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COUNCIL OF STATE DEBATES

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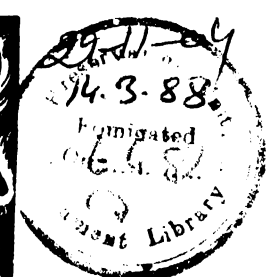
TWELFTH SESSION

OF THE

THIRD COUNCIL OF STATE, 1936



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COUNCIL OF STATE.

Tuesday, 13th October, 1936.

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

QUESTIONS AND ANSWERS.

PROMOTION OF CLERKS QUALIFIED FOR THE FIRST DIVISION IN ATTACHED OFFICES.

176. THE HONOURABLE MR. P. N. SAPRU: (*a*) Is it a fact that in the quota fixed for departmental promotions to the posts of assistants in Attached Offices (scale Rs. 120—350) those qualified for the routine division in the Staff Selection Board's examinations held in 1921 and 1922 are eligible for promotion to the extent of 10 per cent. of the total cadre and that those qualified for the lower division of the Secretariat in the same examinations are eligible for such promotion to the extent of 33⅓ per cent. ? If so, what is the reason for this increased percentage in case of those qualified as clerks, lower division, Secretariat ?

(*b*) Is it a fact that in the quota fixed for departmental promotions to the post of assistant in the Secretariat (scale Rs. 200—500) those declared qualified for the lower division, Secretariat, in the Staff Selection Board examinations held in 1921 and 1922, as also those qualified as assistants in the Attached Offices, in the same examinations are equally eligible for promotion to the extent of 50 per cent. ?

(*c*) Is it a fact that, of the persons indicated in (*b*) above, assistants in the Attached Offices are qualified for one category higher than clerks, lower division, Secretariat, and would in the normal course be in the scale of Rs. 120—350 with prospects of becoming superintendents in the scale of Rs. 400—600 ?

(*d*) If the replies to parts (*b*) and (*c*) above be in the affirmative, has any percentage, similar to that in the case of persons employed in Attached Offices referred to in part (*a*) above, been fixed purely for persons qualified for the upper division of the Attached Offices but employed in the lower division of the Secretariat in the matter of promotion as assistants in the Secretariat ?

THE HONOURABLE MR. R. M. MAXWELL: (*a*) to (*d*). I would invite the attention of the Honourable Member to the reply given to the Honourable Rai Bahadur Lala Jagdish Prasad's question No. 171, on the 9th October, 1936. I may add that the separate quota of promotion to the assistants' grade in Attached Offices for those qualified for the second division of the Secretariat but working in the lower division of Attached Offices was not fixed

on the ground that they are qualified for one category higher than routine grade clerks, but because the scale of pay of the division for which they are qualified corresponds approximately to that of assistants in Attached Offices. This correspondence does not exist in the case of second division clerks in the Secretariat who are qualified for the first division of Attached Offices.

THE HONOURABLE MR. P. N. SAPRU : Does it add to the qualifications and merits of a lower division clerk employed in the Secretariat to have passed the examination for assistants, Attached Offices ?

THE HONOURABLE THE PRESIDENT : Order, order. That is a matter of opinion.

REGISTRATION OF MAGAZINES IN THE OFFICE OF THE POSTMASTER GENERAL, ASSAM AND BENGAL CIRCLE.

177. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : Will Government state which of the undermentioned monthly magazines are registered in the Office of the Postmaster General of the Bengal and Assam Circle :

(*a*) *Labour*, the organ of the All-India (including Burma) Postal and Railway Mail Service Union, Bengal Provincial Branch.

(*b*) *Sramik*, magazine of the Cooch Behar District Postal Union.

(*c*) *Dakbarta*, magazine of the Jalpaiguri District Postal Union ?

THE HONOURABLE MR. A. G. CLOW : *Labour* and *Dakbarta* are registered and *Sramik* is not.

ARTICLES IN *Dakbarta* AND *Sramik* MAGAZINES ON MALADMINISTRATION OF THE SUPERINTENDENT OF POST OFFICES, JAILPAIGURI DIVISION.

178. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : (*a*) Are Government aware that some issues of *Dakbarta* of 1934 and the March, April and May, 1936 issues of the *Sramik* contained reports regarding maladministration of the Superintendent of Post Offices, Jalpaiguri Division ?

(*b*) If so, will Government please state what action was taken by them ?

THE HONOURABLE MR. A. G. CLOW : (*a*) No.

(*b*) Does not arise.

HOLDING OF INDEPENDENT CHARGE OF POST OFFICES BY JUNIOR CLERKS IN THE POSTAL DIVISIONS OF MIDNAPORE, MYMENSINGH AND JALPAIGURI.

179. THE HONOURABLE MR. MAHMOOD SUHRAWARDY : Are Government aware that there are various cases in the Postal Divisions of Midnapore, Mymensingh and Jalpaiguri of junior clerks holding independent charge in post offices and their seniors working as clerks elsewhere ? What steps do Government propose to take to put a stop to such practice ?

THE HONOURABLE MR. A. G. CLOW : I have no particulars, but am willing to accept the Honourable Member's statement. Such appointments do not involve any supersession and the last part of this question does not arise.

BILLS 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 following Bills, which were passed by the Legislative Assembly at its meeting held on the 12th October, 1936, namely:

A Bill to implement Article 28 of the Geneva Convention of the 27th day of July, 1929.

A Bill to amend the Indian Rubber Control Act, 1934, for certain purposes.

A Bill to validate certain marriages solemnized in the Civil and Military Station of Bangalore.

A Bill to amend the Indian Tea Control Act, 1933, for certain purposes.

A Bill to provide out of the property of the Indian Red Cross Society a Fund to be administered in Burma by a Burma Red Cross Society, and to terminate in Burma the existing functions of the Indian Red Cross Society.

A Bill further to amend the General Clauses Act, 1897, for a certain purpose, and

A Bill further to amend the Chittagong Port Act, 1914, for certain purposes.

INDIAN COMPANIES (AMENDMENT) BILL—*continued.*

THE HONOURABLE THE PRESIDENT: Honourable Sir Nripendra Sircar, we are very glad that you are feeling better and are able to come to this Council today. I may offer you on behalf of this Council a hearty welcome and I know your presence will be very valuable here today and it will afford encouragement to the Members of this House.

THE HONOURABLE SIR NRIPENDRA SIRCAR (Law Member): I thank you, Sir, for your kind words.

THE HONOURABLE THE PRESIDENT: We will now proceed with the detailed consideration of the Bill. Clause 2.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY (West Bengal: Muhammadan): Sir, I move:

"That after clause 2 the following new clause be inserted, namely:

'In section 3 (*1*) of the said Act, after the words 'High Court' the words 'and the Court of the District Judge' be inserted'."

Sir, I have brought this amendment to safeguard the interests of (*a*) factories, (*b*) jute mills, (*c*) banking companies, and (*d*) other industrial concerns outside the original jurisdiction of the Calcutta High Court. Sir, experience has shown that litigation, firstly, on the original side has been very expensive

[Mr. Mahmood Suhrawardy.]

and dilatory; secondly, I do not see any sense in restricting the jurisdiction of the Companies Act to the High Court alone. Now, the district judges are competent to deal with cases effectively outside the original jurisdiction of the Calcutta High Court with less trouble and expense.

With these remarks, Sir, I move my amendment for the acceptance of the House.

THE HONOURABLE MR. S. C. SEN (Government of India: Nominated Official): Sir, I oppose this amendment. The reasons are these. Under the Indian Companies Act the jurisdiction given to the courts are very limited. The courts have jurisdiction in four important matters. The first one is the sanctioning of changes in the memorandum of association. The second is in connection with the ratification of the share register. The third is in connection with the winding up, and the fourth is in the matter of sanctioning of arrangements and compromises. All these matters are very important and they involve an intimate knowledge of the technical subject of Company Law. Therefore, Sir, there is a considerable risk in giving jurisdiction to the district courts generally unless my Honourable friend, Mr. Suhrawardy, can satisfy us that the technical side of the law can be dealt with effectively by the district courts. Over and above that, Sir, if I may draw the attention of the Honourable House to the provision in section 3 in the Act itself. Honourable Members will find that the Local Governments are given the power in deserving cases of delegating the powers of the High Courts to the district judges. This is not a dead letter and it has been so done at least in the Province of Bengal, where some five districts so far as I know have already been given these powers.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY: May I know, Sir, which are the five districts?

THE HONOURABLE MR. S. C. SEN: I am not sure but I think they are Dacca, the 24-Parganas, Sylhet and the others I am not able to remember.

THE HONOURABLE MR. MAHMOOD SUHRAWARDY: But not Midnapore. Midnapore and Mymensingh are supposed to be the biggest districts in Bengal.

THE HONOURABLE THE PRESIDENT: Order, order. You are not entitled to make a speech.

THE HONOURABLE MR. S. C. SEN: Sir, the question is the delegation would be given in districts where these matters crop up every day or very frequently. It is no use giving it to a district simply because it is a large district in size. There may not be company matters cropping up there at all. Therefore, Sir, I submit that in this matter which is already provided for it is not necessary and certainly not desirable to have any amendments.

THE HONOURABLE THE PRESIDENT: The Question is that the following amendment be made:

"That after clause 2 the following new clause be added, namely:

'In section 3 (*1*) of the said Act, after the words 'High Court' the words 'and the Court of the District Judge' be inserted'."

The amendment was negatived.

Clause 2 was added to the Bill.

Clauses 3 to 7 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 8.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce): Sir, I move:

"That in clause 8 of the Bill after the second proviso the following further proviso be added:

'Provided further that Regulation 107 shall not be deemed to form part of the articles of association of any company in and so far as the company in general meeting shall so determine'."

This, Sir, is one of the mandatory sections which I consider deprives the shareholders of what I regard as their reasonable rights. I can see no adequate grounds for insisting on Regulation 107 forming part of the articles of association of a company if the shareholders themselves do not wish it.

I admit that there are many companies which can and many which do in effect comply with the provisions of Regulation 107, but there are also companies which could only do so to the detriment of the interests of the shareholders.

I have no desire to suggest the concealment of information which shareholders ought to receive. My point is purely that in a profit and loss account some information would be of far more benefit to competitors than it could possibly be to the shareholders.

If it is desired to lay down what the profit and loss accounts of companies shall show I think the provision should be on the following lines:

The profit and loss account shall show arranged under the most convenient heads the total income derived from investments, interest on debentures or loans allocations to and from reserves or other funds, the balances transferred from trading account, depreciation, dividends declared and other items of income or expenditure not arising from trading, in particular the expenses of establishment, salaries, and other like matters. Every item of expenditure chargeable against the year's income shall be brought into the account so that a just balance of profit and loss may be laid before the meeting and in cases where any item of expenditure which may in fairness be justified for several years as being incurred in any one year the whole amount of such item shall be stated unless the company in general meeting shall otherwise determine with the addition of the reasons, unless the company in general meeting shall otherwise determine, why only a portion of such expenditure is charged against the income of the year.

Sir, I move.

THE HONOURABLE SIR PHIROZE SETHNA (Bombay: Non-Muhammadan): Mr. President, before this amendment is considered, we would like to know from the Honourable the Law Member if there is not some conflict in some of the clauses? For example, certain clauses in making certain Regulations of Table A compulsory conflict with other clauses of the Bill. For instance, in clause 34, new section 79 (*1*) (*c*) makes provision as regards poll

[Sir Phiroze Sethna.]

at a general meeting and says that five members shall be entitled to demand a poll whereas Regulation 56 of Table A requires only three members to demand a poll. I will read these. Section 79 (*1*) (*c*) says:

"Five members present in person or by proxy, or the chairman of the meeting, or any member or members holding not less than one-tenth of the issued capital which carries voting rights shall be entitled to demand a poll, etc.".

Regulation 56 of Table A reads:

"At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and unless a poll is so demanded, a declaration by the chairman that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution".

These two provisions conflict with one another. Perhaps there may be an explanation, and I hope the Honourable the Law Member or the Honourable Mr. Sen will place it before us.

THE HONOURABLE MR. C. G. ARTHUR (Bengal Chamber of Commerce): Sir, I rise to support the amendment moved by my Honourable colleague, Mr. Parker, which amendment also stands against my name.

Sir, our main reason for putting forward this amendment is that Regulation 107 as it stands goes far beyond what we believe to be the intention of the Honourable the Law Member. As we understand it, his intention is to secure the compulsory publication of a proper profit and loss account. For example, he wants—and quite rightly wants—to make certain that every profit and loss account in future shall show, arranged under the most convenient heads, the total income derived from investments, interest on loans, balance transferred from trading account, allocation to and from reserves and other funds, depreciation, dividends declared and other items of income and expenditure not arising from trading—in particular the expenses of establishment, salaries and other like matters.

Now, Sir, those whose views I represent would have no objection to the compulsory inclusion of Regulation 107 if that Regulation went no further than that. Unfortunately, as the Regulation is now worded, it may be interpreted to mean that it goes much further in the way of disclosure than is desirable in the interests of shareholders. It should not, I think, be forgotten that when Regulation 107 was originally drafted there could have been no idea in the minds either of the draftsmen or of the legislators of that time that this clause should ever be made compulsory. In such circumstances, therefore, it is natural that close attention should not have been paid to the exact wording of the Regulation.

I had intended at first to table an amendment to Regulation 107 somewhat on the lines I have indicated in the remarks I have just made. I realise, however, that to have done so at this stage might have raised difficulties for the Honourable the Law Member. Had we in this House been able to secure the support of the Honourable Member and of Government for a redraft of Regulation 107, it seems possible that any such redraft might have received

criticism at the hands of the Legislative Assembly and such criticism at this juncture, as I fully realise, might have been embarrassing to Government.

In such circumstances, therefore, I decided not to move an amendment on these lines, though I cannot but feel that it might well have secured the support of the Honourable the Law Member, and I support instead the amendment moved by my Honourable friend Mr. Parker. All that this amendment seeks to achieve is that the shareholders themselves should be allowed to decide whether they desire the existing Regulation 107 to apply in the case of their company or not.

THE HONOURABLE SIR NRIPENDRA SIRCAR (Law Member): Sir, my Honourable friends of the European Group, by sheer repetition I believe have convinced themselves that there is some foundation for their objection, but really there is none. The objection was taken when opinions were received from the Bombay Chamber of Commerce and from some other bodies, but ever since that time I have begged of them at innumerable conferences, in the Select Committee, and in the other House to tell me what are the difficulties, but except general statements that business will be ruined, the heavens will fall and things of that kind, I have not heard anything which will bear out their fear. Today, Sir, two Honourable Members have spoken on their behalf and we have not heard anything specific as to what the danger is and what is the kind of disclosure which will paralyse industry and ruin business if this amendment is not allowed. As a matter of fact we were pressed very much on this point in the other place. One of the Members of the European Group said, "Well, if we follow the provision as laid in the Bill it will mean that disclosures will be made which may not be dangerous in connection with other companies but will be extremely dangerous in connection with mining companies because they will show our raising costs". Sir, during the third reading stage in the other place I produced for the House and for my European friends one after another a series of reports of mining companies in Bengal and in Burma where they have made disclosures far in excess of what is now required of them. There is absolutely no ground for any fear and I challenge anybody to find out the raising cost from the figures which are produced and from the figures which will be produced if this a mendment is defeated. I daresay in the mining regions everybody has a fairly shrewd idea of what the raising cost is and the heavens won't fall if these figures are disclosed—but in fact I am not convinced that there is any danger. I submit that the other argument that if the shareholders like they can insist on this has no substance. We in India know that many of the managing agents hold more than 51 per cent. of the shares and the shareholders in many cases will not be able to carry a resolution against the managing agent. This amendment ought not to be accepted by the House.

As regards the point raised by Sir Phiroze Sethna, there is a complete answer but I propose to reserve that till we come to clause 34.

THE HONOURABLE THE PRESIDENT: The Question is that the following amendment be made:

"That in clause 8 after the second proviso the following further proviso be added:

'Provided further that Regulation 107 shall not be deemed to form part of the articles of association of any company in and so far as the company in general meeting shall so determine'."

The amendment was negatived.

Clause 8 was added to the Bill.

Clauses 9 to 15 were added to the Bil.

THE HONOURABLE THE PRESIDENT: Clause 16.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern: Non-Muhammadan): Sir, I move:

"That in clause 16 after sub-section (7) of proposed section 34 the following be added, namely:

'Provided that the company shall have no right to refuse transfer of shares in cases when the right to such transfer has been transmitted by the testamentary disposition or operation of law'."

Sir, the object of this amendment is that the companies should have no right to refuse transfer in cases of heirs and beneficiaries who inherit when the owner of the shares dies. The reasons are obvious. Strictly speaking, the case I have in mind is a case of transmission, but the word "transfer" is a rather wide word and therefore I think it will clarify matters if an amendment of this character is accepted.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa: Muhammadan): Mr. President, this question of the transferability of shares has been agitating the minds of the Indian public for a long time. At present the Governments in the provinces have gone out of their way to give the right of transferability even to tenants who have small holdings, and the stock argument of Government has been that there should not be any bar to the validity of such transfers. Secondly, the Honourable Mr. Sen yesterday in winding up the debate stated what is the fact that this power is exercised very infrequently and by few companies. If, therefore, it is exercised only by a small minority and on very few occasions, that means there would be no harm in allowing transfers. It is only in a few specific cases where this could by any stretch of the imagination be regarded as a hardship. Therefore, I think this modest amendment will not involve any question of principle, because this transmission is such that if the companies refuse to register there is no way out, because those who have received this transmission are not in need of the transfer. And where the operation of law is concerned there I think the discretion of the judiciary would be better if the other party can intervene and stop the due performance of a decree of court.

With these words, Sir, I support this amendment.

THE HONOURABLE MR. S. C. SEN: Sir, I oppose this amendment. In the first place so far as the question of transmission by testamentary disposition or by operation of law is concerned, I think it is not necessary. In the first place this section is really applicable to transfers inter-parties. If I may draw the attention of Honourable Members to section 35 of the existing Act, they will find that it is not necessary for the legal representatives of a deceased shareholder to get themselves registered if they want to dispose of the shares.

Why then is this clause at all necessary? My friend's apprehension is that otherwise the shares may not be disposed of. There is no ground for such an apprehension. If you look at clause 35, it says:

"The transfer of a share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not a member, be as valid as if he had been a member at the time of the execution of the transfer".

Therefore the right to transfer shares at the instance of the legal representatives, although they are not on the register, is there preserved. A legal representative can transfer or assign his shares although he may not be on the register himself. That, Sir, disposes of the first point.

As regards the second point, let us see what my Honourable friend wants. A decree declaring the rights of a person to certain shares is passed. The decree holder is at best only in the position of a transferee. He gets no better status. How can he say merely by reason of the fact that his title has been declared, get an automatic right to have his name registered. In the case of an ordinary transferee the directors have the discretion to accept or refuse registration. Why should a person whose title is declared by a decree be given the right to force the directors to give up the discretionary power they possess. There is no ground for differentiating between the two. I therefore oppose the amendment.

THE HONOURABLE THE PRESIDENT: The Question is that the following amendment be made:

"That in clause 16 after sub-section (7) of proposed section 34 the following be added, namely:

'Provided that the company shall have no right to refuse transfer of shares in cases when the right to such transfer has been transmitted by the testamentary disposition or operation of law'."

The amendment was negatived.

Clause 16 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 17.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I move:

"That in sub-clause (*b*) of clause 17 for the words 'ten days' the following be substituted, namely:

'ten days exclusive of Sundays and holidays and days on which the transfer books of the company are closed'."

I think this is a reasonable request that we make. Ten days are not merely enough. It may be that the offices are closed on account of Easter or Christmas for four or five days. If my amendment is accepted, it will satisfy all.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, the only objection on the part of the Government to accept this amendment is by reason of the use of the word "holidays". I do not know where this would lead us.

THE HONOURABLE SIR PHIROZE SETHNA: May I say, Sir, "bank holidays"?

THE HONOURABLE SIR NRIPENDRA SIRCAR: Instead of using Sundays and holidays, if my Honourable friend moves an amendment as follows, the Government will have no objection to accept the amendment:

"ten days exclusive of non-working days and days on which the transfer books of the company are closed."

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I accept the suggestion.

THE HONOURABLE THE PRESIDENT: The Question is that the following amendment be made:

"That in sub-clause (*b*) of clause 17 for the words 'ten days' the following be substituted, namely:

'ten days exclusive of non-working days and days on which the transfer books of the company are closed'."

The amendment was adopted.

Clause 17, as amended, was added to the Bill.

Clauses 18 to 30 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 31.

THE HONOURABLE MR. P. N. SAPRU: Sir, I move:

"That in clause 31 in sub-section (*3*) of the proposed section 76 after the words 'if default is made as aforesaid' the following be inserted, namely:

'or if the proceedings of a general meeting are unduly prolonged without the consent of the meeting'."

I may invite attention to sub-clause (*3*) of clause 31. The sub-clause will read as follows if my amendment is accepted:

"If default is made as aforesaid, or if the proceedings of a general meeting are unduly prolonged without the consent of the meeting, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company".

Now, Sir, experience shows that sometimes obstructive tactics are adopted by shareholders and the chairman is sometimes too weak to stop those tactics. It is necessary in these cases when obstructive tactics are adopted that there should be a right given to the shareholders to go to the court and get directions that the meeting shall not be unduly prolonged. That is the object of my amendment. I want that some right should be given to the court to see that meetings are conducted properly and obstructive tactics are not adopted by shareholders who are interested in adopting those obstructive tactics. Chairmen of meetings sometimes prove weak in dealing with obstruction of shareholders and that is why some such safeguard as is suggested in this amendment is necessary.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, this amendment as well as some others in the name of my Honourable friend, Mr. Sapru, attempt to give meticulous directions as to what should be done if the meeting is not properly conducted. But no power on earth can prevent a meeting being improperly conducted if the shareholders make up their minds to do so and there is no object in giving these minute directions, and I submit, Sir, that the matter must be really left to the good sense of the shareholders and to the power that the chairman has under the ordinary law and Company law.

THE HONOURABLE THE PRESIDENT : The Question is that the following amendment be made :

"That in clause 31 in sub-section (*3*) of the proposed section 76 after the words 'if default is made as aforesaid' the following be inserted, namely :

'or if the proceedings of a general meeting are unduly prolonged without the consent of the meeting'."

The amendment was negatived.

Clause 31 was added to the Bill.

Clauses 32 and 33 were added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 34.

THE HONOURABLE MR. P. N. SAPRU : Sir, I move :

"That in clause 34 after clause (*c*) of the proposed section 79(*1*) the following be inserted, namely :

'The poll shall be taken unless otherwise agreed to by the meeting, in a manner that will enable the business of the meeting to be concluded within ten days from the date on which the meeting was first held'."

Sir, the proposal is that the poll shall be taken in a manner so that the business of the meeting might be concluded within ten days from the date on which the meeting first began. The object again is that meetings are not prolonged and if a poll is demanded it should be taken within a reasonable time. Sometimes it takes months for a poll to be taken. A time limit should be fixed within which the poll must be finished. Sir, that is the object of my amendment.

THE HONOURABLE MR. S. C. SEN : Sir, I oppose this amendment. This amendment is really on a par with the two amendments which stood previously in the name of my Honourable friend, Mr. Sapru. The remarks which the Honourable Sir Nripendra Sircar made as regards the two previous matters apply equally to this. We have known of no case ; at least no complaints have been made by any of the public bodies about any delay, undue or otherwise, in the taking of polls. The difficulties are really imaginary. We have not had any facts and figures which show that the power of taking polls has ever been abused. In the next place it is impossible to specify any limit of time. On the materials before us there are no reasons to believe that polls are not taken speedily and that they are delayed for months. It seems to me there is no point in this amendment. It is unnecessary and I oppose.

THE HONOURABLE THE PRESIDENT : The Question is that the following amendment be made :

"That in clause 34 after clause (*c*) of the proposed section 79(*1*) the following be inserted, namely :

'The poll shall be taken unless otherwise agreed to by the meeting, in a manner that will enable the business of the meeting to be concluded within ten days from the date on which the meeting was first held'."

The amendment was negatived.

THE HONOURABLE SIR PHIROZE SETHNA : I thought the Honourable the Law Member was going to offer an explanation in regard to clause 34, as he said he would do when I spoke on Mr. Parker's amendment on clause 8.

THE HONOURABLE MR. S. C. SEN: I beg to submit that there is no inconsistency between the two matters. If my Honourable friend, Sir Phiroze Sethna, will look at clause 7 all that it says is that clause 56 will be deemed to form part of the articles of a company. The result is even if there is no specific provision, clause 56 will be deemed to be part of the articles. Let us now look at clause 34 which my Honourable friend says is inconsistent. The opening words of clause 34, section 79 (*1*) are these:

"The following provisions shall have effect with respect to meetings of a company other than a private company not being a subsidiary of a public company and the procedure thereat, *notwithstanding* any provision made in the articles of the company in this behalf".

Therefore, the position is this, Sir, that under this section although there is such a provision in the article, the article will be over-ridden. What clause 7 does is merely to incorporate article 56 of Table A as part of the articles. There is no inconsistency and there is no necessity for this amendment.

THE HONOURABLE MR. HOSSAIN IMAM: Do we take it, Sir, that the provisions of article 56 are over-ridden by this clause?

THE HONOURABLE MR. S. C. SEN: To a limited extent undoubtedly it over-rides the provisions of the article.

THE HONOURABLE MR. HOSSAIN IMAM: Does that in effect mean that there is no necessity for incorporating article 56 in the Bill because if we have over-ridden it and the provision in this sub-section of clause 34 is more stringent, then why this difference? Government must make up their minds once for all as to what they want.

THE HONOURABLE MR. S. C. SEN: Article 56 of Table A says:

"A resolution put to the vote of the meeting shall be decided by a show of hands" and so on.

There are many other matters than the demanding of the poll and they are untouched. It is only the demanding of the poll which is over-ridden by the clause—not the other matters.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab: Non-Muhammadan): Sir, I rise to move the amendment which stands in my name:

"That in clause 34 for clause (*d*) of sub-section (*2*) of proposed section 79 the following clause be substituted, namely:

'(*d*) every shareholder of a company incorporated under this Act, or under the Indian Companies Act, 1866 or 1882, or any other enactment for the time being in force, when the company was incorporated, shall at a general meeting, have one vote for each share held by him, subject to a maximum of 25 per cent. of the total number of shares issued by the company, or one vote for each share up to a maximum limit of 100 and one vote for every ten shares over that number whichever is less'."

Sir, experience has proved that when a company or a shareholder owns a large number of shares in any limited company sometimes the power is misused.

Sir, my amendment has the support of the Northern India Chamber of Commerce. In the Punjab, Sir, I suppose most of the Honourable Members know that in certain companies who own a large block of shares in a company the funds of the company have been ruined for want of vote control by the other shareholders. Now, Sir, some cases are pending in the Lahore High Court and other courts. To avoid that misuse of the power, I propose this amendment. It is not a new one. In the Reserve Bank of India Act we find a similar section curtailing the power.

THE HONOURABLE THE PRESIDENT: You cannot apply that. The object of the provision in the Reserve Bank of India Act was to prevent shares from accumulating in one hand.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: That may be so, Sir. I did not say that that was the reason. What I meant was, that my proposal is not a novel one. It is a proposal which experience has shown there is necessity for. And from what we see in the Punjab, we ought to have some safeguard in this direction so that the majority of the shareholders may not be able to be controlled by a company or person owning a big block of shares Sir, this amendment deserves support and I hope the Honourable House will accept it.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, there are at least two objections to the amendment moved by my Honourable friend. He thinks that if the amendment is carried the oppression of the fraud which may be created by a person holding a large block of shares will disappear. Nothing of the kind. Because I may assure my Honourable friend that Company Law does not recognise Trust shares which may be put in the names of nominees. If I hold 5,000 shares there is nothing to prevent my keeping 1,000 in my name and the other 4,000 in the name of my relatives or friends. The whole object would be defeated in that case. My second objection, which is still more important, is this. Why is it that companies offer extra voting rights to certain classes of shareholders? It is one of the means of luring capital. If the time arrives when it finds it cannot attract capital, it offers extra voting rights, and it is really destroying the whole structure of the present Company Law if companies are not allowed to issue shares with these differing rights. I submit, Sir, this amendment is absolutely useless.

THE HONOURABLE THE PRESIDENT: The Question is that the following amendment be made:

"That in clause 34 of clause (*d*) for sub-section (*2*) of proposed section 79 the following clause be substituted, namely:

'(*d*) every shareholder of a company incorporated under this Act, or under the Indian Companies Act, 1866 or 1882, or any other enactment for the time being in force, when the company was incorporated, shall at a general meeting have one vote for each share held by him, subject to a maximum of 25 per cent. of the total number of shares issued by the company, or one vote for each share up to a maximum limit of 100 and one vote for every ten shares over that number whichever is less'."

The amendment was negatived.

THE HONOURABLE MR. P. N. SAPRU: Sir, I move:

"That in clause 34 to clause (*e*) of sub-section (*2*) of the proposed section 79, the following be added, namely:

'or by an attorney'."

Now, Sir, we know shareholders can be represented by proxies. But a proxy must be a shareholder. Now, Sir, the suggestion that I make is that the proxy may be an attorney, that is to say, a solicitor, and that attorney or solicitor need not be a member of the company. I see, Sir, no reason why a shareholder should not be allowed the right of representation through an attorney. If he has no confidence in any shareholder and if he cannot therefore make any shareholder a proxy, he should be allowed the right of representation through a solicitor or attorney. That is the object of my amendment and the second amendment is only of a consequential nature.

THE HONOURABLE MR. S. C. SEN: Sir, I oppose this amendment. In the first place, there is nothing in clause 34 which prevents a shareholder from appointing or giving a general power of attorney to his attorney to attend meetings. That is done every day. That is not barred by this clause. Therefore, Sir, I do not quite understand what my Honourable friend wants. The shareholders have the right to appoint an attorney at present, and under the law, as it will be he will have the right to vote either by proxy or by the holder of a general power of attorney.

THE HONOURABLE MR. P. N. SAPRU: The proxy must be a shareholder; the proxy cannot be a person who is not a shareholder.

THE HONOURABLE MR. S. C. SEN: You can authorise any man by means of a power of attorney to attend and vote for you at a meeting.

THE HONOURABLE MR. P. N. SAPRU: Is it suggested that the power is already there?

THE HONOURABLE MR. S. C. SEN: Yes.

THE HONOURABLE THE PRESIDENT: Anybody can give a power of attorney to any person to represent him at the meeting.

THE HONOURABLE MR. P. N. SAPRU: The person who represents him need not be a shareholder?

THE HONOURABLE THE PRESIDENT: No. He need not be a shareholder.

THE HONOURABLE MR. P. N. SAPRU: I will then ask your permission, Sir, to withdraw the amendment.

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

Clause 34 was added to the Bill.

Clauses 35 and 36 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 37.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I beg to move:

"That in clause 37 in the proposed sub-section (*5*) of section 83 for the words 'after seven days', where they occur for the first time, the words 'fourteen days' be substituted."

I submit, Sir, that on occasions, seven days may not be considered sufficient. For example, there may be the Easter holidays or the Christmas holidays. But, more than that, the reports of annual general meetings of large companies are very long and it does take time to prepare them. Besides, the time taken by the office itself, they are very often submitted to the lawyers, and, as we know, lawyers are never prompt in returning them after approving of them.

THE HONOURABLE SIR NRIPENDRA SIRCAR: It depends on what you pay them!

THE HONOURABLE SIR PHIROZE SETHNA: All cannot afford to pay the fees which the Honourable the Law Member might claim! But even in the case of large companies where they pay very handsome fees to their solicitors, these solicitors are not generally known to be very prompt in giving their replies. Moreover, Sir, the report of the meeting may have to be submitted to every director. That also will involve time. As a rule, however, they are submitted only to the chairman and it may be that the chairman is away from the place where the meeting was held for days together. So, for all these reasons, seven days is not sufficient and that is why, Sir, I move my amendment.

THE HONOURABLE MR. S. C. SEN: Sir, I am afraid we cannot accept this amendment. What is provided in sub-clause (*5*) of clause 37 of the proposed Bill is that any shareholder can, after seven days of the holding of the general meeting, apply for and obtain copies of the minutes of the proceedings. As you are aware, Sir, and as Honourable Members are aware, the minutes of the proceedings are generally jotted down at the meeting itself. It only means transcribing them into the minute book and getting it signed by the chairman. It is only on very rare occasions that it requires the scrutiny of lawyers. But, as the Honourable the Law Member has pointed out, it is not impossible to get them to do it within seven days. Therefore, there is no point in the contention, that seven days is not sufficient. The other point that it has got to be submitted to all the directors for their approval is a novel proposal. The only man who is concerned with the minutes and who is responsible for the correctness thereof is the chairman and it is his signature that is required. He will be present himself and it ought to be possible to get everything right within seven days. The extension asked for is therefore not reasonable.

THE HONOURABLE THE PRESIDENT: The Question is that the following amendment be made:

"That in clause 37 in the proposed sub-section (*5*) of section 83 for the words 'after seven days', where they occur for the first time, the words 'fourteen days' be substituted."

The amendment was negatived.

Clause 37 was added to the Bill.

Clause 38 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 39.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I beg to move:

"That in clause 39 for the proposed sub-section (2) of section 83B, the following sub-section be substituted, namely:

'(2) Notwithstanding anything contained in the articles of a company other than a private company the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of directors, and at least one-third of the whole number of directors shall be appointed by the company in general meeting'."

Sir, as I observed in the speech I made yesterday, this clause has led to some confusion and, as I may repeat, even such important newspapers as the *Times of India* and the *Statesman* have interpreted it differently from the manner in which the Honourable the Law Member interprets it. It is only with the idea that a clause may be inserted in the Act which will not lead to litigation that I have brought forward this amendment. I hope the Honourable the Law Member will be able to clear up this point to the satisfaction of the public. Regulation 78 in effect means that one-third of the board shall retire each year, but this clause says that two-thirds of the board shall be subject to retirement by rotation. This leads to confusion, and to avoid the same I trust the Honourable the Law Member will put matters right in any manner he likes.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, if my Honourable friend will turn not only to Regulation 78 but also to Regulations 79, 80 and 81, he will probably find that there is no difficulty. Under 78, Sir, the whole of the directors shall retire from office at the first ordinary meeting, and in every subsequent year, one-third shall retire. There is no necessity under the provisions of this Bill that two-thirds should retire in the same year. That is not wanted. One-third shall retire. Two-thirds are liable to retire by rotation. This is quite consistent with one-third retiring each year.

The next point is this. As regards the first portion of the amendment that not more than one-third of the whole number of directors shall be appointed by the managing agents, that has been provided for in the Bill. That is section 87K. The other question is, how many shareholders are going to elect? I submit, Sir, whatever the views of others may be, there is no difficulty, because under Regulations 78 and 79, who are the directors in respect of whose vacancies the shareholders are asked to appoint successors? Under Regulation 79, the directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

The point to be remembered is that while two-thirds of the directors shall be persons, who are liable to retire, but section 83B (2) is silent as to how vacancies are to be filled up. The section does not constitute the shareholders the appointing authority. The right of shareholders to elect directors is to be found in the Regulations of Table A, and in those Regulations only. And 81 says that a company at the general meeting at which a director retires may fill up the vacated office by electing a person thereto. Therefore the scheme of the regulations is that the vacancies caused by the retirement of elected directors are filled by the shareholders. Now, under the amendment which was carried in the other place, which has come

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to be known as Dr. Khare's amendment, it is quite true, as I have already said, two-thirds of the directors have got to retire by rotation. The provision, *i.e.*, section 83B(*2*) does not lay down that in case of those who retire by rotation, their vacancies should be filled by the shareholders. Therefore, what is the position ? Under the Bill as it stands the position is that one-third is the maximum number to be nominated by the managing agents. As regards the others the Bill gives no right to fill up the vacancy caused by the retirement of a director who was not an elected director. A director nominated by the managing agent not being an elected director in his case the vacancy cannot be filled up by shareholders. I submit, Sir, in those circumstances what is the necessity of putting in that at least one-third of the whole number of directors shall be appointed by the company. I think our object is gained by limiting the number of directors to be nominated by the managing agents and by fixing the maximum at one-third. I am quite aware that there have been differences of opinion, and it is bad enough when we are sometimes told that learned Judges in High Courts have differed, but we have now the additional terror that the *Times of India* differs from the *Statesman*. That, Sir, however, does not disturb my sleep. I do not see any necessity for this amendment.

THE HONOURABLE THE PRESIDENT : The Question is that the following amendment be made :

"That in clause 39 of the Bill for the proposed sub-section (*2*) of section 83B, the following sub-section be substituted, namely :

'(*2*) Notwithstanding anything contained in the articles of a company other than a private company the directors, if any, appointed by the managing agent shall not exceed in number one-third of the whole number of directors, and at least one-third of the whole number of directors shall be appointed by the company in general meeting '."

The amendment was negatived.

Clause 39 was added to the Bill.

Clauses 40 and 41 were added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 42.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, I move:

"That in clause 42 after sub-section (*2*) of the proposed new section 86A, the following proviso be inserted, namely :

'Provided that no person who has been convicted by a court of law of any offence under the Indian Companies Act or who has committed any misfeasance or fraud or embezzlement shall be eligible as a director '."

Sir, this is a clause which is very essential in the interests of the shareholders. We find that people who have been convicted of offences under the Companies Act or who commit misfeasance are often elected as directors by their friends when new companies are promoted or are added to the boards of existing concerns. I think for the safety of the shareholders such persons should not be eligible to stand as directors. I hope this amendment will be accepted by the Council.

THE HONOURABLE MR. S. C. SEN : So far as the principle underlying this amendment is concerned we are in sympathy with it, but the place where my Honourable friend wants it to be put is not the proper place. The drafting is

[Mr. S. C. Sen.]

not right either. If you look into section 86A, sub-section (*1*) deals with an undischarged insolvent and prevents him from acting as a director. The amendment in question is meant to be a proviso to sub-section (*2*) which reads :

" In this section the expression ' company ' includes a company incorporated outside British India which has an established place of business within British India ".

So that it would be a complete misfit. But, if my Honourable friend wants that this should be a substantive sub-section, then it could be done if the draft is altered. Otherwise I do not think we can accept it.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Let it be put as a substantive clause.

THE HONOURABLE THE PRESIDENT : Order, order. The Question is that the amendment proposed by the Honourable Rai Bahadur Lala Ram Saran Das be made.

The amendment was negatived.

THE HONOURABLE SIR PHIROZE SETHNA : Sir, I move :

" That in clause 42 in both the provisos to section 86B for the word ' district ', wherever it occurs, the word ' town ' be substituted."

The word " district " causes some confusion and I will not be surprised if the Honourable Mr. Sen has an explanation to offer which will put right the meaning of the word.

THE HONOURABLE SIR NRIPENDRA SIRCAR : I was going to suggest something after pointing out that we cannot possibly accept the substitution of the word " town " for " district ". In Calcutta, for instance, many of the big managing agents live either in Ballygunge or Alipore, and it would be incongruous if all the time they should be living there, that their work should be carried on by alternate directors. But I see the point. There may be some confusion as regards presidency-towns, if we use the word " district." Therefore, if the Chair permits, Mr. Sen will move an amendment which will be in the nature of an explanation, and I think that will meet my friend's point.

THE HONOURABLE THE PRESIDENT : Where do you wish to insert this amendment ?

THE HONOURABLE SIR NRIPENDRA SIRCAR : At the end of the provisos to section 86B.

THE HONOURABLE THE PRESIDENT : Then it will be better to go through the other amendments first.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, I move :

" That in clause 42 after the second proviso to the proposed new section 86B, the following further proviso be added :

' Provided always that should any director appointing an alternate or a substitute director be absent from meetings of the board for more than six months, the appointment of any such alternate or substitute director by him shall thereupon cease and determine '."

Sir, this is a very modest amendment. When any company is floated or is running, the shareholders appoint certain directors in whom they repose confidence and in the case of alternate directors that is lost. Alternate or substitute directors could not occupy the position for long periods.

Sir, I move.

THE HONOURABLE MR. S. C. SEN: Sir, I oppose this amendment. I am afraid there is a confusion of ideas underlying this amendment. In the first instance, once a director appoints an alternate or substitute director he ceases to be a director for the time being. His alternate or substitute director is the director who is functioning. Therefore how can he a man who has ceased to be a director, cease to be a director again? There is, therefore, a clear confusion of ideas in this matter. If my Honourable friend means that if any director is himself absent from meetings for six months he should vacate the office, then he is curtailing the powers which are already given in section 86G at page 18 of the Bill. He will find that under clause (*f*) of section 86G if he absents for three months he vacates the office. What my Honourable friend wants would be to extend the time to six months. Sir, I therefore oppose.

THE HONOURABLE SIR PHIROZE SETHNA: On a point of information, Sir. With regard to this three months' time, when is the three months period supposed to commence, from the date when the director says that he is going away for three months or from the date he actually leaves?

THE HONOURABLE MR. S. C. SEN: So far as the query made by my Honourable friend Sir Phiroze Sethna is concerned, that surely does not arise on this amendment at all. If a man wants to go away for three months, he can appoint an alternate or substitute director. That is the provision. There is no difficulty there.

THE HONOURABLE THE PRESIDENT: When do the functions of the substitute director begin? From the date the original director leaves?

THE HONOURABLE MR. S. C. SEN: It is for the director who wants to appoint an alternate or substitute director to say from which date he will cease, and his substitute will act.

THE HONOURABLE THE PRESIDENT: The Question is that the amendment proposed by the Honourable Rai Bahadur Lala Ram Saran Das be made.

The amendment was negatived.

THE HONOURABLE MR. S. C. SEN: Sir, I beg to move:

"In clause 42 to proposed section 86B the following be added:

'*Explanation.*—For the purposes of the provisos to this section, the presidency-towns of Calcutta and Madras shall be deemed to be part of the 24-Parganas and Chingleput districts respectively, and the presidency-town of Bombay shall be deemed to be part of Bombay Suburban and Thana districts'."

The object is to meet the point raised by my Honourable friend Sir Phiroze Sethna and it would clear up the difficulty.

The amendment was adopted.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I move:

"That in clause 42 in the proposed section 86E after the words 'managing director' the words 'managing agent' be inserted."

[Sir Phiroze Sethna.]

Sir, I make a suggestion which if accepted would avoid the Explanation at the bottom of that clause. It is only for that reason that I have suggested this amendment.

THE HONOURABLE MR. S. C. SEN: Sir, it is conceded by the Honourable mover, Sir Phiroze Sethna, that this amendment is unnecessary if the Explanation which is already there is retained. Therefore, I see no point in moving this amendment which involves expunging an Explanation and inserting another word in another place.

THE HONOURABLE SIR PHIROZE SETHNA: Is it not better to do it? Why offer an Explanation when one extra word alone in the clause will make it quite clear?

THE HONOURABLE MR. S. C. SEN: Opinions differ, Sir.

The amendment was negatived.

THE HONOURABLE MR. P. N. SAPRU: Sir, I move:

"That in clause 42 to the proposed section 86F (*1*) the following be added, namely:

'a director so removed shall not be re-appointed a director by the board of directors'."

Sir, under section 86F(*1*) it is open to a company to remove by its ordinary resolution a director and what I suggest in my amendment is that a director who has been so removed by an ordinary resolution of the company should not be re-eligible for election by the board of directors. It should not be open to the board of directors to undo what the meeting has done. Sir, that is my amendment and I think it is a very reasonable and fair amendment and I hope it will be accepted by the Government. I know, Sir, that the board of directors are not likely to act irresponsibly, but it is in order to provide against such a possible contingency that I have suggested this amendment.

THE HONOURABLE MR. S. C. SEN: Sir, so far as this amendment is concerned, I do not think it is necessary. If I may draw the attention of my Honourable friend Mr. Sapru to section 86F(*1*):

"The company may by extraordinary resolution remove any director, whose period of office is liable to determination at any time by retirement of directors in rotation, before the expiration of his period of office and may by ordinary resolution appoint another person in his stead".

Therefore what really is intended is that the same person cannot be appointed. This is clear from the words "another person". Besides, Sir, this contingency is not likely to arise.

THE HONOURABLE MR. P. N. SAPRU: It is likely. A vacancy on the board of directors might arise later and then it would be open to the board of directors to appoint a director who had been removed by the company. It is that contingency that I want to guard against.

THE HONOURABLE MR. S. C. SEN: Having regard to the apprehension expressed by my Honourable friend, although it is not likely to occur, we have no objection to accept the amendment.

The amendment was adopted.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I move:

"That in clause 42 after clause (*h*) of sub-section (*1*) of the proposed new section 86G, the following be added, namely:

'(*i*) if he fails to attend in person the meetings of the board of directors for a continuous period of six months his seat on the board as a director shall *ipso facto* cease and determine'."

Sir, as my Honourable friend Mr. Sen has explained, the power already given under clause (*f*) should be limited by this. Sir, I want to restrict that power because a director who has been absent for more than six months should *ipso facto* cease to be a director. Shareholders elect directors who agree to work and in whom they repose trust. If they absent themselves for long periods, it is proper that an absence of more than six months will result in their ceasing as directors. This will lead to full efficiency of the board.

THE HONOURABLE MR. S. C. SEN: Sir, I regret I have to oppose this amendment and for this reason, Sir. This amendment is wholly inconsistent with the provisions of section 86B which we have just passed. Under section 86B, Sir, we have authorised a person who wants to be absent for more than three months to appoint a substitute director. If he does so, Sir, how can he again forfeit his seat by being absent personally for six months. The two things are absolutely inconsistent.

The amendment was negatived.

Clause 42, as amended, was added to the Bill.

Clause 43 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 44.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce): Sir, I move:

"That in clause 44 of the Bill in the proposed sub-section (*2*) of section 87A for all the words after the words 'shall not continue to hold office after the expiry of twenty years' the following be substituted, namely:

'may, unless he shall have been re-appointed after the commencement of the said Act be removed from office by a special resolution of the company, after the expiration of twenty years from the commencement of the said Act'."

Sir, I have already expressed the view that it is not fair either to the shareholders or the managing agents that the law should provide for the termination of the period of office of the managing agent without the approval of the shareholders. To interfere with an existing contract is, in my opinion, a very serious thing to do. It is true that it has been done before when contracts are found to be against public policy, but this is only the case when a harsh bargain is driven against a person in great need or difficulty or against the ignorant and the helpless: it can hardly be maintained that shareholders as a body are needy or helpless persons.

I would remind the Honourable Members of this House that the Select Committee in the other place provided for compensation on termination under this clause, and I suggest that the members of the Select Committee must be regarded as the Members of the Lower House who were most expert and most

[Mr. R. H. Parker.]

suitable to consider this particular subject. Although I myself think that the provisions suggested were unsatisfactory, it is clear that they were of the opinion that compensation ought to be made.

Although I am completely in favour of freedom for the parties to make their own arrangements in matters of this kind, if the Legislature is determined upon limiting the duration of managing agents' agreements, I would regard the proposal as being of a comparatively innocuous nature if it were confined to new companies. I cannot willingly consent to any provision which treats existing contracts in the manner proposed.

I ask Honourable Members to realise the position in which companies and managing agents will find themselves if this provision becomes law. Whether they like it or whether they do not, their contracts will cease 20 years after this law comes into effect. Even if it is for the benefit of both the parties for the managing agents to be re-appointed on the same terms it will be necessary for a special resolution of the company to be obtained in many cases.

The managing agent has very often in the past been the father and mother of the company and if he knows that he is to cease to occupy that position at a definite date he cannot conceivably be expected to take the same paternal or maternal interest very often involving his own credit and money in the future of the concern.

The number of companies which have survived difficult times owing to the support of their managing agents is great. There are sometimes unfortunate stages in the life of an undertaking when to the ordinary outsider such as a banker, prospects are hopeless and money is unattainable, but those who have a real inside knowledge of the position can very often satisfy themselves that the possibilities or probabilities of the situation justify faith and hope, and it is in circumstances such as these that managing agents have pledged their credit or advanced their money to enable undertakings to pull through their times of difficulty and emerge into times of success.

I do not wish to make any special plea for managing agents but I do wish to draw attention to the fact that even if a managing agent's remuneration from a particular company may sometimes appear to be excessive, it has to be borne in mind that in many cases they have spent considerable sums on other concerns which have been failures. They are in a position somewhat akin to that of finance houses who finance various undertakings at different times, some of which are successful, some of which fail, and very often on the average the results are financially but little better than the return on Government securities. Let us avoid, if we possibly can, doing anything to discourage managing agents from investigating and supporting new ventures.

Honourable Members will remember that the Indian Industrial Commission reported that

> "The managing agency system has a far greater list of successes to its credit than can be shown by ordinary company management under individual managing directors".

The report went on to say:

"We are much impressed by the strong evidence of the high financial prestige possessed by the better class of agency firms and the readiness of the investing public to follow their lead, a position only reached, we recognise, by a policy extending over many years of efficient management, cautious finance and watchful attention to the interests of their clients' enterprises".

The amendment which I move merely gives the shareholders the power to decide the matter and in my submission it is only just and right that this should be so.

I have made it plain for my part that I do not think it right that the Legislature should interfere in existing contracts of this kind but if this is insisted upon it seems to me to be only in conformity with the underlying principles of the Bill which we are considering that no more should be done than give the shareholders the right to consider the position and come to their own decision.

Sir, I move.

THE HONOURABLE MR. C. G. ARTHUR (Bengal Chamber of Commerce): Sir, as clause 87 (*a*) (*2*) is framed, the managing agent statutorily ceases to hold office at the expiration of 20 years from the commencement of the Act, and it is possible that the company may find itself with no proper form of management until a majority of the shareholders can make up their minds. In principle, it is considered that the right of a company to choose its own management and, if it adopts that form of management, to appoint its managing agents for what period it thinks fit should not be fettered. In the case of a future appointment for a term of years it should be made clear that the managing agents may continue to hold office after the fixed term has expired until they are removed or there is a fresh appointment. In commercial opinion no case has been made which justifies the Legislature terminating, even at a future date, managing agency contracts of great importance.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, I think this amendment ought not to be accepted. The history of the 20 years which has been fixed in the Bill must be fresh in the minds of everybody. In view of the opinions which have been received and the discussions which have taken place Government, after taking into account all considerations, pro and con, came to the conclusion that 20 years ought to be allowed. I think the representatives of the managing agents, whether here or elsewhere, do not realise this and, if I may say so, they are not sufficiently grateful for having got the 20 years. As a matter of fact, Sir, I do not know where they would have been if Government had not taken up the strong attitude that if the 20 years is reduced, they would rather drop the Bill, not because they have any special tender concern for the managing agents but because they thought it was right. While, on the one hand, we have been very firm that the 20 years ought not to be reduced, we are equally firm that the 20 years is not to be extended. Now, Sir, what is the result of this amendment? After 20 years, the managing agents will not go out, unless there is a special resolution, and if the managing agents hold, say, 40 per cent. of the shares, then they will never go out. A book which has been so often quoted in newspapers and in the other place—Mr. Lokanathan's book—gives a table showing the holdings of blocks of shares of managing agents. While it is quite true that in jute and

[Sir Nripendra Sircar.]

some other concerns in Bengal the holdings are sometimes so low as 18 or 20 or 25 per cent., in some others the holdings are very high and often more than 50 per cent., and these managing agents will have a permanent tenure. They will never be turned out. A special resolution can never be passed against them.

Then, Sir, as regards this bogey of this interregnum, *i.e.*, what will happen if these useful managing agents retire automatically? What will happen to the company? It is said the company will be ruined. Well, Sir, the company has got 20 years to look ahead. They can make up their mind in the 19th year or the 18th year as to what will happen to the company. Secondly, Sir, under Regulation 71 which is now compulsorily included, the moment the managing agents go out, there is the statutory liability of the directors to conduct the business. So, we need not fear that if the managing agents go out, there will be no one in charge of the business of the company. Further, if they are good managing agents they are likely to be re-appointed. Sir, I think this amendment ought to be opposed.

The amendment was negatived.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I rise to move the following amendment:

"That in clause 44 to sub-section (2) of the proposed new section 87A, the following proviso be added, namely:

'Provided however that the managing agent of a company who has a contract for the management of a company on the basis of commission on production and is contrary to the basis of remuneration based on net profits as defined in proposed section 87C shall not continue to hold office after one year of the commencement of the Indian Companies (Amendment) Act, 1936, unless within that period the same is altered as is required in section 87C'."

Sir, this is a very reasonable request and in case Government consider that my time limit is too short, I am prepared to extend it to two or three years.

Sir, I move.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, Government will oppose this on the ground, as has been already pointed out, that this abuse—if I may use the word—of commission on the basis of production is limited to a very small number of companies. I gave the figures in another place. Speaking off-hand, Sir, although it exists outside Ahmedabad, the charge has really been brought against Ahmedabad. Sir, taking Ahmedabad, the issued capital is Rs. 4 crores for all the mills taken together, while, taking all companies in British India the issued capital of all the companies is more than Rs. 100 crores, Ahmedabad represents only a small fraction. Then again, out of the 78 Ahmedabad mills (if my Honourable friend will study the history of each mill which is now found in a very convenient form in a book, which has been issued, he will find that) out of 78, possibly in 25 or 26, this complaint can be made that commission is taken on a production basis. There again, Sir, it is only one-third of one-twenty-fifth, that we are striving to get at. Out of those 25 or 26 mills in respect of which it can be

said that they are taking commission on a production basis, the history of the majority of them shows that their shareholders have done remarkably well. Dividends of 11, 12, 15 and 17 per cent. have been given and 7 per cent. even in slump times and some of them have paid back the capital several times over. For such a minute fraction we do not desire a departure from the general law which has been laid down for all managing agents.

The amendment was negatived.

THE HONOURABLE MR. HOSSAIN IMAM: Mr. President, I rise to move:

"That in clause 44 after sub-section (2) of the proposed section 87A, the following proviso be inserted, namely:

'Provided this clause shall not apply to those managing agents who have not paid at least 15 per cent. in all in seven years ending 1935. Managing agents of such companies shall be dismissed one year after this Act comes into operation and they shall not be eligible for re-election'."

You will remember, Sir, that I had given notice of no amendments, because I was hopeless of being able to carry any amendments in this place which does not meet with the approval of the Government. I was asked by an Honourable Member—a nominated Member—why I was so disparaging of this House. Therefore, Sir, I brought forward this amendment which wants to separate the black sheep from the white sheep.

THE HONOURABLE SIR DAVID DEVADOSS: You mean the sheep from the goats!

THE HONOURABLE MR. HOSSAIN IMAM: This, I may say, wants to separate the sharks from the other harmless fishes—because after all they are all fishes. The test I have put in may be objected to on the ground that it is not a sure basis. If the company in a total period of seven years is not able to declare a return of even 15 per cent., that means there is something wrong with the company. In most groups, whether textile, jute, coal or the sugar industry, you find that there are prosperous concerns as well as unprosperous concerns. Under efficient management almost all the companies are giving a return. It is only the shady firms which do not make any return. The Honourable the Law Member just now pointed out that the Ahmedabad mills, in spite of paying heavy commission on the basis of sales, are able to declare a sufficient dividend of 7 or 12 or 15 per cent. If a concern is well managed, in spite of exorbitant demands of the managing agents it can go on and be a success. But the question is, why should those companies which have not been a success in the period of seven years in the hands of their managing agents be compelled to carry on under the same agency. Why should bad managing agents get the benefit which their good brothers have earned. We do not object to an extension of 20 years being given to those managing agents who have qualified for extension. But there is no reason why every kind of managing agent should receive the same treatment. *I should be quite prepared to accept any better test which the Government can find to separate the black sheep from the rest.* If there is no differentiation between the good and the bad the Indian public will think them all identical. Why I brought this amendment up was that we should give a

[Mr. Hossain Imam.]

chance to the better managing firms to take up these agencies and throw out the others. If a company is not giving any dividends its managing agents ought to be moved out. At present the company however would have to pay them compensation to get out as they are a permanent fixture. And unless you have a law under which they can be removed there can be no prosperity for these companies. I have not brought this amendment in any spirit of opposition. I simply wish to give this Bill a good shape, and with these words, Sir, I move this amendment.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, my Honourable friend stated that, feeling hopeless, he did not give notice of amendments. If this amendment is his best production, then the House is to be congratulated that he has not given notice of any other amendment. I beg to submit that this is an absurd proposition, and for this reason. If a company has not paid 15 per cent. during the period 1929 to 1935 then what he wants is that the managing agents should go. Sir, when we lawyers, having no experience of business, proceed on idealistic lines we are bound to make fools of ourselves. Take the tea companies of Bengal and Assam. There has been a slump for five or six years. How can it be expected that any company under any managing agent, however good, will give a return of 15 per cent. within the period 1929—1935. My friend has got a very simple method of finding out which is good and which is bad. If you give 15 per cent. in six years, you are good. If you happen to be unable to do that, you are bad. But the various circumstances which reflect on the power of any company under the best heaven-sent managing agents to give any dividends are too numerous, and my Honourable friend has not considered any of them. Sir, we know of, and I gave many instances in the other House, managing agents who have struggled not for seven but for ten years without being able to declare any dividends. But those companies, by reason of the finance supplied by managing agents and by reason of the trouble taken by them, have at last become successful concerns. My Honourable friend's idea seems to be so grotesque that this House ought not to be detained any longer with it.

The amendment was negatived.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I move:

"That in clause 44 to sub-section (4) of section 87A, the following be added, namely:

'and shall not prejudice the right of the managing agent to recover any compensation which would have been payable by the company to the managing agent for the premature termination of his contract of management had such termination resulted from the action of the company itself'."

I might remind the House that the Select Committee had this clause and to my mind there has not been sufficient or any justification for dropping it. Take the case of a company started, say, in 1930, and the managing agents had a contract for 35 years. Then, after this Act passes, it will be allowed to continue for the next 20 years, which will carry them to 1956. But their contract being for 35 years they could have gone on to 1965.

There would, therefore, according to them, compensation be due to them for nine years. I know in the other place the Honourable the Law Member stated that in such a case the courts do not award compensation, or if they do, of very trifling amounts, because it would be difficult to foresee whether the same managing agents would in the subsequent nine years be able to earn commission at the same rate or more or less. Whatever that may be, my point is, that there is that contract. Whether he gets anything or not is his lookout; but if he wants to contest his claim there is no reason why he should be denied permission for doing so by the Act as it is now framed. It is therefore in fairness to such managing agents that I do move this amendment, which I repeat is in keeping with what the Select Committee decided upon at one time.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, there are two objections to the amendment. The first is one which has been indicated by the Honourable mover, Sir Phiroze Sethna. The courts have ruled that where a managing agent is engaged for 20 years and is wrongfully dismissed, say, at the end of five years, the courts allow him practically nothing for the 15 years which he has lost. The judgment of Lord Justice James has always been followed. Recently the Madras High Court followed it. The reasoning of the decisions is that it is quite true I have engaged you for 20 years. I have however given you no undertaking of what would be my volume of business. I can reduce it and if I reduce it to zero and if you earn nothing, you cannot complain. Whatever that may be that has been consistently followed. It is only a couple of years ago that in Madras an insurance agent who was entitled to 2 per cent. on the premium on the policies which he would secure was dismissed some years before the period fixed for him. He was given nothing on the basis of the commission which he would have probably earned. Therefore, Sir, what can they get? They can get very little. The next item is, office allowance; to this the answer is, "My friend, you have no office to keep, you have been dismissed, why not dismiss the typists and put an end to the lease of your house? They can get nothing there". While, on the one hand, they will get very little and it is really a sentimental objection, on the other hand, the ordinary shareholders and the company will be afraid of getting rid of a managing agent if they know that it will involve litigation; litigation which, it must be admitted, must be a protracted one with doubtful result. Nobody would be able to predict as to what would be the result of the litigation. This will be hanging over the heads of the shareholders and rather than indulge in litigation which may be taken right up to the Judicial Committee, they would continue the managing agency. That is the first objection. The second objection is this. Compensation is allowed if there is wrongful dismissal. Sir, it is rather incongruous to suggest that on the one hand the dismissal is right, it is not wrongful because it is done by the operation of the statute, and, at the same time, to allow compensation on the footing that they have been wrongfully dismissed. Sir, this matter has been very carefully considered by Government and they are unable to accept the amendment.

The amendment was negatived.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I rise to move:

"That in clause 44 in sub-clause (*a*) of the proposed new section 87B after the words 'remove a managing agent' the words 'for fraud or breach of trust or gross negligence or mismanagement' be inserted."

Sir, my amendment is a reasonable one. In case any company wants to remove the managing director for fraud, or breach of trust or gross negligence it should have the same power as it has to remove a managing director if he is convicted of an offence under the Companies Act. This is a reasonable amendment and it ought to have the support of this House.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, if my Honourable friend thinks it is a reasonable amendment, it is possibly under a misapprehension as to the law applicable to the subject. Under Common Law, General Law, whatever it is called, the master has the right to remove the servant, not only for the three things, namely, fraud, breach of trust, gross neglect or mismanagement, but for other reasons too, for instance, incompetence. It is not intended by section 87B to take away the right of a master to dismiss a servant on any ground which is available to him under the General Law. What section 87B does is quite different. Therefore, there is not only no necessity for this amendment, but it will be a mischievous amendment—I mean no disrespect—because my Honourable friend takes up some of the items, and not all the items exhaustively, for which the managing agent can be removed. Government possibly cannot accept this amendment which will lead to no good result.

The amendment was negatived.

THE HONOURABLE MR. R. H. PARKER: Sir, I move:

"That in clause 44 of the Bill in the proposed sub-section (*3*) of section 87C the word 'depreciation' be omitted."

Sir, the necessity of moving this amendment arises out of the fact that depreciation is to a certain extent a matter of opinion; that opinion must frequently be the opinion of the managing agent as being best acquainted with the company's affairs and if depreciation is to be a charge against profits before arriving at the sum upon which a managing agent's remuneration is to be calculated he is placed in a position where his own interests and the interests of the shareholders are in conflict. If he does his duty by the shareholders he reduces his own income, and I suggest that it is much fairer to both the shareholders and the managing agents not to place either of them in this position.

If the proposed provision becomes law I doubt not that there will be many cases where the shareholders will desire to re-appoint the managing agents at the end of the period of 20 years, and I would remind Honourable Members that they will only be able to re-appoint them on the same terms as before in most cases by a special resolution. Now a special resolution, as Honourable Members are aware, requires a majority of 75 per cent. of those present and entitled to vote and I do suggest that it is quite unfair to allow a minority of shareholders to make it impossible to re-engage the services of managing agents on terms on which they have been employed for many years before.

Sir, I move.

THE HONOURABLE SIR PHIROZE SETHNA : Sir, I support this amendment. Here, again, the Select Committee did not include depreciation in the matter of arriving at the net profits and in determining the commission to be paid to the managing agents. Take a concrete case. Suppose a company makes a profit of Rs. 2 lakhs and according to the Income-tax Act the managing agent is allowed to deduct 2½ per cent. on the value of buildings which might be worth Rs. 5 lakhs, which would mean Rs. 12,500. On machinery if it is worth Rs. 15 lakhs, he is allowed to deduct 5 per cent. which would mean Rs. 75,000. Because you include depreciation Rs. 85,000 will have to be deducted from the profits of Rs. 2 lakhs. The managing agent, therefore, will not get 10 per cent. on Rs. 2 lakhs, or Rs. 20,000 as originally intended, but 10 per cent. on only Rs. 1,12,500, or Rs. 11,250, which makes an enormous difference in his income. This condition does not exist in the present Act and yet all managing agents have always tried to set apart as much as they possibly can for depreciation in the interests of the company itself. Therefore, there is no necessity to my mind of enforcing this rule of deducting depreciation. What will be the consequence ? The consequence will be that agents will not depreciate to the extent that they ought to. But more than that, when a new company is floated and according to this Act depreciation will have to be deducted, the managing agent will rightly not be content with a percentage of 10 per cent. which is according to the prevailing practice, but he will insist on 12½ or even 15 per cent.

1 P.M.

THE HONOURABLE THE PRESIDENT : He will be entitled to the minimum amount of commission under the Act.

THE HONOURABLE SIR PHIROZE SETHNA : That is so. That does not affect the question so much. The point is, that when the managing agent goes to the public and says in his prospectus that he will charge a managing commission of 12½ or 15 per cent. the result will be that his capital will not be subscribed by the public to the extent that it is today when agents charge only 10 per cent., and India wants more companies, wants industries to be encouraged and this is one way of discouraging the formation of new companies. And I would therefore suggest to the Honourable Member to leave out depreciation as has been done in the past and leave it to the managing agents to deduct what they think is right for depreciation and I hope therefore that this amendment will receive support.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS : Sir, I rise to oppose this amendment. Sir, net profit means profit accrued after duducting all legitimate expenses. Where there is any depreciation it is right to charge it before we calculate the net profit. Supposing a company makes Rs. 1 lakh as gross profit and in depreciation Rs. 1¼ lakhs is due. It means we are paying commission on profits to the managing agents when the company is actually losing and there are no profits. Therefore, Sir, I would very much like that depreciation should be calculated when coming to the net profits but in case the managing agents in future are not satisfied with 10 per cent. commission on net profits after deduction of the depreciation, they would be justified in asking for 15 per cent. commission or more. Sir, that it is quite reasonable and fair that net profit should mean the actual profit and not a supposed profit.

THE HONOURABLE MR. HOSSAIN IMAM: On a point of information, Sir. Will the excise duty be deducted on sugar and steel?

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, I have not heard from my Honourable friend, Sir Phiroze Sethna, one word of justification for his amendment. Why should depreciation not be deducted? His argument is, that if you do this, then, when a company is promoted, in the prospectuses, instead of the managing agents stating that they will take 10 per cent. they will ask for 12 per cent. Well, I think that is more honest. I do not see any harm in that if the shareholders are willing to give him 12 per cent.

THE HONOURABLE SIR PHIROZE SETHNA: As a rule they will not be willing because it is the straightforward practice.

THE HONOURABLE SIR NRIPENDRA SIRCAR: If they are not willing, then that particular company will not be floated.

THE HONOURABLE SIR PHIROZE SETHNA: It is to prevent that that I made my suggestion.

THE HONOURABLE SIR NRIPENDRA SIRCAR: The 10 per cent. is a mere camouflage. He is really getting 12 per cent. because he is not deducting depreciation which ought to be deducted on principle.

THE HONOURABLE SIR PHIROZE SETHNA: Why did not the Select Committee think so?

THE HONOURABLE SIR NRIPENDRA SIRCAR: Well, if you are coming to the Select Committee, the House has not accepted all the proposals of the Select Committee and I do not think my Honourable friend will accept all that was suggested by the Select Committee. Some of it would be rather inconvenient. Neither this House nor the Government is bound to accept every decision of the Select Committee. It comes back to this that depreciation in principle ought to be deducted. I have not heard one word to the contrary. It is because it is not deducted that this camouflage is permitted. Therefore, the managing agent goes to the shareholders and says I am getting only 10 per cent. I do not think the Honourable Member has produced any argument in support of his amendment.

THE HONOURABLE MR. HOSSAIN IMAM: The Honourable Member has not answered my question whether excise duty is covered or not?

THE HONOURABLE SIR NRIPENDRA SIRCAR: Well, Sir, whatever is covered is to be found here. What it means it says here.

The amendment was negatived.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS: Sir, I move:

"That in clause 44 after the proposed new section 87H, the following new section be added, namely:

'87HH. Nothing in this Act or in the articles of association of any company shall prejudice the rights of the company to remove the managing agent according to General Law'."

Sir, this is a very reasonable amendment and the Honourable the Law Member has told us today that General Law will be applicable in all cases.

Therefore, Sir, I hope the Honourable Member as he said on the other amendment will see his way to accept the amendment.

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, as I said a few minutes ago, a company has got the right to remove managing agents under the General Law on certain grounds. Therefore, this is wholly unnecessary. If we have got to accept amendments simply because they are reasonable even when they are unnecessary, instead of 116 we shall have 516 clauses.

The amendment was negatived.

Clause 44 was added to the Bill.

Clause 45 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 46.

THE HONOURABLE MR. R. H. PARKER: Sir, I move:

"That sub-clause (*b*) of clause 46 of the Bill be omitted."

Sir, I regard this provision of the Bill as very harmful to the interests of shareholders. It will mean that there can be no secrecy as to the policy of a particular company and that in practice anyone who likes can find out all sorts of matters which ought only to be known to the executive, and that he will be able to use the information for his own benefit to the detriment of the interests of the shareholders.

Why should any individual who is not substantially interested financially in a company be in a position to obtain information for his own benefit and to the detriment of those who are substantially interested? I foresee that we shall have formed in the bigger cities companies entitled "Unlimited information regarding companies limited" who will hold the minimum number of shares necessary to every company and supply information at a price to those who desire to obtain it.

I submit that we are considering an infringement of the proper rights of the individual.

Sir, I move.

THE HONOURABLE SIR NRIPENDRA SIRCAR: All attention which is possible, has been paid to this clause. My Honourable friend's argument comes to this. Supposing a mischievous person or a busybody, who holds one share, goes on inspecting and finds out facts, not for any *bona fide* purpose but for improper purposes. That is conceivable. But, on the other hand, where is my Honourable friend going to draw the line? If the right is not given to the shareholder—supposing a shareholder holds 10,000 shares. Has he no substantial interest? Why should he not inspect? While I admit the possibility of this right being misused, on the other hand, it is impossible to draw the line between a shareholder and another shareholder. If we accept the amendment, no shareholder, whatever the amount of his holding, will be able to inspect. But, Sir, while opposing this amendment, I am prepared to say this, that if we do find that in actual practice after the Act has come into operation this right has been abused, and inspections have been taken by members for improper purposes, and such inspections have caused harassment, or have been detrimental to companies, we shall consider the

[Sir Nripendra Sircar.]

position later on. But, at the present moment, Sir, I oppose the amendment.

THE HONOURABLE MR. C. G. ARTHUR: May I speak on this, Sir?

THE HONOURABLE THE PRESIDENT: You cannot speak at this stage. You have lost your opportunity.

The amendment was negatived.

THE HONOURABLE MR. R. H. PARKER: Sir, I move:

"That in clause 46 in the proposed sub-section (*4*) of section 91A after the words 'Every officer of the company who' the words 'knowingly or wilfully' be inserted."

Sir, sub-section (*4*) of section 91A in clause 46 provides that every officer——

THE HONOURABLE SIR NRIPENDRA SIRCAR: Sir, it will shorten proceedings if I inform my Honourable friend that Government have no objection to accept this amendment.

THE HONOURABLE MR. R. H. PARKER: Thank you, Sir.

The amendment was adopted.

Clause 46, as amended, was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 47.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I beg to move:

"That in clause 47 for sub-clause (*a*) the following be substituted, namely:

'In sub-section (*1*) of section 91B after the word 'interested' the words 'and unless otherwise provided by the articles of association his presence shall not count for the purpose of forming a quorum at the time of such vote' be inserted'."

Sir, in England, there is no statutory provision like section 91B but this provision is usually made in the articles and if such provision exists in the articles as it does in the statute here, courts have held that an interested director cannot form part of a quorum. Section 91B here copies the article in English companies and therefore if the articles do not otherwise provide, an interested director cannot join in a quorum but if the articles expressly so provide, then an interested director can count for quorum. There is a difference of opinion in this matter between the Honourable the Law Member and others, and I may be permitted to quote the opinion of an eminent Counsel in Bombay, a former Advocate General, Sir J. B. Kanga. He writes:

"I am of opinion that under the existing law if the articles provide that a director interested is to be counted for the purpose of a quorum that would be a good clause for the purpose of holding that there is a quorum notwithstanding section 91B of the Companies Act——"

THE HONOURABLE SIR NRIPENDRA SIRCAR: I have not expressed a different opinion.

THE HONOURABLE SIR PHIROZE SETHNA: I stand corrected.

"Section 91B only states that an interested director shall not vote and his vote shall not be counted. It does not provide that for forming a quorum his presence should not be taken into consideration. The disability is the disability to vote and not the

disability to be present at the meeting for the purpose of a quorum. If the articles do not provide that a director notwithstanding his interest may form a quorum then under the general rule he cannot be counted for the purpose of a quorum ".

I trust, Sir, my amendment will be accepted.

THE HONOURABLE SIR NRIPENDRA SIRCAR : Sir, there is no question of law involved in this. The question is, what the House is going to decide ? Is it desirable that a person who is interested, who cannot vote, should form part of the quorum ? Take, for instance, three directors meet. That is a quorum, consisting of three. Two of them cannot discuss the matter. They are not interested in voting. They remain like statues and the third man proposes, seconds and carries, a resolution. That is the state of things we want to prevent.

The amendment was negatived.

Clause 47 was added to the Bill.

THE HONOURABLE THE PRESIDENT : This will be a convenient time to adjourn.

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.

Clauses 48 to 54 were added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 55.

THE HONOURABLE MR. S. C. SEN : Sir, I move :

" That for clause 55 the following be substituted :

'55. In section 101 of the said Act—

(*a*) for sub-sections (*1*) and (*2*) the following sub-sections shall be substituted, namely :

'(*1*) No allotment shall be made of any share capital of a company offered to the public for subscription unless the amount stated in the prospectus as the minimum amount which in the opinion of the directors must be raised by the issue of share capital in order to provide the sums or, if any part thereof is to be defrayed in any other manner, the balance of the sum required to be provided in respect of the matters specified in sub-section (*2*) has been subscribed, and the sum of at least five per cent. thereof has been paid to or received in cash by the company.

(*2*) The matters for which provision for the raising of a minimum amount of share capital must be made by the directors are the following, namely :

(*a*) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue,

(*b*) any preliminary expenses payable by the company and any commission so payable to any person in consideration of his agreeing to subscribe for or of his procuring or agreeing to procure subscriptions for any shares in the company,

(*c*) the repayment of any moneys borrowed by the company in respect of any of the foregoing matter, and

(*d*) working capital.

[Mr. S. C. Sen.]

(*2A*) The amount referred to in sub-section (*1*) as the amount stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as 'the minimum subscription.'

(*2B*) All moneys received from applicants for shares shall be deposited and kept in a scheduled Bank as defined in the Reserve Bank of India Act, 1934, until returned in accordance with the provisions of sub-section (*4*) or until the certificate to commence business is obtained under section 103.

(*2C*) In the event of any contravention of the provisions of sub-section (*2B*) every promoter, director or other person knowingly responsible for such contravention shall be liable to a fine not exceeding five hundred rupees.'; and

(*b*) in sub-section (*4*) for the word 'twenty' the word 'eighty', for the word 'thirty' the word 'ninety' and for the word 'thirtieth' the word 'ninetieth' respectively shall be substituted '."

If I may draw the attention of Honourable Members to clause 55 of the Bill as it now stands it will be seen that the amendment I propose is merely a drafting amendment. The opening words of this clause at present are " For sub-sections (*1*) and (*2*) of section 101 of the said Act the following sub-sections shall be substituted, namely :". Then sub-clause (*2*) on page 29 says, " In sub-section (*4*) for the word 'twenty' the word 'eighty' and for the words 'thirty' and so on. This latter clause does not fit in with the opening words, and that is the reason why this drafting amendment is necessary. We want to change the opening words of this clause and divide the whole section into two parts.

Sir, I move.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA (United Provinces Central : Non-Muhammadan) : Sir, I have an amendment to this clause and if this is adopted, then my amendment will be an amendment to this.

THE HONOURABLE MR. HOSSAIN IMAM : As this is a substitute Motion, I think the other amendments should be moved first as this is a more comprehensive Motion.

THE HONOURABLE MR. S. C. SEN : Sir, I think it would be better if you put my amendment to the vote, then you will have clause 55 in order. You can then consider the amendments.

THE HONOURABLE THE PRESIDENT : That is the proper thing.

The Question is that the amendment moved by the Honourable Mr. Sen be made.

The amendment was adopted.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : Sir, I move :

" That in clause 55 in the proposed sub-section (*1*) of section 101 for the words 'No allotment shall be made of any share capital of a company offered to the public for subscription' the words 'No certificate to commence business shall be granted to a company' be substituted."

My object is that money invested by shareholders when a company is being promoted should be better secured. We see every day how companies are registered and before they commence work they are brought into liquidation, and when that happens the shareholders have to pay the charges of registration and preliminary expenses and so on. So, if a company before commencing its business gets a certificate from the Registrar I think the interest of the shareholders would be better safeguarded, and therefore I move.

THE HONOURABLE MR. S. C. SEN: I oppose this amendment. I have not been quite able to follow the reasons which led my Honourable friend Mr. Mehrotra to move this Motion. Under clause 55 the promoters are debarred from proceeding to allotment of shares unless the minimum subscription as defined in the section is obtained. Now, what my Honourable friend wants evidently is that they may be at liberty to go on allotting shares although they may not be able to commence business. I do not find any utility for this. The allotment of shares is meant to enable the company to commence business, but if they cannot commence business what is the utility of allotting shares and wasting time and money on such a useless procedure.

Sir, I oppose.

The amendment was negatived.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: Sir, I beg to move:

"That in clause 55 in the proposed sub-section (*1*) after the word 'unless' occurring in the third line the word 'half' be inserted."

The object is the same as I stated before and as that amendment has not been accepted, if this is accepted, allotment will not commence unless half the capital of the company is secured.

I hope this amendment will be accepted by the House.

THE HONOURABLE MR. S. C. SEN: Sir, I am afraid I have again got to oppose this amendment. Under section 103 no company can commence business unless the whole of the minimum subscription has been subscribed. What is the point in proceeding to allot when half the minimum subscription is secured. The company may not get the other half; and may not commence business at all. I submit that this is absolutely useless.

The amendment was negatived.

Clause 55, as amended, was added to the Bill.

Clauses 56, 57 and 58 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 59.

THE HONOURABLE MR. R. H. PARKER: Sir, I move:

"That in clause 59 of the Bill the proposed section 105C be omitted."

Sir, section 105C in clause 59 of the Bill provides that when the directors decide to increase the capital of the company by the issue of further shares they are bound to offer the shares in the first instance to existing shareholders.

[Mr. R. H. Parker.]

I would like in the first place to draw the attention of the House to the provisions of the new section 153B in clause 84 of the Bill. This clause is similar to the provision in the new English Act and recognises schemes which would not be possible in many cases if the proposed section 105C, which we are now considering, became law.

Those who have practical experience of company matters will, I feel sure, agree with me that many arrangements which have been beneficial to shareholders in the past could not have been brought about if the provisions of the proposed section 105C had been law.

The Honourable Mr. Sen yesterday did not deal with this point in his reply and he referred me to *Palmer's Company Precedents* and I agree that Palmer is a great authority on the subject; on the other hand, Palmer was drafting a section for those who wanted, not for those who did not want it; and I submit that is not an answer to the case.

I think it is most important in the interests of the shareholders that the directors should have power to issue shares to any individual or to the shareholders of another company. I also think it is in the interests of the general public who in this case do happen to be affected because many of these arrangements are with a view to economy which in due course is reflected in costs of production.

Sir, I move.

THE HONOURABLE MR. S. C. SEN: Sir, I have already indicated the views of the Government in regard to this matter and I will not proceed to repeat it today. My Honourable friend Mr. Parker has referred me to the provisions of clause 84 of the Bill and he has referred me to section 79. He says there will be an inconsistency if this clause is passed into law. Sir, I am afraid I do not agree with him there. If we look at clause 105C, this clause merely provides that where directors decide to increase the capital of the company by the issue of further shares of the company, they should do certain things. I have been referred to clause 84. That has got nothing to do with the increase of capital. Clause 84 deals with arrangements while section 105C refers to the case where a company wants to increase its capital by the issue of further shares. Then again what does this clause after all say? It says that if the existing shareholders are prepared to find the money which the company wants, they will have the first right to do so and take up the shares offered. On what principle can there be any objection to this? The existing shareholders if they are prepared to find the money, they already having the interest of the company, should be the first persons who should be allowed to do it and that is all that this section requires. If the shareholders are not forthcoming and if they do not want to put in the money which the company wants, it leaves the directors discretion to offer the shares to outsiders. I think a provision to this end and in the form in which it will be brought up in the next amendment which stands in my name is only just and proper and I oppose the amendment.

The amendment was negatived.

THE HONOURABLE MR. S. C. SEN: Sir, I move:

"That in clause 59 for the proposed section 105C, the following be substituted, namely:

'105C. Where the directors decide to increase the capital of the company by the issue of further shares such shares shall be offered to the members in proportion to the existing shares held by each member (irrespective of class) and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer if not accepted, will be deemed to be declined; and after the expiration of such time, or on receipt of an intimation from the member to whom such notice is given, that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company'."

Further issue of capital.

My reasons for moving this amendment are that in clause 105C as it now stands, the result of the words " of the same class held by them " is to make the allotment of a specified class of shares limited to the holders of that class of shares only. It was pointed out on the floor of the Lower House that there are cases where managing agents (and there is at least one in the United Provinces and one in Bengal), have issued shares with preferential voting rights which are held by them or their nominees. Now, it may happen that the company may issue shares of the same class as those held by the managing agents for the purpose of obtaining capital *bonâ fide*. If the clause remians as it is then it is only the managing agents and their nominees who will be entitled to get the shares. No others would be entitled to get them. That was not the view which the Government took and that is the reason why we want to make it clear by the amendment. In the suggested clause you will find that it gives the right to all the shareholders in proportion to their existing holdings to obtain shares.

Sir, I move.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I am very glad that the Honourable Mr. Sen has decided to drop the words " of the same class ", which is covered by amendment No. 52. I would, however, like to ask Mr. Sen what exactly he means by saying that shares shall be offered to the members in proportion to the existing shares held by each member. Now, shares are of different descriptions. They may be ordinary shares, they may be preference shares, they may be deferred shares. I should like to know therefore whether he attaches any importance to the denomination of the shares. For example, ordinary shares may be of Rs. 10 each, preference shares may be of Rs. 100 each and deferred shares of Rs. 1,000 each. Does the Honourable Mr. Sen contemplate giving the man a right to take shares in the new capital issued in accordance with the number of shares he holds ?

THE HONOURABLE MR. S. C. SEN: Sir, the intention of the section referred to by my Honourable friend is to give them in proportion to the amount contributed by them to the capital.

THE HONOURABLE MR. HOSSAIN IMAM: Is that clear from the verdict ?

THE HONOURABLE MR. S. C. SEN: We should say so, Sir.

THE HONOURABLE MR. R. H. PARKER: Sir, I wish to oppose this section on grounds which I will not set out at any considerable length but I would like to say that Mr. Sen has still left me dissatisfied and I want to make it plain that my point was not that the company were wanting money but they were wanting to issue their shares as consideration for assets purchased. That is where you fail to allow me to carry some of the arrangements I want to carry through.

3-5 P.M.

The amendment was adopted.

Clause 59, as amended, was added to the Bill.

Clause 60 was added to the Bill.

Clauses 61 to 70 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 71.

THE HONOURABLE MR. R. H. PARKER: Sir, I move:

"That in clause 71 of the Bill in the proposed sub-section (3) of section 132 for the words 'The profit and loss account' the words 'Unless otherwise determined by the company in general meeting the profit and loss account' be substituted."

Sir, I have already expressed my views on another clause as to the lines on which the law should deal with the question of the contents of a Profit and Loss Account. I have already pointed out that it is frequently not in the interests of shareholders that certain information should be published, but my main point is this, Sir, that I do not think the shareholders ought to be allowed to decide that information which this section requires the Profit and Loss Account to give shall not be published.

The Honourable the Law Member this morning suggested that no one had given any details of what particular items they were thinking of in relation to this question. My party had in mind the cost of production and details of trading which might very frequently be very helpful to opponents or competitors.

There are many cases where the publication of the remuneration of a managing agent would be utterly misleading. I am thinking in particular of the payment in respect of office allowance: the sum may be a large one or a small one but very frequently it is mainly or completely expended by the managing agent in providing the accommodation, staff, etc., which under the agreement he is bound to provide.

Misleading information is apt to damage the credit of a company and thus the interests of its shareholders. It is quite possible for the prospective shareholder, the share broker or others who may be watching the affairs of a company to draw the conclusion that the managing agents are receiving such a large sum that the company cannot be regarded as sound, inadequate regard being given to the fact that a very large proportion of what appears to be the remuneration of the managing agent is in fact mere ordinary office expenses.

This is another case where I regard the Bill as infringing unduly on the liberty of the subject.

Sir, I move.

THE HONOURABLE MR. C. G. ARTHUR : The amendment is put forward in order that the shareholders may decide as to what they consider should be published with regard to the remuneration paid to managing agents and directors. If in the view of shareholders it is not in the interests of the company that this information should be made public in the Profit and Loss Account, provision should be made in the Bill for them to so decide. Without adding the words of the amendment to the section, shareholders' discretion in this matter is removed by law, and it is my view, Sir, that shareholders' rights should not be restricted in this manner.

THE HONOURABLE MR. S. C. SEN : Sir, I oppose this amendment. I do not know what justification there is for making such a violent assumption—that the shareholders would not require the information referred to although they have been crying themselves hoarse to know the remuneration paid to the managing agents. From the materials which the Government had before them, which was received subsequent to the circulation of the Bill so far as the shareholders are concerned, they were unanimous in insisting on the disclosure of the managing agents' remuneration, and I do not know, Sir, from where Mr. Parker got his information that the shareholders would not want to know what they have been fighting for all this time.

THE HONOURABLE MR. R. H. PARKER : I know one case, Sir.

THE HONOURABLE MR. S. C. SEN : Sir, I know of no case where the shareholders were so docile that they want all these informations to be left severely alone. From the materials we have got we know that they have all along asked for the disclosure of the remuneration of the managing agents and that is the reason, Sir, why in the Bill we have insisted that at least this portion of the information should be given.

Now, Sir, my Honourable friend says that the figures given under " remuneration " might be misleading. Sir, there is nothing to prevent the managing agent from saying in a note that so much was his remuneration out of which so much had to be paid for office rent and other expenses. If they want to mislead others, no one can prevent it but there is nothing in the Act to prevent them from giving the truth. But that they should not disclose their remuneration if they can cajole the shareholders into saying so is something that this House cannot accept. Sir, a similar motion was moved in the Lower House and it was thrown out without a division and I think this House will also do the same.

The amendment was negatived.

Clause 71 was added to the Bill.

Clauses 72 to 105 were added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 106.

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

"That in sub-clause (*b*) of clause 106 for the proposed new clause (*d*) of section 230, the following be substituted, namely :

'(*d*) compensation payable under the Workmen's Compensation Act, 1923, in respect of the death or disablement of any officer or employee of the company'."

The clause as it stands recognises the right of workmen's compensation claims to priority in winding up proceedings but unfortunately owing to the wording adopted this preference is limited to claims actually payable to officers or employees, that is, to persons who are alive. It thus excludes payments to their dependants on account of the death of any officer or employee of the company. I am sure that this Council will agree that these claims are equally deserving and I trust that it will adopt the wider wording which I propose.

THE HONOURABLE MR. S. C. SEN : Sir, we realise that this is a thing which was omitted from consideration and we accept the amendment.

The amendment was adopted.

Clause 106, as amended, was added to the Bill.

Clauses 107 to 116 were added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 117.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : Sir, I beg to move :

"That for sub-clause (*a*) of clause 117 the following be substituted :

'(*a*) for sub-section (*3*) and the proviso thereto the following shall be sub stituted, namely :

'(3) Every company to which this section applies shall in every calendar year make out a balance sheet in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting and deliver for registration a copy of that balance sheet to the registrar of the province in which the company has its principal place of business ; and if any such balance sheet is not written in the English language, the company shall annex to it a certified translation thereof'."

Sir, the object of the amendment is that the shareholders should be in possession of every information and the balance sheet placed before them should not hide anything. We have already accepted just now an amendment of the Honourable Mr. Sen by which he also wants that the remuneration of the managing agents and other things should be shown in the profit and loss account. My object is practically the same that nothing should be hidden from the shareholders and they must be in a position to know the true state of affairs of the company. I hope it will be accepted by the Government.

THE HONOURABLE MR. S. C. SEN : Sir, I am afraid I have got to oppose this amendment. My reasons are these. This amendment is for the purpose of compelling all foreign companies to file a balance sheet in the form in which Indian companies would have to file them. Now, if you look at Form F, the form to be followed by Indian companies you will find that there are

many things which need not apply to foreign companies. They may not be of any use to us in India. Then, again, there may not be any shareholder of the company in India for whose benefit those disclosures might be required. It has also been pointed out by foreign companies which have large fields of business in India like the Lloyds Bank, the National City Bank of New York and the Standard Oil Company that if they have got to comply with Form F in all its details, it would mean months and months of labour and a terrible waste of money and labour with no substantial benefit to anybody. As an alternative, Sir, we have, in the draft Bill inserted Form H, to which I would draw your attention. This Form is sought to be made away with by this amendment, although all the information which should legitimately be required for any person who may come in contact with these foreign companies is provided there in Form H. No case has been made out why the foreign companies, who may not have any shareholder in India, should be compelled to file a balance sheet containing useless informations. It will not only be inconvenient but in some cases impossible for them to comply with Form F, which is designed specially for Indian companies and in the view of this Government should not be insisted upon.

Sir, I oppose the amendment.

The amendment was negatived.

Clause 117 was added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 118.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: Sir, I beg to move:

"That in clause 118 after sub-section (*2*) of the proposed new section 277BB the following be inserted as sub-section (*3*) and the subsequent sub-sections be re-numbered accordingly:

'(*3*) Any person acting in contravention of this section shall be liable to a fine not exceeding rupees five hundred'."

Sir, sub-section (*1*) of section 277BB runs:

"It shall not be lawful for any person to go from house to house offering shares of a company incorporated outside India for subscription or purchase to the public or any member of the public".

It stops there. It does not mention any penalty if the sub-section is contravened. If the matter goes to court, the court will also be in the difficult position as to what penalty to impose. If any person contravenes this sub-section inadvertently, he also will not be in a position to know what penalty he will have to pay. So, Sir, the clause is incomplete. I have suggested the same penalty that my Honourable friend Mr. Sen has proposed in clause 55. There he also proposed that every promoter, director, or other person in India responsible for such contravention shall be liable to a fine not exceeding Rs. 500. I have proposed the same penalty, and if my amendment is accepted, this clause will be complete. Otherwise, it will be incomplete and people will not know what penalty will be for contravention of this clause.

THE HONOURABLE MR. S. C. SEN : Sir, as the amendment now stands, we cannot accept it. We admit that it will be better if this section was completed by putting in a penalty clause. Government was not in favour of this clause at all, and the Select Committee omitted it. But in the Lower House, it was adopted. Sir, if my Honourable friend Mr. Mehrotra will agree to the fine being limited to " not exceeding rupees one hundred " we can accept the amendment; otherwise, we will have to oppose it.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA : Sir, I accept the amendment.

THE HONOURALE THE PRESIDENT : The Question is that the amendment moved by the Honourable Rai Bahadur Lala Mathura Prasad Mehrotra be adopted with the substitution of the word " one " for " five ".

The amendment was adopted.

Clause 118, as amended, was added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 119.

THE HONOURABLE MR. R. H. PARKER : Sir, I move :

" That in clause 119 of the Bill in the proposed section 277L for the words ' accepting deposits of money on current account or otherwise ' the following be substituted, namely :

' Managing, holding, selling and realising all property moveable and immoveable which may come into the possession of the company in satisfaction or part satisfaction of any of its claims '."

As I have already explained, I fear that in the form in which this now stands a banking company lending money on the security of more than 50 per cent. of the shares of a company 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 Bill the other company would automatically become a subsidiary company of the lender.

I believe that this is not the intention of Government, but I have given very careful consideration to the wording of the proposed section 277L and I am confirmed in my view by legal opinion.

Section 277L provides that a banking company shall not form or hold shares in any subsidiary company except a subsidiary company of its own, formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor, trustee or otherwise, *and* (and I emphasise the words " and " which means that the foregoing provisions are mandatory) such other purposes set forth in section 277E as are incidental to the business of accepting deposits of money on current account or otherwise. In other words a banking company could not regard as security more than 50 per cent. of the shares of any company unless that company were formed for the purpose of undertaking and executing trusts, undertaking the administration of estates as executor, trustee or otherwise.

Now, it is quite obvious that very few companies are formed for this purpose and that in practice no bank could safely advance money on the security of more than 50 per cent. of the shares of most companies. This, I submit, is an undesirable restriction on banking companies and a denial to the holders of shares in companies of ordinary banking facilities.

The reference at the end of section 277L to " such other purposes set forth in section 277E as are incidental to the acceptance of deposits of money on current account or otherwise " does not in my belief help. I have already referred to the fact that the first part of the section is mandatory and that in most cases it would mean that more than 50 per cent. of the shares of a company could not be held by a banking company and the other purposes set forth in section 277E are limited to those which are incidental to the business of accepting deposits of money on current account or otherwise.

I submit that the *ejusdem generis* rule applies and that this must mean the purposes are limited only to those set out at the beginning of section 277E, *viz.*, the acceptance of deposits of money on current account or otherwise and not to the additional forms of business set out in sub-sections (*1*) to (*17*) of that section.

I feel convinced that no Member of the Legislature desired this to result from the proposed provision. The amendment which I move merely provides for a banking company to be able to manage, hold, sell and realise all property moveable and immoveable which may come into the possession of the banking company in satisfaction or part satisfaction of any of its claims.

Sir, I move.

THE HONOURABLE MR. S. C. SEN : Sir, if we were convinced that this section would really cause any inconvenience to any banking company the Government would have gladly reconsidered the provision. But we are not convinced that there will be in fact any inconvenience, and I must give my reasons for that to enable Honourable Members to follow me. I would draw the attention of the House to the provisions of section 277E and to the long list of things which a banking company can embark on in addition to its principal business. Under clause 7 of this list a banking company can legitimately acquire by purchase, lease, exchange, hire or otherwise any property moveable or immovable and any rights or privileges which the company may think necessary or convenient to acquire. And I would specially draw attention to the next part of this clause which runs thus:

" Or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability ".

Therefore if the company thinks that it is necessary to order to recover any loan that it should hold any shares which it holds as security, it can do so.

Now, Sir, it is said that section 277L is an exception to this right. We have considered this matter and it is in our opinion impossible to suggest that there is anything in section 277L which prevents a company in cases covered by clause 7 from acquiring and holding shares, to the extent of 50 per cent. But what is more, in my view, it is made quite clear by the last words of the section.

" such other purposes set forth in section 277E as are incidental to the business of accepting deposits of money on current account or otherwise ".

In the opening part of section 277E the principal business of a bank is defined, and clauses 1 to 17 are the incidental things which a banking company can do

[Mr. S. C. Sen.]

and which it is empowered to do under the provisions of this section. The words in the last four lines of section 277L make it clear that all the purposes mentioned in the 17 clauses of 277E are covered so long as the company whose shares are held is one which carries on business covered or permitted by section 277E, clauses 1 to 17. There is no bar to a company holding those shares if by reason of necessity it is forced to do so.

There is another matter which in my view makes it also quite clear. If Honourable Members will look at the definition of a subsidiary company they will find that the term "subsidiary" is a relative term. It is only applicable *vis-a-vis* the holding company. As regards an outsider the company is not a subsidiary company. It is only treated as subsidiary to the holding company and to no other. Therefore this reference to shares of a subsidiary company do not at all present any difficulty such as my Honourable friend Mr. Parker has in view. Sir, we have considered this matter. In our view there is no real apprehension. If there was any real difficulty we would have gladly accepted suggestions which would have cleared it up. As it is, in our opinion there is none and there is nothing to clear. Therefore this amendment is opposed.

The amendment was negatived.

Clause 119 was added to the Bill.

Class 120 was added to the Bill.

THE HONOURABLE THE PRESIDENT : Clause 121.

THE HONOURABLE MR. S. C. SEN : Sir, I move :

"That in clause 121 for sub-section (2) of the proposed section 282B the following be substituted, namely :

'(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund after the commencement of the Indian Companies (Amendment) Act, 1936, shall be invested and shall be invested only in securities mentioned or referred to in clauses (*a*) to (*e*) of section 20 of the Indian Trusts Act, 1882, and all moneys belonging to such fund at the commencement of the said Act which are not so invested shall be invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one-tenth of the whole amount of such money'."

Sir, If you look at clause 121 of the Bill and the sub-clause to section 282 as it now stands, you will find that it is limited in its operation to the investment of moneys put in any provident fund by the employees themselves. It does not refer to the contribution made by the employers or the company. Now, Sir, on the floor of the Lower House the Honourable Leader of the House there gave an undertaking that he would have an amendment moved in this House to include the investment of contributions made by the employers also and to make the provision applicable not only to the contributions made after the commencement of the Act but also from before and that he would have an amendment moved which would make it compulsory for the company

to invest their existing funds in trust securities in the course of ten years. In pursuance of that undertaking the present amendment has been tabled. The result of this amendment will be that if this amendment is accepted all contributions made by the employees and employers after the passing of this Act will have to be forthwith invested in trust securities and all the existing funds will have to be invested in such securities in the course of ten years by instalments of 10 per cent. every year.

Sir, I move.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce): Sir, I wish this proposal were a practical one. I feel that the result would really be that you would find many people would have to give up provident funds altogether and that you would have less money for your employees than you are getting now. The theory that the money ought to be put into Government securities is an excellent one and I am in favour of it, but I do not believe it is practicable, and the worst of the whole thing is the provision that contributions made in the past by both parties should within the next ten years be put into Government securities. It is bad enough to insist with regard to future contributions, but as to the past I am sorry I must oppose the provision.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern: Non-Muhammadan): Sir, the Honourable Mr. Parker has told us that it is impracticable to invest provident founds in Government securities, but he has not stated why it is impracticable to do so. He has said that one result of this amendment will be that joint stock companies will give up having provident funds, but he has not told us why they will give up provident funds if this amendment is carried. It is only right that provident funds should be invested in securities which are safer than any other securities. The interests of employees is involved and I therefore support the amendment of the Honourable Mr. Sen.

THE HONOURABLE MR. HOSSAIN IMAM: Sir, may I ask a question? This is a condition to be imposed on the Indian compaines. Are the Government prepared to show the way and follow it themselves so far as their own provident funds are concerned?

THE HONOURABLE MR. S. C. SEN: That Question does not arise.

THE HONOURABLE THE PRESIDENT: The Question is that the amendment moved by the Honourable Mr. Sen be adopted.

The amendment was adopted.

THE HONOURABLE MR. S. C. SEN: Sir, I move:

"That in clause 121 in the proposed section 282B, sub-sections (*3*) and (*4*) shall be renumbered as sub-sections (*4*) and (*5*) and the following shall be inserted as sub-section (*3*):

'(*3*) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (*2*) applies or in any contract between a company and its employees, no employee shall be entitled to receive in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (*2*) interest at a rate exceeding the rate of interest yielded by such investment'."

[Mr. S. C. Sen.]

This is a consequential amendment and I think even the Honourable Mr. Parker will admit that this is for the benefit of the company and not for the benefit of the employees. Sir, in the previous amendment it was provided that all provident funds should be invested not in Government securities alone, as some of my friends thought, but in one of the many kinds of investments mentioned in clause 20 of the Indian Trusts Act, one of them being mortgages on immovable properties. Therefore there was no point in saying that it was only to force them to invest in Government securities. The reason why the previous clause was adopted was that the Government thought that as compared to the getting of higher interest with a chance of losing the capital and the employees might like the law to have the capital safeguarded with a lesser rate of interest. As a corollary to that, the Government consider that it is only just and proper that where the provident fund rules say that the employees should be given interest at a higher rate, the company should not be made to suffer, and that the employees should get such interest as the company would earn in respect of this investment and that is the reason why this amendment is being moved. It is really for the benefit of those whom my Honourable friend Mr. Parker represents.

The amendment was adopted.

Clause 121, as amended, was added to the Bill.

Clauses 122 and 123 were added to the Bill.

THE HONOURABLE THE PRESIDENT: Clause 124.

THE HONOURABLE MR. S. C. SEN: Sir, I move:

"That in clause 124 in the proposed Form 'F' in the sub-heading 'Investments' under the heading of 'Property and Assets' before the word 'Distinguishing' the following words shall be inserted, namely:

'Showing nature of investments and mode of valuation, *e.g.*, cost or market value and'."

Sir, this is intended to rectify an omission really, in printing Form "F", in the Bill in the first instance as the result of which certain words which appeared in the original Form "F" and which were never intended to be left out were in fact left out. There was a tragedy over this point in the other House. An amendment was moved by one of the Honourable Members there and the Government and the supporters of the amendment who were in an absolute majority all shouted "Aye" but unfortunately the President declared it otherwise and declared that the "Noes" had it. The result was that the attempt to correct the wrong failed. Sir, it is really a Motion to insert the words which have been accidentally omitted.

The amendment was adopted.

THE HONOURABLE SIR PHIROZE SETHNA: Sir, I beg to move:

"That in clause 124 in sub-clause (*b*) in the proposed new Form H in Note (*1*) (*a*) after the words 'loans made' the words 'to or' be inserted."

Sir, I have brought forward this amendment in the belief that these words were perhaps accidentally omitted. In form H information is required to be supplied in or in addition to the information contained in the balance-sheet of a company referred to in Part X, and what is required is shown under Liabilities and Assets. Under "Liabilities and Assets" in No. 5 is shown "Loans (*a*) secured, stating the nature of the Society; (*b*) unsecured". In Note (1) it is said:

"There shall not be required to be shown in the case of a company the ordinary business of which includes the lending of money, loans made by the company in the ordinary course of its business."

I contend, Sir, that perhaps the words "to or" were intended to go in after "loans" and accidentally left out and therefore I put forward this innocent amendment.

THE HONOURABLE MR. S. C. SEN: Sir, I regret I have to oppose this amendment. If I may draw the attention of the Honourable Members of this House to Form H, they will see that the omission is not accidental nor is the amendment as innocent as has been painted by my Honourable friend. Sir, what by Honourable friend wants to do is to add the innocent words "to or" in Note (1) but if Honourable Members of this House will read the clause after the insertion of the proposed words they will find that the result will be that Items 5 and 6 at page 79 will never be disclosed. That is to say, Sir, one portion of the most material information required, namely, the liabilities to which the company is subject, will never be disclosed. If that is called an innocent accidental omission I do not know what a deliberate omission is. The amendment is neither innocent nor is the omission of the words intended to be added accidental and as I intimated to my Honourable friends we cannot allow companies under this guise to evade the effect of clause 56. That is what the effect of adding these words will be.

Sir, I oppose this amendment.

The amendment was negatived.

Clause 124, as amended, was added to the Bill.

THE HONOURABLE MR. S. C. SEN: Sir, I beg to move:

"That necessary corrections of the numbering and lettering of the sections inserted by the Bill be carried out together with consequential corrections of cross references."

Sir, this is a most formal amendment. It is necessary to order just to correct the numbering of the sections as the result of the various amendments which have been carried.

Sir, I move.

The amendment was adopted.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. C. SEN: Sir, I move:

"That the Bill to amend the Indian Companies Act, 1913, for certain purposes, as passed by the Legislative Assembly and as amended by this Honourable House, be passed."

[Mr. S. C. Sen.]

Sir, we have now reached the last stage in the progress of this Bill and I must express my gratitude to the Members of this Honourable House on the way in which they have taken to this Bill. Sir, this House, which is noted for the sobriety of its judgments, has lived up to its reputation and has dealt with the Bill in the most efficient manner. Sir, I do not think I need add anything beyond saying that the Bill has taken much less time here than we anticipated, although it has been criticised from all legilimate points of view.

Sir, I move.

THE HOBOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I had no idea of speaking at this stage of the Bill. But there are certain important matters which have forced me to do so. Sir, at present we find that those directors who have been convicted either under the Indian Companies Act or who have committed breach of faith, embezzlement or misfeasance, are eligible for election as directors. When I moved my amendment, the Honourable Mr. Sen, if I rightly understood him said, that he was in sympathy with it but that he wanted instead of a proviso an independent clause. Sir, this action of Government in rejecting my amendment shows that Government wants to support those directors who have committed fraud or misfeasance or have been guilty of an offence under the Companies Act. The rejection of my amendment will lead to a continuance of the mischief and fraud that has prevailed in the past. Sir, I appeal again to the Government not to be a party to fraud and patronise those directors who commit fraud.

Then, Sir, I moved another amendment to the effect that nothing in this Act or in the articles of association of any company shall prejudice the rights of the company to remove the manging agent according to General Law. The Honourable the Law Member, if I understood him rightly, himslf said that General Law was applicable while he was speaking on my other amendment, but he did not like to accept this because he said that it will mean that he will have to insert a few hundred other clauses. With due deference to him, I do not understand why this modest and reasonable request was rejected. When he himself says that the General Law applies, why should he not make it quiet clear in the Act ?

Sir, I will not speak about the other amendments, but as these amendments if accepted will prevent fraud, misfeasance, breaches of trust and offences under the Indian Companies Act, I hope Government will see their way to embody them in the Statute.

Sir, on the whole this new Bill is a great improvement on the existing one and I congratulate the Honourable Sir Nripendra Sircar and the Honourable Mr. Sen in bringing this Bill on to the Statute-book.

With these words, Sir, I again request Government to strongly reconsider the two amendments which I have now urged and to incorporate them in the Bill when it goes to the other House, if they cannot include them in this House at this stage.

THE HONOURABLE MR. BIJAY KUMAR BASU (Bengal : Nominated Non-Official) : Sir, I feel a sort of legitimate pride, if I may say so, on hearing

the chorus of praise and congratulations heaped on two devoted heads, (1) the Law Member and (2) my friend the Honourable Mr. Sen. My reasons for feeling the pride which I call a legitimate pride are that both come from the same province as myself ——

THE HONOURABLE SIR DAVID DEVADOSS (Nominated : Indian Christians) : Birds of a feather !

THE HONOURABLE MR. BIJAY KUMAR BASU : Secondly, they were both practitioners of the Calcutta High Court, and thirdly, Sir,—last though not least, Mr. Sen belongs to the same profession to which I have the honour to belong. I already see the countenances of my Bengal colleagues beaming and I am sure they see their reflected glory on my countenance. Sir, the piloting of this Bill in the other place as well as here had been—if I may be permitted to use the expression—a marvellous achievement of Sir Nripendra Sircar (Applause) not because this is a complicated Bill which had to be worked in detail, but because there were such varied interests and sometimes conflicting interests involved which had to be focussed and brought into line to get a clear passage of the Bill in the other House. That, I call a mervellous achievement for the Law Member. He has done it with tact ; he has done it with the energy and dexterity of a very experienced parliamentarian. In the debates, as I read the proceedings of the other House, there was no heat generated although some of the matters were very controversial. There was a sort of pleasantry going on between the Opposition and the Government benches. The whole thing was so smoothly done that it is a matter in which we all could join to congratulate him on the tact and the diplomacy which Sir Nripendra Sircar showed in the passage of the Bill.

As regards the Bill itself, I must confess that I am neither a company promoter nor a share speculator nor a large investor in shares, nor have I any partnership or interest in any managing agency firm.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Are you a director ?

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA (United Provinces Central : Non-Muhammadan) : Are you a shareholder ?

THE HONOURABLE MR. BIJAY KUMAR BASU : A shareholder, of course. But my view will not be tainted, if I may say so, with any of these interests. My view on this Bill will be that of an orthodox lawyer and nothing else.

AN HONOURABLE MEMBER : Who is the unorthodox ?

THE HONOURABLE MR. P. N. SAPRU : Will the Bill multiply litigation ?

THE HONOURABLE MR. BIJAY KUMAR BASU : If it does, it will greatly benefit the lawyer.

THE HONOURABLE THE PRESIDENT : Please do not listen to them. You proceed.

THE HONOURABLE MR. BIJAY KUMAR BASU : It is very difficult to go on if there is interruption, and if there is interruption, I feel tempted to reply.

THE HONOURABLE THE PRESIDENT : Then it is your fault. (Laughter.)

THE HONOURABLE MR. BIJAY KUMAR BASU : The Bill was called for for a very long time and it has not come a day too soon. Portions of the Bill which go to amend the existing Act were found in various instances to be absolutely necessary and they have been incorporated in this measure and passed today. The two new features of the Bill are the provisions about the managing agency system and the provisions about the banking companies. As regards the managing agency system there was very great divergence of opinion. Some people—a very large number perhaps—wanted the managing agents to vanish altogether, while others who are managing agents or persons interested in manging agencies or persons interested in better management of companies thought that the managing agency system must remain. There was a tug of war, and as the Law Member said in the other House, he tried to strike a golden mean. I am sure the golden mean has been struck despite the observations made by my Honourable friends, Mr. Parker and Mr. Arthur. The difficulty, so far as the managing agents were concerned, that was felt by the public interested in companies—the shareholders—was they thought that the managing agents were taking too much. That was the whole crux of the problem. There was a very trite expression in 19th Century England that " in matters of commerce the fault of the Dutch was offering too little and taking too much ". That was the real difficulty with the managing agents, and I think that after this Bill has been passed into law, the managing agents will find that after all they have not been so badly treated as they apprehended when the Bill was on the anvil. It is not possible by the action of any legislature—by any law—to make dishonest men honest. It is beyond the powers of any law. If that were possible, the existence of the Indian Penal Code on the Statute-book would have prevented thieves from committing thefts or murderers from committing murders. But nothing of the kind has happened. (*An Honourable Member :* " There are Pleaders also ! ") They do not commit murders ! They only help murderers to escape ! Here also, with the aid of the layers, however stringent the laws we make, the offenders will escape. As has been well said, " laws are like cobwebs, they catch small flies but they allow the hornests and wasps to break through " ! There have been complaints about the period of tenure granted to managing agents. That has been discussed almost threadbare, and I am sure, as was pointed out both by Mr. Sen and by the Law Member during the discussion on the amendments, that no good managing agent has anything to fear as to the stringency of this law, because it is to the interest of the shareholders to retain those managing agents who have proved their worth. If they find that the managing agents are giving them good money they would not think of determining their contract, because after all self interest is the one thing one looks after better than anything else, and the self-interest of the shareholders will not allow good managing agents to go out of the business. There are cases of managing agents whom my friend Mr. Hussain Imam refers to as the black sheep. Well, they will be turned out after 20 years if they cannot be turned out earlier. You can rest assured that, whatever the machinations of managing agents, the shareholders in their own interests whenever they have the chance will turn them out. So one way or the other, the term fixed for managing agencies in

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the Bill will really serve the purpose of protecting the unwary shareholder and also bring fraudulent managing agents to justice.

Then, Sir, the other new feature introduced by this Bill into the Companies Act is the law as regards banking companies. As you will remember, it was the recommendation of the Central Banking Inquiry Committee that banking company legislation should be brought forward. It was not possible to bring that legislation separately, so in the amendment of the Companies Act here those provisions have been incorporated, and I think, as at the present moment banking companies are developing in India, this amendment will be of very great use in the future.

Sir, I join with others once more in my congratulation to my friend Mr. Sen on his having piloted this Bill in this House in such an efficient way.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: Sir, my friend Mr. Sen while moving the third reading of the Bill has commented upon the speedy way in which the House has finished it and he called us sober. We are not only thankful to him but feel elated at the compliment he has paid this evening to this House. But as he has only recently joined us he perhaps does not know the reasons why unexpected things happen, and why the Bill which he expected would take a long time has been passed in a couple of days. The constitution of the House is such that nothing can be passed in it which is not agreeable to the Treasury benches, and that has lessened the enthusiasm of many members in regard to the putting forward of amendments and pressing them to a vote.

THE HONOURABLE THE PRESIDENT: There were over 65 amendments put forward.

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: But what was the result, Sir? Only those amendments which were accepted by the Government passed through. The others were either not moved or were moved and failed.

THE HONOURABLE RAJA GHAZANFAR ALI KHAN (West Punjab Muhammadan): Why did you not call for a division?

THE HONOURABLE RAI BAHADUR LALA MATHURA PRASAD MEHROTRA: I am afraid if a division had been called my freind would not have voted with us.

Now, I come to the Bill itself. I entirely agree with my friend Mr. Basu that the Bill is a compromise between the shareholders and the managing agents, and I am one of those who believe that for the industrial development of the country the managing agency system is necessary. (*An Honourable Member:* "You are a managing agent?") I can assure my Honourable friend I am not. It is because we have seen the fate of many companies which have failed on account of the lask of capital, and in many cases it is due to the money of the managing agents that they were saved. But I am one of those who believe that the powers of the managing agents should be limited and a check should be imposed upon them as far as possible. An effort in this direction has been made. It may be that it has not gone far enough and it may be that other checks may require to be introduced later on, but the Bill

[Rai Bahadur Lala Mathura Prasad Mehrotra.]

is certainly an improvement on the present position and shareholders will be elated to know that they will be in a position to know the exact status of a company and what the managing agents are doing. And so the managing agents will not only think twice but many times before they do things contrary to the wishes of shareholders or to keep away things from them which they ought to know.

Sir, some very useful amendments were tabled both in the other House and in this House but the Treasury benches did not see their way to accept them. I would however request the Government, after seeing the difficulties and drawbacks of the Bill in actual working, to bring an amending Bill in due course to incorporate the useful suggestions which have at present been thrown out in both the Houses.

Sir, in conclusion, I join my friends in congratulating the Honourable the Law Member and my friend Mr. Sen for the labour they have put in and the way in which they have tried to accommodate both the view points in this Bill.

With these words, Sir, I support the Motion.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces: General): Sir, I rise to congratulate my Honourable friends, Mr. Sen and the Honourable the Law Member, but my congratulations are not formal. Really it was a marvellous achievement on their part to pilot the Bill in the other House. I do not call it a marvellous achievement to pilot it in this House, situated as we are. Whatever the Treasury benches want done they can always get done here.

Sir, I rose to speak on the third reading only with the intention of confining myself to the defeat of the amendment of my Leader the Honourable Lala Ram Saran Das. His amendment was necessary and an innocent one and it was required for the smooth working of the company. What was stated in the amendment was that directors who are convicted under the Companies Act or who are accused of fraud or misfeasance should not be appointed as directors. Ordinary morality, ordinary common sense, require that such persons should not be given charge of companies. Sir, I fail to understand the attitude of Government on this point. As I said yesterday, I am not one of those who hold extreme views on this Bill, but I certainly feel very much grieved to see that a very useful and innocent amendment has not been accepted by the Government. Sir, it has been said—and I regret to find that it has been stated by a very prominent Solicitor of Calcutta—that law was not made to make men honest or that laws do not make men honest. According to me, Sir, the intention of the framers of the law is to make them honest. If the men do not turn honest, that is not their fault. The intention was there that the men who are to be governed by the law should be honest. I submit, Sir, that if this particular amendment had been accepted by the Government they would have made the working of the company more smooth and that would have been in the interests of the investing public. I, however, congratulate the framers of the Bill in meeting half-way the wishes of the public and I hope that in the future working of this Bill they will come to know the difficulties and they will again make an attempt to improve the Bill as necessity arises.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa: Muhammadan): Mr. President, the Bill is about to be passed. We have received the congratulations of the Honourable Mr. Sen, but the world knows in what sense those congratulations are taken. They cannot blind us to the realities. My Honourable colleague, Mr. Basu, pointed out that the business of the lawyers is to protect the public, but I am sure that in this Bill there are a sufficient number of loopholes. The hurried way in which this Bill has been placed before us will enable the lawyers to find a veritable paradise in this measure. The Bill has been brought before this Council at the tail end of the session. The number of amendments which had been made in this measure during the Select Committee stage and during its passage in the Assembly have made some of ts provisions anomalous. The Honourable Mr. Sen tried to explain that though regulation 56 and clause 34 of the present Bill do not tally, one over-rides the other. If it is going to be so, then it was necessary that only a part of that section should have been adopted, for in regulation 56 the main thing is only the taking of votes and that has been over-ridden by clause 36. Again, in another section, section 44, 87C (*3*), I asked about the excise duty. What has happened to that? Now, the Honourable the Law Member was insisting that there should be honesty in the managing agency commission business, whatever they charge. May I ask him whether it is honest profit or dishonest profit that is charged? There is an enormous amount of excise duty to be paid out of profits. It is right that 50 per cent. of the profits which are paid to the Government should be the basis of managing agency commission?

THE HONOURABLE THE PRESIDENT: I do not think you have read that section correctly. It includes in my opinion any duty that is paid.

THE HONOURABLE MR. HOSSAIN IMAM: I have taken the advice of the Legislative Department. A responsible officer of the Legislative Department told me that it is not correct.

THE HONOURABLE THE PRESIDENT: The words "revenue duty" are there.

THE HONOURABLE MR. HOSSAIN IMAM: It is the result of hurriedly passing this measure.

Now, Sir, some of my Honourable friends are genuinely under the impression that the Government are trying to improve the managing agency system of the companies. They need not be under any misapprehension. The old companies have been given a lease of life for 20 years and the companies which will be formed in future have also been exempted from all the trammels that have been imposed by the proviso put at the end of section 87D. The managing agents who are there before the issue of prospectuses will not be liable to any of the rules and regulations which have been passed by us. Sir, it may be thought that I am making a sweeping assertion, but the High Courts will give you rulings whether it is a fact or not. The Government have realised and have admitted that there are black sheep among the managing agents; otherwise there was no necessity of bringing in this Act to checkmate the managing

[Mr. Hossain Imam.]

agency system. If it were a good thing, as the Honourable Mr. Parker and his Group have been advocating, there was no necessity of a Bill of this nature, but the Government have not tried to differentiate between the good and the bad managing agents. Either they believe that they are all so bad that they do not want to separate the evil ones because they will only have a few good ones left and therefore they do not wish to put their hands into this matter; or, Sir, they are under the impression that the managing agency system is so strongly entrenched and its influence is so wide that no interests can stand against it. Sir, the managing agency system is supported by the Government of India because it has a strong resemblance to the structure of its own machinery. The managing agent is in the position of the Secretary of State. The directors are in the position of the Government of India, while the shareholders have been relegated to the position of a Second Chamber, who have rights but no power of enforcing them. In the same manner, the shareholders must be told to do this and not to touch that. The managing agents can rest assured that they have not only been saved but they have been given a free period of 20 years during which they need not worry. It is possible, Sir, that, if this Act had been passed at a later stage when we had a more responsible form of government, more drastic measures may have been brought. But now, the belief that Government have already done something will act as an opiate and put to sleep all the watch dogs that were out. The Bill, Sir, has given certain powers but it is lacking in thoroughness, and, as I said, the draft measure was much better than the Bill as it has come to us.

THE HONOURABLE MR. P. N. SAPRU: Sir, we have now reached, as the Honourable Mr. Sen said, the last stage of our discussion and our congratulations are due to the Honourable Mr. Sen on the very able manner in which he has piloted the Bill through this House. Sir, Mr. Sen has shown himself to be, if I may say so, a very skilful parliamentarian.

Sir, the Bill, as I said in my speech at the consideration stage, represents a vast improvement over the present Companies Act. Sir, I am not going into questions which we discussed at the consideration stage. The Bill goes back from this House substantially in the same form in which it came to this House. There were a number of amendments moved by us. A few of them were accepted by the Honourable Mr. Sen but I was sorry, Sir, about one amendment which was not accepted by the Honourable Mr. Sen. That amendment, Sir, was moved by my leader, the Honourable Lala Ram Saran Das, and was not accepted by the Law Member. (*An Honourable Member:* "By Mr. Sen.") Mr. Sen and the Law Member have the same voice. The amendment, Sir, which I have in mind was about directors. The Honourable Lala Ram Saran Das suggested that no person who had been convicted in a court of law of any offence, or who had committed any misfeasance or fraud, should be eligible as a director. I think, Sir, there could be no objection, as indeed the Law Member himself recognised, to an amendment of this character and it is rather regrettable that the Benches opposite did not accept this amendment which was moved by the Honourable Rai Bahadur Lala Ram Saran Das. In the interests of purity of administration of companies, this amendment was

necessary. Then, Sir, we were sorry also that another amendment of our Leader was not accepted and that was in regard to the managing agency.

"Nothing in this Act or in the articles or association of any company shall prejudice the rights of the company to remove the managing agent according to general law."

That was the amendment moved by the Honourable Lala Ram Saran Das, and the argument advanced by the Honourable the Law Member was that it was unnecessary. Well, Sir, nothing would have been lost if this amendment had been accepted. It would have made the legal position clear. I do not know, Sir, that the legal position is as clear as the Honourable the Law Member tried to make it out to be. At any rate, Sir, the amendment of the Honourable the Leader of the Opposition would have made the legal position absolutely clear.

Then, Sir, coming to my own amendments, I am thankful to Mr. Sen for having accepted one of them. But I was rather sorry that he was not prepared to accept certain amendments which I moved in regard to the conduct of meetings. Sir, experience shows that sometimes obstructive tactics are employed in order to prolong the deliberations at meetings and experience also shows that chairmen at these meetings are not always impartial. They are sometimes weak in dealing with obstructive shareholders and therefore, Sir, the general effect of my amendments would have been to place certain restrictions upon the conduct of these meetings, restrictions which would have been in the interests of shareholders, restrictions which would have increased the power of shareholders. Sir, there have been amendments which have to some extent also improved the Bill and I must refer to the amendment of Mr. Sen in regard to the provident fund and to the amendment of the Honourable Mr. Clow in regard to the Workmens Compensation Act. Sir, the Bill, as I said, goes back to the Lower House substantially in the form in which it came to us. It represents an improvement on the Companies Law.

There is just one remark I would like to make before I close, and that is that I would like it to be put into force as early as possible. Sir, many companies are being floated in order to evade the rather stringent provisions of the new Bill and therefore, Sir, there should not be much delay in enforcing this Bill. Sir, the Bill should be enforced as early as possible. I hope, Sir, that the Honourable Mr. Sen and the Honourable the Law Member will try and see that the Bill is put into force at as early a date as possible. As soon as His Excellency's assent has been obtained, it should be put into force. There should be no delay as suggested by the Honourable Sir Phiroze Sethna. Sir, these are all the observations I wished to make and I would like again to congratulate the Honourable Mr. Sen and the Honourable the Law Member on the excellent work that they have done. It is a great piece of constructive legislation in which we have been engaged and though our contribution has been rather small, yet we feel some pride in having had a share in this legislation which is a thoroughly good piece of legislation.

Sir, these are all the remarks which I have to make at this stage.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce): Sir, I feel myself that we should, from my point of view, have had a better Bill

[Mr. R. H. Parker.]

if I had been allowed to choose the amendments which the Government were going to accept instead of the Honourable Mr. Sen. Nevertheless, I have to admit that he has helped a lot.

Yesterday, the Honourable Sir David Devadoss referred to an unfortunate experience of his, or of his friends, where the directors refused to pay any dividend despite the fact they were making profits and he suggested that the cure for that was that they should be forced to pay dividends whenever they made profits. I would like him and others to remember that that would be very dangerous. There are times when they make a profit but it is not necessarily in the form of cash. They may have liabilities to meet. It might force them to borrow money or to try to borrow money and that might do the company a lot of harm. The real answer to this question is, I think, that you must invest only in companies whose directors are really working in the interests of the share holders. That is the only safe way.

My Honourable friend Mr. Sapru wanted the Bill to become law soon. I think there is a very great practical difficulty. The result of this Bill must mean that a great number of companies will have to have their articles of association completely overhauled and a great deal of work will have to be done in this connection. I do not think you can expect them to do this in the very near future. I would remind Honourable Members that the 1913 Act was passed in March, 1912, and it came into effect only on the 1st of April, 1913.

There is one other important point which I mentioned in my speech on consideration and I am sorry that no Member from the Government benches has referred to it. I feel myself that it is quite possible that Government would have taken a somewhat different view on some of the amendments which were put forward had there not been the risk to which I referred yesterday that this Bill might in the result lapse. I hope Government will seriously consider this and take great care that we do not find ourselves in this position again.

THE HONOURABLE KHAN BAHADUR DR. SIR NASARVANJI CHOKSY (Bombay: Nominated Non-Official): Sir, I associate myself with the Honourable Members who have congratulated the Honourable the Law Member and Mr. Sen on the ability and thoroughness with which they have piloted this Bill through both the Houses. Sir, the sole origin of industrialisation in Western India and Bombay has been due to the system of managing agents. It was the managing agents who were the pioneers and promoters of the mill industry over 70 years ago in the Bombay Presidency. It must be admitted that all managing agents are not exactly alike. As my Honourable friend Mr. Hossain Imam said, there may have been black sheep. Probably there are. But that is no reason why we should condemn the whole system. They have been of great usefulness in the promotion of industrialisation in this country. In former times, when the system was first introduced in Bombay, managing agents used to derive commission on the basis of production. Whether they sold their products at loss or at profit, they were entitled to their commission on the production of cotton mills at the rate of half an anna per pound. It was Mr. Jamshedji Tata who originated the present system of commission of 10 per cent. on profits. That has resulted in considerable changes in the organisation and methods

of administration of these mills. But, Sir, there is another side to the question. The managing agents undertake very great responsibilities, and time after time, year after year, they have to stake their personal security and property in order to borrow money from the banks to keep their mills going. Not only that. If one were to scan the annual reports of most of the mills in Bombay it will be found that there has been so much recurring loss that the managing agents gave up the entire or a good proportion of their commission. If all this were to be summed up it would amount to crores of rupees—a fact that must stagger most of the speakers who have condemned the system. It may be that in several instances they have not been honest, but they have had to pay the penalty of their dishonesty. That has led to the salutary provisions made in the Bill for safeguarding the provident funds for the benefit of employees. There occurred an instance some time back wherein Rs. 14 lakhs of the provident fund was misused or misapplied. And thus the provision that has been made for the security of the employees is indeed in the right and proper direction.

Sir, if my Honourable friend Mr. Hossain Imam wishes to radically change the whole system of industrial expansion, let him visist Japan. There he will see how the Japanese mills are conducted. He will be surprised to know that there is no managing agency there, but there are managing directors. Each director is a specialist of repute and is attached to a particular branch which he looks after in a vast organisation. He is a highly paid officer with great responsibilities.

THE HONOURABLE MR. HOSSAIN IMAM: Adopt it.

THE HONOURABLE KHAN BAHADUR DR. SIR NASARVANJI CHOKSY: Such are the bases upon which the Japanese mill industry has been built up apart from the economy through the employment of female labour and other concomitants. On the whole, Sir, this Bill is a distinct advance upon the existing Act. It may not be flawness, for no Bill can be perfect. But I do believe that after a few years if its working we shall be able to find out the lacunae and loopholes and perhaps my Honourable friend Mr. Hossain Imam will be filling those up with his usual acumen.

Sir, I have great pleasure in supporting the passage of this Bill.

THE HONOURABLE MR. S. C. SEN: Sir, I only wish to refer to some of the remarks which have been made by the Honourable the Leader of the Opposition. I wish it were possible on this side of the House to accommodate my friends opposite in a greater way than we have been able to do. But where we have not been able to do so I can assure the House that it is not with a sense of obstruction but in view of the fact that we are not convinced that it is necessary to incorporate those amendments in the Bill. Sir, I can assure my Honourable friends opposite that if, as a result of the working of this Bill, it is found that there are defects such as my Honourable friends tried to bring to our notice, the Government will undoubtedly take notice of the suggestions if and when an amending Act is taken in hand.

THE HONOURABLE MR. HOSSAIN IMAM: And referred to a Joint Select Committee, Sir.

THE HONOURABLE THE PRESIDENT: Honourable Members, before I put this final Motion to the vote of the House, I feel I would be failing in my duty if I did not associate myself with you all in the tribute of praise which you have given to Sir Nripendra Sircar and to Mr. Sen. When I first came to know that this important and complex Bill was entrusted to the Honourable Sir Nripendra Sircar I came to the conclusion that it was the right thing done by the Government of India. We all know the forensic reputation of Sir Nripendra Sircar and by steering this most difficult and complex measure through both the Houses, Sir Nripendra Sircar has added to his many laurels and to his reputation for profound legal knowledge. (Applause.) I must also congratulate Mr. Sen on this occasion. (Applause.) The whole brunt of this work, as every one knows, has fallen on Mr. Sen. For months previous to the Bill being placed before the Council, he did most difficult spade work. In fact, we can give him the compliment of having framed this Bill and put it in proper shape. Not only has he done this, but especially in this House he has piloted the Bill with remarkable skill and knowledge of law. He has convinced many of us here that he is not only a rising parliamentarian but a great and skilful debater. I compliment him again on his knowledge of the company law and the successful manner in which he has piloted a most difficult Bill through the House. (Applause.)

The Question is:

"That the Bill further to amend the Indian Companies Act, 1913, for certain purposes, as passed by the Legislative Assembly and as amended by this House, be passed."

The Motion was adopted.

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 Code of Civil Procedure, 1908, for certain purposes (Amendment of section 51, etc.), which was passed by the Legislative Assembly at its meeting held on the 13th October, 1936.

THE HONOURABLE MR. HOSSAIN IMAM: Sir, is it lawful to lay a Bill on the table of the House on the same day on which it is passed in the other House? Under the Standing Order I think it is not permitted.

THE HONOURABLE THE PRESIDENT: The Standing Order may be waived and the practice has been followed in this House. I only want to save the time and suit the convenience of Honourable Members.

STATEMENT OF BUSINESS.

THE HONOURABLE KUNWAR SIR JAGDISH PRASAD (Leader of the House): Sir, I wish to make a statement as regards the business which has yet to be transacted by Honourable Members. They are all very anxious I know to finish the business as soon as possible. There is nothing which can be

placed before them tomorrow, so the House will meet now on Thursday, and the business that will be for consideration is, first, the Bill to amend the Indian Tea Cess Act, 1903, which was laid on the table of the House yesterday. Then there are, Sir, eight Bills which have been laid on the table this morning, and they can be discussed if you, Sir, are pleased to give a direction that the usual period of notice is curtailed. I think it is the general wish of Honourable Members that such a procedure should be adopted in the special circumstances in which we have been placed. Therefore the business will be the discussion of these nine Bills, one of which was laid on the table yesterday and eight were laid on the table today.

THE HONOURABLE RAJA GHAZANFAR ALI KHAN: I think every one of us is anxious to go away and therefore we will not raise any objection to the period of notice being suspended.

THE HONOURABLE THE PRESIDENT: There is no question of objection. The matter rests in my discretion.

THE HONOURABLE RAJA GHAZANFAR ALI KHAN: You generally take our wishes into account, Sir.

THE HONOURABLE THE PRESIDENT: As suggested by the Honourable Leader of the House, I agree to take all these Bills for discussion on the 15th October, the day after tomorrow, especially as all Honourable Members are very anxious to go away. I may however point out that, as far as amendments are concerned, I will give every possible latitude and will receive them till 10 o'clock on the morning of the 15th instant, provided two copies are made of every amendment, one copy being supplied to the Secretary and one sent to me direct.

The Council then adjourned till Eleven of the Clock on Thursday, the 15th October, 1936.