THE

COUNCIL OF STATE DEBATES

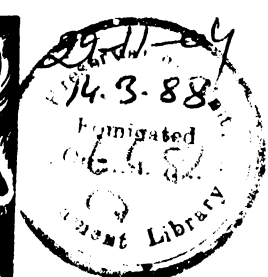
VOLUME II, 1936

(21st September to 17th October, 1936)

TWELFTH SESSION

OF THE

THIRD COUNCIL OF STATE, 1936



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COUNCIL OF STATE.

Monday, 12th October, 1936.

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

MEMBERS SWORN:

The Honourable Mr. John Bartley, C.I.E. (Government of India: Nominated Official).

The Honourable Mr. Bijay Kumar Basu, C.I.E. (Bengal: Nominated Non-Official).

QUESTIONS AND ANSWERS.

TRAVELLING ALLOWANCE EARNED BY POSTAL INSPECTORS IN THE BENGAL CIRCLE.

172. THE HONOURABLE MR. MAHMOOD SUHRAWARDY: Will Government please furnish a statement showing separately the amount of travelling allowance earned by each of the Postal Inspectors of Bengal Circle, month by month, from January, 1936 to July, 1936?

THE HONOURABLE MR. A. G. CLOW: I regret that I am unable to furnish such a statement. Its compilation would involve an amount of research quite incommensurate with its value.

EXPENDITURE INCURRED ON ACCOUNT OF TRAVELLING ALLOWANCE FOR 1934-35 AND 1935-36 IN THE POSTAL DIVISIONS OF MIDNAPORE, MYMENSINGH, ETC.

173. THE HONOURABLE MR. MAHMOOD SUHRAWARDY: Will Government please furnish a statement showing the amount spent under the Head Travelling Allowance for 1934-35 and 1935-36 in the Postal Divisions of (*i*) Midnapore, (*ii*) Mymensingh, (*iii*) Rangpur, (*iv*) Hooghly and (*v*) Jalpaiguri?

THE HONOURABLE MR. A. G. CLOW: A statement containing the information is laid on the table.

A statement showing the expenditure incurred on account of travelling allowance for 1934-35 and 1935-36 in the following postal divisions.

Postal Division.	1934-35.	1935-36.
	Rs.	Rs.
Midnapore ..	6,464	6,723
Mymensingh ..	5,965	6,133
Rangpur ..	6,323	5,493
Hooghly ..	4,986	4,654
Jalpaiguri	7,251	8,821

INCIDENT AT A FOOTBALL MATCH OF THE DURAND FOOTBALL TOURNAMENT ON THE 30TH SEPTEMBER, 1936.

174. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: (*a*) Is it a fact that a Muslim boy of tender age belonging to the Harcourt Butler School was injured by soldiers of the Royal Scots and other regiments present in the one rupee enclosure of the Annandale ground on the 30th September ?

(*b*) Is it also a fact that one Indian died as a result of the injury caused by the assaults of the soldiers ?

(*c*) Is it a fact that a large number of persons were also seriously injured ? If so, what is the number so injured and how many of them are Muslims, and how many of them are Hindus, and how many are Sikhs ?

THE HONOURABLE MR. R. M. MAXWELL: (*a*) No. In the confusion that followed the football match, a Muslim boy received a cut on the head. The injury was not serious and there is no proof that it was caused by soldiers.

(*b*) No.

(*c*) No. Only three persons including the Muslim boy referred to in (*a*) above received minor injuries. I have no information as to the communities to which the other two persons belonged.

CONCESSION FARES GIVEN BY RAILWAYS IN CERTAIN HILL STATIONS.

175. THE HONOURABLE KUNWAR HAJI ISMAIL ALI KHAN: (*a*) Do some of the Railways allow concession in fare for certain hill stations in India ?

(*b*) If the answer to above part is in the affirmative will Government be pleased to state the name of the Railways and hill stations for which concession is allowed ?

THE HONOURABLE SIR GUTHRIE RUSSELL: (*a*) Yes.

(*b*) Assam Bengal Railway .. Haflong Hill and Shillong.
Bengal Nagpur Railway Ranchi.

Eastern Bengal Railway ..	Darjeeling, Ghum, Kurseong, Gielle Khola and Shillong.
Great Indian Peninsula Railway	Matheran, Kirkee and Poona.
Madras and Southern Mahratta Railway.	Bangalore, Ootacamund, Coonoor, Wellington.
South Indian Railway	Ootacamund, Coonoor and Wellington.
Darjeeling Himalayan Railway	Darjeeling, Ghum, Kurseong and Gielle Khola.

THE HONOURABLE KUNWAR HAJI ISMAIL ALI KHAN: Will Government kindly state in which hill stations the concession is allowed ?

THE HONOURABLE SIR GUTHRIE RUSSELL: The hill stations I have given in this list.

THE HONOURABLE KUNWAR HAJI ISMAIL ALI KHAN: Is it a fact that the Great Indian Peninsula does not allow any concession for Mussoorie hill station ?

THE HONOURABLE SIR GUTHRIE RUSSELL: Mussoorie is not on the Great Indian Peninsula Railway !

BILL PASSED BY THE LEGISLATIVE ASSEMBLY LAID ON THE TABLE.

SECRETARY OF THE COUNCIL: Sir, in pursuance of rule 25 of the Indian Legislative Rules, I lay on the table copies of the Bill further to amend the Indian Tea Cess Act, 1903, for certain purposes, which was passed by the Legislative Assembly at its meeting held on the 10th October, 1936.

INDIAN COMPANIES (AMENDMENT) BILL.

THE HONOURABLE THE PRESIDENT: Honourable Members, the Council will now proceed to discuss the Bill further to amend the Indian Companies Act, 1913. I am very sorry to inform you that the Honourable the Law Member is unable to be present here today owing to illness and under medical advice but he has asked me to tender his apologies to you. The Honourable Mr. Sen.

THE HONOURABLE MR. S. C. SEN (Government of India: Nominated Official): Sir, I move:

"That the Bill further to amend the Indian Companies Act, 1913, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

Sir, before I actually place some of the facts which it is necessary to place before this Honourable House, I must express my regret at the unavoidable absence owing to ill-health, as you have already intimated to this House, of the Honourable the Leader of the Lower House. No one is more sorry than himself that he could not come to this House to present the Bill as he originally

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intended, and I hope, Sir, that the Honourable Members will extend to me the indulgence of taking his place and doing the best I can so far as this important Bill is concerned.

Sir, in moving the Motion which stands in my name I would like, with your permission, to give a short synopsis of the events leading up to the introduction of this Bill in this Honourable House. Sir, as Honourable Members are aware, the Indian Companies Act of 1913 was introduced and based on the English Companies Act of 1908. As a matter of fact, except in a very few minor details it was a verbatim copy of the English Act. Sir, since then 23 years have passed and we have gained much experience as a result of the working of the Act. In England, Sir, during this period two commissions were issued to examine the law as it stood with a view to find out what possible amendments could be made. The first of these, Sir, was presided over by that eminent company lawyer, Lord Wrenbury, or Justice Buckley as he was called when he was on the Bench. But his recommendations were made at a time when the war was just over and naturally the main points dealt with there were questions regarding the trading of aliens in England. After that, Sir, there was another commission issued which was presided over by Mr. Wilfrid Green as he then was and Lord Justice Green as he is now and a report of that committee was laid before Parliament in 1928, and the English Consolidating Companies Act, 1929, was based upon his report. Sir, since the amendment of the English Companies Act, demands were made in this country for amending our Act, and the Government had to give pledges from time to time that the question would be taken up as early as convenient. Pursuant thereto, Sir, in 1934, His Excellency the Viceroy announced that the Government had decided to appoint a special officer to go into the question and to make a preliminary survey of the matters which required reconsideration and a special officer was appointed. Sir, this report was submitted by the officer in February, 1935. In order that the Government might have regard to all points of view before the actual drafting of the Bill was taken up, Sir, the Government appointed an advisory committee consisting of the representatives of the two great associations of Chambers of Commerce, namely, the Associated Chamber of Commerce and the Federation of Indian Chambers of Commerce, the representatives of the millowners, the representatives of the shareholders, and the representative of the Reserve Bank. Sir, that committee made certain tentative suggestions upon which the draft Bill was based. That Bill was introduced in the Lower House in the Indian Legislative Assembly in the budget session of this year, and it went into Select Committee where it was examined by the representatives of all groups in the House. Sir, the Bill as amended by the Select Committee was placed before the Legislative Assembly during the current session and after 18 working days during which amendments were received from all quarters and criticisms of all kinds were considered, the Bill was finally passed.

It is that Bill, Sir, which is now before this Honourable House and it is in regard to that Bill that my Motion relates.

Honourable Members will find that in the Bill we had to deal not only with problems which had to be considered in the English Act but we had to

deal also with problems which are peculiar to our own country. The principal amongst them was the question of managing agencies, a system which as such is not present in England at all. The matters which had to be dealt with were indeed very numerous and Honourable Members will find that as a result the Bill had to run to about 126 clauses. In order to enable Honourable Members to know exactly the matters that have been dealt with in this Bill I shall, with your permission, Sir, give a short resume of the principal matters dealt with in this Bill and the provisions made with regard thereto. If I may shortly summarise the matters which the framers of this Bill had to bear in view, they fall, really speaking, under six main heads; firstly, the question of prevention of mushroom companies and the suppression of fraudulent companies; secondly, the question of better disclosures to shareholders; thirdly, the giving of further powers to shareholders; fourthly, providing for check over what was called the autocracy of the directors; fifthly, prevention of abuses of the managing agency system, and lastly, provisions relating to banking companies. The last matter came in because Government found that it was not convenient to have a more comprehensive Act to deal with banking companies and they wanted to eradicate some of the evils which were not attended to by the Reserve Bank of India Act. Sir, I will not, for the time being, refer to the various miscellaneous matters which have also been dealt with in the Bill but the sum total of which will be found to be very considerable.

Sir, with your leave, I will now indicate the provisions in the Bill under each of these heads. The first clause to which I will draw the attention of the House is clause 55. Before this, the provisions of the Indian Companies Act allowed companies to put in in their own articles any fancy sum which they liked as the minimum subscription, and under the statute, once you got shares to the amount of the minimum subscription, you could commence business and the company could function. There were great abuses in this direction. Some companies had ridiculously low minimum subscriptions with the result that they practically, with no capital worth the name began their activities, they began to incur liabilities with the inevitable result that in most cases they came to grief. That is the first point which this Bill has tried to make good. Under clause 55 it is not now possible to give any arbitrary figure as the minimum subscription. The law has provided that certain matters must be taken into account, and in order to fix the minimum subscription the directors have got to provide for the matters mentioned in sub-clause (*2*) of clause 55. This prevents one of the great abuses.

Then, Sir, you come to clause 79. It provides for prosecuting at the cost of the State, persons who have been guilty of offences in relation to companies. Under this provision in the Bill, it is the State which undertakes the liability of prosecuting such persons, and that is no mean advantage.

I then come to clause 77 (*b*), where you will find that Registrars of Joint Stock Companies have been given powers to investigate into cases of what are known as fraudulent trading, cases which are now very frequent in at least two provinces, namely, Bengal and Bombay. In many cases which have been brought to the notice of Government it has been found that small

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mushroom companies have been carrying on their business but their activities have been mainly directed to defrauding the public who come into contact with them.

THE HONOURABLE THE PRESIDENT: What is the law in England?

THE HONOURABLE MR. S. C. SEN: The law in England is much the same as we have sought to bring in this country, under this clause, except that it is the Board of Trade in England which undertakes these tasks in England, but there is no similar body in India and so the duty has been cast upon the Registrar of Joint Stock Companies to do the investigation. The procedure here, under this Bill, is that if the Registrar gets any information that there is any fraudulent trading, he carries out his investigations and submits a report to the Government, and the Government then begins the prosecution as a State prosecution.

These three matters in which the Bill has sought to introduce innovations will, I am sure Honourable Members will agree, provide a substantial check against the growth of mushroom companies and against the continuance of fraudulent companies.

It will be convenient to deal with the second and third matters under the same head, namely, better disclosures to shareholders and giving of further powers to shareholders. In this matter, I will begin with the formation of the company. Sir, I have, for the time being, left out private companies, because, as Honourable Members are aware, they are more or less glorified partnerships, and they really do not come within the category of companies in which the general public are interested. Sir, in the case of public companies, the first thing which is taken in hand after the formation is the publication of the prospectus. Honourable Members will find in clause 50 of the Bill the statute now imposes upon the directors or the promoters a great deal more of liability than was in the old Act. Very many details which did not find a place in the old Act have been introduced. The main idea has been to give to the shareholders who are likely to purchase shares the fullest idea as to what the company is going to do, and what its prospects are, and to place all facts and material to enable them to judge about the shares and the prospects of the company.

I then come to clauses 69, 70, 71 and 72. These provide for various new things. First of all, they provide for the compulsory preparation of a profit and loss account; they provide for a directors' report; they provide for an auditors' report, and what is more, they provide for the compulsory circulation of all these documents to the shareholders in order that they might have a real insight into the company's working and its finances.

Clause 15 is the next clause to which I draw the attention of Honourable Members. It compels the directors to disclose all changes in the management, and clause 34 puts a stop to arbitrary and indiscriminate rules regarding meetings of shareholders. Then we have a clause which does away with the restriction on the right of the shareholder to vote after he is put on the register. That was one of the evils which was canvassed on the floor of the Lower House. It was pointed out that under the articles of many companies they

have put a period of restriction within which shareholders, although they are on the register, could not vote. That was a matter which has been put right in this Bill.

Then we come to clause 44 of the Bill, which restricts the right of managing agents to pack the directorate with their own nominees, and by process of elimination gives the shareholders a right to have, except in cases where there are special directors, their own nominees on the Board to the extent of two-thirds.

The next provision to which I would draw the attention of this Honourable House are clauses 17, 37 and 46. These clauses give the shareholders access to the share register, the minutes of proceedings of general meetings and the register of contracts entered into by the directors. The last is a matter upon which there is a great divergence of opinion, but there is unanimity of opinion to this extent that this undoubtedly is a great boon to the shareholders.

Clause 86F of the Bill gives the shareholders a statutory right to remove the directors in proper cases by a special resolution. And lastly, we come to clause 44 in which sub-clauses (*d*) and (*e*) places in the hands of the shareholders the most valuable right of appointing, removing and varying the terms of contracts of managing agents.

Sir, I think even the most fastidious of critics will agree that all these provisions collectively serve to give to the shareholder a very great amount of control which they previously did not have under this statute.

I now come to the fourth matter, namely, provisions for the check of what they call the arbitrary power of the directors. In this direction, very substantial alterations have been made. While the Bill does not purport to interfere with the internal management of the company by the directors, yet it has certainly striven to check and stop many of the evils which were proved to exist. Sir, I shall try and shorten the enumeration of the clauses which deal with it. I will first take clause 42, and I draw the attention of Honourable Members to section 86A. This is a clause under which undischarged bankrupts have been prevented at all times from getting themselves elected as directors and interfering in the management of companies. It has very often been found that people who have been unsuccessful in their private life, unsuccessful in the sense that they have had to take the help of the bankruptcy court, have got themselves attached to companies and by the continuation of their own schemes have brought the companies to ruin. Sir, this provision was found very useful in England and we have adopted that in the Indian Act. Then in section 86B we have prevented the assignment of offices by directors. In 86C the conditions in the articles of association which relieved directors from liabilities in respect of negligence, breach of trust or breach of duty has been rendered void. In 86D there is a very important departure, namely, that loans to directors have been debarred, except in the case of banking companies. The reasons for this exception were, as has been pointed out, that the directors in the banking companies mostly represented their best constituents and that it would be inopportune and inequitable not to provide an exemption for them. Then in section 86E we find a provision which prevents a director from holding offices of profit under the company

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except of a certain nature, such as managing agent, managing director, manager, etc. Section 86EE deals with and curtails the hitherto unrestricted right of the directors to enter into contracts with the company. Until recently under the existing statute, all that the directors had to do was, provided there was a provision in the articles, to disclose that they were concerned in any contract and they could enter into any contracts with the company. That is no longer possible. They have now to obtain the sanction of three-fourths of the number of the directorate before they can enter into any contracts, and under the same section they have got to maintain a register which shows the contracts which have been so entered into with the company and that is open to inspection by the shareholders. Section 86FF provides for the first time the automatic vacating of the office of director in certain contingencies. And in clause 59 section 105C the power of directors to issue new shares for increasing the capital and allotting them to any one they liked has been curtailed. It is now made compulsory that when new shares are issued they must be offered in the first instance to the existing shareholders to be taken up by them in proportion to their personal holding, and only if they decline, then and then only can outsiders be allotted those shares. That is a very substantial change which I have no doubt the Honourable Members will agree are for the benefit of shareholders.

Clause 68 which incorporates the new provisions regarding the keeping of books by companies imposes upon directors a liability, and a very stringent liability, to keep proper books. Any director who does not take proper steps to enforce the keeping of the proper books runs the risk of being fined or imprisoned. This is not a novel feature. It is on a par with similar provisions in England regarding penalty. Clause 46, which deals with section 91A (*3*), imposes upon the directors an obligation to keep a register, and section 91B (*1*) and (*3*) prevents an interested director from forming a quorum at the meeting of the board when such a contract is likely to be decided upon. Clause 96, section 177A, imposes upon them the liability to furnish the liquidator, in the event of the company being wound up, a statement showing the affairs of the company. This was very necessary as in many cases the liquidators found themselves absolutely at sea because of the way in which the papers were kept and because of the indifference of the directors as regards helping them after the winding up.

Sir, these are shortly the provisions relating to the check upon the directors' activities, and I have no doubt that Honourable Members will agree that this is a formidable list of liabilities and that, with penalties attached for default, this will really serve to remove what are called dummy directors, of which we had many instances under the present law. In my submission, and I think Honourable Members will agree, this will serve to ensure proper supervision of the directors and the proper discharge of their duties.

The next head which I want to touch is that of the managing agents. This is one of the most important features of the present Bill. This is a matter for which no precedents could be found and the framers of the Bill found the greatest difficulty in steering a middle course between the extreme views

which were entertained by the various public bodies and the general public at large. Sir, the materials available to the Government show that it is impossible so far as India was concerned to suggest that this system of managing agency could be done away with. The Government has proceeded on the basis that the managing agency system cannot be done away with, that it has served to benefit the industrial progress of the country to a very considerable extent.

THE HONOURABLE THE PRESIDENT: Can you tell the Council how the system originated in India?

THE HONOURABLE MR. S. C. SEN: Sir, the system originated in India with formation of companies in the early times when the idea of a corporation was practically unknown to India and people were chary of putting their money into companies unless they had the guarantee of some men of proved worth and substance. That is how it began, Sir. It also gained its foothold because of the want of banking facilities which companies in India suffered from the beginning, and I am quite sure—and we have acknowledged it on the floor of the Lower House and elsewhere—that but for the help given by the managing agency system many of the thriving concerns which we have today would not be there. But at the same time the Government could not be blind to the fact that amongst a particular section at least of the managing agents there were abuses which were proved to exist, abuses which called for remedies, and that is the basis, Sir, on which this Bill has proceeded. The Bill does not purport to do away with the system of managing agency; it purports to retain it, but retain it within limits. Before I come to the actual provision I crave your permission to indicate shortly the abuses which were found to exist and which Government thought called for remedy in the Bill. Sir, in the report which was submitted to the Government at pages 31 and 32, Honourable Members will find a summary of what were the matters of which consideration was called for. If I may be pardoned for drawing your attention to them, the matters against which Government was called upon to consider amendments were:

(*i*) Inter-investment, or the investment of the surplus funds of one company in another company run by the same managing agents;

(*ii*) the practice of financing capital expenditure by short-term loans;

(*iii*) the unsatisfactory way in which managing agents have discharged their obligation in respect of subsidiary services undertaken by them;

(*iv*) unreasonableness of the remuneration, specially the charging of commissions on the sales and purchases and office allowance;

(*v*) the practice of managing agents taking up the management of more concerns than they can effectively control;

(*vi*) the practice of assigning the agency without any reference to the company; and

(*vii*) the unduly long periods for which managing agents are appointed and the unsatisfactory provisions for their removal.

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These were the matters upon which the Government was called upon to consider. The greatest difficulty with which the Government was faced was in the case of existing managing agents and in making up their minds the Government had to take into account two extremely divergent views which were urged. One section wanted the abolition of the system. The other view (and this was urged by some Honourable Members in the Lower House) was that the sanctity of contracts must be observed and that irrespective of the fact whether the terms were unconscionable or not the existing agencies must not be touched. That provided, Sir, the greatest difficulty; and while it is true that the Government has always been prepared to observe the sanctity of contracts, they came to the opinion that it was equally true that it was the duty of the Government to stop abuses by legislation should there be proof in support of them even if it required affecting the subsisting contracts. In this case, on the materials which were placed before the Government they came to the conclusion that there was abundant evidence available to show not only that there were abuses in some directions but that they needed immediate stopping.

THE HONOURABLE THE PRESIDENT: Do you think that shareholders buying shares in particular concerns enquire into these matters before buying?

THE HONOURABLE MR. S. C. SEN: I agree that they do not and this has been the main theme of the argument of the Shareholders' Association and they have all along urged that the shareholders need protection against themselves. Well, Sir, that is a principle which can hardly be pushed to its extreme. The Government has taken this course that it is necessary in the interests of the industrial development of this country to put in certain restrictions regarding the activities of managing agents; and when I draw the attention of this Honourable House to the provisions which have been made, I think it will be conceded from all quarters that the Government has done what is only reasonable, that they have interfered to the extent of making what may be called the minimum requirements and that anything less than what they have done would have been open to misrepresentation in the country. Sir, the first matter in which Government has interfered under the provisions of this Bill is the question of the terms on which managing agents can be appointed and under the provisions of this Bill it is provided that managing agents, both new and old, cannot have a span of life of more than 20 years at a stretch from now. Sir, it was urged on behalf of certain sections of the public that there should be a differentiation between existing managing agents and those who will come into existence in the future, but on consideration of all the facts it was found that there was absolutely no justification for differentiation, and in the Bill you will find therefore that old and new have been placed really on the same level.

Now, Sir, if I may, with your leave, draw the attention of the House to the various provisions which have been made in this behalf, I ought to begin in the first instance with clause 2, where in section 9A the managing agent has been defined. I must confess that the question of definition gave us not a

little trouble, but the definition which has been evolved you will find, Sir, has met with the approval of all the sections in the sense that no one has been able to give a better definition or suggest a better definition. The definition makes it clear that managing agents are after all under the control of the directors, but that the extent of the control is limited, and depends upon the delegation which the directors or the company agree to make under the agreement. We next come to clause 44 which contains all the provisions relating to managing agency in general. The new section 87A limits the term of appointment as I have said, to 20 years. Sir, I think it is only right and proper to indicate that in this matter the Government chose to differ, and differ for good reasons, from the recommendation made by the Special Officer. From the opinions received by the Government after the Bill was circulated, if I may point out, out of 300 opinions received, only three differ from his suggestion, namely, they asked for a lesser period in the case of existing companies. The rest asked mostly for more and others were indifferent. That showed, Sir, that the period fixed by the Government was just and proper—at least it was considered to be so by an overwhelming majority of the sections of the public interested in the matter.

THE HONOURABLE MR. HOSSAIN IMAM: Will the Honourable Member enlighten us how many of these opinions were from managing agents and from their connections and partners?

THE HONOURABLE MR. S. C. SEN: I do not think, Sir, the Government possess material for investigation of these matters, but if you read, on the face of it, you will find that they represent the opinion of independent bodies in the country.

THE HONOURABLE THE PRESIDENT: If the managing agents form the majority, you cannot prevent them from controlling the minority.

THE HONOURABLE MR. S. C. SEN: The principal idea in the matter of companies is that the minority has got to obey the mandates of the majority except in cases which amount to fraud and oppression. It is one of the vital principles underlying companies that the minority must always obey the majority, but subject to limits. As I say, if it amounts to fraud or oppression, it is the right of the minority to set it right. There can be no centralised organisation if the constitution gave the right to the minority to revolt against the majority on all occasions.

Sir, as I was pointing out, in section 87B we have the power of removing the managing agents for certain offences proved in court. Then we have the invalidating of the assignments of their remuneration. A managing agent would not hereafter be able to transfer his office without the consent of the shareholders. Lastly, there is no compensation to be allowed to a managing agent on winding up if he is accessory to or if he has hastened the winding up by his negligence. Clause 87C, Sir, provides that future appointments can be made only on the basis of remuneration calculated on a fixed percentage of the net annual profits of the company, with a provision for a minimum payment in the case of the profits proving inadequate. In clause 87D, Sir, loans to managing agents are debarred, and in 87D we also have a provision that no managing agent can enter into a contract for the sale of goods with a company

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of which he is a managing agent unless he obtains the consent of three-fourths of the directors present. In clause 87E there is provision for the prevention of inter-investment or the making of loans to a company under the same management. In clause 87F there is provision for the prevention of the purchase of shares and debentures of a company under the same management. In 87G there are restrictions on the powers of managing agents in regard to the issue of debentures or the investment of funds, and clause 87H prevents them from entering into competitive business on their own account. Clause 87K debars them from nominating more than one-third of the total number of directors on the board. Over and above these liabilities, Sir, liabilities have been imposed upon them to see that proper books and accounts are kept and proper balance sheets are made and if Honourable Members will look at clause 68 and clause 69 they will find that the liabilities are not very small. I think, Sir, if you take into account all the restrictions which have now been imposed, the Honourable Members will agree with me that they appear at any rate at the present time to be sufficient to deter the managing agents from going wrong in future.

The next important point is, Sir, the banking companies and, as I had occasion to explain, this part of the Act was necessary because the Government found it inconvenient and inopportune at the present moment to have a comprehensive Act as recommended by the Central Banking Inquiry Committee. At the same time, Sir, there were other recommendations of the Central Banking Inquiry Committee which called for consideration. They were, firstly, Sir, the enforcement of the principle of keeping reserves and cash reserves in a bank. As Honourable Members are aware, the Reserve Bank of India Act has really dealt with the big banks. They do not cater for the needs of the small banks and it was therefore found necessary to introduce for the present legislation in the Indian Companies Act to provide for the recommendations which have been made by the Central Banking Inquiry Committee. Now, Sir, in this matter, the first difficulty which we had was in connection with the definition of a banking company. Sir, I am quite aware and the Government was quite aware of the fact that the Hilton Committee and the other committees did not venture to define a banking company. But it was necessary, in order that the Act and the provisions of the Act might be properly administered, to have a definition. It was for this purpose, Sir, that the Government had the benefit of the services of Sir Walter Lamond in the Advisory Committee and later on when the Bill was in the Select Committee stage of the opinions of Sir James Taylor and other well-known financial experts in the country. As a result, Sir, in section 277E the definition of a banking company has been given and so far as we have been able to find it really ropes in all possible or most of the avenues which a banking company may explore in the course of its legitimate activities. We have tried to give effect, Sir, to the recommendations of the Central Banking Inquiry Committee in the sections which follow, namely, sections 277F, etc., and I may very shortly give you the reference, Sir, so that Honourable Members may follow the provisions of the Act. Section 277F imposes restrictions on the activities of banking companies. One of the recommendations of the Central Banking Inquiry Committee was, Sir, that it

was undesirable that banking companies should get involved in trading concerns. That is what is purported to have been contained in section 277F. In section 277G there is a restriction put on the appointment of managing agents of banking companies. This again was one of the recommendations of the Central Banking Inquiry Committee, namely, that banks are institutions of such a peculiar nature that managing agents are not wanted. It is the confidence of the customers of the bank which makes the bank a success and not the financing by the managing agents. In section 277H provision is made for a sufficient working capital before a banking company can commence business. Section 277I provides for the unpaid capital being preserved intact, and section 277J provides for a compulsory reserve fund. Sir, I do not know what happens in other parts of the country but in the province from which I come we have had a very bitter experience during the last four years. Hundreds of these small banks came to the verge of bankruptcy because of the fact that they had no reserves, cash or otherwise. Sir, they were very prosperous banks, some of them declared dividends to the extent of 60 per cent. or so in years gone by but they were so unbusinesslike in their working that they kept no reserve funds with the result that when in 1933 the economic crisis came in Bengal they were absolutely reduced to the verge of bankruptcy. And it was with the greatest difficulty that what might otherwise have been a national calamity in the province was avoided. Sir, it is to avoid a repetition of such a deplorable state of affairs that section 277J has been enacted. It compels every banking company before declaring a dividend to put by a decent sum as a reserve. Then we have the provisions relating to the cash reserves. It is on the same lines as the provisions in the Reserve Bank of India Act. Then lastly, we have section 277M which is a distinct improvement in so far as it provides a sort of moratorium for banks which are in temporary difficulties, provided of course it is proved to the satisfaction of the court. The Registrar is given the power to make a preliminary investigation to find out if the protection is needed but subject to that the courts have been given the power to make an order in the nature of a moratorium. Sir, I have no doubt that the Honourable Members will agree with me that, so far as indigenous small banks in the country are concerned, these are necessary safeguards, safeguards for the protection of the banks from being reduced to a state of bankruptcy and to force them to carry on their business on business-like methods.

Sir, the last matter to which I will draw the attention of this House is the provision relating to the winding up of companies. The most notable thing in this section, Sir, is the division of the voluntary winding up of companies into two broad divisions. As Honourable Members will appreciate, Sir, when a company is insolvent the persons mainly interested are the creditors. There is not likely to be any surplus which will accrue to the shareholders and therefore the shareholders have no interest. Under the existing Act, Sir, by a peculiar irony of fate, although the creditors were the persons mainly interested the whole of the work of winding up was left in the hands of the shareholders, who were absolutely indifferent ; they had nothing to lose or gain by the winding up, and naturally matters were very bad. This has been put right. In the case of insolvent companies the control has now been given to the creditors.

[Mr. S. C. Sen.]

While if the company is solvent the members are, of course, as Honourable Members will appreciate, the persons who have something at stake. There may be a surplus after payment to creditors. Therefore they have been given more control.

Another welcome feature in this direction is in relation to cases where companies are wound up compulsorily by court. A very difficult situation arises often owing to lapse of time between the making of an order and the appointment of a liquidator. During this period the company remains in a state of suspended animation, and its funds are in jeopardy specially as there is nothing to prevent the directors from carrying on until and unless a liquidator was appointed to take charge of the assets from the hands of the directors. This has been set right and now the official receiver becomes automatically the official liquidator directly an order is made. There is, therefore, no period of interregnum between the passing of the order and the appointment of the liquidator.

Sir, the provisions of clause 96 for the making of a statement by the directors to the liquidators, the appointment of committees of inspection, the periodical statements by liquidators and the power of liquidators have, in my humble opinion, removed most of the legitimate complaints that could be made in the matter of winding up proceedings.

This brings me, Sir, to the last subject, the miscellaneous provisions in the Bill. Sir, it is not possible for me, during the short time at my disposal, to refer to these in detail. They are far too numerous. But if I may draw the attention of Honourable Members to the provisions of clauses 111, 120 and 121, they will find how some of the most bitter complaints which were made against the way in which companies made away with security money, with provident funds, etc., have been dealt with and how the new provisions have sought to place them on a basis of absolute security, and to this extent, they are distinct advances in the present Bill.

Sir, I have now done, but before I resume my seat, may I once more remind this House of the various stages through which this Bill has passed ? It has passed through a most gruelling test in the Lower House, all possible phases have been discussed in the amendments that were raised—and I can assure my Honourable friends they were not very small in number ; they reached up to the modest figure of 600. Sir, no legislation is perfect, and we, on this side of the House, do not claim this to be a perfect piece of legislation. But what I venture to submit, Sir, is that it will be admitted that what we have done, what we have striven to achieve by this Bill, is undoubtedly a considerable advance on the law as it stood. I venture to submit that if Honourable Members will consider this Bill calmly and dispassionately, they will find that we have tried to grapple with problems which presented themselves to us. It will be for posterity to say if we have succeeded or if we have failed. Experience alone will show if we have been too lax or if we have been too lenient. But I sincerely hope that this Bill will be given a fair trial before it is condemned and its provisions are unduly criticised. Sir, fortunately for us, this is a matter in which there cannot be any party question, nor is there any political issue involved. We all have the same ideal, namely, the eradication of the evils and the

advancement of the industrial progress of the country. I seek, Sir, the co-operation of all sections of the House. Let us, like a team, put forth our shoulders to the wheel and let us help to usher forth the new legislation for the attainment of our common ideal. (Loud applause.)

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Mr. President, before I commence my remarks on the Bill, permit me to congratulate our new colleague on the masterful exposition of the case which he gave us. The Bill before the House is of momentous importance, and although we, on this side of the House, may not regard the provisions made as adequate and may question the methods which have been adopted by the Legislative Department in piloting this Bill, we cannot be blind to the fact that it has involved a great deal of labour to the Legislative Department and we are all grateful to the Honourable the Law Member for the indefatigable energy, zeal and keenness with which he has seen this measure through. (Applause.) His worthy lieutenant, Mr. Susil Chandra Sen—he will pardon me if I say that I regard him better as he was than as what he is. The proposals as they originally emanated from him were far superior, in my opinion, as safeguarding the interests of the investors than the Bill which is now before us. Sir, I cannot allow this discussion to go on without saying how keenly we feel the calculated disrespect and disregard of this House which has been evinced by the Legislative Department in not referring such an important Bill as this to a Joint Select Committee of the two Houses. A Bill of this nature, which does not involve any political issue, but which requires a more dispassionate consideration, ought to have been referrred to a Joint Select Committee of the two Houses as was done in the case of the Reserve Bank Bill. We have been told that it is the opposition in the other place which was the stumbling block. I beg to differ. In the discussions on the Bill in Simla, once or twice a warning was given by the Government benches that if certain unacceptable amendments were persisted in, the Government may have to withdraw the Bill. That had a salutary effect. If Government had been really determined on referring this Bill to a Joint Select Committee, they could have used their armoury to this purpose and nothing would have deterred them. We were told that the Assembly has no objection *per se* to a Joint Select Committee but that their objection arises from the fact that a House of 145 will have the same representation as a House of 60. I am afraid this bogey has been raised simply in order to stop the reference of the Bill to a Joint Select Committee. This law, as it at present stands, will perhaps be in the future legislation as well.

THE HONOURABLE THE PRESIDENT : There is no law ; it is rule 42 of the Legislative Rules.

THE HONOURABLE MR. HOSSAIN IMAM : The Standing Order is subject to amendment and the Goverment have had this matter before them for a long time. We tried to amend the Standing Orders once for certain purposes but we failed. If the Government really felt that this Standing Order stood in the way they ought to have changed it long ago and not allowed it to stop us from exercising our share in the shaping of the Bill.

12 NOON.

THE HONOURABLE THE PRESIDENT: There was nothing to prevent you from putting in amendments.

THE HONOURABLE MR. HOSSAIN IMAM: We once moved amendments in similar circumstances and the fate they met was enough to deter us from making future efforts in that direction.

Sir, in the second place this is rather an inopportune moment to bring this Bill before the House. Government will remember, or perhaps they have forgotten, that when the Assembly was being dissolved two years ago they had the Simla session earlier so as to give the Assembly Members a chance to contest their elections, which took place in November and December. But when it comes to the turn of the Council, as this House by its subservience has made itself the mock of the public as well as of the Government, the Government have no regard for the feelings of this House, and we are compelled to stay here up to the middle of October when we have to file our nomination papers within 25 days of our departure. That is the regard which the Government pays to the wishes and the convenience of this House.

The Honourable Mr. Sen gave us the ancient history of this Bill. I shall try to give to the House a little bit of modern history. There has been strong agitation for the amendment of Company law for a long time, but the impetus was given by the reports of the Tariff Board on the textile industry. From the first report onward to the last report, which we got in 1934, they always had something to say about the unsuitability of the present Companies Act. It was directly due to the last Tariff Board report that this matter came up before the Government and in September, 1934 the Honourable Mr. Sen was appointed to revise this measure. I congratulate the Honourable Member in having waded through the mass of literature which was in the Commerce Department during the short period of five months. He gave us a very comprehensive and, I may say, a very exhaustive report, and the draft which he placed before us was far superior and they could have made it almost a fool-proof Act. But what has happened? When he submitted his report in February, 1935 it was pigeon-holed either in the Commerce, the Law or the Home Department. No one heard anything about it until January, 1936. For ten months it remained in a dormant condition. Now, in January, 1936, a Committee known as the Company Law Amendment Committee sat, in which people who were really very competent to deal with this subject sat and gave us the benefit of their views. Professor Davar, Sir Joseph Kay, Mr. Niranjan Sarkar, Sir Walter Lamond and Mr. Aikman were the members of this Committee. The report of this Committee gave us certain amendments which it is supposed were incorporated in the original Bill, modifying the draft of the Honourable Mr. Sen.

THE HONOURABLE THE PRESIDENT: I do not know what you are arguing, but do you wish to contend that you are prejudiced by the delay on the part of the Government?

THE HONOURABLE MR. HOSSAIN IMAM: No, Sir. What I am saying is that it was possible for the Government to bring in this measure earlier and

thereby give ample time to both the Houses to consider this measure in a dispassionate manner.

Sir, we have no statement of the Government as to the policy underlying this Bill. What we know is from the letter which the Honourable Mr. Sen wrote forwarding his report and from the speeches of the Honourable Law Member in the other House. As I said, it was supposed that the original Bill was modified in consideration of the opinions of this expert Committee. But I find there are certain amendments for which I could get no explanation either from the Law Member's speeches or the papers before us. I refer to the amendment by the Honourable Mr. Sen of section 911.

THE HONOURABLE THE PRESIDENT: May I draw the attention of the Honourable Member that we are discussing now the general principles of the Bill.

THE HONOURABLE MR. HOSSAIN IMAM: Sir, that is what I am saying, we do not know what is the basis of this Act. Is the basis of the Act as announced today, is that the basis on which we are to frame the Act or the original letter of the Honourable Mr. Sen, dated February, 1935.

THE HONOURABLE THE PRESIDENT: We have nothing to do with the Honourable Mr. Sen's letter or with anyone else. You must discuss the Bill as it stands.

THE HONOURABLE MR. HOSSAIN IMAM: And are we debarred from discussing how this took shape and how the original Bill has been destroyed by the present measure? That is what I am drawing attention to. The Honourable Member said that we were out not to abolish but to reform the managing agency system, and the reform which he recommended embodied the principle that in companies to be formed after the passing of this Act the terms of the managing agency contract shall be subject to confirmation by the shareholders. That very salutary provision which would not have affected any existing company has been removed without rhyme or reason. I want to know the reason for removing this. The expert Committee had not a word to say about it. The original Bill does not contain it. This makes us suspicious that there are influences not known to us.

THE HONOURABLE THE PRESIDENT: I may point out to the Honourable Member that this is a Government Bill. The Government have brought this Bill and it is open to them to incorporate any section and to present the Bill in any form they like. You cannot go beyond the Bill itself in discussing the provisions of this Bill. I would therefore ask you to confine yourself to the Bill itself.

THE HONOURABLE MR. HOSSAIN IMAM: I shall abide by your decision. But this makes the attitude of the Government rather suspicious.

Now, Sir, I come to the essential features of the Bill as announced by the Honourable Mr. Sen just now. I may say that I am not competent to deal with them all. My only interest lies in two. What steps have been taken to stop the growth of mushroom and fraudulent companies and the reform of the managing agency system, involving as it does the control of the board of directors, the control of the shareholders and of the amenities and rights given to the shareholders? I am not concerned either with the banking provisions or other

miscellaneous items to which the Honourable Mr. Sen referred. First and foremost of all, are the provisions which have been made for stopping the growth of mushroom companies. Mushroom companies, as the name shows, are institutions which are not *bona fide*. The difference between the Bill as it has been passed by the Assembly and as it was presented to the Assembly is that whereas in the former Bill stress was laid on prevention, here the stress is laid on cure. As we all know, Sir, prevention is better than cure. What Mr. Sen in his original draft wanted to do and what was incorporated in the original Bill was that it should be made impossible for a mushroom company to grow up, and thereby safeguard the interests of unwary shareholders. But what the Bill, as it has been passed, does is that after we have been fleeced, after the sharks have had their bite, they will not be allowed to devour——

THE HONOURABLE MR. H. DOW : Are these sharks the same as the mushrooms ?

THE HONOURABLE MR. HOSSAIN IMAM : No, Sir. The managing agents of the mushroom companies after they have devoured a part of the body of the shareholders, they will not be allowed to take up the whole of it. That is what the present Bill does. I shall show how this has happened. The original Bill——

THE HONOURABLE THE PRESIDENT : I have already ruled that you are not to go into the question of the original draft.

THE HONOURABLE MR. HOSSAIN IMAM : I am referring to the original Bill as introduced in the Assembly and we are in possession of it and we are entitled to discuss it. I have left the draft of Mr. Sen because it was too good to be true. The original Bill in section 41 provided that no allotment shall be made until a certain minimum amount of share has been subscribed and a minimum amount on the subscribed capital has been realised. Now, the Select Committee changes that provision by dropping all reference to the minimum capital to be subscribed. That, Sir, has been left to the discretion of somebody and what further harm they did was that they do not mention, do not explain, why they have dropped the salutary provision of 25 per cent. of the subscribed capital being collected before allotment is made. The note of the Select Committee, if I may be pardoned for saying so, tries to hide things rather than elucidate them.

THE HONOURABLE THE PRESIDENT : Order, order. I do not think you are entitled to use such expressions about the Select Committee.

THE HONOURABLE MR. HOSSAIN IMAM : Mr. President, I will read the report and I will leave it to the House to see whether it is fair or not.

THE HONOURABLE THE PRESIDENT : You may read the report and the Council may draw its inference, but you cannot say what you have said.

THE HONOURABLE MR. HOSSAIN IMAM : It may not have been their intention, but this is what we find in the Act as it stands at the present moment. This is their explanation to clause 41 :

"We have redrafted the section with the object of simplifying it by transferring the substance of the four clauses (*a*) to (*d*) to a new sub-section and have omitted the words

'providing as an alternative for the minimum subscription the subscription of 33⅓ per cent. of the offered share capital'. We have omitted sub-section (2) of the section as drafted, considering that its provisions are superfluous".

Now, Sir, this part, 25 per cent. thereof, has been erased by the Select Committee without giving any explanation.

THE HONOURABLE THE PRESIDENT: But the Select Committee is not bound to give an explanation. They can make whatever change they think proper and the Honourable Member is too old a Member not to know that. I do not think it is fair on the part of the Honourable Member to question the discretion of the Select Committee in the matter of their report.

THE HONOURABLE MR. HOSSAIN IMAM: No, Sir. I am not questioning their right to do so; what I am questioning is that they have not given us a true picture.

THE HONOURABLE THE PRESIDENT: They are not bound to meet with your wishes.

THE HONOURABLE MR. HOSSAIN IMAM: They may not be bound to but in fairness they should. Even the Honourable Law Member in his introductory speech of the 8th September has felt himself compelled to mention this fact of 25 per cent. which the Select Committee dropped.

THE HONOURABLE THE PRESIDENT: You could have brought an amendment in this House to that effect. If your point is a very sound one, what is the good of talking about the Select Committee's report? It was open to you to bring in an amendment.

THE HONOURABLE MR. HOSSAIN IMAM: The Honourable Law Member in introducing the report of the Select Committee in the other House has clarified the situation which was left dark by the Select Committee; and in that we find that the issues have been confounded. The issue was whether mushroom companies should be allowed to grow or not. But what has happened? As will be found from page 614 of the debate in the other place——

THE HONOURABLE THE PRESIDENT: Order, order. You cannot refer to it.

THE HONOURABLE MR. HOSSAIN IMAM: I am just giving it to the House so that they may verify my statement if they so desire. There, Sir, he has stated that he has been guided in removing this provision because of the under-capitalisation of the Ahmedabad industry. The Ahmedabad industry is an old established industry; that has absolutely no concern with mushroom companies ——

THE HONOURABLE THE PRESIDENT: Do you hold a brief for the Ahmedabad industry?

THE HONOURABLE MR. HOSSAIN IMAM: No, Sir. The Ahmedabad industry is an old established industry and it cannot even by a stretch of the imagination be called a mushroom company. Mushroom companies which are in our minds and in the mind of the Government Draftsman are something quite different from an established industry. It never gets established. Its function is just to collect money, eat it up and then wind it up. That is what the

[Mr. Hossain Imam.]

mushroom company does. Now, Sir, personally I was unable to understand how the question of the under-capitalisation of the Ahmedabad industry could be pertinent to a consideration of measures to be taken to prevent the growth of mushroom companies. I would like the Honourable Member to enlighten us how he did apply that state of affairs to the growth of mushroom companies. The only explanation which I could think out was that it would be impossible in future to start an industry on the same basis on which the Ahmedabad industry has been started. If you stretch this point to that extent and want to avoid a similar development you can say that it has an applicability to the present case. But may I point out that the Government is now trying to create the very circumstances which have led to the imposition of the managing agency system in India. The basis and the thriving ground for the managing agency system was the unsound financial position of the company. If you have a sound and a prosperous company which has full backing of capital at its back, there is no necessity of having a managing agent. What is the real root cause of the growth of the managing agency system is now brought forward by the Government as an argument for stopping the growth of mushroom companies.

THE HONOURABLE THE PRESIDENT: I anticipated that argument and in order to put the Council in possession of the facts, I asked the Honourable Member to give the origin of the managing agency system in India and he has fully explained how that system originated and from your remarks it appears that you have not followed the Honourable Member.

THE HONOURABLE MR. HOSSAIN IMAM: Mr. President, I do not wish to say anything about your remarks, because you are perfectly just. The managing agency system originally may have grown in good ground. But are the Government prepared to say that all the managing agents of the present day are of similar capacity and of similar sound standing as the old managing agency firms were when this system originated? There is a world of difference, Sir, between the original people who started this managing agency system and the men who are exploiting this position. Now, Sir, as far as these mushroom companies are concerned, may I tell the House how these mushroom companies grow up? One of the tricks of the trade is, someone comes forward and underwrites a considerable portion of the shares. Indeed the underwriting commission is usually fixed at 10 per cent. That is what happens in most of the mushroom companies—10 per cent.—and the first application money is fixed at 5 per cent. Now, what they do is that a person connected with the managing agent goes and underwrites a lakh of shares and therefore he is entitled to get Rs. 10,000 as his commission. He files, either fraudulent papers from men of no standing or applications from people of note and substance, and debits Rs. 5,000 from his own commission and those people who are caught in the net are deluded by getting shares for nothing. Now, the underwriter is entitled to get Rs. 5,000 clear profit out of his commission without having incurred any loss. The company after receiving a small quota which is fixed as a minimum proceeds with the allotment and starts functioning. Those people who have subscribed, if they are genuine buyers and have been caught in the net, find that they have to go on paying without respite. If they are

just men of straw, whom the underwriters have put up, then they do not care, because they have nothing to lose. In this way this thing is multiplied. Some people are genuinely caught and those people whose business it is to exploit the ignorance of investors thrive on the trust which investors have in them. Now, Sir, another aspect of these mushroom companies is that the directorate almost always consists not only of the partners of the managing agency firms but of their connections. And here I find, Sir, that the law as drafted is defective in not having cured a very clear defect pointed out by the first Tariff Board on the textile industries—that at least in Bombay they found that most of the directors were directly or indirectly connected with the firms of managing agents. I know that provision has been made that the nominees of the managing agents shall not be more than one-third but there is nothing to prevent members of the firm of managing agents from being nominated as directors on behalf of the shareholders. That, Sir, was a necessary provision for the safeguarding of the interests of the shareholders to be incorporated in this Bill. The question might be asked, Sir, why did I not bring any amendments? I have been here for six years and I know what the chances are for getting an amendment accepted in this House, and therefore, Sir, I did not like to waste the time of the House. (*An Honourable Member:* "If they are reasonable amendments.") Sir, there is nothing as reasonable as the will of the Treasury benches. (*An Honourable Member* : "I protest against that.") Therefore, I regard, Sir, that this provision for checking the growth of mushroom companies are ineffective. At the utmost we can say that they have tried to stop the robbery of the mushroom companies to proceed further than a certain stage but they have not checked that robbery from being started at all.

THE HONOURABLE THE PRESIDENT: We have had enough of these mushroom companies!

THE HONOURABLE MR. HOSSAIN IMAM: Sir, if the draft had been adopted, we would not have had any mushroom companies in India in future.

Now, Sir, I come to the second point as to the abuse of the powers of the directorate. There, Sir, I find that there is a very widespread complaint about the interference with the transfer of shares, at least of fully paid shares on which the company has no lien; this power should not be given arbitrarily to the directors. That power of the directors interferes with the vendability of the shares and it has a great influence on the voting powers and the control of the company. Some of the companies, Sir, in their articles of association had put in provisions which are very detrimental to the interests of the shareholders and no check has been applied by the Government to stop this usurpation of the powers of the shareholders by the articles of association.

THE HONOURABLE THE PRESIDENT: Do you know that this is the law all over the world?

THE HONOURABLE MR. HOSSAIN IMAM: Mr. President, the law all over the world and the law in India are never similar. Nowhere in the world have we got Criminal Law Amendment Act, 1935. And, if that is the basis on which the Government is prepared to act, we would not mind, Sir. But we are not going to be a party to a procedure that when it suits their purposes we should follow one course, and when it does not, we should follow another.

THE HONOURABLE THE PRESIDENT: Do you mean to say there is no provision of criminal law in other parts of the world?

THE HONOURABLE MR. HOSSAIN IMAM: No, Sir, there are Acts and Acts, but the sting is there in the bite.

Sir, you will remember that in the Reserve Bank Committee we recommended that there should be no restriction on the transfer of shares. And there we rather wanted that shares should be freely transferable. Even in the Imperial Bank, Sir, provision has been made that fully-paid shares should be freely transferable. Why should a thing which is permitted in the Reserve Bank and the Imperial Bank—I mean the power of free transfer—why should this power be denied the ordinary companies, when it is given to those who are so fundamentally connected with the financial stability of India? The stock argument is that we do not wish to fetter the discretion of the directors. As if the directors are like the Pope—infallible! As if they are the masters of the situation. As if the shareholders had no *locus standi*. (*An Honourable Member:* "They have.") If they have a *locus standi*, Sir, I claim that they should have full swaraj and they should have the same powers as a sovereign legislature.

Now, Sir, I should like to place before the House a telegram which I received from a very important business man, Mr. Ram Kiresha Dalmia. I shall place the telegram* on the table of the House. He complains that the Bharat Insurance Company, which holds shares in the Lahore Electric Company, is not allowed to transfer its shares and by their not doing this, he is put to loss. The Lahore Electric Supply Company have a rule that after over and above a certain amount of shares, the votes shall decrease with the increased amount of shares. A man holding Rs. 10 lakhs of shares has not the same number of votes as other people having a lakh of shares in different names. By this manipulation, once you deprive the right of transfer, you restrict the right of voting, so that you prevent the very basic principle which Mr. S. C. Sen has enunciated today that the majority must have the control. It is all right to make out principles, but it is when we come to detailed consideration that we have to see whether the sound principle which he enunciated has been followed or not? The case of the New Victoria Mills is a scandal which I think the Honourable the Leader of the House himself knows personally.

THE HONOURABLE THE PRESIDENT: I am afraid you are treading on dangerous ground.

THE HONOURABLE MR. HOSSAIN IMAM: Sir, I will read from the Opinions. This is not dangerous ground, because it is a published document and everybody had a right to institute a suit in a civil court. It has been in our possession for the last eight months. People who have subscribed Rs. 1,03,883 have the same voting strength as people who have subscribed Rs. 10 lakhs. By a manipulation of deferred shares which have paid eight annas only, they have doubled the voting right of a preference share which has contributed Rs. 5. All this is the doing of an Honourable Minister of the United Provinces. Sir, there are any number of instances which I can go on quoting, but as I do not wish to waste the time of the House, I will refer to pages 22 and 23 of the Opinion of the Bombay Shareholders' Association

* *See* Appendix, page 436.

Now, Sir, in fairness, Government should have at least adopted regulation 60 in clause 8, giving one vote for each share, which is incorporated in the present Indian Companies Act. But the application of that regulation has not been made compulsory just as other regulations have been made compulsory. This was a right reform which Government should have adopted.

The proposal was made in the Assembly that the directors should be elected by a system of proportionate representation. Government refused to accept the proposal. May I say that the present system of election of directors plays into the hands of managing agents ? The shareholders have different interests. A strong body of shareholders, at least in big towns, have blocks of shares in several concerns, and they are anxious to keep themselves in the good books of the managing agents so that their shares may give them a return. It is possible for the managing agents to so manipulate the balance sheet that after setting aside necessary sums for depreciation, reserves and other contingent items, nothing may be left over for distribution to the shareholders. So, they want to keep themselves in the good books of the managing agents. One of the leading business men of Bombay confessed to us that he never cared what the managing agents wanted to do. He said that whenever they asked him for a proxy, he used to sign it and give it to the managing agent, because in the long run, he had found that that is the best policy to adopt to keep in the good books of the managing agents.

THE HONOURABLE MR. BIJAY KUMAR BASU : A very shrewd business man !

THE HONOURABLE MR. HOSSAIN IMAM : You also heard this confession. Under the present system whereby there is no proportionate representation or even representation by blocks, we have a very crude form of election. Government, in bringing reforms, have adopted different constituencies for the election of different Members. It was quite possible for the companies to have had blocks of shares, say, from 1 to 100 or 1,000 or 2,000 or 500,000, and say these blocks of shareholders will be entitled to elect one member each. They could divide the whole capital between the number of directors, and thereby you could have representation of every block so that two or five men holding even a minority of shares could not combine and control because the proxies from all shareholder are not always available.

THE HONOURABLE SIR DAVID DAVADOSS : Whose fault ?

THE HONOURABLE MR. HOSSAIN IMAM : That is a very pertinent question. Does my Honourable friend, the High Court Judge, realise that there are times when people are placed as wards of courts ? At the present moment, the Indian investors are more or less in the position of wards. They have to be safeguarded, and that is one of the reasons why there has not been that industrial prosperity which we have been wishing for. The investors have been bitten so often that people are not prepared to come in. If I may be pardoned for saying it, commercial morality is something different from ordinary morality. The get-rich-quick methods of the capitalists are different from the methods of ordinary life and as they are always in strife, the old proverb that everything is fair in love and war applies to their case also.

I now come to the managing agency system. The reforms incorporated

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in this Bill are no doubt a step in advance, but the question is, whether they are a sufficient advance or not? All the complaint about the present reforms is that it is not a sufficient advance. Similarly, our complaint is that Government have not seen their way to incorporate all the necessary things which would have made this managing agency system free from evil. In the first place, Sir, I differ from the Government banches that the managing agency system could not be dispensed with. I know, Sir, the sanctity of contracts. There are provisions even in the present Criminal Code that contracts obtained by fraud are vitiated. Now, who does not know that all these managing agents are formed in a manner which is open to very serious objection. A company is formed with a capital of Rs. 50 lakhs. Seven people subscribe Rs. 100 each, sign articles of association and enter into a contract with managing agents, giving them the right of control over Rs. 50 lakhs for the sum of Rs. 700. That is what happens. I am not questioning the old companies. What I am dealing with is the provision for companies to be incorporated in future. Now, the provision in the draft was that that contract should be subject to confirmation by a statutory meeting of the shareholders to be held six months after the commencement of business. The Government in their wisdom have given the go-by to this provision and in this particular reform none of the established industries were interested because it did not concern them. Further, when we come to what I call the renewal or what may be called the continuation of the present managing agency contracts, in fairness the Government should have taken some measure of control in revising the present contracts. I do not say they should have gone out of their way and reduced the commissions which the managing agents earn. But, where a case exists for revision, as where commissions are based not on profits but on sales, purchases and that kind of thing, they should have taken power. I came across a company, the Jamshree Ranjitsinhji Spinning and Weaving Co. of Sholapur, in which the percentage of commission on the basis of profit rose to 101·6 per cent. in 1934. The managing agents are Laljee Narainjee and Co. There are innumerable instances in which the companies have been charged on the average 38, 27, 22, 26, 34 and 47 per cent. for commission on the profits of the company. I say that it was the duty of the Government to take power to revise those contracts of managing agents where the commissions are based on sales, purchases and other items and not on profits. (*An Honourable Member:* "How can that be insured?") They cannot assure profits, but why allow them to continue this system? There is no doubt that those managing agents who have been managing well are entitled to our respect. They are entitled to have our support, but those who have mismanaged have ceased to have any rights. The Government could at least have made a provision that all those companies which have not declared a dividend of 15 per cent. in all during the last ten years, that is, 1½ per cent. per annum, should not be allowed to continue as managing agents. If they have not got that much profit why should those managing agents be allowed to continue?

THE HONOURABLE THE PRESIDENT: Is it always in the hands of managing agents to make profits?

THE HONOURABLE MR. HOSSAIN IMAM : Sir, it is always in the hands of managing agents to show what is real profit and real loss, and as you have questioned me I will give you one instance. I refer to a very respected firm, the firm of Messrs. Burn and Co. We had the pleasure of having Sir Edward Benthal, the present head of the firm as our colleague and I may say that this matter refers to a period before his term of office. Messrs. Bird and Co. were the real managing agents of the Titaghur Paper Mills Co., and that such an upright and old firm should have indulged in such a dirty thing it grieves me to state. What they did was to purchase china clay from a subsidiary company of their own, the Nagpur Clay Co., at the rate of Rs. 86 per ton, while that Company was getting this clay at Rs. 42 per ton. The Nagpur Clay Co. purchased that clay at site for Rs. 42 per ton and sold it to the Titaghur Paper Mills Co. for Rs. 86 per ton, thereby making a clear profit of Rs. 1,26,000 per annum. That is what managing agents can do. They can always change the profits into a loss. If further instances are necessary I shall quote them if anyone wants to know. This is a form of legalised cheating of the shareholders and Government has taken no steps to check this. There is only one provision, that managing agents, if they contract to supply anything, they will have to do so with the sanction of three-fourths of the members of the board. But there is nothing to prevent the managing agents from committing the same sort of mischief which was committed on the Titaghur Paper Mills Co. in future. Then, Sir, a necessary provision of the Bill ought to have been that managing agents in spite of the articles of association shall be subject to the superintendence and control of the board of directors and shareholders. No provision of this nature is in the Bill. We know that in the articles of association many of the provisions of the Bill can be negatived, unless we have things like clause 8 which makes it incumbent on the company to incorporate certain provisions in the regulations.

Now, I come to the proposition enunciated by the Honourable Mr. Sen that minorities should not be allowed to have control. The other place, as well as the Government Members, seem to be under the impression that in most cases the managing agents hold a substantial stake in the company which they manage. My own experience is that they have very little share in the capital of the company. As I pointed out in connection with my speech on the Textile Industry Bill in this House, the managing agents hold a very small proportion of shares in the concerns which they manage. You will find in the proceedings of the Council of State of the 20th April, 1934 a Statement D in which I had shown that the percentage of agents' holding was only 5·2 per cent. That shows that here exactly the contrary is the case. The minority have the whole control and the Government have gone out of its way to allow them a further lease of life without any check, without any reformation and without any fear of being called to account. Then there are certain minor points on which the Bill is also in certain respects defective. Although in section 50 we have provided for some information being given in the prospectus, in the form given in the Second Schedule there is an omission of an existing provision of the Indian Companies Act. In the Indian Companies Act as at present standing in Schedule II, Form I, a statement is given of minimum subscription fixed by the memorandum and articles of association on which the company may proceed to allotment.

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That statement is not found in the present statement in lieu of prospectus as incorporated in this Bill. I think it is a minor point, but it is something which would be helpful to the future growth of industry. May I say that what the Government have at the present moment done is that they have allowed the existing company, irrespective of whether they are doing the right or wrong things, to have a further lease of life. I am not averse to giving a further lease of life to those managing agents who have during the past shown their capacity to manage and who have been beneficial to shareholders. But all those people who have so far proved themselves to be unable to manage things should have been ousted. I know that a question may be put to me that I am advocating a measure of control by the executive over the functions of the private individuals ; I am tempted to say in reply to this that as it is by legislative action and the lapses in the existing law that these people have come by the enjoyment of these illegal rights, it is only fair that we should not allow them to continue these depredations any further.

Now, Sir, coming to the control of the directors over the managing agents, no doubt there has been some effort made in the Bill. But I am not quite sure and therefore I put it more as a question than as a criticism. Is it possible for the articles of association to negative the provisions of the Act by not taking those regulations as compulsory ? For instance, there is no provision for making regulation 60 compulsory which gives one right to one share in future cases. The real reason why there has been no industrial prosperity in India is that the company law was so defective that people had a general impression that once you purchase a share in a concern, you are caught, and you do not know how far you may be landed, especially, Sir, in the new companies, because you start with a small amount of application and allot money and then you find that you have been caught hold of for a huge amount. A friend was telling me yesterday evening a story. When he sent in some money to a managing agent as his full quota for a certain number of shares, but by mistake he had signed the blank form and not filled in the number of shares. What the managing agent did was that he kept that money as application and allotment money and when the company was tottering, he was asked and he had to pay a further call which amounted to Rs. 30,000.

THE HONOURABLE MR. BIJAY KUMAR BASU : Penalty for the mistake !

THE HONOURABLE MR. HOSSAIN IMAM : Penalty for the mistake ! For confidence in commercial morality !

THE HONOURABLE SIR DAVID DEVADOSS : We must hear the other side.

THE HONOURABLE MR. HOSSAIN IMAM : There are black sheep in every place and I do not say that all the managing agents are like that. The mistake Government have made is that they have not differentiated between the two. This is my complaint against the Government.

THE HONOURABLE THE PRESIDENT : Who is to be the judge ?

THE HONOURABLE MR. HOSSAIN IMAM: Mr. President, the whole paraphernalia of the Government of India and the Provincial Governments! If that is not sufficient to check these things, I do not know what will.

Sir, as the Honourable Member pointed out, in England they have a Board of Trade. If the Government considers that the present authorities are not sufficient to deal with this thing, there was nothing to prevent them from creating something on the lines of the Board of Trade here. The question of the industrial development of the country is too big an issue to be side-tracked on the issue that there is no authority to look into these things. If there is no authority, it is the duty of the Government to create an authority; but they cannot deny the responsibility which rests upon their shoulders to see that the legalised robbery and legalised swindling which is going on now is not allowed to continue any further. Sir, the managing agency system has got a bad name due to the fact that certain unscrupulous people have come in as managing agents and it is in the interests of the genuine managing agents to differentiate themselves from these rapacious people and they are making a mistake if they want to identify themselves with those interests. The interests of fair managing agents should be kept separate and distinct from those black sheep in the garb of managing agents. I am sorry to say that most of the culprits belong to my own community, Indians. There are few Europeans in this category of black sheep. This does not mean that I should hide or that they should be sheltered merely because they are Indians. If there is a mistake, if there is some trouble, it is the duty of the Legislature as well as of the Government to set it right and the complaint that we cannot examine these things is not a valid excuse. At the present moment most of the industries are subsisting because of protection. I know that the jute and the coal industry in the Eastern Provinces is not bound to the Government for any help, but the textile and the sugar industry, the prosperity of these, is dependent on the help and protection which they will get from the country. If the country is prepared to foot the bill for protection, I think the industry ought to come in and give us information and not regard itself as a private property. If it were a private property in the strict sense of the word, then there was no reason why we should be burdened with the weight of protection. They should fend for themselves. But as we are footing the bill, as we are supporting them in their prosperity, it is necessary that a certain amount of control should be exercised by the Government on at least those industries which are existing due to protection. Sir, we know the Tariff Board came across great difficulty recently in the inquiry relating to the woollen industry because some of the industries were not prepared to lay their figures before the Tariff Board. I ask, Sir, has the Honourable Member provided anything in this Bill that protected industries are bound to give their facts and figures relating to the protected industries whenever they are asked?

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THE HONOURABLE THE PRESIDENT: I think all industries are bound to do so.

THE HONOURABLE MR. HOSSAIN IMAM: Well, Sir, they are not bound to give their figures in relation to manufacturing costs and it is that

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with which we are mainly concerned when we are dealing with tariff policy. They are not bound to give us their expenditure under the heading of marketing. This also, Sir, is a very important fact and is included in the tariff inquiry. Personally, I should have liked the formation of separate boards to have control over each and every type of industry where representatives of the industry, labour and the Government would assemble together and eliminate unnecessary competition. And a measure of this nature could have found a place in the Companies Law Amendment Bill if the Government had so desired. I do not say, Sir, that the Bill is not an advance on the old Act or that it should not be supported. What I have been complaining of, Sir, is that it is not as good as it might have been and it cannot have that amount of spontaneous and full support from us which it would have received if it had come to us in the form in which it was drafted by the Honourable Mr. Sen.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay: Non-Muhammadan): Mr. President, I am sure every Member of this House joins with you in the regret that you expressed at the absence from our proceedings this morning of the Honourable Sir Nripendra Sircar. We wish he were here so that we could have offered him our congratulations in person on the very excellent work he has done for the country in putting forward this Bill in the form in which it is before us today.

As the Honourable Mr. Sen pointed out to us this morning, for some years past representations were being frequently made to Government by commercial bodies that the Indian Companies Act of 1913 should be amended and improvements made therein which would bring it into line with the Companies Act of 1929 in the United Kingdom. The most insistent demand made from certain quarters was for the abolition of the managing agency system which prevails in this country. I have no doubt in my mind that were it not for the opposition to the managing agency system perhaps the existing Act might have been allowed to be continued longer. Then, again, the failure about two years ago of a large commercial firm in Bombay which held the managing agencies of several concerns perhaps gave prominence to the necessity of amending the present Act and the Honourable the Law Member decided that steps should be taken for a thoroughing revision without further loss of time. The Honourable the Law Member deserves our gratitude for proceeding in the matter in a thoroughly business-like spirit. He rightly came to the conclusion that the first step to be taken was to have an inquiry conducted by a special officer. He selected Mr. S. C. Sen, a prominent solicitor of Calcutta, and we compliment him on his choice, for Mr. Sen has had a close and intimate acquaintance with the methods of the working of limited companies in his own province be they good, bad or indifferent. The report which Mr. Sen prepared within only five months of his appointment gives proof of his great knowledge of the subject. His recommendations are all well thought out and it is clear that whilst he is out to remedy existing defects he has taken care to see that his proposals will prove acceptable to the commercial community as a whole.

The general public are indeed very thankful to the Honourable the Law Member for referring Mr. Sen's report at first to an informal committee. Thereafter the Bill was prepared and at the Delhi session referred to a Select Committee. The Select Committee's report was before the Assembly for fully eighteen days. Nearly 500 amendments were tabled and the Assembly has now sent the Bill to this House for acceptance. There are perhaps proportionately a larger number of business men in this House than in the other place but they have been forestalled as might have been expected in the changes made and we will certainly approve of most of the changes made after considerable thought and discussion. There are, however, some points in regard to which we find some Honourable Members have sent in amendments which it will be our duty to consider.

And here I have to enter a humble protest against the attitude of Government in regard to this House. Such matters might preferably be referred not to the Select Committee of a single House but to a Joint Committee of the two Houses. The Government of India Act of 1919 provides for such joint committees but during the last fifteen years only two Bills, so far as I remember, were referred to Joint Committees—those in regard to the Imperial Bank and to the Reserve Bank. If the present Bill were referred also to a Joint Committee there would not have been 500 amendments in the Assembly and 65 in this Council nor would the discussions have lasted as long as 18 days. I have no doubt if our Honourable President had a say in the matter he would have insisted on a Joint Committee. Again, I would ask Government to consider the inconvenience Members of this House have to put up with by a Bill of this importance being brought up here at the fag end of the session, in consequence of which we are forced to waste our time by being held up here and practically doing very little work for days together. This is a state of affairs which does require to be remedied. Of course, this Council ceases to exist in a few days from now but I hope Government will be more considerate to the new Council. I may be pardoned for observing that Government realise they cannot trifle with the Assembly constituted as it is, whereas constituted as we are Government make a convenience of this body.

Whilst the Bill covers very considerable ground, in the words of Mr. Sen he has paid special attention to remedying five evils, *viz.*, (1) the growth of mushroom companies and the checking of fraudulent companies; (2) the complaint that shareholders were ignored and kept in the dark by the people in charge of the management; (3) the abuses by the directors; (4) the abuses of the managing agency system; and lastly, the non-disclosure of material information to the shareholders.

There is a section of the public to whom the words "managing agents" are an anathema. They seem to think that nothing good has come out of it. These attacks are mostly against the managing agents of cotton mills at Bombay and Ahmedabad. The Bombay Presidency is the stronghold of the textile industry in India and it is generally believed that the first cotton mill in India was put up in Bombay by one Mr. Cowasjee Davar, an ancestor of Mr. S. R. Davar, to whose help in the preparation of this Bill as a representative of the Bombay Shareholders' Association Sir Nripendra has referred

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in complimentary terms on more than one occasion in the other place. The first cotton mill in India however was erected on the banks of the Hugli about 15 miles from Calcutta more than 75 years ago by Messrs. Kettlewell Bullen and this the Bowreah Mill still continues under the managing agency of the same firm.

It is gratifying however that after the fullest consideration the new Act will continue to recognise this managing agency system and it has not been done away with as was seriously contemplated at one time. The criticisms that were levelled and are still being levelled at managing agents are all conceived with the idea that managing agents as a class are bent as it were on looting and robbing the shareholders of what is their due. As the Honourable the President remarked that there are black sheep everywhere and in all professions and it may be that some managing agents are guilty of offences which the previous Act did not penalise. To condemn, however, the system for the sins of a few is of course entirely wrong and all dispassionate people must admit that not only was the managing agency system a necessity in this country but that the great majority of managing agents have discharged their duties very honourably and shareholders have reason to be thankful to them. As the Honourable Mr. Sen explained this morning, the managing agency system is an absolute necessity in this country. It is so by reason of the fact that the general public have not yet been trained to look upon industrial concerns with the same confidence as in England or elsewhere. The result is that if any new company is started people fight shy and the necessary capital is not forthcoming. It is in such cases that the managing agent is of value not only for the promotion of the company concerned but thereby for the promotion of industries generally and thus helping the country at large.

India is recognised by the League of Nations and the International Labour Organisation as one of the eight largest industrial countries in the world and it cannot be denied that if the managing system had not prevailed we would not have reached this position. In other countries not only is the capital required freely taken up by the general public more easily than here but it is a well-known fact that banks in this country will not help industrial enterprises by advances as is done elsewhere. The banking system in England is acknowledged to be the best in the world and yet we find that banks in Continental countries go at times much further. In Continental towns we find, for example, huge hotels. The owner may be a man of limited means. With the small margin he supplies he gets very large credit from banks who watch every detail of the business but thus enable the proprietor to carry on a large and lucrative business. In India a bank insists upon the personal guarantee of managing agents. This is so in the majority of cases and managing agents in giving such guarantees have on occasions lost very considerable sums of money. The Honourable the Law Member quoted very many of such cases in the Assembly. I know of many others but I may be allowed to quote just one from my personal experience. This relates to the managing agency in Bombay of a cotton mill. The agency firm consisted of three partners. They had to guarantee the loans borrowed

from banks and from depositors with the result that between the three they dropped more than Rs. 42 lakhs in ten years because of the bad times through which the industry was then passing. This was a net loss because during these ten years they never drew a penny piece as managing agency commission. The Honourable the Law Member will agree that this was a worse case than any of those that he quoted.

The managing agency system is not all plain sailing. It does not always make money but on occasions has proved the ruin of some of them. I have said that there are black sheep everywhere. My Honourable friend said there are many bad cases of this kind. The percentage of unscrupulous managing agents is indeed very small.

THE HONOURABLE MR. HOSSAIN IMAM: Let the Government inquire.

THE HONOURABLE SIR PHIROZE SETHNA: There is no necessity for it. I will give you the answer. Such cases are given the widest publicity and rightly so. The percentage of such cases is infinitesimal when we find that there were in India according to the official report of the year 1932-33 as many as 8,715 companies with a capital of Rs. 286½ crores. The number of companies and the capital invested by now, that is within four years from then, must have increased very considerably. These are large numbers but of course very small as compared to the number of companies limited by shares and incorporated in the United Kingdom of which the latest published figures we have are up to the end of the year 1934 and according to which there were 13,449 public companies and 108,640 private limited companies in the United Kingdom at that date. I would ask my friend to calculate and he will find that the number of cases in which the managing agents have been held up in India will not come to even one per cent. I give these figures to show that with the growth of industrialism we shall have far more companies in the future and the continuance of the managing agency system will help to increase their numbers whereas if on the other hand this system were done away with industries in this country would not be promoted to the extent we desire.

Unfortunately all the criticism that has been levelled against the managing agency system is very one-sided. These criticisms reveal absolute mistrust in managing agents and it reminds one of the manner in which the Joint Parliamentary Committee considered proposals in regard to advancing Indian interests. Several suggestions made were turned down in the belief that if any concessions were granted as asked for they would be converted to the disadvantage of the Britisher in the country and this fact accounts for the Joint Parlimentary Committee report being considered unsatisfactory. Similarly those particular critics here believe that if the managing agency system continues it will be used to the detriment of the shareholders. This mistrust prevails not only in India but also in England as can be illustrated by a story I may be permitted to give. There were three Tommies who were very hazy in their ideas of a limited company as also of a managing director. One of them asked, "I say, Bill, what is a company and what is a managing director?" "That is easy explained", said Bill. "Suppose you and I and Alf paid two shillings each and with the joint money we bought a bottle of whisky; then we three are the company; I drink the whisky, I am the Managing Director; you two fellows look on, you are the shareholders"!

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The managing agency system has its advantages and I for one am glad that the majority of the other House have come to the conclusion of retaining it. It is generally believed that this system prevails only in this country. I submit, Sir, that this is not so. Precisely the same function governs the appointment of managing agents in Great Britain but they are not usually known there as managing agents. The firms exercising this function are called there managers or secretaries. They hold their position normally by their expert knowledge of a particular line of business. Some of the famous shipping lines are under the management of firms. To name some, they are the Orient Steam Navigation Co., the Orient and Bank lines, and others. The Moor Line, Ltd., has for its General Managers and Secretaries the firm of Walter Runciman and Co., Ltd., a name famous both in shipping and politics and it may be mentioned here that it has never been thought necessary to bring in any special legislation in Great Britain for the control of such managing agency firms. Then, again, there is the Kolar group of gold mines managed by Messrs. John Taylor and Sons who work in the same capacity as managing agents in England. The same applies to several tea concerns and others as well. The attacks directed against the managing agency system are not so much provoked by the demerits of the system itself as because of its abuse by a very few. I repeat I am glad the amended Bill recognises the system and that it will continue. If it were checked in any way it would undoubtedly have hampered the development of different industries in India which we so sorely need.

Mr. Sen has next tried to clip the wings of the directors and has done so to a reasonable extent. We find no objection to his proposals in regard to giving no loans to directors and similar restrictions and which also applies to managing agents. There were many who thought that the directors should be restricted to the number of companies on whose boards they might serve. That again would have been very awkward. Even in large cities like Bombay and Calcutta the number of men whose names the shareholders would like to see on the boards of their companies are not very many and it is not strange therefore that a few directors are serving in quite a number of concerns as directors. That cannot be helped. Such men are in request not only for their knowledge of the Companies Act but also for their knowledge of business generally and perhaps for their financial standing in time of need. The Bombay Shareholders' Association had prepared a list of what they call multiple directors but they were not able to show that these so-called multiple directors have done any harm or have been found wanting in the discharge of their duties as directors. Directors in India of fairly large companies are paid anything from Rs. 25 to Rs. 100 per meeting. Directors in England are paid very much more, anything from £100 to £500 per annum whereas the chairman is invariably paid much more. The chairman of a large bank gets anything from £10,000 to £20,000 a year. The late Sir Basil Blackett, one of our Finance Members after retiring from India became the Chairman of a big concern in the city on a larger salary than what he received as Finance Member. The last Finance Member, Sir George Schuster, was specially selected for the Chairmanship of a large concern and it is reported that his

emoluments as such Chairman amount to £10,000 a year. Again, in England, in some companies instead of regular fees a certain percentage of the profits are divided amongst the directors. This practice has started in India as well of late. Clause 39 of the Bill deals with the percentage of directors. In fact this clause as worded is not quite clear as the Honourable the Law Member will admit to judge from the fact that even such leading newspapers as the *Times of India* and the *Statesman* have not been able to interpret it as the Honourable the Law Member would like them to do and I believe that one or both of them have even consulted counsel in the matter. I should very much like therefore that the Honourable the Law Member makes this section perfectly clear during the passage of the Bill in this House.

The shareholders' interests have been safeguarded as far as possible. They shall certainly have a bigger say hereafter and there can be no complaint against the same. On the other hand, however, it would appear that the Bill has gone much further than it might. It says that a shareholder is entitled to speak and vote the moment his name is registered. That is bound to work very adversely at times. There are men who are not well disposed towards a particular company by reason of any difference they may have with the managing agents or for other reasons and it will be possible for them and their friends to buy a single share each on the very last day or the day before the meeting, thus getting themselves registered and they will then have a right to speak and vote and be in a position to do much harm. In the articles of association of different companies a period of a very few months is fixed to enable a shareholder to speak and vote. This is a salutary rule for it prevents designing persons from harming a company all of a sudden. The House is aware that there are some people who hold a very nominal number of shares or even a single share in a company with the sole object of being obstructive. They do so for the purpose of seeking notoriety and at times put companies to considerable annoyance and expense by dragging them to the courts. If such a person has some knowledge of the law he can appear in person whereas the company will have to engage counsel and thus be out of pocket to the tune of thousands. Perhaps the ulterior motive such a shareholder has may be none other than that he may be bought out by the payment to him of fancy prices. Such persons are a great hindrance to the smooth working of companies.

There is one important point which I must not omit and that is in regard to the inclusion of the deduction of depreciation from the net profits in arriving at the commission to be paid to the managing agents. This is a mistake to my mind but rather than enlarge upon it at this stage I would prefer to give my reasons when the amendment in this connection is before the House.

My friend referred to proportional representation, and I am very glad that the Lower House has not approved of that. To my mind proportional representation is nothing but a chinese puzzle, and I am glad that proposal has been dropped.

It has been sought to give Indian accountants the title of Chartered Accountants adding the words "India" after. This, to my mind, is a great mistake and I do hope that the Honourable the Law Member who is to decide on this point later will do nothing whereby the position and prestige of

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chartered accountants proper is in any way lowered. At the moment there are perhaps a dozen Indian chartered accountants but ten years hence there will be perhaps a hundred. It will be positively unfair to them after having passed very severe tests and after spending thousands of rupees that those who have not gone through the same course of training but distinctly lower should be entitled to call themselves by the same designation.

The Honourable Mr. Sen referred to banking clauses. There have been banking clauses introduced in this Act. It is just as well that this is so because we do not know when a Banking Act for India will be put on the Statute-book. In the meantime, we shall be quite content with the clauses in the Bill which have been introduced. I think that is a change in the right direction.

In the course of his speeches the Honourable the Law Member has given no indication as to the date from which the new Act will come into operation. The suggestion I have to make in this connection is that a few months time should be given to managing agents to amend their articles of association so that they may conform to the sections of the new Act. This is bound to take some time and I hope the Act will not become operative any earlier than 1st April, 1937.

With these words, Sir, I support the Motion of the Honourable Mr. Sen.

The Council then adjourned for Lunch till a Quarter to Three of the Clock.

The Council re-assembled after Lunch at a Quarter to Three of the Clock, the Honourable the President in the Chair.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce): Sir, I was very glad this morning that my friend, the Honourable Sir Phiroze Sethna, removed the misunderstanding about managing agencies. There are, as he says, quite a number of important companies in England where managing agents control the affairs of the company and it is perhaps worthy of note that in England no special legislation has been found necessary in connection with them. I think that all Honourable Members of this House must welcome an attempt to improve the provisions of the Indian Companies Act, and that we owe a debt of gratitude in particular to both the Honourable the Law Member and the Honourable Mr. Sen and to all those who took such pains before this Bill was introduced in the Legislature and during its passage through the Lower House. I am sure we all regret that the Honourable the Law Member is unable to be here and the reason for this absence.

I think the Bill was considerably improved in many respects in Select Committee and by the Assembly but on the other hand I am afraid they both from my point of view did something to make it worse. I have had some experience in England of the winding up of companies and I have great sympathy with the ignorant shareholders. Where there is suggestion of *mala fides* I have always found that most of the shareholders were widows or orphans or doctors or people who were unlikely to know much about these affairs but on

the other hand I think that in this instance we have gone too far in this Bill so far as the restrictions are such as will hamper the proper management of business.

There still remains to us the duty of endeavouring to improve the Bill as it now stands and to correct any errors which we may find in it. Some of them are no doubt matters of detail and are not of so great importance as others, but there are certainly some questions of principle involved which I think require the very serious consideration of Honourable Members.

Perhaps the most important of these is the very drastic clause which provides for the termination of all existing managing agency agreements after a period of 20 years. For my part I regard this as open to very serious objection. It is clearly in the nature of ex-propriation without compensation. Moreover, I think it is quite wrong to assume that it is fair either to the shareholders or the managing agents. Why should the shareholders cease to have the benefits of an agreement and be forced to make fresh arrangements for the management of the company's affairs which may quite likely be less favourable in one or more respects ? It is true that they can re-appoint the same managing agents, but if the subsisting agreement is a favourable one to the shareholders they may be put to the disadvantage of having to increase their emoluments. I cannot agree that it is fair to the shareholders for the law to take away from them their rights under an agreement of this kind. Why should a managing agent lose his office before the period of his agreement with a company has expired without being compensated for such loss ? In very many cases it has to be borne in mind that the managing agent originally floated the company and has been primarily responsible for such benefits as the shareholders have gained. He probably would not have done so had the period of his agreement been limited to the extent now suggested and I feel that in every way the proposal is unfair to the managing agent as well as to the shareholders.

Sir, I feel very strongly that these provisions of the Bill are mistaken and I have far too great a respect for my eminent friend, the Honourable the Law Member, to believe that he will find it impracticable to arrive at a basis of compensation which would at any rate be nearer to being just than no compensation at all could be. It is noticeable that the Select Committee made certain provisions in this connection and, although I think they were highly unsatisfactory themselves, they definitely recognise the fact that compensation ought to be made. I realise that time now is short but I express the hope that he will take the matter into his consideration with a view to dealing with the subject in an amending Bill.

Then there are certain provisions of the Bill relating to the proportion of the directors of a company who shall be appointed by the company in general meeting and the proportion which can be appointed otherwise and matters of that kind. I foresee that great difficulties may arise as the result of provisions of this nature.

I have been connected in my time with a very large number of companies, both in England and in India, but to a large extent the same considerations apply.

[Mr. R. H. Parker.]

It not infrequently occurs that a company gets into a difficult position and requires more funds to extricate it from its troubles and that the necessary money can only be obtained on conditions which include the power to nominate a certain number of directors on the board. I assure the House that this is a really practical point which is deserving of consideration, for to prohibit the facility is to hamper the raising of capital which is surely retrograde.

Then there are a number of sections which are mandatory and deprive the shareholders of what I regard as their reasonable rights. I cannot understand on what ground it can reasonably be contended that there should be disclosed in the accounts of a company matters which the shareholders themselves feel ought not to be disclosed. There is a line which can be drawn between proper frankness in matters of this kind and a disclosure of what one may describe as the personal affairs of certain individuals to their own disadvantage and for the benefit of competitors who have no direct interest in the concern at all.

Another provision which I would regard as opposed to the interests of shareholders is that where the directors decide to increase the capital of the company by the issue of further shares, they are bound to offer these shares in the first instance to the existing shareholders. I have known of many arrangements for the benefit of all parties concerned which could not have been carried through had this been a provision of law. Not infrequently it happens that the best way of bringing about an economic amalgamation of interests is by one company issuing shares to individuals or to the shareholders of another company, and I deprecate any restriction of this kind which militates not only against shareholders but against the general public, for the public is greatly affected by economy in production which can frequently be brought about in this way. Moreover, such schemes are now recognised by the introduction of the new section 153B in clause 84 of the Bill which is borrowed from the new English Act, and it would seem that clause 55 will to a large extent curb the facilities offered by that section.

Then there is a provision under which depreciation becomes a charge against profits before arriving at the sum upon which the remuneration of managing agents has to be calculated. I entirely agree that from a pure accountancy point of view depreciation is a charge against profits in just the same way as an item like wages is. There is, however, this material difficulty in practice: that depreciation is to a certain extent a matter of opinion. Now that opinion must normally be the opinion of those best acquainted with the circumstances of the case, and those who are best acquainted with the circumstances of the case in a company managed by managing agents must at any rate very often, if not always, be the managing agents.

The provision thus places the managing agent in this dilemma: that if he estimates the depreciation at a low figure he will benefit himself, and if he estimates it at a high figure he will reduce the amount of remuneration which he will receive.

We are trying, I submit, to remove as far as may be possible abuses by those who have control of shareholders' money but I do think that it is asking rather much to place a responsibility of this kind upon the shoulders of any ordinary man.

There is another provision which I think is open to very great objection from the point of view of shareholders, and that is in clause 46 of the Bill which provides for a register being kept by the company in which shall be entered particulars of certain contracts and arrangements which shall be open to inspection by any member of the company.

Now, Sir, what will be the result if this provision becomes law ? It will merely mean that anybody who can gain an advantage by knowing the policy of a particular company and using it to their own advantage as opposed to the interests of the shareholders will buy the smallest number of shares which will entitle him to inspect this register, and the most unfair results will occur.

I regard this provision as one which will help the mischief-maker and harm the interests of a shareholder.

There is what appears to me to be an unintentional error in clause 119 of the Bill in the proposed section 277L. In the form in which this now stands a banking company lending money to a company that is a subsidiary company of another on the security of more than 50 per cent. of its shares would be in jeopardy, as the moment it found it necessary to become the holder of the shares it would be contravening the law, as under other provisions of the Act the borrowing company would automatically become a subsidiary company of the lender. I think this is a matter which there should be no difficulty in dealing with by amendment.

Then there is the point on which the Honourable Mr. Hossain Imam and the Honourable Sir Phiroze Sethna touched.

I admit, Sir, that in tabling amendments on these and some other points I have found myself in great difficulty. I fear that if this Honourable House supports some of these amendments there may be successful opposition to them in another place and that in that event, having regard to the fact that this Council will be dissolved on the 26th October, 1936, there would be the risk that the Bill, if it were then a pending Bill, would lapse. If there is that risk I feel that it is one that ought not to be run, but I also feel that when an important matter of this kind has to come before the Legislature arrangements should be made so that ample time may be available for due consideration by this Council of the views of the other House, and by the other House of the views of this Council.

All of us are here in the interests of India and we had the assurance of His Excellency the Viceroy in his speech to the joint sitting of the Central Legislature this session that he regarded the Council of State as an institution of some importance.

Unless we are given proper opportunity to refer our views back to the Lower House and in the event of this House and the Lower House disagreeing, of a joint session as provided for in the constitution, I submit that we are being deprived of our functions and robbed of the opportunity to perform our duties.

THE HONOURABLE MR. C. G. ARTHUR (Bengal Chamber of Commerce): Sir, in an endeavour to place before the House the attitude of the Members of the Bengal Chamber of Commerce whose representative I have the honour to be, I would ask your indulgence, and that of the Honourable Members of this Council, while I state as briefly as possible their views on the Indian Companies (Amendment) Bill of 1936.

Before doing so, Sir, I should like, if I may, to acknowledge the impartial attitude of the Honourable the Law Member, whose task has been one of great difficulty, and to say how very much I regret his illness and his enforced absence today. In paying tribute to the Honourable the Law Member I should like to thank the Honourable Mr. Sen for all he has done. To hold the balance between warring factions must always call for powers of an exceptional nature and, Sir, my community acknowledges with gratitude the judicial fairness of the Honourable the Law Member's views.

At the same time, Sir,—and with all due respect—that does not mean that they are prepared to accept the Honourable the Law Member's views as final, however fairly conceived, because it is but natural that legal and commercial opinion may not be at one. In fact, Sir, that is one of the grave difficulties of a Bill of this nature, because what may be good in theory may be very far from good in practice, and may indeed be impracticable if due regard is paid to conflicting interests and established rights.

That the innocent have to suffer for the guilty is a platitude, but if by legislation a system is evolved that is unworkable, and further a system that may be inequitable to the terms of a bond, then, Sir, surely it is incumbent that legislators should see to it that an impasse of this kind will not result. The Honourable the Law Member in piloting this Bill through the Legislative Assembly has achieved what everyone of us must recognise to be a real bridging of the gulf between the demands of idealistic reformers and the demands of practical businessmen. On some points in the Bill now before us, however, I feel there is still room for improvement and if at a later stage in our discussions it is my unenviable task to oppose the Government of India, I feel sure that Government and my Honourable friends in this House will realise that I do so in no spirit of carping criticism but from a sincere desire to improve the Bill.

Sir, commercial interests welcome a tightening up of the Indian Companies Act of 1913—a tightening up which has long been recognised as most necessary. It has been well said that you cannot make a man honest by law, but you can at least so frame your Bill as to embody severe penalties for wrongdoers and to secure a proper disclosure of the affairs of the company to the board of directors who are responsible for its management and so provide real protection for the shareholders. No managing agency firm worthy of the name can do otherwise than welcome legislation of this kind. The large agency Houses which have been built up from small beginnings during the last century have achieved their greatness by honesty and fair dealing, and many of the provisions of this Bill will in fact only make compulsory for all what is already the practice in companies under the management of managing agents of repute. The men at the head of such firms are much too proud of their good name ever to allow in companies under their management practices the restriction of which is a major object of this Bill.

3-5 P.M.

That is one side, Sir, but there is another. In framing the Amending Bill and passing it into law, care must be taken to see :

(1) that the rights of shareholders will be safeguarded ;

(2) that sanctity of contract is not violated, and that definite rights of managing agents are not ridden rough-shod over and consigned to that rubbish heap which is associated with a famous—or shall I say infamous—" scrap of paper " ;

(3) that no undue interference is allowed to creep in, which will make the system unworkable.

Sir, it is on these important points that the commercial community will stand their ground in the hope that responsible legislators will acknowledge the reasonableness, and will see to it that nothing in this Bill will be passed into law that offends these just principles.

For myself, Sir, these tenets of which I have spoken will be the solid foundation and basis of any statements I shall make in the debates which lie before us.

I feel honoured today, Sir, to be addressing this House of distinguished Honourable Members, men from all parts of India who have served the State, in the services, in the law, as large landowners, in commerce, and who have occupied, and do occupy today, high places in their particular spheres—men who are accustomed to weigh evidence, to make big decisions, to choose between right and wrong, and I am happy, Sir, to think that before this Bill becomes law it has to pass the discerning scrutiny of the Honourable Members of this Council.

The responsibility is an important one for all concerned and in representing a commercial community in this House I do so in a dual capacity as a managing agent and as an individual whose stewardship of shareholders' funds, entrusted to my care as the Chairman of the boards of companies managed by my firm, and amounting to many crores of rupees, is indeed no light burden.

Sir, it has been said that money talks. In my position today it is a case of other people's money, and their money must be my passport to the minds of Honourable Members when they give consideration to the observations which I shall make. (Applause.)

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern: Non-Muhammadan) : Mr. President, we are sorry to miss Sir Nripendra Sircar today. The House will join me in wishing him a speedy recovery. Sir, the Honourable Sir Nripendra Sircar is one of India's greatest lawyers. He has had vast experience of commercial litigation and it was fitting that the revision of the Indian Companies Act should have been undertaken under his regime. Sir, the Bill will be remembered as Sircar's Bill, if I may put it like that, in years to come, and associated with Sir Nripendra Sircar will be the name of our Honourable friend, Mr. Sen, whom I would like to congratulate on the excellent speech that he made this morning. Our thanks are due to Mr. Sen. He has ably assisted Sir Nripendra Sircar and has worked devotedly over this Bill.

Sir, the Bill makes vast changes in the present Indian Companies Act of 1913. Considering the extent of those changes one feels that it would have

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been better if the Bill had taken the form of a consolidating statute. The last Companies Act was passed in 1913. In the 23 years that have elapsed since the passage of the last Companies Act, there have been many changes in Indian industrial organisation. The number of registered companies in 1913 was 2,000; the number of registered companies now is 10,000. The paid-up capital of these companies in 1913 was Rs. 60 crores; the paid-up capital of these 10,000 companies now is Rs. 300 crores. This increase in the number and capital of the companies has created new problems and an amendment of the Companies Act was overdue. Our Companies Act of 1913 is based on the English statute of 1908. The English statute of 1908 was revised in 1929 and seven years after the passage of the English statute we, the Indian Legislature, are engaged in considering an amending Act, and it cannot therefore be said that the amending Act is premature.

Sir, the Joint Stock Company is the product of our system of free enterprise and large scale production. Enterprises in the modern world cannot be started by single individuals or firms with private resources alone. The joint stock company is a co-operative effort which has given great impetus to commercial and industrial enterprise. But it is a venture liable to abuse in the hands of unscrupulous sharpers who trade upon the gullibility of a credulous public, and the public interest requires that the working of these joint stock companies should be regulated and controlled by well-devised and well-directed legislation. Joint stock companies must not be allowed to be misused and perverted for selfish needs by unscrupulous company promoters and organisers. A company failure means utter ruin to large numbers of poor investors. While we should not make honest business impossible, we should not forget the hundreds and thousands of poor investors who invest their savings in these concerns and who have to depend for their living upon the dividends that they get from these investments. Sir, the Bill, I am glad to say, is based upon correct principles. It recognises the peculiar difficulties of Indian industry and, while affording every encouragement to honest business, would make dishonest business more difficult. Dishonesty cannot entirely be eliminated from life by legislation, but to the extent that legislation can make dishonesty difficult this Bill will make dishonesty difficult. Sir, as was pointed out by the Honourable Mr. Sen, this Bill would check the growth, firstly, of mushroom and fraudulent companies; secondly, it would give some more living interest to shareholders in the management of the concerns of which they are shareholders; thirdly, it would prevent and check abuses by directors; fourthly, it would purge the managing agency system of the abuses which have crept into it; and, lastly, it would enable shareholders to get all the material information necessary for a correct judgment on the concerns of which they happen to be shareholders. It has in its various clauses taken into consideration the needs of the various classes affected by a joint stock company promoters, managers, shareholders and the public at large. It is in every sense a vast improvement upon the present Bill and while I should have liked it to go further in certain directions, further in the sense in which Mr. Hossain Imam would have liked it to go, I recognise that it is a compromise measure which can only succeed if there is

goodwill behind it. My attitude is that I want the Bill; for the time being I am content with the Bill as I recognise it to be a great advance over the existing statute.

Sir, the most controversial clauses of the Bill are in regard to the system of managing agency. The system is, as was admitted by the Honourable Mr. Sen, peculiar to India. Now, there is a school of thought which would abolish the managing agency system altogether. There is a school of thought which in the name of the sanctity of contracts would keep the managing agency system much as it is today. The clauses dealing with it have naturally aroused a great deal of controversy; interests are affected by these clauses and it is but natural that there should be some controversy in regard to these clauses. Sir, my own attitude towards the question of managing agency is this. I think that having regard to the present stage of our industrial development, we cannot get rid of this system. The Bill has struck a middle line in regard to this question of managing agency and I think the Bill's attitude towards the managing agency system is correct. Sir, many harsh things have been said about the managing agents and the system of managing agency. Sir, there is no doubt that the system lends itself to abuse and it ought to be our endeavour to stop those abuses as far as it is humanly possible to do so. But, Sir, the conditions in this country require the managing agency system. It is sometimes necessary for a company to have a managing agent who can pledge his credit, who can pledge his name in order to secure the necessary finance for the concern of which he happens to be the managing agent. A managing director is in a different position from a managing agent. A managing director is a servant and it is not his job to finance the concern or give guarantees to the bankers. Sir, experience shows that managing agents have proved to be on many occasions good financiers, managing agents have found on occasions money for the concerns they are running. Many harsh things, as I said, have been said about the managing agency system. When I read some of these criticisms, I am reminded of a book which was published some years ago called *Mother India*. That was a book by an American lady, Miss Mayo. She went to the hospitals, she looked into the jail reports and the law reports in this country and from these reports she made out a terrible indictment against the country. Many things that she said about our social customs were probably true, but if one read the book as a whole, one found that the picture that she gave of this country was absolutely an untrue picture. Sir, if we confine ourselves only to the dark spots in the managing agency system I think we can make a terrible indictment against the system and we can also say, as Miss Mayo said, that this system has done no good and it really ought to be scrapped altogether. But, Sir, if we take a more balanced view, we shall probably come to the conclusion that industrial development has on the whole been advanced by the system of the managing agency. There are abuses in this system and those abuses we want to get rid of. But I am not prepared to go to the extent of condemning the system altogether. Sir, the system, as I said, requires alteration and adaptation to changed conditions. There are, we know, good managing agents and there are bad managing agents. There are managing agents who run concerns committed to their care in their own selfish interests, little caring for the shareholders whose trustees they profess to be and whose trustees they legally are. There are others who take their

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work in a responsible spirit and the present stage of our industrial development is not a little due to them. Sir, the Bill has not abolished, as we know, the managing agency system altogether. The clauses dealing with it lay down that no managing agent shall be appointed to hold office for more than 20 years at a time. The period of 20 years at first sight looks rather a long period. But, Sir, while I would not like to dogmatise on this at all, while I should have liked the period to be shorter, say, about 10 years, I am free to confess that there is room for argument on this point and that if you want the managing agent to do the best that he can, you must give him time to do it. Clause 2 deals with the existing companies and existing agencies are to be terminated at the end of 20 years unless there is a fresh appointment. Sir, I cannot regard this as an expropriatory or confiscatory clause, because if my reading of the Act is correct, these managing agents are to be reimbursed for any losses that they may incur by reason of the termination of their managing agency contract. Sub-clause (*3*) very properly makes a charge upon the company assets by way of indemnity for liabilities or obligations incurred.

THE HONOURABLE THE PRESIDENT: If he enforces his right, what would be the result? Bankruptcy of the company? Would it not be so?

THE HONOURABLE MR. P. N. SAPRU: Not necessarily, Sir.

THE HONOURABLE THE PRESIDENT: If he wants all his money back?

THE HONOURABLE MR. P. N. SAPRU: If it is feared that bankruptcy would result if he enforced his rights, then the company would extend the period of managing agency and then he will be in a very strong position *vis-a-vis* the company because he can recover indemnity. I therefore cannot look upon the clause as confiscatory or expropriatory.

THE HONOURABLE THE PRESIDENT: Would he not dictate his terms when he is contracting for a second time to act as managing agent?

THE HONOURABLE MR. P. N. SAPRU: Therefore, Sir, the clause helps the managing agent and not the company. If the argument is correct, the clause is in the interests of the managing agents, not necessarily the company. I may here indicate that the clauses lay down that the remuneration of managing agents should be based on a fixed percentage of the annual net profits of the company, with provision for minimum payment in the case of inadequacy of profits, together with an office allowance, to be defined in the agreement of management.

Sir, managing agents, it is but right, should not get remuneration on output, production or sales but on profit. The paramount consideration must be the interests of shareholders. Sir, coming to some other parts of the Bill, I welcome the provisions which lay down that a certain proportion of the working capital should be actually subscribed before a concern is allowed to start. We have had, Sir, a number of mushroom companies in recent years. A company's failure does a great deal of the harm to industrial development and if we were to analyse the causes of these failures, we should find that probably one reason is that many of these companies start with inadequate

capital. The clauses therefore, Sir, are based on sound canons of industrial finance and, generally speaking, they have my support. I could have wished they were more stringent but even as they are I give them my support. Sir, there are, as I said, directions in which I should have liked the Bill to be somewhat different but, having regard to the stage at which we have arrived in our discussions I shall refrain from proposing any amendments on those points. For example, Sir, I should have liked the principle of proportional representation to have been introduced in the election of directors. Sir, I am myself in politics a believer in proportional representation. (*An Honourable Member:* "And also communal representation?") No, Sir, I look upon proportional representation as a substitute for communal representation and I have always held the opinion that if we could study proportional representation we should probably be able to arrive at a more correct solution of our communal problems. We do not want, Sir, as I said, to make business impossible but I do not understand how proportional representation would make business difficult. Perhaps some of our business friends will be able to explain how proportional representation would make business difficult.

Sir, I think it is but right that all sections of shareholders should find themselves represented on the directorate, that the directorate should not consist merely of the majority of shareholders. I should like, Sir, some business friends of ours to explain to us how and why proportional representation would make business more difficult. Therefore, Sir, I am in agreement with Mr. Hossain Imam so far as this question of proportional representation is concerned.

Sir, clauses 16, 35, 41 and 44 will enable shareholders to have access to the books of the company giving information as to the list of shareholders, directors, managing agents, contracts in which the directors are concerned, resolutions passed at meetings of shareholders, etc. Now, Sir, I maintain these clauses are very good clauses because they will keep the shareholders in touch with the living management of the concerns of which they happen to be shareholders.

Now, Sir, I now come to the clauses relating to the audit of companies. Sir, I recognise that the clauses in regard to audit represent an improvement over the present state of affairs but I must frankly say that I should have liked the Bill to go further and to have made the auditors entirely independent of the management. Sir, for his re-election an auditor will have to depend upon the management and to the extent that he will have to depend for his re-election upon the management he will not be entirely independent. Sir, we know that we have to depend for our re-election upon our constituents and even when we want to take an absolutely independent line we feel that we cannot do so. There are occasions when we very often speak in this House with a mental reservation. Well, Sir, after all auditors are not very different from Members of the Legislature and I think, Sir, it would have been on the whole better to have made them entirely independent of the management. Sir, as the House knows, I am always in favour of larger and larger state intervention. I am a state interventionist and I should have been, Sir, in favour myself of compulsory state audit by auditors chosen from

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a panel nominated by a special board of accountancy to be constituted by the Governor General in Council. Auditors, Sir, should be men who are under no obligations to the management and therefore, Sir, I think it is necessary that this question of an independent audit should be taken up at an early date. Then, Sir, there are certain other directions also in which I should have liked to see an improvement in the Bill. Sir, the Bill makes no distinction between public utility concerns and ordinary concerns and I think, Sir, in the case of a public utility concern, the control of the state ought to be larger. There ought to be some provision for direct representation of the consumers as represented by the State on public utility concerns. Then, Sir, there is another matter in which I am interested and that is the question of labour. Well, Sir, I speak with a certain amount of diffidence on this point. I know that workers in this country are not yet sufficiently advanced and yet I think, Sir, that if occasionally our concerns could associate workers with the management of the industry they are engaged in, the problem of capital and labour would be easier of solution. Sir, we have a number of protected industries in this country. The consumer is paying very heavily for this protection. I do not grudge the protection which our industrialists are getting. I think the system of discriminating protection has justified itself but, Sir, when we give protection to our industries we have a right to see that these industries are properly run. And therefore I think, Sir, that in the case of protected industries the actual control which the State exercises might be larger.

Well, Sir, these are all the criticisms that I have to offer in regard to the Companies Bill. I recognise that the Bill is in the nature of a compromise measure. It does not give us everything that we want. We should have liked it to go further but we recognise that the Honourable Sir Nripendra Sircar and the Honourable Mr. Sen had a difficult task. They had to reconcile many conflicting interests.

They had to consider the point of view of businessmen, the point of view of shareholders, the point of view of consumers, the point of view of directors, and so many other interests, and it must in fairness be admitted that they have done their task very well. Our thanks are also due to the various Chambers of Commerce, and particularly to the Bombay Shareholders' Association, for the help they have given us in considering this Bill.

There is just one complaint which we of this House have, and I must give expression to that complaint. The Honourable Mr. Hossain Imam and the Honourable Sir Phiroze Sethna have anticipated me in regard to that complaint. Our House was not associated with the Select Committee which considered this Bill. I think we have business talent and business experience in this House, and we have a just and legitimate grievance in regard to the manner in which we have been treated by the Government and the other House. Sir, we are all discussing this Bill at the fag end of the session. We have had to study this Bill at very short notice and I do not think we can fairly say that we have given our very best to the Bill. I think that if we had been given more time, if we had been associated more closely, we should have been able to make a more substantial contribution to this

measure. However, Sir, we wish this measure every success. We hope that this Bill will prove a landmark in the history of Indian industrial development and will give an impetus to industrial development.

Sir, with these words, I generally support the Bill now before the House.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated : Indian Christians) : Sir, I must congratulate the Honourable the Law Member upon his tact and his ability in piloting this Bill before the other House and I must also congratulate the Honourable Mr. Sen upon the able manner in which he has discharged his duties. Sir, I have only a very few remarks to make. I will notice only one or two points in the Bill. So far as the managing agency system is concerned, the tenure is limited to 20 years. Much has been said for and against this. My experience of Indian companies in my own district of Tinnevelly extends over 30 years. There, the managing agents make their position hereditary and the result was that in the course of a few years, the whole concern had to be scrapped, or rather, the concern became not at all a paying concern and the managing agents had to give up the whole thing. I am speaking of what happened 30 or 40 years ago. Ignorant people were asked to subscribe for shares. They paid only a small amount of their share amount. When the company went into liquidation, the poor people, who had paid only say, Rs. 10 a share, had to fork out Rs. 90. When they appeared before the District Judge each said, "I have already paid Rs. 10" and the District Judge said, "The law is such that you must pay the other Rs. 90 also". The result was, a number of good families were ruined. So, this provision is good. No doubt it may work a little hardship with regard to some well established firms, but considering the large number of companies that are being floated nowadays, I think this provision will have a very salutary effect. Otherwise, these people make themselves permanent managing agents with the result that they do not care for the interest of the shareholders and do just as they like and the companies come to grief.

I am glad to see that the managing agents are to be paid only a share of the profits. Sir, I have the misfortune or fortune to own some shares in a company. It has a very large capital. There was a time when it paid about 30 per cent. That was during the war. Now, Sir, the managing agents get Rs. 60,000 to Rs. 70,000 a year. For two years there has been no dividend at all declared. Is it right ? The managing agents get a commission of, we will say, a pie or two pies on every pound of yarn spun, or so many pies on every yard of cloth woven. If these managing agents only cared for the interests of the shareholders, surely they will strain every nerve to see that the company is in a position to pay a dividend, and therefore, Sir, this provision that they should get only a share of the net profits is a very good one.

I have to make one or two comments about what has been left out When a company is in a position to pay a dividend, there must be some provision by which the managing agents are made to declare a dividend. I have in my mind a case which came up before the Madras High Court. A well-known company, an Indian concern—so my English friends need not think I am attacking them—a very good concern had earned considerable profits. For several years no dividend was declared. The excuse was that

[Sir David Devadoss.]

they wanted to start some other concern or they wanted to buy some new machinery. Whenever the shareholders had the temerity to ask for a dividend, the managing agents said, "We will call up the rest of the share capital". Only about 50 per cent. had been paid and they were threatened with having to pay another 50 per cent. The result was that for a number of years—four or five years, I should think—no dividend was declared. The matter came into court. The shareholders wanted to liquidate the company. After a good deal of trouble, the High Court passed an order that the company should be wound up. The managing agents went up to the Privy Council. In the meantime the whole concern was mismanaged. The official liquidator could not get hold of the books, and could not get possession of the property, and the whole thing went to the dogs. Such a thing ought not to happen. I have suggested this to the Honourable Mr. Sen, that whenever a company is in a position to pay, there must be some provision in the law by which the managing agents or the directors should be directed to declare a dividend. Government was very careful with regard to the losses, that the losses in a particular year should be written off in that year. They wanted to benefit the Income-tax Department. If you spread the losses over a number of years and show no profit, the company would not be liable to pay income-tax. I believe that is the reason why this clause has been introduced. I do not suggest any wrong motive. It is perfectly legitimate for the Government to protect its own interests. But, at the same time, I suggest that the interests of the shareholders also should be protected by some provision under which the managers or the directors should be made to declare a dividend whenever a company is in a position to declare a dividend and not to say they are going to start another concern or they want to buy new machinery or some other such excuse.

Some well-known companies—I do not attribute motives—but some companies purposely refrain from declaring a dividend and the result is the price of the shares goes down. In some cases—I may be wrong in my information—the managing agents or some other people buy up the shares in the market, so that the poor people who have not had the benefit of a dividend are obliged to sell their shares at low prices, and when all these shares are purchased, a proper dividend is declared and the value of the shares goes up. Sir, such a state of things ought not to be allowed to go on and I would ask Mr. Sen to consider this point and if possible to bring in an amendment to the Bill so that my idea may be incorporated in it.

There is one other point I would draw attention to with regard to limitation. Section 235 of this Act says that the Limitation Act will not apply. But this has been deleted and I think it would be better to say that the law of limitation will not apply. I would therefore ask Mr. Sen to consider whether instead of simply deleting that clause in the Act of 1913 it would not be better to put in that the law of limitation will not apply to proceedings against directors and managing agents. I think that will help the courts in deciding the question without difficulty. In matters of this kind doubts may arise and different decisions may be given by different High Courts.

Then, Sir, with regard to proportional representation, I am against it. Business is not politics, and if you put in people who cannot manage the business you will kill the business. If I am not taking up the time of the House I might mention an instance of this. A very well-known lawyer left a considerable fortune. His sons, very respectable people, some of whom were B. As. and B. Ls., started a business. Well, even titles like that do not make a person a good businessman, and the result was that in a few years they lost everything and it was a sad thing they had to go into the insolvency court. Therefore, people who have simply shares are not necessarily businessmen. Most people take shares to get a dividend, and if they get a decent return they leave to businessmen to manage the concern. But if you have proportional representation a man who does not know anything about business may come on the directorate and you can easily imagine the fate of the business. Therefore, we must be very careful in introducing principles which will not at all apply to business concerns.

Sir, it is not necessary for me to say much about this Bill. I welcome all its provisions as being beneficial to business as well as to shareholders. The fear expressed by my friend Mr. Arthur and by Mr. Parker I do not think are well-founded. Managing agents if they do their work properly will be re-appointed. I think the shareholders are not such fools as to turn out the good men. (*An Honourable Member*: "They might have to pay more.") That again depends on the shareholders. If the managing agents are people who want to screw the last penny out of the shareholders, they may be able to do it. But everybody is not like that. No doubt they may bid for better terms, but if the company is in a position to pay and is thriving and if the managing agents deserve a little more let them by all means get it. But if the company is not a thriving concern I do not think the managing agents will be so foolish as to drive a hard bargain, because after all they will be entitled only to a share of the profits. That section will be in force when the new contract is entered into. They cannot say, "We will charge so much on every pound of yarn spun", because under the new law they will be only entitled to a share of the profits, so that if they drive a very hard bargain they will get very little.

So, considering all these things, I think the Bill is a very good one and we all ought to support it.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY (West Bengal: Muhammadan): Sir, when we read the Bill that is now before us, the first impression that I feel sure comes to the mind of all of us is one of admiration and respect for the remarkable achievement of my Honourable friend the Law Member who, I regret is to-day absent owing to illness, and my Honourable friend Mr. Sen. They have succeeded in carrying through the Assembly a highly complicated measure which, I think, strikes a very just balance between the conflicting interests involved.

As I understand it, this Bill seeks firstly to bring managing agents and managing directors more under the control of the board of directors as a whole; secondly, to make the directors more responsible to the shareholders than they are today; thirdly, to close the door to possible abuses arising from interlocking interests among boards of directors and managing agents; fourthly,

[Mr. Mahmood Suhrawardy.]

to tighten up the regulation of banking; fifthly, to give shareholders and the public fuller information about company affairs than they have at present; and lastly, to inflict proper penalties on those who infringe the new company law.

Now, Sir, we in this House are, I believe, strong supporters of all these objects, and we have therefore no criticisms to make on the Bill as a whole. Here and there on points of details, Honourable Members of this House will no doubt have suggestions to make for the improvement of the Bill; but of its general soundness there can be no doubt whatever and as I have already said, we are deeply indebted to the Honourable the Law Member for the great improvement in Company Law that he is responsible for bringing about.

On one point, Sir, I should like to say just a word before I sit down. I refer to clause 46 of the Bill. I can hardly think that the full implications of this clause have been considered. I know of one company with seven directors—four Indians and three Europeans—who are directly or indirectly interested between them in about 300 different companies. Is it really seriously suggested that every transaction with every one of these companies should be entered in a separate contract register in addition to being entered as each transaction must be in the ordinary journals and registers of the business? Sir, I can hardly believe that the implications of clause 46 have yet been fully considered and it will require close scrutiny by us. Again, in the proposed new banking section 277L, practical difficulties are involved that must be considered by this Honourable Council when that clause is before us.

I have criticisms to make also on one or two minor points but for the rest I believe this Bill to be a good Bill and I heartily support it in its general aspect.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces: General): Sir, being a layman and fortunately or unfortunately not connected with any companies, I think I should be in a position to speak on the Bill with a detached view and especially taking into consideration the interest of the investing public. Sir, India, as we all know, is mainly an agricultural country. Industrial development in India is of recent growth and I congratulate the industrial classes who have invested large sums of money and who have started. industries in this country with a view to compete with foreign companies. Not only that, Sir, but on account of industrial development in India to some extent the problem of unemployment has been solved. Some may think that it is a reactionary measure. I am sorry I cannot endorse that view because I think our industrial morality is not or cannot be called low as compared with that in other countries. We have read in the papers about the scandals of various companies in Western countries, but we have not come across such scandals in India. I quite agree that in recent times after the Act of 1913 was passed, many mushroom and fraudulent companies came into existence and their existence was made possible at the cost of the investing public, and I therefore congratulate the Government of India and the framers of this Bill for bringing this measure before us after taking into consideration the conflicting views on this measure. We have heard today speeches which show

that there are divergences of view regarding this measure. I for one though I would have liked the measure to be more stringent am satisfied with the present measure and I hope that this measure will to a very great extent save the investing public from the actions of these vicious people.

In this company affair, three factors come into prominence and according to me the interest of the shareholders must be looked into more carefully. The discussion today we had about the managing agency system shows—and those views are supported by some facts which nobody has been able to contradict—that in every fold there are black sheep, but I am not in a position to condemn the managing agency system as a class, though some of them might have fraudulently conducted their business at the cost of the shareholders. Sir, according to me the managing agency system has brought about the industrial development of India and I feel that it would not be desirable in the interests of India to get rid of the system. In other countries people get their initiative from the State, but in India this system has played a very important part in industrial development. In India we have got a policy of discriminating protection. According to me I think that this policy of discriminating protection does not give full protection to nascent industries. While supporting this policy of protection I cannot overlook the interests of the consumers and therefore the safeguards that have been provided in this Bill will, I hope, reduce the cost of production and the consumers will be able to get goods at reduced prices and that the intermediaries will not be able to make more profits than what is necessary for them. Though it is primarily the co cern of shareholders, the directors and the managing agent, ultimately this thing is the concern of the general public and therefore I submit that from that point of view the provisions that have been incorporated in the Bill will safeguard the interests of the general public also. I should have liked that the provision about the appointment of managing agents should have been more liberal from the point of view of shareholders. I find a provision at page 21 which is to the effect that :

" Provided that nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are there set forth ".

I would have liked, Sir, the appointment of the managing agent made subject to the approval of the general body of shareholders, because under this provision if the appointment is mentioned in the prospectus the general body of shareholders cannot have any voice in the matter, because, according to me the shareholders are ultimately the owners of the company and therefore in this very great matter their voice should have been felt. Then, Sir, also about the remuneration to be paid to the managing agent. I should have liked a provision that the remuneration should have been paid according to the wish of the general body of shareholders. Then, Sir, another difficulty that appears to me is about the compensation that is to be paid to the managing agent after his term of office expires under this provision after 20 years. I have not been able to quite follow this provision because if a managing agent is to get out of office after 20 years, why should the shareholders be responsible for his remuneration ? The company may not like to dispense with the services of the managing agent but under the statute the managing agent has to go automatically and if under the statute the managing

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agent has to go automatically the shareholders should not be burdened with the remuneration. (*An Honourable Member* : "They are not burdened with the remuneration. The men can be re-appointed.") Then, Sir, the clauses that deal with the question of allowing the managing agent to enter into contracts for the purchase, sale or supply of goods should have been more strict. I think, Sir, that the managing agent should not at all be allowed to enter into a contract with the company for the purchase or sale or supply of goods because the managing agent holds a very responsible position in the company and as abuses have occurred in the past and a well-known instance has been cited by my Honourable friend Mr. Hossain Imam, I should have liked that in this measure this particular clause should have been more stringent and should have been to this effect that the managing agent should not have been allowed to enter into contracts with the company. (*An Honourable Member*: "He will do it in the name of the benamidar if he is dishonest.") I say there should be such a provision in the Bill that he will not be able to do it in anybody's name. (*An Honourable Member* : "Can any legislation make a man honest ?") I do not say that but an attempt should be made to make him honest. Then, Sir, I find—I speak subject to correction—that so far as foreign companies incorporated outside India who carry on business in India are concerned, they are not required to file their balance sheet as companies incorporated in India are made to file them. This invidious distinction should not be allowed to continue. I understand, Sir, that Indian companies which are incorporated in India and carry on their business in foreign countries have to file their balance sheets there. So, according to that, companies which are incorporated outside India should be made to file their balance sheets.

THE HONOURABLE THE PRESIDENT : What machinery have you got in this country to check the balance sheets of foreign companies ?

THE HONOURABLE MR. V. V. KALIKAR : Well, Sir, I cannot point out or invent any machinery. The Government should have, and the Government, I think, are capable of inventing machinery for checking their balance sheets. Ultimately, Sir, I will ask my friends who have extreme views about this Bill, like Mr. Hossain Imam, and others——(*An Honourable Member* : "He is the only one")——that they should give a fair trial to this Bill and co-operate with the Government in making this Bill a success. I hope as times change the Government on receipt of opinions from various companies and from the shareholders—if there is any necessity—will make further changes in this Bill but till then, Sir, this Bill deserves a fair trial.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I rise to welcome this measure and I express my gratitude to the Honourable Sir Nripendra Sircar and the Honourable Mr. Sen for successfully piloting this measure in the other House and trying to get it passed here. Sir, I do not want to say much because many of my points have already been traversed by my Honourable colleagues. Sir, I must also join with my Honourable friend Mr. Hossain Imam in saying that the Government is certainly ignoring this House in the matter of Joint Select Committees. Sir, as my Honourable friend Sir Phiroze Sethna has pointed out there is a larger number of business men in this House than in the Assembly. I wish, Sir, that the

Government in time will see to this. This House ought to have been represented on the Select Committee on this Bill.

Sir, my Honourable friend Sir Phiroze Sethna observed that the number of managing agents in this case is very small. Our past experience shows that in the Punjab some of the managing agents have fared very badly. Sir, the case of the Punjab Paper and Pulp Mills is known to all Honourable Members. That was a concern with a capital of about Rs. 50 lakhs, which was promoted through the managing agency of a Calcutta business man, at one time a Member of this House. I need not mention his name as he is dead, but I must say that through the fault of this managing agent, the Punjabis in particular and the other shareholders in general lost very heavily in his concern. So is the case with certain other companies in the Punjab, where the managing agents, by the use of their subsidiary companies, have played the devil with the money of the shareholders. I need not dwell long on this point because I believe that the Honourable Mr. Sen knows very well how some of the managing agents or the manging directors in the Punjab have misbehaved.

Sir, I would strongly request the Government to establish an Indian Board of Trade. That is a measure which has now become necessary, and it will regulate and control the working of the companies in the future and will thus add to their successful working. Although every effort has been made to safeguard the interests of the shareholders, I should like to ask the Honourable Mr. Sen how he is safeguarding the interests of the shareholders by the non-elimination of those directors who have been convicted of offences under the Indian Companies Act, or on whom misfeasance, fraud or embezzlement has been established. Such people, in some name or other try to become the floaters of new concerns, and every time they rob the shareholders. In future, a safeguard should be put that such directors who have been convicted of any offence under the Indian Companies Act or on whom fraud, embezzlement or misfeasance has been established should not be eligible for directorship of any limited company.

Sir, the managing agents in the past, speaking on the whole, have done well, because in India conditions were such that if the managing agents had not come forward, industries would not have developed to the extent they have developed so far. Sir, I might mention that in India, long-term banking facilities for industries are not easily forthcoming, and so it is essential that the bankers should have persons of financial standing on whose security or personal surety they could advance money for the working capital of the various concerns. Sir, I should like a provision in the present Bill that when the parent companies are linked up with subsidiary companies, they must invite public tenders before they give any job to their subsidiary concerns. In the Punjab, Sir, I am sorry to say that fraud and misuse of subsidiary companies has been committed and through these subsidiary companies the shareholders have lost heavily.

Sir, I would also like to draw the attention of the Government to the necessity of establishing industrial banks who may be able to advance long-term loans to industries. At present, the banks are disinclined to lock up their money on long-term loans and, therefore, in order to give an impetus to the development of industries, it is essential that long term facilities for credit should be provided.

[Rai Bahadur Lala Ram Saran Das.]

Sir, in some of the companies, the original directors go home on long leave and their work is assigned to their alternate or substitute directors. Sir, when a company is floated, the shareholders subscribe to the funds of the company with the knowledge that there is a certain directorate and that certain persons are on its board in whom they repose trust. From experience, I find that this practice of appointment of substitute and alternate directors is on the increase and in certain cases these substitute directors go on for years. I will deal with this matter in detail when the relative amendment comes up for discussion. So, I need not take up the time of the House further on this point.

Sir, Government should take more care to see that the industries flourish and that the competition from foreign countries is controlled. By competition, I mean unhealthy competition and dumping. Although that point has no direct bearing on this Bill, still I should like to invite the attention of Government that some of the principal industries in India are at present suffering from the dumping of goods from Japan and other foreign countries.

Sir, I would also like to bring to the notice of the Government that whenever they put an excise duty on the produce of any industry they should also see that that industry does not suffer any loss. I know that in the case of the match industry the middleman is making more profit than the manufacturer and at present the manufacturer is losing while the Government in excise duty and the middleman are making a decent profit.

THE HONOURABLE THE PRESIDENT : It has a remote connection with this Bill.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : I am simply bringing that in so that companies may be protected in a manner in which they deserve. I will not keep the Council any longer but I will again press upon this House that this Bill being a very useful measure we should pass it with acclamation.

THE HONOURABLE MR. S. C. SEN : Sir, I am really glad to find that there is general unanimity in this Honourable House about the utility of this Bill and as to the great advance which it marks in the existing law, even though we differ as to the degree to which the advance has gone. But I welcome the criticism which has been made generally as to the provisions of the Bill on the floor of this House, specially as it serves to clear the atmosphere. With your leave, I shall shortly answer the points made by my Honourable friends here. The Honourable Mr. Hossain Imam made a few points which I think can be disposed of first. He made a point that the provisions regarding transfer of fully-paid up shares has not gone far enough. I do not know whether my friend is aware of what is known as the cornering of shares. I do not know whether he knows that occasions have arisen when the directors for the purpose of protecting the business against a threatened disruption from an undesirable quarter have had to exercise their right of refusing registration of transfers. What would have happened if discretion was not left to them. Apart from that in what percentage of cases has the general discretionary powers of the directors been abused ? That is a point on which my friend has to satisfy the Honourable Members before he can successfully urge that the provisions in the amending Bill should have gone further. Mere apprehensions are not good enough.

Then my friend has said that article 60 of Table A should have been made compulsory. In effect it has been done. My friend has possibly overlooked it, but if he will refer to clause 34 section 79 (2) (*d*) he will find it is there in substance. Then he referred to the Titaghur Paper Mills scandal. I should have expected my Honourable friend Mr. Parker or Mr. Arthur to give it the lie, but as they have not done it, and as we had to give the lie to it on the floor of the Lower House, I am taking this opportunity of saying that most, if not all, of the allegations contained in the brochure which my Honourable friend was reading from were untrue, and I have had it from the highest authority, the senior partner of Messrs. Bird and Co.

THE HONOURABLE MR. HOSSAIN IMAM: Has it been published ?

THE HONOURABLE MR. S. C. SEN: They did not choose to take any notice of a surreptitious publication in which the gentleman in question does not choose to come out in public.

Then, Sir, my friend made certain minor points and, in particular, one in which he pointed to the omission of the column showing " the minimum subscription as stated in the articles " in the form of the statement in lieu of the prospectus. Sir, I have been through the Act and I find that there is a good reason why it has been omitted. It is not an accidental omission but a deliberate one. If my Honourable friend will look at clause 101 as it now stands, he will find that under this clause companies have the option of naming the figure of the minimum subscription in the articles and that is the reason why there is a clause in the statement showing what in the articles is the figure named. If, however, my Honourable friend will now look at the amended section, there is no question of naming any figure in the articles. It now depends upon certain factors. They have to work out the figure and on the basis of that working out the minimum subscription will have to be fixed. It is therefore not possible to give it in the articles. And that is the reason why that column would be most inappropriate and has been removed. Then my friend said something about protected industries giving details to Government in order to enable the Government to choose its policy of tariff. Sir, I confess it is beyond my province to say anything about that, and if my friend has any real suggestions they should be made either to the Commerce or to the Finance Department. That is not a subject really for the Indian Companies Act. The Companies Act is meant for all companies in general and not for particular classes of companies nor is it concerned with the tariff question. The only departure that has been made in the case of banking companies, and the reasons for that have been explained to this Honourable House.

Now, my Honourable friend Sir Phiroze Sethna made certain points and I will shortly indicate our views with regard to them. He said that as to the shareholder's right to speak after his name is registered, this should be left to the articles of association to deal with. I do not see the justification of it. Either the directors have the right to register the transfer or they have not. If they exercise the right to register the transfer and the man is rightly on the register as a shareholder, what justification is there for refusing him exercise of his right of franchise and of speech simply because he might make an inconvenient speech or might go against the existing management. That surely

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does not justify the exclusion of his rights, his rights of property as they are called in decided cases. My friend says that a man may purchase shares at the eleventh hour; he can get himself registered and create trouble. But if he is such an undesirable person and the articles of association give the directors almost unlimited power regarding the transfers, the best way is not to transfer his name until the meeting is over but to say that he should be put on the register and then to gag him is something I do not understand. My Honourable friend has also said that in calculating the net profits the managing agents should not be made to deduct depreciation. As my Honourable friend himself explained it is a matter of accounting. If, in the accounts, say, for the purpose of income-tax, my friend is entitled to deduct depreciation, why, for the purpose of calculating his own profits should not the managing agent also deduct this? If I may be pardoned for using the expression, what is sauce for the goose is sauce for the gander. There is no principle absolutely behind the demand that depreciations for the purpose of calculating profits for one particular set of people should be ignored while for the purpose of getting exemption from income-tax it should be included.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Wear and tear is a legitimate charge on the profits.

THE HONOURABLE MR. S. C. SEN: The provision in the Bill is in accord with the views of my Honourable friend Lala Ram Saran Das, that is, that it should be deducted. But I was dealing with the argument of Sir Phiroze Sethna that it should not be deducted.

THE HONOURABLE SIR PHIROZE SETHNA: I will reply when the amendment in regard to depreciation comes before the House.

THE HONOURABLE MR. S. C. SEN: Sir, there is the last point about which I am not in a position to make any definite commitment and that is with regard to the date from which the new law will come into force but I am authorised to say that the convenience and inconvenience of parties will be borne in mind in fixing the date, which really rests with the Governor General in Council.

I cannot help saying a few things about the remarks made by my Honourable friend Mr. Parker. Of course he represents the other extreme view, the view which says that the sanctity of contracts should be sacrosanct, should not be touched, and that the Government has done the greatest blunder in touching the sanctity of contracts. But, Sir, may I remind my Honourable friend that this is not the first instance where this has been done? There is the Debtors Relief Act and where was the protest about this sanctity of contracts when the Governments of all the provinces passed it by which courts granted interest not according to contracts and when mortgages were thrown asunder? Where was the protest?

THE HONOURABLE MR. BIJAY KUMAR BASU (Bengal: Nominated Non-Official): The Murshidabad Administration Act.

THE HONOURABLE MR. S. C. SEN: I am talking of those Acts which have been passed by all the Provincial Councils but the Act referred to by my Honourable friend is also an example.

THE HONOURABLE MR. BIJAY KUMAR BASU : It was passed by this House.

THE HONOURABLE MR. S. C. SEN : Sir, it all depends on the amount of the abuse which has been found and if the amount is considerable and if it is sufficient to evoke action on the part of the Government, it is recognised that Government will be failing in its duty if it does not choose to take steps in the right direction ; but I confess that the steps which the Government should take should be the minimum and I cannot say that in this particular instance what the Government has done exceeds the bare minimum. Then, the question comes about the compensations for expropriation. My Honourable friend Mr. Parker complained that it was inserted by the Select Committee, but it was given the go-by in the Lower House. Sir, the matter was fully threshed out in the Assembly. In effect although it was inserted in the Select Committee, the law when analysed was found to amount to this that it was very doubtful whether they could in fact get any compensation at all. In fact it was very gravely doubted as to what would be the quantum of the compensation and as one of the judges said it may be very remote. If by this statute a term of period is cut out, why should the company be made to pay for it ? That was the point of view from which it was pressed on behalf of the company. The representatives of the companies said that the Government is satisfied that a good case has been made out for reducing the terms in spite of the contract ; the Government has introduced legislation in this behalf. Why should the company be made to pay ? What has it done ? There was no answer from the point of view of my friends. And on that basis the Government, when that amendment was moved on the floor of the Lower House, had to say that they would not support it.

THE HONOURABLE MR. R. H. PARKER : Government ought to pay.

THE HONOURABLE MR. S. C. SEN : Then, Sir, we were told about the profit and loss account and that certain details should not be given but it should be left to the shareholders to decide as to whether they should be given. My Honourable friend missed the point which is this. The whole idea of making the profit and loss accounts compulsory is to give the shareholders some particulars which will enable them to follow the profits and losses. It will not do merely to say that the balance of income and expenditure is so much and that is the profit or that is the loss. That gives them absolutely no idea and therefore it was necessary to enumerate certain things which must be given. But the most effective answer to my Honourable friend is that what they object to finds a place in the profit and loss account of the accounts as they are now published and instances were shown on the floor of the House where the very items which were objected to on behalf of the Group to which my Honourable friend belongs were disclosed not by Indian companies but by European companies.

THE HONOURABLE MR. R. H. PARKER : That is where they are going to damage the shareholders' interest.

THE HONOURABLE MR. S. C. SEN : If this could be published with impunity in a good many cases, I do not know if there is any ground made out for leaving it to the option of the shareholders in the other cases. The only

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other points about which my Honourable friend has touched in his speech are he has criticised section 105C, which compels directors to issue new shares by offering them in the first instance to the existing shareholders in proportion to their holdings ; but may I ask my Honourable friend that if this is such a revolting proposal, why is it in the standard forms in the articles of association, why is it to be found in almost 90 per cent. of the forms of the articles ? I would pause for an answer if my Honourable friend——

THE HONOURABLE MR. R. H. PARKER : I very much doubt. It is not in my experience.

THE HONOURABLE MR. S. C. SEN : I may refer my Honourable friend to the standard book on the subject, *Palmers Company Precedents*. My friend will find that this is one of the standard forms in the articles and I can assure my Honourable friend that I have in my possession at least ten articles where this article is to be found. It has worked satisfactorily. It is intended to be worked satisfactorily and I do not think my friend will find that it does work any hardship. After all, Sir, is it unjust that if a company does issue new shares and there are the existing shareholders who are prepared to put in the capital, why should not they, being already in the company, being already interested in the company, have it first ?

THE HONOURABLE SIR DAVID DEVADOSS : They have only the option.

THE HONOURABLE MR. S. C. SEN : They have only the option as my Honourable friend points out and it is not that the company has not the right to dispose it of to outsiders ; if the shareholders to whom option is given do not exercise it, the company is at liberty to offer it to outsiders.

THE HONOURABLE MR. BIJAY KUMAR BASU : Right of pre-emption.

THE HONOURABLE MR. S. C. SEN : It is the right to have the first refusal, if I may so call it. Then, my friends have said something about clause 119. My Honourable friend Mr. Parker knows that we have considered their point of view and we do not consider that there is any doubt or any difficulty, but as my Honourable friend has tabled an amendment, we will reply fully when that amendment is taken up for discussion. Beyond these, there have been very few suggestions made which do not require any serious notice at all, but I must confess I must deal with one suggestion made by Sir David Devadoss. He suggests that some provision should be made to compel the declaration of dividend. I do not know if that is feasible ?

THE HONOURABLE MR. R. H. PARKER : No.

THE HONOURABLE MR. S. C. SEN : In my opinion it is not and for this reason, Sir. It is first of all a matter of internal arrangement in which no legislation should interfere. In the next place there are a thousand and one things which compel directors not to declare a dividend in a particular year. They may think it is necessary to utilise the profits in extending the business ; they may think it necessary to utilise the profit in keeping a reserve. There are many things which they have got to take into account and it is only those who are in direct charge or control of the management of the company to whom

this matter pertains to, and it would be, I think, highly reprehensible to put in a legislation a provision to compel them to do it and thereby possibly to make them forego a principle which they do not approve.

Now, Sir, that is about all the suggestions that have been made. But as I say, I am indeed glad to find that there is general unanimity about the utility of the Bill and of the advance that it has made. I do sincerely hope that this Honourable House will act with the same amount of appreciation in disposing of the amendments and in discarding those which they think are not useful.

THE HONOURABLE MR. BIJAY KUMAR BASU : This House has always done so !

THE HONOURABLE THE PRESIDENT : Motion made :

" That the Bill further to amend the Indian Companies Act, 1913, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

The Question is :

" That this Motion be adopted. "

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Tuesday, the 13th October, 1936.

APPENDIX.

Directors power refusing transfer fully paid shares abused many cases instance Bharat Insurance holding 14,000 Lahore Electric shares worth above sixty lakhs more than 55 per cent. total capital. Being controlled by other directors holding small number shares. Lahore Electric articles provide one vote each up to thousand shares and one for eight above therefore Bharat wanted transfer its shares in nominees names to increase voting power for safeguarding its interests. Transfer refused by existing Directors to keep their own control. Am managing agent several big concerns but wish to safeguard public interest. Please find some means change law.

DALMIA,

Rohtas Sugar, Limited,

Chairman, Bharat Insurance.