

Friday, 27th January, 1939

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THE
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VOLUME I, 1939

(23rd January to 18th April, 1939)

FIFTH SESSION

OF THE

FOURTH COUNCIL OF STATE, 1939

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COUNCIL OF STATE.

Friday, 27th January, 1939.

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

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

THE HONOURABLE THE PRESIDENT: The debate on the Income-tax Bill will now resume.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official): Sir, I congratulate the Honourable the Finance Member upon this very excellent Bill and I particularly thank him for taking his courage in both hands and trying to get some revenue out of the leave allowances and leave pay. Sir, it may be within the recollection of many of the Honourable Members of this House that several years ago I moved a Resolution that the pensions should be taxed under the Income-tax Act, and I explained the whole situation and stated that the assesses would not lose by being taxed here, as they would get relief in the United Kingdom, except those who reside in the Free State of Ireland or on the Continent and I said our sympathy need not be wasted upon those people because they avoided paying income-tax to the United Kingdom. Now, Sir, I am glad to see that at least the leave allowances and leave pay are brought within the ambit of the present Bill.

I do not want to go over the ground covered by the other Honourable Members. I will confine myself to only one or two points. The first point that I wish to refer to is the taxing of what is called world income. Sir, that is done in the United Kingdom. Under the English law relating to income-tax, whether you get your income for India or from anywhere else, if you are a resident of the United Kingdom you are liable to pay tax, and I do not see why a different rule should be applied to India.

The second point is the provision for the establishment of an Appellate Tribunal. Sir, the impression in the minds of many people is that the Income-tax Officers always try to get as much as possible and they avail themselves of all possible loopholes in the law in order to increase the assessment. The existence of an independent Tribunal which will go into the question on appeal will be a sufficient safeguard or a deterrent against over-enthusiastic officers in trying to raise revenue, and in important cases I think the Tribunal will give adequate relief.

The next point that I wish to refer to is the hardship caused to people who are following the *Marumakattayam* law. Sir, we on the eastern side of the Ghats, as well as people in the west, do not I think realise what is meant by *Marumakattayam* law. According to that law marriage is only a civil contract, terminable at the will of either party, husband or wife. The wife belongs to a different family, or *Tarwad* as it is called, from the husband, and if the husband

[Sir David Devadoss.]

dies without leaving a will his children do not inherit to him. I may explain it by an example. Suppose I was a Malayalee governed by the *Marumakattayam* law. If I happened to die without leaving a will, none of my children would get anything of my property, nor my wife. The heirs would be the sister's children, and according to the strict law even they may not get it, because the property of an intestate goes to what is known as the *Karnavan* head of the *Tarwad*, which may be a big family, of which one is an off-shoot. The *Tarwad* may consist of 200 to 500 persons, and if a man dies leaving no will all his earnings would go to the *Tarwad*. A husband also cannot inherit to his wife. It is difficult for us to realise these facts, because, whether it be the Muhammadan or the Hindu or the Christian law which is applicable to us, the wife and children get the property of a deceased husband and father. Therefore, Sir, it would be a real hardship if the wife who has a separate income derived from her own *Tarwad* should be made to put that income along with her husband's and be made to pay tax. Of course, if she gets a taxable income, let her be assessed separately and her husband assessed separately. I want the Honourable the Finance Member to realise the situation. Under the *Marumakattayam* law the wife and husband are different entities altogether. According to the Christian law husband and wife are one, and according to the Hindu law marriage is a sacrament and a husband and wife are one not only on earth but for the future as well. Under the *Marumakattayam* law marriage is only a civil contract terminable at the will of either party. Therefore, I would ask the Honourable the Finance Member to consider this point seriously. It is a real hardship.

Another point I wish to urge is this. In the case of subjects of Indian States, say of Travancore and Cochin, many of them are resident in British India. Why should they be asked to bring into the hotchpotch the agricultural income which they get, not in British India but in the States? Whereas British Indians have not to add their agricultural income to their other income for the purpose of assessment, the subjects of Indian States, who are resident in British India, are obliged to do that. The same remark would apply to persons who have got property in Burma. The Nattukottai Chettys of the Madras Presidency have invested something like Rs. 80 crores in Burma. As they could not realise their outstandings they had only Hobson's choice, namely, of taking up the land of the debtors. Such being the case, it cannot be said that they made an investment on the land for the purpose of raising an income, but they were obliged to take the land because they could not realise their outstandings. Those people also will suffer if they are obliged to bring their agricultural income into account here for the purpose of taxation.

Then, Sir, another point that I wish to refer to in passing is this. I really sympathise with the Honourable Mr. Ramadas Pantulu in saying that the wife and children ought to be given an allowance, that is to say, an allowance in their favour should not be taxed; but unfortunately, Sir, the Muhammadan law allows four wives and the Hindu law an unlimited number of wives.

THE HONOURABLE MR. P. N. SAPRU : And there is universal marriage.

THE HONOURABLE SIR DAVID DEVADOSS : That being so, I do not think that it is possible to give relief in such cases. No doubt we would certainly welcome such relief, but on account of the laws under which most of the people in India are living, it is not possible to give that relief.

Then Sir, with regard to clause 60 which relates to punishment for false statements, I wish to observe that the fear of imprisonment would not deter people from making a false statement. Sir, the fear of jails has recently been taken away because some of the greatest and the gentlest in the land have been to jail and if I am not saying anything very objectionable, a sojourn in His Majesty's Penitentiary seems to be a qualification for a ministership! That being so, I do not think that the mere fear of simple imprisonment for a short time would deter people from making a false statement. What I suggest is, that if a person makes a false statement the Court should have the power to inflict a sufficient punishment upon that person. Supposing a man gives his income as Rs. 10,000 instead of Rs. 12,000, I suggest the Court should have the power to impose a fine which may extend to ten times the amount by which he wanted to deceive the Government.

THE HONOURABLE THE PRESIDENT : If he is not able to pay what is to happen ?

THE HONOURABLE SIR DAVID DEVADOSS : Let him go to the Bankruptcy Court.

THE HONOURABLE THE PRESIDENT : Then he escapes.

THE HONOURABLE SIR DAVID DEVADOSS : He loses everything he has. What else can we do ? That is a contingency which we must face. Therefore, what I say is, that in the case of these prosecutions, the well-to-do man may escape prosecution and even if he is convicted the sympathy of the Court would be with him and he may be convicted with simple imprisonment till the rising of the Court, whereas a poor man who wanted to cheat the Government of a few rupees may be sent to jail for the full term. That is how we find things are going on. Therefore, Sir, I have given notice of an amendment. I would suggest to the Government the desirability of putting something in the Act which would deter people from trying to reduce their income. If it is due to a mistake or anything like that it would not be punishable ; but it must be false and the man must know it to be false.

THE HONOURABLE THE PRESIDENT : What do you suggest ?

THE HONOURABLE SIR DAVID DEVADOSS : I suggest a fine not exceeding ten times the amount by which he wanted to reduce the income. That will certainly prevent the very well-to-do people from making a false return.

Sir, I do not want to take up the time of the House by referring to other matters which have been dealt with at great length by other Honourable Members and with these remarks, I have much pleasure in supporting the Motion.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, I had not the pleasure of hearing Mr. Chambers yesterday. I have read his excellent speech or at any rate a summary of his excellent speech in the *Hindustan Times*. I missed hearing his speech and therefore I shall not say anything about what he said yesterday. I am glad to be able to say that, generally speaking, the Bill meets with my approval and I would like to give the consideration Motion my full and complete support. Sir, it will be correct to say that it has stiffened up the law against the tax-dodger. We want the law against the tax-dodger to be stiffened up. There is a moral issue involved ; we are not here to defend the tax-dodger. It has stiffened up.

[Mr. P. N. Sapru.]

the law against the tax-dodger and it has also softened to the extent that it was expedient to do so the rigours of the law against the honest taxpayer. There is another consideration which weighs with me in supporting this measure. After all, the provinces have an interest in the income-tax and we do need in this country a more rapid development of the social services. It may be that some of our provinces are unnecessarily sacrificing revenue. But under a system of responsible government, it is open to a party to try experiments in certain directions, and therefore I think that if by improving the income-tax gathering machinery we improve our finances we also thereby strengthen the stability of the democratic machinery now in operation in the provinces. For the strengthening of the democratic machinery now in operation in the provinces it is necessary that the income-tax machinery should be stiffened so that the income-tax receipts may go up. Therefore, frankly from that point of view I welcome this measure because it will enable our income-tax receipts to go up.

Coming now to some of the provisions of the Bill, I would first of all like to say that it is not correct to say that the honest assessee will get no relief under the Bill which has been moved for consideration by the Honourable Mr. Chambers. A notable improvement which the Bill seeks to effect is the establishment of an Appellate Tribunal for appeals from the decisions of Appellate Assistant Commissioners. We are going to have separate Appellate Assistant Commissioners and there is going to be a Tribunal that would consist of 10 persons, five of whom will be men of judicial experience and five of them will be men who have had experience of accountancy, and the Tribunal will be presided over by a judicial officer. That will bring the income-tax administrative machinery into conformity with the machinery in other countries and that certainly is an improvement over the present position. Therefore, I think, you cannot say that the rigour of the present law has in no respect been softened. It has been softened in several respects.

Then, I would like to say just one or two words about the "slab" and "step" systems. I am personally entirely in favour of the slab system. As has been rightly pointed out by the Income-tax Inquiry Report, which was a very careful inquiry, the slab system will give relief to the poorer taxpayer. It will mean that the man who pays a tax on an income of Rs. 24,000 or over will have to pay a little more, but then he ought to pay a little more than what he is paying today. The defects of the present system and the merits of the slab system have been pointed out by the Income-tax Inquiry Report in these words and I would adopt those words as my own :

"The principal defect is that the present scale provides (subject only to the inadequate provision of marginal relief) for taxation of the whole income at a specified rate when the income exceeds a certain limit, and not merely the taxation of the excess over the limit at that rate. Thus an assessee with income of Rs. 14,999 pays Rs. 1,015 tax as compared with Rs. 1,399 tax payable on an income of Rs. 15,500, an increase of Rs. 384 tax on an increase of Rs. 501 in income.

"As a result of this feature of the present scale, we have found a tendency on the part of the assessee to claim bad debts, etc., not strictly allowable within the year, in order to keep his income below a particular limit, with a corresponding tendency on the part of some Income-tax Officers to endeavour to keep the computation above that limit. This tends to a conflict which has little regard to the merits of a case but is mainly concerned with the rate of tax chargeable on the whole income".

The slab system has not been directly provided for in the Bill but I think it is intended to substitute the slab system for the present step system. There are indications in the Bill that the slab system will be substituted for the present

step system. I am entirely in favour of the slab system. I think the results of the slab system are indicated in Appendix II of the Report and I find, on a perusal of that Appendix, that it will be a system which will give relief to the smaller taxpayers.

THE HONOURABLE THE PRESIDENT : Can you tell me what system is followed in England ? Is it the slab system that is followed there ?

THE HONOURABLE MR. S. P. CHAMBERS : The slab system is followed in England.

THE HONOURABLE MR. P. N. SAPRU : That, again, is an additional argument in favour of the slab system.

Coming to another question, I would say that as between the definition of dividend in the present Bill and the definition of dividend as proposed in the original Bill, I prefer the definition of dividend in the original Bill.

THE HONOURABLE SIR JAMES GRIGG : So do I.

THE HONOURABLE MR. P. N. SAPRU : I am glad that I am in agreement with Sir James Grigg. There are more points of agreement between us in regard to this Bill than points of difference.

Sir, one of the aims of the Bill is to rope in some of the incomes which have so far escaped taxation. It has been pointed out that profits are profits and industrialists should not be allowed to convert profits into capital. Over-capitalisation, if I may say so with all respect, is not good for an industry. It leads in many cases to inefficiency. If industrialists are allowed to convert profits into capital, then they can always say to the workers and to their labourers that they have not enough to improve the conditions of labour. The right course for an industrialist who wants more money or who wants more capital for his industry is to appeal to shareholders after dividends have been declared and ask them to purchase additional shares. It strikes me that it is not right to allow directors to convert shares into debenture shares or bonus shares. Therefore, as between the original definition of debenture and the present definition of debenture, I prefer the original definition of debenture. I recognise, however, that the Bill is a compromise measure and therefore, in order that the Bill might be carried through, some arrangements had to be made and therefore I am not disposed to stress this point further.

Then, Sir, I come to another feature of the Bill. In the original Bill, the income of the husband and the wife was to be aggregated for purposes of taxation. This has been done away with. I am not very clear myself on this point because there is here, I confess, a conflict between the social reformer and the tax gatherer. As a social reformer, I would like the wife to have an independent existence. As a man who is interested in having the finances of the country improved, I would like to get more finances for the country. On the whole, I am not disposed, therefore, to quarrel with the proposal that the income of the husband and the wife should not be aggregated together. I think the Select Committee was right in sacrificing revenues to social reform. I note that the clause permitting Income-tax Officers to enter the premises of an assessee has been deleted. I may say that I agree with the change. I also note with satisfaction that persons having an income of less than Rs. 3,500 a year will not be penalised for failing to make returns when they have been asked by the Income-tax authorities to send the returns. I note that the penalty

[Mr. P. N. Sapru.]

imposed for failure to make a return in their case is not a very heavy one. The penalty is, I think, Rs. 25. I agree with these proposals. The controversy in the other House ranged round clause 4 and the provisions in regard to foreign incomes of Indians. The Bill retains the accrual basis, but exemption is made in respect of accrued incomes to the extent of Rs. 4,500 a year. Further the exempted income is to be taxed only if brought into India. On this question of accrual basis, I may say that I am in favour of it myself. People ought to be made, and that is how I would put the case for the accrual basis, to pay according to their ability to pay. If I make money in a foreign country and make large profits, my capacity to pay income-tax is thereby increased.

THE HONOURABLE MR. HOSSAIN IMAM : What does the Honourable Member mean by large profits ? What percentage ?

THE HONOURABLE MR. P. N. SAPRU : If I am dealing in foreign trade I must be assumed to be a man of substance and it must be assumed that I have some capacity to pay. I see nothing wrong in being asked to pay not only on the income that accrues to me in my country but also on the income that accrues to me outside also. It is the beneficent activities of the Government that enable me to make the income that I do in foreign countries. Look at what the Government of India do for our Indians overseas. I do not say that they have done everything that they could or should, but it is no use denying that they do something for the Indians overseas. We are hoping to have Consular services. We have Trade Agents in several places. We have Agents in South Africa, in Malaya, in Ceylon, and in Burma. If I happen to be in a foreign country and if I am stranded there, I can always go to the Consulate of my country and get the help of that Consulate. Can I make the income that I do in foreign countries without this assistance, without the help and the support that my Government gives me ? Therefore I see nothing wrong in the accrual basis and I am in favour of the proposal that the world income of the individual should be taken into consideration in assessing income-tax.

THE HONOURABLE MR. V. V. KALIKAR (Central Provinces : General) : Is this your own Government really ?

THE HONOURABLE MR. P. N. SAPRU : I am sorry to differ from my Honourable friend. He and I belong to the same Group. He says it is not my own Government. Today it is not my Government but it will be my Government tomorrow. I cannot look at the question only from the point of view of the present. I must look at the question also from the point of view of the future.

THE HONOURABLE THE PRESIDENT : Never mind that. You speak on the Bill.

THE HONOURABLE MR. P. N. SAPRU : Very well, Sir.

The income-tax is not a tax on consumption. It is a tax on incomes and it is not a tax on capital either. Its incidence must vary with the income of the man. Now, Sir, of course the real objection to the accrual basis was that there was discrimination between people who were domiciled in India and people who refused to take a domicile in India. So far as that distinction is concerned, that has to a very great extent been removed by the present Bill. The present position is that for the discrimination between domiciled residents and non-domiciled residents has been substituted the distinction between those who are

resident and those who are ordinarily resident. According to these definitions even if a person has been resident in the year of assessment had he been a resident in nine out of ten years preceding if he had not on the whole resided in India for more than 730 days or if he had not kept a dwelling house or resided for 182 days during two years or if he had been absent from India for two years in the preceding seven years then he would be classed under not ordinarily resident. I think, Sir, the conditions are not entirely satisfactory. As I read the Bill it means this : that those who come on a contract for five years or less will escape taxation on their foreign incomes. Indians who go out of India for two years out of seven years would also escape from assessment on their foreign investments and property income. The proposals are not quite satisfactory, but they represent a compromise between conflicting groups and interests and I think it would not be right for us to disturb the compromise. Therefore though I do not look upon this compromise as an ideal compromise, I would as a practical man stand by the compromise.

Sir, I may say that I agree with the new definition which has been provided for in the Bill for charitable purposes. It is intended to provide against dishonesty. There are many dishonest charitable trusts : they are charitable trusts only in name and they escape taxation under the present law. I am glad therefore that a new definition of charitable purposes has been substituted in the Bill.

I come now to the question of allowances for wives and children. It has been said that in England there is a certain kind of relief given if you happen to be a married man. I would like that relief to be given for married men also in India, but there is one difference between England and India in this respect. In England marriage is not universal ; here unfortunately marriage is almost universal. I say "almost" because we have Christians and Europeans and it is not universal among them ; but it is practically almost universal among the Hindus and Muslims. Therefore, if you give any exemption to married men, you will be giving exemption to nearly the entire income-tax paying community. Let us first change our social system and then ask for the application of the English system. So far as children are concerned, here again while I would like relief to be given for children I note that we are not particularly careful in bringing forth children into the world in this country, we go on multiplying and there is not much foresight in that respect and therefore I am not prepared to criticise the Income-tax authorities for not giving any relief in the matter of children either.

I note with satisfaction that leave salaries are going to be taxed hereafter and I also note with satisfaction that Government have accepted the clause to the effect that the executive will have in future power only to modify or alter existing exemptions and not to add to them. I think leave salaries ought never to have been exempted from taxation. I was going through the opinions of the Provincial Governments the other day and I was rather surprised that the service interests were against this proposal of the Committee that leave salaries should be taxed. They said, "Oh, well, that is the basis of our contract; this exemption has been there for so many years". India is a land of vested interests and I am not surprised that the services also think in terms of vested interests only. I am glad that a courageous step has been taken in this direction and so far as pensions are concerned, excepting those pensions which are exempt under, I think, section 272 of the Government of India Act, pensions will also be subject to taxation. This is as it should be. I would like section 272 of the Government of India Act also to disappear.

I have just one word to say about earned and unearned incomes. I notice that the Bill makes no distinction between earned and unearned incomes.

[Mr. P. N. Saprú.]

I quite understand the reason why the Bill makes no such distinction. I note that the Taxation Inquiry Committee of 1924 and 1925 came to the conclusion that the existing conditions of India did not justify any attempt to differentiate between earned and unearned income. The conclusion to which the Committee came was that there had been no material change in conditions since the Report of the Taxation Inquiry Committee in 1924-25 and therefore they were not prepared to recommend that there should be any distinction in taxation on earned and unearned incomes. I regretfully agree with the findings of the Taxation Inquiry Committee and the Income-tax Inquiry Report and I am not disposed to complain that the Bill makes no such distinction.

I think the Honourable Mr. Ramadas Pantulu has made clear the position in regard to double income-tax relief under section 49 and I would not like to say very much about it. The present position is not satisfactory from the point of view of the Indian taxpayer but we realise that the Bill is the best that we can get in the circumstances that exist in this country, and while we should have liked the Bill to be different in certain respects, we are not prepared to say that the Bill is a bad Bill. I would say that the Bill is on the whole a good Bill and that it will place the Income-tax law on a better basis than it is at present.

I think I have covered nearly all the points that I had in mind. I do not think that we ought to disturb lightly the arrangements that were arrived at in the other place. We happen to be a revising Chamber and though not in form it is in effect a fiscal measure and therefore I do not think there is any force in the criticism that a joint select committee was not appointed. I should have been sorry if a joint select committee had been appointed to consider the Bill. I would like the Council of State, speaking with all respect, to remain a revising Chamber and I should have been sorry if a joint select committee had been appointed. I would therefore like to give the Bill my full and complete support.

*THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muham-madan) : Sir, I regret that I was not here yesterday to listen to the maiden speech of my Honourable friend Mr. Chambers. I also regret that at the very outset I have to differ from my Honourable friend Mr. Saprú on the question of joint select committees. That has been with me at least a very persistent question, and I have agitated many a time on the point, and especially on this matter on the 17th of March, 1937, I moved a Resolution for the consideration of the Report submitted by Mr. Chambers, and in that Resolution I had requested the Honourable the Finance Secretary to promise that the Bill based on this Report would be referred to a joint select committee. Sir, joint select committees have not been sitting since we had the Reserve Bank Bill. That was the last joint select committee we had, and I think, Sir, the experience, business and commercial, which we have in abundance in this House would have justified the inclusion of Members of this Chamber in the Select Committee which sat on this Bill. In addition to that, Sir, the reason for my asking for a joint select committee is that there is no provision in the Statute that this is only a revising Chamber. Because of our action and the peculiarly restricted electorate we are regarded as a revising Chamber, although we are not in fact a revising Chamber. However, that is now beside the point.

Coming to the Bill, I find that the Government in their usual manner have tried to muddle through the measure without taking full care to safeguard the

*Not corrected by the Honourable Member.

interests of those who are least able to safeguard themselves. The business interests are adequately provided with measures to safeguard themselves with all the paraphernalia. It is really those taxpayers who have been aptly described by Sir Homi Mody as fools who have to be safeguarded. Sir Homi Mody said in the other place that there are three classes of income-taxpayers, —the one class which is a thoroughly dishonest section, the other which is not quite honest, and the third are the fools. I know, Sir, that he would not class himself either in the first or the third, but people in the mofussil, the small traders and others, really come under the third category, I mean the fools. It is these people who have not been sufficiently safeguarded, and all the rigours of the Income-tax law have been expended on this unfortunate class because the first two have at their hand ready all the legal advice and expert knowledge by which they can outwit the Income-tax Department—

THE HONOURABLE THE PRESIDENT : Under what class do you come ?

THE HONOURABLE MR. HOSSAIN IMAM : I do not come under any class. Fortunately I am not an income-taxpayer of the Government of India, although I am sorry I will be an income-taxpayer of my own Government, the Provincial Government. So there is no question of my classing myself in any of the three categories—

THE HONOURABLE SIR JAMES GRIGG : Null and void !

THE HONOURABLE MR. HOSSAIN IMAM : This Bill, Sir, had a chequered history. It was nearly twice on the point of dying. First, in the Delhi session of 1937 when the Finance Member introduced the Bill on the 7th of April, there was a move to circulate it for eliciting public opinion. On that occasion the Finance Member characterised this Motion as really a dilatory motion which would in effect kill the Bill. At that time somehow it was rescued, and by a compromise it was agreed to refer the Bill to a Select Committee, and if the Assembly referred the Bill to a Select Committee the Finance Member promised to circulate it by an executive order, and so this measure was saved—

THE HONOURABLE THE PRESIDENT : Will all this discussion serve any useful purpose now ? The Assembly has already passed the Bill.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, I was trying to point out that this measure had not a very happy beginning, and therefore the compromises arrived at—

THE HONOURABLE THE PRESIDENT : I am not concerned with the compromises in the other House. I am concerned here with the Bill as it stands before this House.

THE HONOURABLE MR. HOSSAIN IMAM : Those compromises are embodied in this Bill. It was by means of those compromises that clause 4 could be passed. The present shape of clause 4 was not introduced by the free will of the Government. They had to be coerced—

THE HONOURABLE THE PRESIDENT : Since the Government of India has agreed to this matter, there is no use dilating on it.

THE HONOURABLE MR. HOSSAIN IMAM : It was Hobson's choice. Anyway, I now come to the fundamental principles of this Bill. The Honourable the Finance Member in the other place at the introduction stage as well

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as in the subsequent stages stated that there are three principles underlying this measure,—the first is taxation of foreign incomes, the second is the tightening up of loopholes and making the law more stringent against tax-dodgers and tax-evaders, and the third is relief and betterment. Personally, I count one more principle which is embodied in this Bill, and that is the continuation of the double income-tax relief. As far as the provisions relating to relief and betterment are concerned, they had the unanimous support of all sides in the other House, and in this House too, I find from the papers, these provisions have been supported, and so I shall not dilate on those provisions. Then, Sir, there are the other provisions for tightening up of loopholes, and about these I wish to say a few words, because I fear that people who are unable to get legal advice may be fooled by these tightening measures. I will give the House one instance which came to my knowledge in my province. At the end of a year a notice was served on a man to file his returns. Before he could comply with it the year ended, and he was therefore served with a fresh notice for the year that had just closed. Somehow or other he was unable to submit a return within the time, and he was assessed to income-tax under the penalty laws. When the third year came in and he received a notice again,—of course he had to pay for the previous two years because under the penalty clause there was no appeal,—he found that he was assessed for a house property which did not belong to him—

THE HONOURABLE SIR JAMES GRIGG : Why could he not send in a return in time ?

THE HONOURABLE MR. HOSSAIN IMAM : Perhaps the Honourable Member knows that people who are not subject to income-tax do not know the niceties of the Income-tax law—

THE HONOURABLE SIR JAMES GRIGG : But he submitted a return after the time ?

THE HONOURABLE THE PRESIDENT : He deliberately refused ?

THE HONOURABLE MR. HOSSAIN IMAM : He filled a return, and when he submitted it after the time he was assessed to income-tax under the penalty clause—

THE HONOURABLE THE PRESIDENT : Yes, but after the period had expired ?

THE HONOURABLE MR. HOSSAIN IMAM : He then represented the matter to the Income-tax people to prove that the house did not belong to him, in fact he even submitted an affidavit to prove that the house did not belong to him, and he was free, but in the two previous years he was subjected to extortion by the Income-tax Department, because he did not know for what he had been assessed.

THE HONOURABLE SIR JAMES GRIGG : It was largely his fault for not sending in a return in the first instance.

THE HONOURABLE MR. HOSSAIN IMAM : But the house did not belong to him.

THE HONOURABLE SIR JAMES GRIGG : How did he live if he had no income ?

THE HONOURABLE MR. HOSSAIN IMAM : He was a zamindar. He was assessed to house property which belonged to other relations of his. Wrongly he was thought to be the assessee. He has not been taxed since then. But I am telling you this just to illustrate how these laws can be used to harass people.

There are others again, Sir, about which I wonder if the tightening up has been enough. I refer, Sir, to some of the companies which are branches of parent concerns in Europe. For instance, Krupp's, Siemens, Imperial Chemicals. They have a subsidiary company in India. That company, Sir, gets all its goods from the parent company and the prices charged to the subsidiary company are so high that there is practically no profit to the subsidiary company. Under these provisions, Sir, there are not only one or two companies—

THE HONOURABLE THE PRESIDENT : What section are you referring to ?

THE HONOURABLE MR. HOSSAIN IMAM : I am referring, Sir, to the fact that these incomes have not been brought in.

THE HONOURABLE SIR JAMES GRIGG : Provisions dealing with cases like that are in the existing Act.

THE HONOURABLE MR. HOSSAIN IMAM : I was told, Sir, in Calcutta—

THE HONOURABLE SIR JAMES GRIGG : You must not believe all you are told !

THE HONOURABLE MR. HOSSAIN IMAM— that there is no measure to catch them.

THE HONOURABLE SIR JAMES GRIGG : I will show you that there is.

THE HONOURABLE MR. HOSSAIN IMAM : Well, I am glad if you have got them.

Now, Sir, as far as taxation of foreign income is concerned, I am glad that the Honourable the Finance Member has accommodated the Indian by making the provision more liberal as far as they are concerned. The Bill as it was introduced allowed non-Indians greater latitude than has been permitted in the Bill as it has been passed by the Assembly. To that extent, Sir, we welcome this improvement and as far as the taxation of the Indian income on an accrual basis is concerned, there can be no two opinions, merely owing to the fact that a person is resident in India and therefore according to world practice we are entitled to tax his income which accrues in the country as well as those which accrue outside. But there is one thing to be said, Sir, that for so long these people were allowed to invest their money abroad without being taxed, therefore when you start taxing them it is only proper that you should give them some time. Also that there should be an equality of sacrifice. Not only Indians who have invested abroad should be caught and be subjected to tax but also the fact must not be lost sight of that others who are escaping taxation to the full extent should also be roped in. I refer, Sir, to double income tax relief. No doubt,

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double income-tax relief is not a new measure. No doubt it has legislative sanction. But there are certain facts, Sir, which must be borne in mind. Firstly, Sir, the Income-tax Bill of 1922 was passed at a time when the Legislatures were boycotted by the Congress as well as the Muslims. The first election under the Montford scheme was not contested.

THE HONOURABLE THE PRESIDENT : What difference does that now make ?

THE HONOURABLE MR. HOSSAIN IMAM : That makes this difference, Sir, that a House not properly constituted had given its sanction to this measure, and secondly, there was a definite statement by the then Finance Member, Sir Malcolm Hailey, that India did not stand to lose much by this double income-tax relief. Now, Sir, it has been admitted by the Honourable the Finance Member himself that it does involve a loss of more than Rs. 60 lakhs to the Indian exchequer. If a thing has been done on a wrong presumption, you as a lawyer will decide that that contract has been vitiated.

THE HONOURABLE THE PRESIDENT : It was their fault if they did not go to the Councils.

THE HONOURABLE MR. HOSSAIN IMAM : No, Sir, my contention is that even the unrepresentative Legislature which was constituted in those days sanctioned this measure on the understanding that the Indian exchequer would not lose much.

THE HONOURABLE THE PRESIDENT : But you are wrong in stating that it was unrepresentative. There were other representatives there.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, as far as I remember there were many seats which were not contested and people got in merely by luck.

THE HONOURABLE SIR DAVID DEVADOSS : Whose fault was it ?

THE HONOURABLE MR. HOSSAIN IMAM : The nation had decided to boycott these Councils.

THE HONOURABLE SIR DAVID DEVADOSS : Not the nation ; a section of the people.

THE HONOURABLE MR. HOSSAIN IMAM : A section, Sir, that you find controlling all the provinces today except one.

THE HONOURABLE SIR DAVID DEVADOSS : That is today, not 18 years ago.

THE HONOURABLE SIR A. P. PATRO : A change may come again, sooner than you anticipate.

THE HONOURABLE THE PRESIDENT : Will you please proceed with your speech ?

THE HONOURABLE MR. HOSSAIN IMAM : Now, Sir, I agree that no new concession is being granted in this double income-tax relief. It is a continuation of an old arrangement and there is a little tightening by which we might

get a little more than we were getting formerly. While I say this, I also submit, Sir, that there are certain facts which should not be lost sight of. Firstly, we had income-tax in India for the first time in 1865. Then there was no double income-tax relief. Secondly, Sir, we started again having income-tax not in 1922 but about nine or ten years before that we carried on without this double income-tax relief. Then again, there is the fact, Sir, that the British Government sanctioned relief to its own nationals irrespective of the fact whether the Government of India was prepared to grant it or not in 1916. The British Government had allowed relief to those who were paying Indian income-tax.

THE HONOURABLE SIR DAVID DEVADOSS : So did Australia grant relief.

THE HONOURABLE MR. HOSSAIN IMAM : That, Sir, was in the nature of a mutual concession. This was not a mutual concession. Double income-tax relief was granted to British traders and British business men.

THE HONOURABLE THE PRESIDENT : This may all be true, but what bearing has it on the Bill? What section do you refer to?

THE HONOURABLE MR. HOSSAIN IMAM : I say, Sir, this should not be continued now—this double income-tax relief.

THE HONOURABLE THE PRESIDENT : Not many people will be with you there.

THE HONOURABLE MR. HOSSAIN IMAM : I am asking for it on behalf of the down-trodden millions and for the 11 provinces which will get a share out of the proceeds.

THE HONOURABLE SIR DAVID DEVADOSS : You mean for the fools!

THE HONOURABLE MR. HOSSAIN IMAM : I was saying, Sir, that the British Government allowed this relief to its people irrespective of the fact whether we were prepared to do it or not. We made this double income-tax concession to the British nationals not as a condition for their investment, not as an inducement for them to continue to invest their capital but as a gratuitous relief which we granted because we had no say in the matter. It was granted on our behalf by our guardians under incorrect assumptions.

THE HONOURABLE THE PRESIDENT : But now Indians will also get the benefit under the Act.

THE HONOURABLE MR. HOSSAIN IMAM : The amount of relief which has accrued to Indians would be infinitesimal compared to the relief which has accrued to British personnel. I believe that not even 10 per cent. would come to Indians and more than 90 per cent. would go to the British. Sir, the argument has been trotted out that if we turn down this double income-tax relief, we will be attacking the sanctity of contract. Sanctity of contract is always subject to the over-riding condition of the public good. There are any number of contracts which have been broken. I live under a Government, Sir, which has broken all the contracts and customary laws which existed as far as the division of the produce or the demands from the tenants are concerned. (*An Honourable Member*: "Bihar Government"!)

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have also done the same thing. Under the Insurance Act they have broken all the contracts of the managing agency which existed at that time. A State has the supreme power of breaking a contract which is not in the public interest. Sir, people who entered the I.C.S. and other Services before 1924 had no contract to get the Lee concessions. We granted them the Lee concessions—when I say “we”, I mean our guardians—and now those concessions have become sacred. We cannot break them even in the case of those who entered the service before the inauguration of the Lee concessions.

Now, Sir, it is open to those people who are subjected to the rigours of double income-tax to get relief, and if they do not get relief, it is their own fault and the Indian exchequer should not be penalised for it. There are two or three ways in which they can get this. Firstly, the British firms who are mostly concerned in this can float their company in India. By the mere fact of getting the company registered in India and not retaining their British domicile they can escape British income-tax on the company's profits. Secondly, the British Government, which has always taken care of its people and their investment, can come to their rescue and if they do not allow double income-tax relief to these particular persons, the House of Commons can pass an Act giving them greater exemption so that they may not have to pay too much. At present, according to the Honourable the Finance Member, they are paying a higher income-tax than the Indian companies. The Honourable the Finance Member in the other place pointed out that they pay $4\frac{1}{2}$ annas as income-tax whereas Indian companies pay 3 annas, and on his own showing, if India ceases to give any relief, then they will have to pay $5\frac{1}{2}$ annas, or 3 piee more in the rupee, and he will gain 6 pies in the rupee. That is, by the payment of a lakh more by the British firms, we stand to gain Rs. 2 lakhs. The other lakh would come from the relief that would be granted by the British exchequer. Can it be questioned that the necessity for money and relief to the Indian exchequer is far, far greater than that of the British exchequer? They can disregard such a small income as Rs. 60 lakhs. It would not come to even half a million in 800 millions—one-sixteenth of one per cent. That is the percentage to the British exchequer. Whereas, to us, it would be something like one per cent.—sixteen times more. The value of each pound left from the British exchequer is sixteen times more to India than it is to the British exchequer—

THE HONOURABLE SIR JAMES GRIGG : - I do not see how.

THE HONOURABLE MR. HOSSAIN IMAM : It may be. Now, there is another thing which should be considered. This concession was not part of the original contract. At the time when the British people invested their capital, they had not this relief and therefore they cannot plead that it was a condition precedent to their investment. It was a relief granted by our guardians because they had the control in their own hands.

As far as tax on leave salary is concerned, I would like the Government to tell us whether we are taxing all the pensions payable in England which are not protected by the Government of India Act? There are any number of pensions paid by the companies and others which are not protected by the Government of India Act. I wonder if all these are being roped in. I hope they are being roped in—

- THE HONOURABLE THE PRESIDENT : What class ?

THE HONOURABLE MR. HOSSAIN IMAM : Pensions of the mercantile employees, railway employees, and others. These are not protected under the Government of India Act. It is only the pensions of the All-India Services and the Army which are protected by the Government of India Act.

Now, Sir, I should like to say a few words about the Committee of which the Honourable Mr. Chambers was a member. The Honourable the Finance Member, in the other place, said that he has adopted 48 of the recommendations of that Committee without modification, nine with modifications, that he has left over four for further consideration and has rejected six. I would like him to explain the recommendations which have been rejected or modified or held over a little more.

THE HONOURABLE THE PRESIDENT : How will all that help us in considering this Bill ?

THE HONOURABLE MR. HOSSAIN IMAM : It will help us in this way. It will tell us whether the Government have adopted all the recommendations or if they have not, what they promise to do about those which they have not adopted. It is not known which 48 recommendations have been accepted—

THE HONOURABLE THE PRESIDENT : Is Government bound to carry out all the recommendations ?

THE HONOURABLE MR. HOSSAIN IMAM : Sir, this Government is bound by nothing. At the present moment even the Provincial Governments have assumed the character of the Government of India. A ruling has been given in one of the Houses of a Provincial Legislature, I think in Madras, by the President of that House that resolutions passed even in that representative House are not mandatory. That cannot be explained in any other way but that it is a reflection of the irresponsible character of the Government of India.

THE HONOURABLE THE PRESIDENT : It is your own Government !

THE HONOURABLE MR. HOSSAIN IMAM : That is what I am saying, that they are as irresponsible as the Central Government.

THE HONOURABLE THE PRESIDENT : Then try to hurry on the Federation !

THE HONOURABLE MR. HOSSAIN IMAM : Federation will be worse ! As it is we are not so badly off as a British Indian centre, than it will be under the States Federation rulers.

I would also like the Honourable Mr. Chambers to point out whether the capital profit to which he referred in the other House, which he wanted to rope in under the original Bill, whether they have been exempted now under this amended Bill ? Speaking in the other House on pages 3385-86 of the Assembly Debates, the Honourable Mr. Chambers illustrated that there are certain kinds of capital profits which it was intended to rope in. I wonder whether they have been roped in or left out under the amended Bill. I am referring to capital profits as in the Andrew Yule case, in which we lost Rs. 2½ crores. Are those profits still free or will they be roped in in future ?

THE HONOURABLE THE PRESIDENT : That was a case of legal avoidance.

THE HONOURABLE MR. HOSSAIN IMAM : Legal avoidance is an euphemistic name for something—(*An Honourable Member* : “Fraudulent”?)—I will not go so far as to say fraudulent, but it is anything but honest.

Now, Sir, before I close my remarks I wish to say a few words about other demands which have been voiced in the other House too. What has Government done about the sterling pensions and the interest on sterling loans which are at present protected by the Government of India Act? The expert Committee had recommended that even though the interest on sterling loans at present are exempted by specific provision in the Government of India Act, it is open to the Government of India to make the interest on loans floated in future payable in India and thereby escape the provisions of the Government of India Act. We have so far heard nothing from the Government of India as to whether they accept this recommendation of the Committee.

There were other recommendations of the Committee also. It was for this reason that I asked the Honourable Finance Member to specify those which he has held over and those which he has rejected, so that we may know what are the items he has rejected, which not only Indians demanded but which even a Committee of experts unconnected with India and unacceptable to Indians also recommended. As was pointed out in the debate in the other House on the appointment of Mr. Chambers, even a man who had no connection with India, who came with an open mind, he could be more honest and a better advocate of India than those people who are paid out of Indian revenues. The Report of that Committee says—

THE HONOURABLE THE PRESIDENT : I cannot allow you to read from that book.

THE HONOURABLE MR. HOSSAIN IMAM : It is from the proceedings of the Council of State, Sir, of the 17th March, 1937, page 452. I then said :

“The Report points out that under the present Government of India Act, section 315 (4) and section 178 (3) the Indian Legislature is powerless to enact. After admitting this, or bawling this, they recommend that :

“If in spite of these considerations, it is desired to bring such interest within the scope of British Indian income-tax, this could only be done by amendment of that Act by the United Kingdom Legislature. In such an event, special machinery for the deduction of tax would need to be provided”.

This means they did not dismiss this idea as something against the canons of sound finance or something novel or preposterous. It was quite a natural desire and I wish that the Government would, even at this late date, do something to alleviate this injustice.

Then a further recommendation was :

“The view was expressed that even if non-taxability in respect of the interest on existing loans must be retained, it should be avoided in respect of any future issues by making the interest payable in India, but this is a matter of Government's financial policy”.

We want to know whether the Government have accepted this principle, that in future sterling loans will be floated on the distinct condition that the interest is payable in India so as to avoid the rigour of the Government of India Act?

THE HONOURABLE SIR JAMES GRIGG : No.

THE HONOURABLE MR. HOSSAIN IMAM : Then it is one of the rejected recommendations?

THE HONOURABLE SIR JAMES GRIGG : So far as the Government is concerned, yes.

THE HONOURABLE MR. HOSSAIN IMAM : Sir, the Government and the Honourable the Finance Member were very angry that the people did not respond and they are very wooden in their—

THE HONOURABLE THE PRESIDENT : This contingency has not arisen now. When it arises you can speak about it.

THE HONOURABLE MR. HOSSAIN IMAM : The contingency is arising from day to day, Sir. The question is whether we, who are the representatives of the people, would be justified in giving our support to the measures of Government taxation in conditions under which the Government of India rejects all our demands.

THE HONOURABLE THE PRESIDENT : But this is an amending Bill, not a consolidating measure.

THE HONOURABLE MR. HOSSAIN IMAM : It is an amending measure but the Government have got a provision about this point in this Bill too. That is why we are sorry the Government did not bring in a comprehensive Bill under which we could tackle all the questions outstanding. There is the question of section 60, under which all this exemption has been granted. The Committee has expressed a strong note—

THE HONOURABLE THE PRESIDENT : You cannot at this stage go into questions relating to other sections which are not before the House.

THE HONOURABLE MR. HOSSAIN IMAM : If you will excuse me, Sir, all these sections are being amended under this Bill. There is an amendment to section 60 of the Act provided in this Bill, clause 73, in which it is said that after the passing of this Amendment Act no notification can be made under the Act except to withdraw the concessions which exist at present. Now I wish to say that this section 60 of the Income-tax Act is a peculiar provision which has no counterpart in the British Act. The power to exempt a class or kind of income is against all democratic canons. The Government think they have done us a great service by self-denying ordinances that they will not introduce any new exemption. What we demand is that they should at once withdraw all the concessions that have been given, and if they wish to have any concessions they should get legislative sanction for them. What may have been good enough for 1922 is not good enough for 1939. The world has changed enormously. And we also hope that as we have got responsibility, a sort of provincial autonomy in the provinces, we are entitled to have a greater voice in the financial provisions of the Government of India. I am referring to section 6 of the Report at page 9 and I wish the Honourable the Finance Member to tell us what he has done with the recommendations contained therein about pensions and other things enumerated in this paragraph of the Income-tax Inquiry Report.

Sir, there were certain Indians in the other House who opposed the taxation of foreign income on the specific ground that as the Government of India was

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not willing to rope in those people who are now exempted from income-tax either by an enactment of this Legislature or by an enactment of the British Legislature we would be justified in not allowing them the power to tax Indian income abroad. I do not go so far, but I do say this much, that the attitude of the Government so far as it concerns the roping in of the exemptions of income which really accrue in India, if the Government do not mend themselves now or in the near future, it will be difficult for anyone to support their action. Barring this one provision, Sir, of double income-tax relief, I give my general support to the measure before the House.

THE HONOURABLE THE PRESIDENT: I do not think there are any more, speakers today. I will call upon the Honourable Mr. Chambers to reply.

THE HONOURABLE MR. S. P. CHAMBERS (Nominated Official): Sir, most of the speeches of Honourable Members have in general supported the Bill and I hardly think I need deal with those points on which those Honourable Members are in agreement with Government; and that I think narrows what I have to say to those points on which criticism has been made. But even among those there were one or two which were points of some detail and upon which I think it probably would be better for the discussion to proceed upon the basis of any amendment of that particular point. For that reason I will leave those points out as well.

The Honourable Rai Bahadur Sri Narain Mahtha first of all said that this was a tax-gatherer's Bill and I think by that he meant to criticise the Bill. Any Bill dealing with income-tax must of necessity be a tax-gatherer's Bill.

THE HONOURABLE THE PRESIDENT: I do not think he meant any disparagement by those words at all.

THE HONOURABLE MR. S. P. CHAMBERS: I must have misunderstood the intention of the Honourable Member's remarks. If he meant that the Bill was designed solely to get extra revenue—I can hardly think he meant that—I think that is an unfair criticism having regard to the number of clauses which give tax away and to the provisions, rather lengthy provisions, for giving relief to superannuation funds, allowing losses to be carried forward and the setting up of an Appellate Tribunal.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA (Bihar: Non-Muhammadan): What I meant was that the Bill was predominantly aimed at collecting more taxes. That was the predominating feature of the Bill.

THE HONOURABLE MR. S. P. CHAMBERS: I think even with that explanation the criticism is probably not altogether justified because of the number of clauses which do in fact give money away and improve the machinery. However, that possibly is a matter of opinion.

Then he referred to the question of allowances for wives and children and other Honourable Members referred to this matter as well. On this point the Honourable Mr. Sapru gave such an excellent reply that I do not think I need say anything; he gave just the reasons that I would have given myself. I propose to leave the matter just where the Honourable Mr. Sapru left it.

Another point was raised about the Tribunal and it was this, the proviso was objected to on the ground that it gave Government power to appoint as

accountant members persons who did not have the qualifications specified in the clause. On that point the Honourable the Finance Member gave an undertaking in the Legislative Assembly, which of course holds good here, that he would not use this proviso except on rare occasions where it proved to be definitely in the interests of the administration, that it would not be used for the purpose of packing the Tribunal with Government nominees who were not qualified accountants.

Then one or two Honourable Members raised this question of pensions paid abroad and I think the Honourable Sri Narain Mahtha said, "Why not make the pensions payable in India"? There again this is a matter which, strictly speaking, is not relevant to the Bill which is under discussion. Whether the Government of India can make pensions payable wherever they like is not a matter for me. If the Honourable Member wishes to deal with that, I presume he will raise it in the appropriate place. He cannot deal with it in this Income-tax Bill. Then I think he said that an assurance was given by Government that the exemptions under section 272 of the Government of India Act would be withdrawn. I want to make it quite clear that no such assurance was given. What the Honourable Member may be referring to was a Resolution of the Select Committee of the Legislative Assembly asking the Government to take some action in the matter, but the Government themselves did not give any assurance on that point.

The Honourable Rao Bahadur Govindachari said that this Bill was going to, or might, kill the goose that laid the golden egg or eggs. I suppose it must be geese he meant! Here again, income-tax of all taxes, is the one which is least restrictive, which imposes the least hindrance to industry and trade. That is a principle which was laid down by economists many years ago and if we must have the money, as I think Honourable Members agree we must, we may as well have it by the best possible tax and I think in this respect the income-tax is as good a tax as any other. I do not think the geese are likely to be killed. I think they will continue to lay the golden eggs, and in fact if we take, for instance, the clause dealing with the declaration of dividends by companies, I think one would agree that we were trying to get some of the geese to lay the eggs a little more regularly year by year instead of holding them up!

The Honourable Sir Ramunni Menon raised two points about the wife's income being added to the husband's income. Perhaps I might clear a possible misunderstanding. First of all the original provision in the Bill to aggregate all incomes in all cases was deleted. That was deleted in the Select Committee, so that we are not in the position that in all cases the wife's income is to be added to that of the husband's. We have only that more restricted provision which was introduced by the amending Bill in 1937, whereby the wife's income is derived from assets transferred to her by her husband that income of the wife shall be treated as the income of the husband. Where that condition prevails, the wife's income or that part of the wife's income will be treated as the husband's income for all purposes and not as her income. From that it follows that the lowest layer or slice in the slab system will not be doubled if part of the wife's income is added to the husband's income. Precisely the same point applies to the question of the allowance of Rs. 4,500 for foreign income unremitted. But it must be remembered that where the wife has a separate income—

THE HONOURABLE THE PRESIDENT: What will happen if the wife buys an estate out of pin money allowed by her husband?

THE HONOURABLE MR. S. P. CHAMBERS : I do not know whether one would regard the giving of pin money day by day or week by week or month by month as assets transferred. I have not heard of any legal opinion on it but the obvious intention is I should say that if a wife had over a period of years saved some money out of the daily allowance the Income-tax Officer would not be in a position to prove as a condition precedent to applying this section that on a specific date there was a transfer by the husband to the wife of assets.

THE HONOURABLE THE PRESIDENT : You would say that it would be difficult for the Income-tax Officer to interpret the section ?

THE HONOURABLE MR. S. P. CHAMBERS : In these circumstances it would be so difficult that he would be compelled to take what I would regard as the common sense view of the matter and to treat the income of the wife as the income of the wife.

THE HONOURABLE MR. R. H. PARKER (Bombay : Chamber of Commerce) : There is actually a case to support that view.

THE HONOURABLE MR. S. P. CHAMBERS : The Honourable Mr. Parker knows the Indian income-tax cases much better than I do. If that is so, there is no difficulty. I want to make quite clear also that where the wife has a separate income, then, of course, it is treated as separate for all purposes, it is not treated under the section as the husband's and she will get separate exemption and also deduction of Rs. 4,500 in respect of foreign income unremitted to British India.

I think an Honourable Member raised the question of the exemption of agricultural income in Indian States. Here I think he is under some misapprehension. First of all, agricultural income in an Indian State is not exempted from British Indian income-tax.

THE HONOURABLE SIR RAMUNNI MENON (Nominated Non-Official) : At present it is.

THE HONOURABLE MR. S. P. CHAMBERS : At present it is chargeable on the basis of the amounts received in British India. All that has been done is to change the basis and say that it shall be taxed whether it is brought into British India or not. In a sense it is wrong to speak of the previous exemption of such income. There never has been an exemption in the strict sense of the word. What we are trying to do is to take this on the basis of the amount arising and not on the amount brought into or received in British India, and it is suggested by a comparison with agricultural income in British India that this may in some measure be unfair. But may I remind the Honourable Member that agricultural income even in British India is not entirely exempted from income-tax ? The position with agricultural income in British India is that it is not a subject for central taxation. The provinces have the right to tax that income, and, in fact, one province, Bihar, has already imposed an income-tax—

THE HONOURABLE THE PRESIDENT : What about super-tax ? Will it be included in considering the super-tax ?

THE HONOURABLE MR. S. P. CHAMBERS : For the purpose of central income-tax agricultural income which is exempt is exempt for all purposes

and for super-tax purposes as well. Therefore, if we exempted agricultural income arising in an Indian State, we would not only be going further than the existing law of giving an exemption which does not already exist, but we should be putting agricultural income in an Indian State in a better position than agricultural income in British India, and that I submit is not justified.

Then there was one point raised by the Honourable Mr. Pantulu about income arising abroad, and it is a general point. He suggested that as the Indian Government does not protect their nationals abroad, why should we tax their income? May I mention that it is not the Indians who have been killed in Burma whom we are seeking to tax. We are seeking to tax persons resident in British India on incomes arising abroad. Those Indians who are resident abroad remain exempt from taxation from income arising abroad.

One or two Honourable Members raised the point that this was an amending Bill and not a consolidating Bill, and in particular it was suggested by my Honourable friend, I think it was Mr. Pantulu, that this might have been done in order to prevent the discussion of certain sections which the Government do not wish to have discussed. If I am wrong I may be corrected on that. But, in fact, on the very section which he quoted, section 49, if he will look at the Bill he will see that it was the subject of an amendment by clause 53 of this amending Bill. I think that in that respect the criticism is altogether misplaced.

The Honourable Mr. Kalikar said that the slab system was going to affect industry adversely. I am afraid he has stretched his imagination too much. All that we have done is to make the incidence of tax a little more equitable by making the rates go up smoothly instead of by jumps, and I cannot see how Indian industries are going to collapse because we have done that. As I have said before, if we must have money, let us have it as equitable as we can; let the incidence be as fair as possible.

I think it was the Honourable Mr. Kalikar who also said that the Bill may affect unfairly some persons who are illiterate, on this question of making the returns compulsory. I dealt with that yesterday and said that there are careful provisions to prevent that happening and I hardly think that I need repeat what I then said about the manner in which penalties cannot be imposed on illiterate persons or on persons with incomes below Rs. 3,500 if they have not had individual notice.

Now, I come to the Honourable Mr. Parker's speech. His speech struck me as being a kind of profit and loss account, a summarised profit and loss account. It was very short but he said that on these points we seem to get more money, on those the Government seem to get more money. He said that the carry forward of losses was a very good thing, but if you look at the depreciation provisions he may have to pay more tax under those, and so he did not like this one so much, and so on. I am afraid we cannot deal with the income-tax quite in that way. We have to make the thing as fair as we can, and that means that in some respects we are giving money away and in some other respects we are asking for more money.

The Honourable Sir David Devadoss raised a point about husband and wife's income but I have already dealt with that.

I think there was some difficulty about the definition of dividends which the Honourable Mr. Sapru sought to bring forward. He suggested that the present definition is not so good as the one in the original Bill. I think in some respects he has perhaps over-criticised this definition because it will not be possible under the definition merely to call profits a debenture or something

[Mr. S. P. Chambers.]

like that. The only exception of substance made is that we specifically exclude from the definition of dividend those debentures which have been issued for full cash consideration. In other words, we are excluding specifically something which in fact we would have excluded as a matter of practice. We are merely making explicit what was implicit in the original definition. We are not letting out quite so much as he thought.

Now, I come to the criticisms of the Honourable Mr. Hossain Imam. He said that this Bill seemed to fail to safeguard the interests of the small mofussil taxpayer. I think he suggested that of the three classes of assessee, these would fall in the third class—the fools. But of course I think the Honourable Sir Homi Mody was making that classification in a light vein and I hardly think that he himself expected—

THE HONOURABLE THE PRESIDENT : You need not take that part of his speech seriously.

THE HONOURABLE MR. S. P. CHAMBERS : But this point that Mr. Hossain Imam raised, the point about the small mofussil assessee, I think he intended to be taken seriously. Now, unfortunately Mr. Hossain Imam was not here yesterday and it may be that had he been here he may not have made that comment, because yesterday I explained how there were safeguards for these assessee and I do not think I need give that explanation again. Then on the question of the taxation of foreign companies with connections in British India, it was suggested that they could arrange their course of business in such a way as to avoid the tax. I should like to refer the Honourable Member in that connection to the present provisions of the Act, sub-section (2) of section 42. I shall read it as amended in the other House for the sake of convenience. The sub-section reads as follows :

“ Where a person not resident in British India carries on business with a person resident in British India and it appears to the Income-tax Officer that owing to the close connection between such persons the course of business between those persons is so arranged that the business done by the resident in pursuance of his connection with the non-resident produces to the resident either no profits or less than the ordinary profits which might be expected to arise in that business, the profits derived therefrom or which may reasonably be deemed to have been derived therefrom shall be chargeable to income-tax in the name of the resident person who shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax ”.

I think that entirely covers that point. There is thus specific provision to cover that case.

Then the point was raised several times that a number of recommendations—six it was suggested—of the Inquiry Committee were held over. Of those two at least have since been incorporated in the Bill, namely, the very important one about the Tribunal of appeal which does not appear in the original Bill and the exemption of superannuation funds. I need not deal with that any further. Then again the point was raised about capital profits such as those in the Yule case, which escape tax. I should like to say in that connection that the amended definition of dividend *plus* the provisions in clause 25 do in fact govern the position and they do enable us to tax those profits. That is all, I think, I have to say.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That the Bill further to amend the Indian Income-tax Act, 1922, as passed by the Legislative Assembly, be taken into consideration.”

The Motion was adopted.

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

The Council re-assembled after Lunch at Half Past Two of the Clock, the Honourable the President in the Chair.

Clause 2.

THE HONOURABLE MR. S. P. CHAMBERS (Nominated Official) : Sir, I move :

" That in sub-clause (b) of clause 2 of the Bill, in the proviso to proposed clause (6A) of section 2 of the Act, for the words, letters and brackets ' paragraphs (c) and (d) of this sub-section ' the words, letters and brackets ' sub-clause (c) or (d) ' be substituted."

Sir, the change is a very small one—the substitution of the word " or " for the word " and ", and there need be no discussion as to this ; it is merely a change which the draftsman has suggested.

The Motion was adopted.

THE HONOURABLE MR. RAMADAS PANTULU (Madras : Non-Muhammadan) : Sir, I move :

" That in sub-clause (d) of clause 2 of the Bill, before the proposed clause (6C) of section 2 of the Act, the following be inserted and the subsequent clauses be re-numbered, namely :—

' (6C.) A co-operative society is a society registered under the Co-operative Societies Act, 1912, or under the Act of a Provincial Legislature governing the registration of co-operative societies.'

The object of this amendment is to provide that co-operative societies should be dealt with as a separate class of assesses by themselves. Sir, as I explained to this House yesterday, we are now treated as " Associations of persons " and this has resulted in the anomaly that we are treated less favourably than companies in regard to super-tax. As I said yesterday, we have been paying a larger amount of super-tax than companies do. As I do not propose to make any other speech on my other amendment I will elucidate my point with the aid of some significant figures and I will leave it at that. In the year 1935-36, the profits of the Madras Provincial Co-operative Banks were Rs. 2,30,516, as per the Banks' return and the profits as assessed by the Income-tax Department were Rs. 3,23,935. On that basis we paid as income-tax Rs. 48,801 and as super-tax Rs. 48,654. In that connection I may say that the super-tax that would have been payable, if our Co-operative Bank was treated as a joint stock bank would have been Rs. 17,121. Similarly in 1936-37 we made an income-tax return showing a profit of Rs. 2,04,461. The profits assessed by the Income-tax Department were Rs. 2,49,007. The income-tax paid was Rs. 36,453 and the super-tax paid was Rs. 27,915. If we were a joint stock company we should have paid a super-tax of Rs. 12,438. In 1937-38 we submitted a return showing a profit of Rs. 2,02,267. The Income-tax Department assessed the profits at Rs. 2,58,260. On that we paid an income-tax of Rs. 34,207 and a super-tax of Rs. 29,916. If we were a joint stock company, we would have paid a super-tax of Rs. 14,101. In those three years we thus paid a much more, a sum of Rs. 62,825 more, than what we should have paid as super-tax if we were a joint stock company. I have later amendments in connection with taxing a co-operative society ; therefore I want a definition of co-operative society to be inserted here so that the other amendments that follow may be in order. That is the object of this particular amendment.

Sir, I move.

THE HONOURABLE SIR JAMES GRIGG (Finance Member): If the Honourable Member will allow me, I would like to make one comprehensive reply to the whole of his amendments about co-operative societies. The first three of them are only definitions and the operative amendment is the one to clause 6 which proposes to give the executive a rule-making power for the taxation of co-operative societies. Now in the present Bill there are various provisions which have been inserted in order to curb the rule-making power of the executive. That was objected to in various connections both in the Select Committee and in the other House. For example, the rules for the taxation of insurance companies have now been made statutory and not executive. In the same way, the power to tax or exempt from taxation by section 60, sub-section (1), has also been removed. I think it would be a retrograde step if we at this stage inserted in the Bill provisions enabling the executive to tax by rules. At the same time I must say that I was on the face of it impressed with the case which the Honourable Member made yesterday, and it is a case which requires investigation, and I would like to suggest to him that, in return for a promise that the whole question of the taxation of co-operative societies for income-tax shall be investigated and an assurance that, if we find that if any remedial action is required we shall take it somehow, on that basis the Honourable Member might be prepared not to press his amendments at this stage. It is quite clear that the Honourable Member himself has no specific rule of taxation to suggest and he merely proposes to insert "rule-making powers", leaving it to the executive to provide the basis of taxation hereafter. Now that, I say, is wrong in principle. At the same time, in so far as there is a case, I give him the assurance that we will do our best to meet it and I would ask him therefore to withdraw his amendments and not to press them at this stage.

THE HONOURABLE MR. RAMADAS PANTULU: Sir, I am thankful to the Honourable the Finance Member for the assurance that he has given and I would appeal to him to give us some speedy executive relief if it is possible for him under the existing Act to see that we do not pay as much as we do now.

THE HONOURABLE SIR JAMES GRIGG: The Honourable Member must not press me more than that; I have gone as far as I can promise to do. If we find that there is a case to be made out, we shall do our utmost to meet that whether by executive action or by new legislation.

THE HONOURABLE MR. RAMADAS PANTULU: I ask for leave to withdraw my amendment, Sir.

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

THE HONOURABLE MR. S. P. CHAMBERS: Sir, I move:

"That in sub-clause (b) of clause 2 of the Bill, in the *Explanation* to proposed clause (6A) of section 2 of the Act, for the word 'section' the word 'clause' be substituted."

This change is only one of form. The original word was "section"; we only mean to refer to this clause of the particular sub-section.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (d) of clause 2 of the Bill, in proposed clause (6C) of section 2 of the Act, after the words ‘ that sub-section ’ the following be inserted, namely :—

‘ and any sum deemed to be profits under the second proviso to clause (vii) of sub-section (2) of section 10 and the profits of any business of insurance carried on by a mutual insurance company computed in accordance with Rule 9 in the Schedule ’.”

The object of this amendment is to make quite sure that these two other provisions in the Bill are also included in “ income ”. The first one is the one referred to in sub-section (2) of section 10, the treatment as profits of the excess on the sale of machinery in respect of which depreciation allowance has been given. There is some doubt that without a specific reference to this in the definition of income, notwithstanding the words we have put in in section 10, which is the computation clause, this may not be, in fact, income. The same applies to profits of mutual insurance companies. In the Schedule the profits of mutual insurance companies are to be dealt with in a certain way, but it has been pointed out that mutual surplus may not, in fact, be income. Therefore, the Schedule merely provides a rule for determining the profits and is perhaps insufficient and we ought to go a step further and make sure that the intention is carried out by including that also in the definition of income.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (d) of clause 2 of the Bill, proposed clause (6E) of section 2 of the Act be omitted.”

This sub-clause (6E) defines what we mean by an Income-tax Inspector. The legal powers of the Income-tax Inspector were provided in clause 42. They were powers to enter premises. Those powers have been deleted because the whole sub-section has been deleted and therefore we no longer need to have a definition of an Income-tax Inspector. He has no other functions under the Act.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in clause 2 of the Bill, after sub-clause (d), the following sub-clause be added, namely :—

‘ (dd) in clause (9), after the word “ family ”, the words “ and a local authority ” shall be inserted ’.”

These words are necessary because the word “ person ” in the General Clauses Act does not include a local authority and as provision is made later on in the Bill for the taxation of certain profits of local authorities, we need the inclusion here in the definition.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (e) (iii) of clause 2 of the Bill, in proposed sub-clause (c) of clause (11) of section 2 of the Act,—

(i) for the words ‘ year of assessment ’, the words ‘ year for which the assessment is to be made ’ be substituted ;

[Mr. S. P. Chambers.]

- (ii) after the words and figure ' 31st day of March ', where they occur for the second time, the words, letter and brackets ' and the case is not one for which a period has been determined by the Central Board of Revenue under sub-clause (b) ' be inserted ; and
- (iii) in the proviso, the words, letter and brackets ' or the last day of the period determined under sub-clause (b) ' be omitted."

The first part of this amendment is the substitution of the words " year for which the assessment is to be made " because the expression " year of assessment " is not defined in the Act and the longer expression is used elsewhere in the Bill. For that reason, we are making the change in this sub-clause as well. The second part is put in because under sub-clause (b) the Central Board of Revenue have power to determine what is the previous year in certain special circumstances and it has been thought undesirable in such a case to allow the assessee a further option of choosing yet another period. There is already " 31st March " which is one year end and then the period which the Central Board of Revenue can determine especially for this case. Therefore, we hardly require yet a third alternative for this particular class of assesses. The third part is merely consequential upon the second part in the same amendment.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

" That in sub-clause (f) of clause 2 of the Bill, for the words ' which would be included in total income if the assessee were a person ordinarily resident in British India ', the words, figures and brackets ' wherever accruing or arising except income to which, under the provisions of sub-section (3) of section 4, this Act does not apply ' be substituted."

This is a consequential amendment in the definition of total world income. As has already been explained, foreign income is not wholly assessable. There are certain deductions including the deduction of Rs. 4,500. If we merely leave the words alone, then the expression " total world income " becomes rather obscure and therefore we have substituted words which make our meaning absolutely clear. We mean all his income wherever it arose without any deduction, either Rs. 4,500 or anything else.

The Motion was adopted.

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

Clause 3.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

" That in clause 3 of the Bill, for the word ' all ' the words ' all income, profits and gains ' be substituted, and for the words ' the total ' the words ' the total income ' be substituted."

This is a purely formal change. The expression " total income " has been defined but in the charging section, section 3, we have put in the expression " all income, profits and gains " which is somewhat inconsistent : so, we are making this clause consistent with the rest of the Act.

The Motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (a) of clause 4 of the Bill, in proposed sub-section (1) of section 4 of the Act, for the word ‘ and ’ at the end of clause (a) and at the end of clause (b), the word ‘ or ’ in both cases be substituted.”

This is another occasion when the word ‘ and ’ has been put in and the draftsman suggests that the word ‘ or ’ ought to be there. There is no point of principle involved in this change.

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That clause 4, as amended, stand part of the Bill.”

***THE HONOURABLE SARDAR BUTA SINGH (Punjab : Sikh) :** I want to say a few words on the clause itself, Sir. I oppose this clause because the following proviso has been excluded, namely :—

“ Provided further that nothing in this sub-section shall apply to income from agriculture arising or accruing in a State of India from land from which any annual payment in money or in kind is made to the State ”.

This proviso which exempted agriculturists in an Indian State and which exists now has been deleted. The position under which this exemption was originally given remains unchanged and there appears to be no justification for withdrawing this exemption. Such income is exempt in British India and following the same principle agricultural income accruing or arising in any one of the Indian States and for which any annual payment in money or in kind is made to the State should also be held to be exempt. It was said that some Provincial Governments are imposing tax on agricultural incomes but I submit that it should be left to such provinces. In my province a very large number of agriculturists have purchased land in the Bahawalpur and Bikaner States and these poor people who with great difficulty can make both ends meet will be hardly hit. It will mean double tax on agricultural produce. I am sure this is not the intention of Government. The Honourable Mr. Chambers during his reply remarked that by exempting agricultural income from the States he cannot put agriculture in the States on a more favourable footing than of British India. I fail to see how he has come to this conclusion because revenue is paid on land in the States as is done in British India and in case provinces impose a tax the same would apply to the agricultural income derived by an individual from a State.

***THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhamadan) :** I should like to say a few words, Sir. I just want an explanation. I have not been able to follow the exemption of Rs. 4,500 that has been granted in this paragraph to foreign incomes. Will the Honourable the Finance Member explain this fully ?

THE HONOURABLE THE PRESIDENT : That is entirely a different matter. What do you want explained ?

* Not corrected by the Honourable Member.

THE HONOURABLE MR. HOSSAIN IMAM : The wording, Sir, is not quite clear to a layman. Therefore I want him to explain how the foreign income up to Rs. 4,500 will be exempted.

THE HONOURABLE SIR JAMES GRIGG : I will take the simpler point first. Foreign income if remitted is taxed entirely without any exemption whatever and of the margin which is unremitted the first Rs. 4,500 will not be charged to tax. I hope that will make it clear to the Honourable Member.

As regards agricultural land in the States, I admit that, owing to the division of jurisdiction for the taxation of income, namely, that the centre taxes ordinary income, and agricultural income is taxed by the provinces, you are bound to get certain inconsistencies and inequalities between people of the same total income and the same circumstances. When the exemption of agricultural income from States was made, it was a comparatively recent grafting on to the Income-tax Act, that inconsistency was resolved in one direction whereas the original Income-tax Act resolved it in another. The argument for moving in the direction of the present Act was that agricultural income was not taxed in British India. But now that it can be taxed in the provinces, and it is being taxed in the provinces, it seems more logical to resolve the dilemma in the original sense. Incidentally the States for this purpose are the equivalent of foreign territory and agricultural income arising in foreign territory is also taxed. And on the whole the least injustice and the least unfairness taking it all round is to do what we are doing now and not what was done in the original Act. And I do not think the Honourable Member will find that in practice there is a great deal of hardship. He mentions that these people are very poor and can hardly make both ends meet. Then the income they derive from the Bikaner and Bahawalpur States must be under Rs. 2,000 and will probably not be taxed at all.

THE HONOURABLE SARDAR BUTA SINGH : They have sold their property.

THE HONOURABLE SIR JAMES GRIGG : Then it is not agricultural income.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That clause 4 stand part of the Bill.”

The Motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5.

THE HONOURABLE MR. R. H. PARKER : Sir, I have applied for sanction to move an amendment to this clause.

THE HONOURABLE THE PRESIDENT : Very well, we will take it up later on. Ordinarily under Standing Order 46 it ought to be proceeded with in the course of discussion of the clause but as the Government has no objection I understand, I shall take up this question tomorrow.

Amendment No. 12 may stand over as well as it also relates to clause 5. I think we will discuss it all together.

Clause 6.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in clause 6 of the Bill, in proposed section 5 of the Act,—

(i) in sub-section (1), the words, letter and brackets

‘ and

(e) Income-tax Inspectors ’

be omitted ;

(ii) sub-section (4) be omitted ;

(iii) in sub-section (7) before the word ‘ authorities ’ the word ‘ other ’ be inserted, and for the figure ‘ 8 ’ the figure ‘ 3 ’ be substituted ;

(iv) in sub-section (8), for the words ‘ Income-tax Officers and Income-tax Inspectors ’, the words ‘ and Income-tax Officers ’ be substituted ; and

(v) sub-sections 5, (6), (7), (8) and (9) be re-numbered (4), (5), (6), (7) and (8), respectively.”

This, Sir, is a purely consequential amendment upon the deletion of Income-tax Inspectors from the Act and there is just one other change. There was a misprint of 6 for 3 which

has been corrected also.

The Motion was adopted.

Clause 6, as amended, was added to the Bill.

Clause 7 was added to the Bill.

Clause 8.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in clause 8 of the Bill, after sub-clause (c) the following sub-clause be inserted namely :—

‘ (cc) in the existing proviso after the word “ Provided ” the word “ further ” be inserted.’ ”

This is a purely formal change.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (d) of clause 8 of the Bill, for the word ‘ salary ’ where it first occurs, the word ‘ tax ’ be substituted.”

This corrects a purely verbal error.

The Motion was adopted.

Clause 8, as amended, was added to the Bill.

Clause 8A.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That for clause 8A of the Bill, the following be substituted, namely :—

Amendment of section 8, ‘ 8A. In section 8 of the said Act to the first proviso the Act XI of 1922. following shall be added, namely :—

“ or in respect of any interest payable on money borrowed for the purpose of investment in the securities by the assessee except interest chargeable under this Act which is payable without British India, not being interest on a loan issued

[Mr. S. P. Chambers.]

for public subscription before the 1st day of April, 1938, unless in respect of interest which is so chargeable tax has been paid or deducted under section 18, or unless there is a person in British India who may be appointed an agent under section 43 in respect of such interest " '."

This change, Sir, is consequential upon an amendment made in the Legislative Assembly. Interest paid in respect of securities owned was not an allowable deduction prior to that amendment. It was given by executive action. But this was made statutory and we now seek to add to that allowance the same condition that exists in sections 9, 10 and 12 ; that is to say, in the other sections of the original Act which deal with income from property, business, and other sources, and that provision is just this, that where the interest is paid by a person abroad, unless there is machinery for collecting that tax and that interest is actually chargeable under the Act, then that deduction would not be made. This point has been accepted in principle in the other three clauses and I think it can be said to be purely consequential on accepting this amendment to clause 8A.

The Motion was adopted.

Clause 8A, as amended, was added to the Bill.

Clause 9.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

" That in sub-clause (a) of clause 9 of the Bill, in the proviso to proposed clause (iv) of sub-section (1) of section 9 of the Act, after the words and figure ' section 18 or ' the words ' in respect of which ' be inserted."

These words appear to have been left out by a mistake and they are just added to make sense of the original amendment.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

" That in sub-clause (a) of clause 9 of the Bill, in proposed clause (vi) of sub-section (1) of section 9 of the Act, for the words ' to any such part ' the words ' to any vacant part ' be substituted."

This again is a purely formal change to make the thing clear.

The Motion was adopted.

Clause 9, as amended, was added to the Bill.

Clause 10.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

" That in paragraph (vi) of sub-clause (b) of clause 10 of the Bill after the words ' his business ', where they occur for the second time, the words ' profession or vocation ' be inserted."

This is a pure drafting amendment, Sir.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (c) of clause 10 of the Bill, in proposed sub-section (4) of section 10 of the Act, the words ‘ except income-tax or super-tax paid without British India in a State or country with which British India has not made arrangements for double income-tax relief ’ be omitted.”

This is a change of substance and I think I ought to explain it a little more fully. As is, I think, well understood, an arrangement was made in connection with clause 4 on the taxation of foreign incomes and a part of that arrangement was that a deduction from the tax payable in British India should be made of half the foreign tax or half the Indian tax whichever is the lower. That is a deduction of a tax from tax. But before that clause was reached in the Assembly, this clause—clause 10—had already been passed and in this clause the foreign income-tax was to be deducted from the income assessable. Now that we have the allowance of the foreign tax from the actual tax payable, we do not need it deducted from the income which is to be charged, the greater relief in a sense having wiped out the smaller relief. For that reason I suggest that these words should be deleted and this relief withdrawn.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (c) of clause 10 of the Bill, in proposed sub-section (5) of section 10 of the Act, for the figure ‘ 1938 ’, in both places where it occurs the figure ‘ 1939 ’ be substituted.”

This is a purely formal change in the description of this Bill.

The Motion was adopted.

Clause 10, as amended, was added to the Bill.

Clause 11 was added to the Bill.

Clause 12.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (c) of clause 12 of the Bill, after the figure and brackets ‘ (vi) ’ the word ‘ and ’ be inserted.”

This again is a small drafting error which is being corrected.

The Motion was adopted.

Clause 12, as amended, was added to the Bill.

Clauses 13, 14 and 15 were added to the Bill.

Clause 16.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (b) of clause 16, after the word, figure and brackets ‘ sub-section (3) ’, the following words be inserted, namely :—

‘ for the word “ proviso ” the words “ second proviso ” shall be substituted, and.’”

[Mr. S. P. Chambers.]

This again is a purely consequential change.

The Motion was adopted.

Clause 16, as amended, was added to the Bill.

Clause 17.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (a) of clause 17 of the Bill, in clause (a) of proposed sub-section (1) of section 16 of the Act, for the word ‘ proviso ’ the words ‘ second proviso ’ be substituted.”

This again, Sir, is a consequential amendment.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (a) of clause 17 of the Bill, in clause (c) of proposed sub-section (1) of section 16 of the Act, for the figure ‘ 1938 ’ the figure ‘ 1939 ’ be substituted.”

This is a similar amendment to the earlier one.

The Motion was adopted.

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

Clause 18.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in clause 18 of the Bill, in sub-section (1) of proposed section 17 of the Act, for the words ‘ had it arisen in British India ’, in both places where they occur, the words ‘ had it been his total income ’ be substituted.”

This again is a consequential change.

The Motion was adopted.

Clause 18, as amended, was added to the Bill.

Clause 19.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (j) of clause 19 of the Bill, the word ‘ and ’, where it occurs for the third time, be omitted, and to the said sub-clause the following be added, namely :—

‘ and in the second proviso to the said sub-section,—

(i) for the words, figures and brackets ‘ sub-section (3) of section 16 ’ the words, letters, figures and brackets ‘ clause (c) of sub-section (1) or sub-section (3) of section 16, section 44D or section 44E ’ shall be substituted ; and

(ii) for the words ‘ that person ’ the words ‘ such other person ’ shall be substituted.”

This again is a purely formal change.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

"That in sub-clause (k) of clause 19 of the Bill, the word 'shall', where it occurs for the second time, be omitted."

The Motion was adopted.

Clause 19, as amended, was added to the Bill.

Clauses 20 and 21 were added to the Bill.

Clause 22.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

"That sub-clause (b) of clause 22 of the Bill be re-numbered as sub-clause (d) and that after sub-clause (a) the following sub-clauses be inserted, namely :—

'(b) in clause (a), after the word "received" the words "or to whom was due" shall be inserted ;

(c) in clause (b), after the word "received" the words "or so due" shall be inserted, and after the word "paid" the words "or due, as the case may be" shall be added ;'

The object of this amendment is to make this section in the original Bill consistent with the change made in the clause which charges salaries on the amounts received or the amounts due. This is a purely consequential change.

The Motion was adopted.

Clause 22, as amended, was added to the Bill.

Clause 23.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

"That in sub-clause (a) of clause 23 of the Bill, for the words 'whose income exceeds' the words 'whose total income during the previous year exceeded' be substituted, and for the words 'previous year' the words 'that year' be substituted."

This again is purely to clarify the drafting.

The Motion was adopted.

Clause 23.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

"That in sub-clause (d) of clause 23 of the Bill, the words and figure ' of section 22 be omitted."

This again is merely a drafting improvement.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

"That in sub-clause (e) of clause 23 of the Bill, for proposed sub-section (5) of section 22 of the Act, the following be substituted, namely :—

'(5) The prescribed form of the returns referred to in sub-sections (1) and (2) shall, in the case of an assessee engaged in any business, profession or vocation, require him to furnish particulars of the location and style of the principal

[Mr. S. P. Chambers.]

place wherein he carries on the business, profession or vocation and of any branches thereof, the names and addresses of his partners, if any, in such business, profession or vocation and the extent of the share of the assessee and the shares of all such partners in the profits of the business, profession or vocation and any branches thereof."

The object of this amendment is a very small one. The word "business" should have been followed by "profession or vocation", but it was difficult to put them in and make sense without a fairly large re-drafting. There is no other change proposed by this amendment.

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : The Question is :

"That clause 23, as amended, stand part of the Bill."

*THE HONOURABLE MR. HOSSAIN IMAM : This is one of the sections, Sir, in regard to which I wanted that the third class of assessee should get some relief. The fact that an announcement will be made in the papers asking for returns to be furnished within 60 days may not penetrate to the far-off parts in the mofussil and if people do not file the return in time they are liable to be assessed under the penalty clause unless the Income-tax Officer takes compassion on them and grants time for which you have provided. Now, what I want is that ordinarily mofussil assessees should get time after they come to know of it. You may not allow time to all the assessees who are wide awake and in the principal places of business. They are always on guard. It is the small people who are carrying on business in villages who have no access to the expert advisers and also to the newspapers who do not come to know of it until it is too late. They are told, "You have not submitted your return within the prescribed time and therefore penalty proceedings will be taken against you". What I want is that by executive action people who are genuinely far off from the centres of business should get relief. Ordinarily they should get time and they should not be penalised.

THE HONOURABLE SIR JAMES GRIGG : It was a little unfortunate that the Honourable Member was unable to be present yesterday, otherwise he would have heard from Mr. Chambers that the object of the public notice is not to relieve the executive, the Income-tax Officer, of the responsibility of sending a notice of return to all those whom he knows to be assessable. It is merely to deprive the wilfully dishonest taxpayer who does not want to send a return from putting forward the defence that he never saw the notice and the dilemma which the Honourable Member is afraid of cannot possibly happen. If there is any *bona fide* excuse, there would not be any penalty.

THE HONOURABLE THE PRESIDENT : The Question is :

"That clause 23, as amended, stand part of the Bill."

The Motion was adopted.

Clause 23, as amended, was added to the Bill.

* Not corrected by the Honourable Member.

Clause 24.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in clause 24 of the Bill, sub-clauses (a) and (b) be re-numbered (c) and (d), and that, before sub-clause (c) as so re-numbered, the following sub-clauses be inserted, namely :—

- ‘ (a) in sub-section (1), after the word “ satisfied ” the words “ without requiring the presence of the assessee or the production by him of any evidence ” shall be inserted ;
- (b) in sub-section (2), for the words and figure “ has reason to believe that a return made under section 22 is incorrect or incomplete, he shall serve on the person who made the return ” the words and figure “ is not satisfied without requiring the presence of the person who made the return or the production of evidence that a return made under section 22 is correct and complete, he shall serve on such person ” shall be substituted ’.”

This amendment is put in to implement a promise or an undertaking given in the Legislative Assembly that an amendment of this clause would be made so as to take away from the persons to whom notice has been served the stigma that they must necessarily be dishonest persons. It was suggested that those persons who received notice of return and whose returns were accepted as correct were treated as honest, but that before an Income-tax Officer could serve a notice under sub-section (2) of this section on an assessee he has in advance to assume that that assessee is dishonest, that he has made an incorrect return. The wording has been improved in this respect. The first sub-section now says if he is satisfied without requiring any further evidence or the assessee to be present, then he can accept the return, and the second one says if he is not so satisfied then he can call for such evidence as he thinks necessary. He would not necessarily assume that an assessee is dishonest before he issues a notice under sub-section (2).

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (d) as re-numbered of clause 24 of the Bill, in the first proviso to clause (a) of proposed sub-section (5) of section 23 of the Act, for the words and figure ‘ under section 24 ’ the words and figure ‘ and set off in accordance with the provisions of section 24 ’ be substituted.”

This is purely a clarification.

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That clause 24, as amended stand part of the Bill.”

***THE HONOURABLE MR. HOSSAIN IMAM :** ‘ Sir, this is one of the clauses under which the greatest iniquity is brought about and people are asked to submit any number of account books which they really do not possess. It often happens in the mofussil that Income-tax Officers ask people to produce books of accounts and other papers which are not readily available. They do not give time for bringing those papers and if a person puts in an application saying that he is unable to file the books within the time allotted, nothing is done but he is penalised. These are some of the troubles of the mofussil people which I wish to bring to the notice of the Honourable Member.

* Not corrected by the Honourable Member.

THE HONOURABLE SIR JAMES GRIGG : If the Honourable Member will allow me to bring to his notice the troubles of the Income-tax Officer in the same connection, when he serves a notice calling for certain documents, he gets a reply after some months that the documents are all in Indore or Gwalior or Pudukottah or something of that sort. If the Honourable Member finds that Income-tax Officers are a little suspicious about the excuse that papers had been mislaid and could not be produced within the time given, he had better bear in mind that that excuse is very often an invalid one.

THE HONOURABLE THE PRESIDENT : The Question is :

“ That clause 24, as amended, stand part of the Bill.”

The Motion was adopted.

Clause 24, as amended, was added to the Bill.

Clause 25.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (b) of clause 25 of the Bill, in proposed sub-section (1) of section 23A of the Act—

- (i) for the words ‘ for any year or period ’ the words ‘ in respect of any previous year ’ be substituted ;
- (ii) for the words ‘ that year or period ’, where they first occur, the words ‘ that previous year ’ be substituted ;
- (iii) for the words ‘ for that year or period ’, where they occur for the second and third times, the words ‘ of that previous year ’ be substituted ;
- (iv) for the words ‘ in previous years ’ the words ‘ in earlier years ’ be substituted, and
- (v) for the words ‘ for the year or period concerned ’ the words ‘ of the previous year concerned ’ be substituted.”

Sir, the object of this amendment is to make the wording more consistent with other parts of the Act. The expression “ the previous year ” is defined in clause 2 and without a specific reference to this term in this clause, doubt exists as to the year in which the conditions are to be applied. For this reason this amendment has been put in.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (c) after the word ‘ inserted ’ the words “ and the words ‘ firm, association or ’ shall be omitted ” be inserted ”.

Sir, this is purely a consequential change.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (e) of the Bill, for the figures ‘ 3 ’ and ‘ 4 ’ the figures ‘ 4 ’ and ‘ 5 ’ be respectively substituted.”

The Motion was adopted.

Clause 25, as amended, was added to the Bill.

Clause 26.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (b) of clause 26 of the Bill, in proposed sub-section (2) of section 24 of the Act,—

- (i) for the words and figures ‘ the year 1939-40 ’ the words and figures ‘ the year ending on the 31st day of March, 1940 ’ be substituted ;
- (ii) for the words and figures ‘ the years 1939-40, 1940-41, 1941-42, 1942-43, 1943-44 ’ the words and figures ‘ the years ending on the 31st day of March, 1940, the 31st day of March, 1941, the 31st day of March, 1942, the 31st day of March, 1943, and the 31st day of March, 1944, ’ be substituted ;
- (iii) in the second proviso, for the words, letter, figure and brackets ‘ section 23, sub-section (5), clause (b) ’ the words, letter, figures and brackets ‘ clause (b) of sub-section (5) of section 23 ’ be substituted.”

These again are purely drafting amendments.

The Motion was adopted.

Clause 26, as amended, was added to the Bill.

Clause 27.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That to sub-clause (a) of clause 27 of the Bill the following be added, namely :—

‘ and in the proviso, for the words “ or have been assessed at too low a rate ” the words “ or have been under-assessed, or have been assessed at too low a rate, or have been the subject of excessive relief under this Act but ” shall be substituted.’ ”

This is purely a formal change.

The Motion was adopted.

Clause 27, as amended, was added to the Bill.

Clause 28 was added to the Bill.

Clause 29.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That in sub-clause (b) of clause 29 of the Bill for the figure ‘ 1938 ’ the figure ‘ 1939 ’ be substituted.”

The Motion was adopted.

Clause 29, as amended, was added to the Bill.

Clause 30.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

“ That—

(a) in sub-clause (b) of clause 30 of the Bill, for the words ‘ which has been partitioned ’ the words ‘ whose joint family property has been partitioned ’ be substituted ; and

(b) to the said sub-clause, the following be added, namely :—

‘ the words “ separation or ” shall be omitted, and, in the proviso, for the words “ separated members and groups of members ” the words “ members and groups of members whose joint family property has been partitioned ” shall be substituted.’ ”

[Mr. S. P. Chambers.]

These are changes in the second sub-clause consequential upon the change made in the Legislative Assembly in the first sub-clause.

The Motion was adopted.

Clause 30, as amended, was added to the Bill.

Clause 31.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

" That in sub-clause (a) of clause 31 of the Bill, in the proposed second proviso to sub-section (1) of section 26 of the Act, for the words ' thus directly assessed cannot be recovered from a partner ' the words ' assessed upon a partner cannot be recovered from him ' be substituted."

Sir, this again is a clarification.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

" That in sub-clause (b) of clause 31 of the Bill, in the proviso to proposed sub-section (2) of section 26 of the Act,—

(i) for the words ' the assessment for the previous year only shall be made on the person succeeding him ', the words ' the assessment of the profits of the year in which the succession took place up to the date of succession, and for the year preceding that year shall be made on the person succeeding him in like manner and to the same amount as it would have been made on the person succeeded ' be substituted ;

(ii) after the words ' or when the tax ' the words ' in respect of the assessment made for either of such years ' be inserted ; and

(iii) the words ' in respect of the previous year only ' be omitted."

Sir, this is a clarification of the wording of the amendment moved in the Legislative Assembly and I think this brings out the meaning rather more clearly.

The Motion was adopted.

Clause 31, as amended, was added to the Bill.

Clause 31A.

THE HONOURABLE MR. S. P. CHAMBERS : Sir, I move :

" That after clause 31 of the Bill, the following clause be inserted, namely :—

' 31A. In section 27 of the said Act, the words " or, in the case of a company, the principal officer thereof " shall be omitted '."

Amendment of Section 27, Act XI of 1932.

This is a purely consequential change.

The Motion was adopted.

Clause 31A was added to the Bill.

Clause 32.

THE HONOURABLE MR. S. P. CHAMBERS: Sir, I move:

"That in sub-clause (a) of clause 32 of the Bill, in proviso (c) to proposed sub-section (1) of section 28 of the Act, after the words 'of that section' the words and figure 'or under section 34' be inserted."

These words were I think inadvertently omitted from the original Bill.
The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS: Sir, I move:

"That in sub-clause (b) of clause 32 of the Bill, for the word 'twice', the words 'one and a half times' be substituted."

This change is not entirely a formal change. In the first part of section 28 which deals with penalties there was formerly provision for the penalty being twice the amount of the tax; but in this subsidiary sub-section which is less important the word 'twice' was left in, and we think that the maximum penalty in this other case should be reduced to the same as in the major part of the section.

The Motion was adopted.

THE HONOURABLE MR. S. P. CHAMBERS: Sir, I move:

"That in sub-clause (d) of clause 32 of the Bill, for the letter 'b' the figure '6' be substituted."

This is just a printing change.

The Motion was adopted.

Clause 32, as amended, was added to the Bill.

THE HONOURABLE THE PRESIDENT: I will stop at this stage and adjourn the House for fifteen minutes till 4 P.M. when the Adjournment Motion will be debated. The Bill will be taken up tomorrow.

The Council then adjourned till Four of the Clock.

The Council re-assembled at four of the Clock, the Honourable the President in the Chair.

MOTION FOR ADJOURNMENT *re* RAILWAY DISASTER NEAR
HAZARIBAGH, E. I. R.

THE HONOURABLE THE PRESIDENT: No speech will exceed 15 minutes according to the Regulation.

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

"That the House do adjourn"

to discuss a matter of definite urgent public importance, namely, the train disaster near Hazaribagh Road Station. Before I go on to develop my argu-

[Mr. P. N. Saprū.]

ments, I should like to express my sense of grief which we all feel at the loss which the victims of this disaster must have suffered. It is a terrible thing to lose one's life in a disaster like this, and we all feel deeply for the members of the bereaved families and for those who have sustained injuries. Sir, I would also like to say that these train disasters must be having a great strain upon our railway staff which, generally speaking, does its work well.

Sir, we have had, as I said, another serious disaster on the E. I. R., and the locality in which the disaster has occurred is sparsely populated and hilly, and the disaster itself is as serious, if not perhaps more serious than the Bihta disaster. In the Bihta disaster there was no fire after the accident. Here there was a fire which kept burning for 36 hours. It is, therefore, impossible to get an exact number of the persons killed. The first estimate was, I think, 7 killed and 49 injured. Later on the figures given were, I think, 10 killed and 49 injured, and I think the Honourable Sir Guthrie Russell will perhaps be able to supply us with the latest figures. It must have been a very difficult task, Sir, to attempt any rescue work in the midst of the smoke and fire which were present. Now, Sir, I have got no particular theory to advance so far as the disaster is concerned. I do not know whether the disaster was due to sabotage; I do not know whether the disaster was due to any defect in the track, nor can I say that it was due to any other cause. I want, Sir, that the cause of this disaster should be ascertained by an independent inquiry, preferably by a judicial inquiry, because I have more confidence in a judicial inquiry than in a committee composed of officials and non-officials or of officials only with mere administrative experience. The usual theory put forward in cases of disaster of this nature is sabotage. Of course, here we have the Senior Government Inspector who says that the disaster was due to sabotage, and I do not forget that this very Senior Government Inspector who puts forward the theory that the disaster was due to sabotage said, in the case of the Bihta disaster, that it was not due to sabotage. Therefore, the Report of the Senior Government Inspector also should be taken into consideration. But whatever may be that Report, the point is, when you have an accident of this magnitude, it becomes the duty of every one to press for a thorough and searching inquiry into the cause or causes that have brought about the accident. Sir, we are all interested in the safety of the travelling public. The E. I. R. is our biggest Railway. Bihar has been very unfortunate so far as the E. I. R. is concerned. These accidents somehow seem to be reserved for Bihar. Why is it that Bihar has been selected for these accidents? If it is sabotage, then what is the cause of this sabotage? Is it due to some political motive? It cannot be so. Is it due to some retrenchment which has been effected in the staff or is it due to some other cause? We do not know the real cause or causes. All these, Sir, are matters which require investigation, and it is desirable in the interests of the Railway Administration itself that there should be a thorough and searching inquiry into the causes that have brought about this disaster.

Now, Sir, there are just one or two more things I should like to say, and they are these. Two trains must have passed on this track before. Some goods train also must have passed on this track before. Now, if two trains had passed before the rails could have been tampered with only after these trains had passed. According to the time-table, I think the 1-Up and the 3-Up passed half an hour before the 9-Down. Was there time for the rails to be removed during this interval of half an hour? It seems to me that it is a point which needs some consideration. Is it a fact, Sir, that there has been large retrenchment in the lower staff, and if so, is it a fact that these tracks are not well

guarded? That is another point which requires investigation. I had a letter from a very distinguished Member of this House, who is in fact the leader of our Group. I will just read out that letter so that the House may be in possession of his observations.

THE HONOURABLE THE PRESIDENT: You cannot place his views before the House.

THE HONOURABLE MR. P. N. SAPRU: No, Sir, I am adopting them as my own.

THE HONOURABLE THE PRESIDENT: If you wish that, then don't read that letter.

THE HONOURABLE MR. P. N. SAPRU: I shall say that they are also my views.

"I passed the spot of Hazaribagh incident that very night about 10 or 15 minutes before the accident, and on my way back stopped at Gaya and Dehri-on-Sone where the strong rumour was that the E. I. R. had made a big reduction in the gangmen employed on platelaying and as there was a very heavy coal traffic on both the lines, this wrong economy must result in the frequent defects in the railway track and this has been the main cause of such accidents.

Besides this the rumour I heard at Gaya was that a railway employee put fire to the coaches. Another rumour was that in order to show a smaller number of deaths to the public the railway servants burnt the dead bodies even before the inspection is made by the Government Inspector. I cannot vouchsafe for these statements but put them before you so that you may be able to use them—"

THE HONOURABLE THE PRESIDENT: That is quite enough.

THE HONOURABLE MR. P. N. SAPRU: Another point is the question of relief that was administered to the victims of the disaster. It has been stated in the press that the Bombay Mail took only a few passengers to Howrah and that it did not stop there long enough. If that is so, it is a serious reflection on the Railway authorities. They should have attached more importance to human life than to running the train to time. It really did not matter if the train got late by four hours or five hours. After all, it is not necessary that a train should always reach in time, it is more necessary that relief should be administered to the dead and injured. I hope that my Honourable friend Sir Guthrie Russell will be able to make a reassuring statement on this matter. I understand from some of the statements made that only 16 people were conveyed to Howrah by the Bombay Mail and that so far as the others were concerned the Bombay Mail did not stop there sufficiently long to take others also to Howrah. I would stress, therefore, that there is need for an independent inquiry, and when I say an independent inquiry I mean an inquiry by persons who have some experience of testing evidence, of valuing evidence; I prefer, as I said, a judicial inquiry. We have had experience of a judicial inquiry. The Bihta inquiry was an excellent inquiry. I think it was able to establish confidence in the public and I hope that the Honourable Sir Guthrie Russell will be able to reassure us on this point. I am not moving this Adjournment in a spirit of censorious criticism. I am moving it in a very different spirit altogether. I want that there should be public—

THE HONOURABLE THE PRESIDENT: You may put any interpretation you like, but it is a Motion of censure.

THE HONOURABLE MR. P. N. SAPRU : Technically it may be a Motion of censure, but that is the only way in which one can elicit information, and the real object of this Motion is to elicit information. Therefore, I would say that I would ask the Government not to look upon it as a Motion of censure ; I would ask them to look upon it as a Motion intended to secure the safety of the passenger public.

With these words, I would commend this Motion to the acceptance of the House.

THE HONOURABLE THE PRESIDENT : The Honourable Mr. Hossain Imam. If you do not speak now you will lose your opportunity.

* **THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) :** This accident happened on the 12th of this month. A Resolution was moved in the Bihar Provincial Legislative Assembly and was unanimously passed, demanding an inquiry into this train disaster. The point which came to our notice in that debate was that there is a difference of opinion between the Senior Government Inspector and the Bihar C. I. D. The Bihar C. I. D. do not endorse the remarks of the Senior Government Inspector. Now, I have before me the statement of the Senior Government Inspector on this accident. I find certain inexplicable omissions in it. Firstly, this statement does not mention the Down Patna-Bakarkhana Passenger which passed almost immediately after this disaster. There is no mention of this train. Another thing which is not understandable to me is that the 9-Up passed Chikaki according to the Government Inspector at 2-59 hours and he times the disaster at 3-14 hours at mile 210. Did it take 15 minutes to pass one mile. And the driver after this disaster inspects the scene of the accident and then goes on foot to the station and he arrives at Chikaki at 3-30 hours. A man walks after this accident, reaches the place in exactly the same time as the time taken by this train, an express train, to travel from Chikaki to the place of accident. The theory in support of sabotage is that conveniently it is reported that a spanner was missing from Chikaki. A report is not submitted before the accident but after the accident and that spanner is conveniently found at the site of the accident. The man who took it from the shed very conveniently places it back so that the theory of sabotage may be confirmed. Now, we have this unfortunate fact that fire broke out. We have definite information of four engines passing or coming to that place from the time of accident to the time the fire broke out—the 9-Up engine, then we have the Bakarkhana Down Passenger engine, a light engine and the Bombay Mail engine. All these engines and guard vans are fitted with, I am told, fire extinguishers. Were all the extinguishers available used in this disaster ? I find that there is no mention in the Senior Government Inspector's Report, and the information as far as I could gather locally was that only the fire extinguisher in the 9-Up engine was used. One could not be sufficient to quell this. The Senior Government Inspector—

(At this stage the Honourable Member began to read from a newspaper.)

THE HONOURABLE THE PRESIDENT : Are you reading from a newspaper ?

THE HONOURABLE MR. HOSSAIN IMAM : I am reading from the Report of the Senior Government Inspector.

THE HONOURABLE THE PRESIDENT : But from a newspaper ?

THE HONOURABLE MR. HOSSAIN IMAM : Yes.

THE HONOURABLE THE PRESIDENT: The Honourable Member cannot do that.

THE HONOURABLE MR. HOSSAIN IMAN: Now, Sir, my question is, what help did the Down Passenger give? The Senior Government Inspector, as he has conveniently forgotten to mention it, so he does not give the time, but our private information is that that train passed about 40 minutes after this disaster and probably when it passed the fire had broken out. The excuse of the engine driver was that he went to inform the Chikaki people of this disaster so that they may be able to send help. But that was a lame excuse. If he had taken care to ask the fireman or some one else he would have learned that the driver had already gone to Chikaki on foot and as a matter of fact he arrived there before the train reached the place of accident. If he had stayed there with his contingent of people much could have been saved. It was the gravest error on the part of the driver to pass it without rendering help when it was required.

THE HONOURABLE THE PRESIDENT: You must make allowance under such circumstances for people losing their heads.

THE HONOURABLE MR. HOSSAIN IMAM: Mr. President, the driver of the other train did lose his head but the driver of the 9-Up who had suffered did not lose his head. He was quite conscious and he went to the right place to inform without losing a single minute; he arrived there within 16 minutes of the accident according to the Senior Government Inspector. Although that is the time the Senior Government Inspector gives, 3-14 is the time when the train passed mile 210 and the crew felt a jerk and the driver applied the brake and stopped and found his train had derailed and he describes further on what had happened to the five coaches and gives further details. It is rather a strange fact that engine 1163 which was involved in this accident held the record for the E. I. R. as the best engine which has travelled long distances. The picture of this engine appeared in the *Statesman* on the very day when this accident occurred. Then, Sir, we find that, although this serious accident had happened, the Bombay Mail arrived there very late. According to the Senior Government Inspector, it arrived at 4-50, although its time of arrival was much earlier. Perhaps the train was detained to equip and take over medical aid. But the report from this side is that it did not give sufficient medical aid to those injured. Every minute that was lost in rushing up the train was really in a way making the disaster greater and greater. I had occasion, Sir, to pass through the site of the disaster about four days afterwards and I can tell you, Sir, that it is such a lonely place, almost a God-forsaken place, that it was almost impossible to attract any help from the locality. There was no habitation near by and therefore there was all the more reason why every train that passed should render first aid as far as possible and the train which did pass with medical aid was slow in giving help. I doubt, Sir, whether the time-table given by the Senior Government Inspector and by the C.I.D. of Bihar tally. The Bihar C. I. D. hold—though they have not yet given out anything about what they have come to find—but they have said this much that they do not endorse the findings of the Senior Government Inspector. They have not placed any alternative before us yet. These accidents have become too common in the Province of Bihar. This was the fourth accident of the kind in Bihar, although we have since read of a fifth accident in this morning's paper, in which two light engines collided, and six persons were killed. There is some discontent among the railway employees. That the Government will not deny. Then there is the further fact that these permanent way inspectors who are there to keep the line in traffic order and to guard it, they have either been retrenched or their gangmen have been

[Mr. Hossain Imam.]

retrenched. Some sort of discontent there is no doubt, to which reference was made by the letter of the Honourable Lala Ram Saran Das. In all these disasters no action has been taken against these people who are primarily responsible for maintaining the line in good condition. The Government, Sir, have conveniently whitewashed all the errors of their employees. We never heard anything about the Bamrauli disaster in which 7-Down was involved when it collided with a standing train near Bamrauli after the Bihta disaster. Then we had the disaster to 18-Down near Buxar very recently, in October last, and then a disaster which did not end so seriously, of a number of trains near Patna. And this was the fourth disaster since Bihta in which lives have been lost. Now we want to know what positive efforts the Government have made to prevent such occurrences. There is no doubt that this is a tall order, to ask the Government to stop this thing for which nothing can be done. But care must be taken not only to leave the line in repair, not only to allow prosecution against people who are criminally responsible, but also to create goodwill and take good work from the people who are employed. It is false economy to spend less where more expenditure should be made and spend more where retrenchment should ordinarily be made. We have, Sir, a topsy-turvy Government, where expenditure on overheads is always high, and down below there is always niggardly expenditure. The Grand Chord had so far been regarded as a safe line. There had not been any serious derailment during the past twelve years that I can remember, involving loss of human life. This 9-Up disaster has shaken the public confidence and for a few days after this disaster we found, Sir, that a number of motor buses were plying from Calcutta to Benares carrying passengers and people had become nervous even on this line which they had so far regarded as a safe line. We ask, Sir, Government not only to inquire into the immediate disaster but to take a wider outlook and to find out if they possibly can how to avoid these disasters in future. We further want, Sir, that the mere Report of the Senior Government Inspector should not be taken—I do not say that he is wrong but after all he is a human being and is liable to errors of judgment and the full facts may not have been placed before him because his statement was given only a few days after the disaster. Therefore, Sir, I ask the Government to have a judicial inquiry into the accident and the causes that have led to so many disasters on the E. I. R.

THE HONOURABLE SIR GUTHRIE RUSSELL (Chief Commissioner for Railways) : Sir, I think it may help if I intervene in the debate at this early stage and place before the House what information there is in possession of Government at the moment, or at least all the information which I can give in the limited time at my disposal regarding the accident which happened to 9-Up Express on the 12th January this year. But first I would like to express the sympathy of Government, the Railway Board and every railwayman in India to the injured and the relatives of the killed. No one knows better than I do what distress a major railway accident brings in its train. I would also endorse the remarks made by the Honourable Mr. Sapru in regard to the railway staff. I may say right away that Government, on the findings before them, are quite convinced that the cause of this accident was sabotage. This is the finding of the Senior Government Inspector, the statutory authority for inquiring into railway accidents. His finding, which has been published, reads as follows :

“ There can be no doubt as to the cause of the accident. A rail had been deliberately opened out and moved out of position. The fastenings of the rail were found to be opened out and had been left lying near the respective joints. The police authorities have accepted this conclusion and are now investigating ”.

It will be seen that the Senior Government Inspector states that the Bihar police have accepted his finding. On what evidence did the Senior Government Inspector and the Bihar police arrive at this finding? To explain this, I am afraid it will be necessary to enter into rather technical details and if I could have been provided with the blackboard, which we are all familiar with from our schoolhood days, it would have been a great help to illustrate my points but even without this facility I trust I shall make myself clear to Honourable Members.

At the site of the accident the track is laid with what are called 100-lb. double-headed rails, that is, the rail weighs 100 lbs. per yard; each rail is 36 feet long and, therefore, weighs over half a ton. The rails are laid on what are called D. & O. plate sleepers, and this is of special importance. A sleeper comprises two plates. The plates are rather like inverted and elongated soup plates and these plates are held together by a tie bar which keeps the track in gauge. The rails are fixed to the plates by two jaws, the outer jaw being fixed to the plate and forming part of the plate, and the inner jaw being a loose jaw the bottom of which is housed in two slots and held in position by what is called a cotter, that is, a flat tapered pin. Each end of the rail is attached to the end of the next rail by means of fish plates one on either side of the rail. The fish plates are held to the rail by four fish bolts and nuts. If the fish plates, loose jaws, etc., are removed the rail will fall on its side towards the centre of the track. This is actually what happened in the accident which took place at Bhadaura on the 16th October, 1938, whereas, in this accident, not only had the rail fallen inside but it had been actually shifted two feet towards the centre of the track. Here, after the accident, at one end of the rail a fish plate was found on the track together with four fish bolts and nuts all uninjured. At the other end of the rail one fish bolt and nut were found together with one fish plate uninjured. All the 14 loose jaws were found at the side of the track uninjured together with 10 of the cotters which I have already mentioned. It was quite impossible for the fish plates, fish bolts, loose jaws and cotters to have been removed except by human agency. If the rail had been forced out as a result of the accident, the fish bolts must have shown signs of damage. They must have been sheared through or they must have broken.

Now, I think it was the Honourable Mr. Sapru or the Honourable Mr. Hossain Imam who raised the question of whether there was time to do this between the passage of the trains. Actually there was an interval of one hour between the last train which passed over the damaged track and the derailed train 9-Up, and on the down line a train passed about 10 minutes or a quarter of an hour before the accident. Actually, what was done could have been done within 10 minutes. Further, the miscreants could have done half the work and there was a convenient culvert close to the site of the accident where they could have hidden. Now, could the rail have been removed after the accident? In other words, could the rail have been "planted?" It is possible that this might have been done by a gang of men, but it would have taken them a very long time. Actually, the whole train had passed over the gap except the last coach. The end bogie of that coach was standing on the rail just before the removed rail, and thus was right over the rail which had been taken out of the track making access to this impossible.

THE HONOURABLE MR. HOSSAIN IMAM: How did the engine pass?

THE HONOURABLE SIR GUTHRIE RUSSELL: I will come to that. Actually, there was nobody to do the work and, in any case, surely some

[Sir Guthrie Russell.]

passengers would have noticed men removing this rail and placing it where it was finally found. The accident occurred at 3-04 in the morning according to the driver, not at 3-14 as suggested by the Honourable Mr. Hossain Imam.

THE HONOURABLE MR. HOSSAIN IMAM : That was published in the papers.

THE HONOURABLE SIR GUTHRIE RUSSELL : The paper must be wrong. The Senior Government Inspector, after going into the whole matter, has now assessed that the accident occurred roughly one minute or two minutes past three. There was nobody there to do this planting. The only railway people there were the driver of the engine, his two firemen and the guard. Immediately after the accident the driver went back to Chikaki station to give warning and to summon help. One of the firemen was sent ahead to protect the up line and the other remained with his engine. The guard was seriously injured and he could have done nothing.

The point was raised by the Honourable Mr. Hossain Imam as to how the engine got across the gap, and that is one of the features of this accident. The width of the gap is 36 feet and the train, at the time of the accident, was travelling at 55 miles per hour. At that speed the engine would have taken just under half a second to get across. The track was straight and there was no reason that the engine should sway either to right or left, and the right hand wheels remained on the rail. The distance between the outer edges of the flanges of the engine wheels is such that the wheels could ride on the top of the outer jaws of the sleeper of which there were 14. It may be asked why did not the tender also cross the gap. The reason for this is obvious. The engine smashed the jaws and there was nothing for the tender to ride on ; it therefore derailed and pulled off the coaches following.

THE HONOURABLE MR. P. N. SAPRU : How can the coaches catch fire ?

THE HONOURABLE SIR GUTHRIE RUSSELL : If you wait a minute, I will come to that.

THE HONOURABLE MR. HOSSAIN IMAM : Was it travelling at 55 miles an hour even after the restrictions ?

THE HONOURABLE SIR GUTHRIE RUSSELL : I will try and answer all your questions. I do not say that this would happen in every case. But wonderful things do happen in railway accidents. I know personally of a case where the fish plates and all the keys had been removed from two lengths of rail and at least five express trains had passed over the track and not one of them was derailed and no damage was done and no one knew anything about it till a gang man discovered it the next morning.

Now, in further support of this theory of what happened, the right hand wheels of the locomotive were entirely unmarked, whereas the left hand wheels definitely showed that they had come into contact with the jaws and ballast and the leading bogie wheel was marked where it hit the rail head beyond the gap. I may say that in derailments, signs of derailment always appear on the wheels which are derailed. As other evidence of the impossibility of the rail having been removed deliberately and "planted" after the accident, some details of what happened after the accident may be of interest. 83-Up Ranchi Passenger which has been referred to arrived at the scene of the accident

about 40 minutes after the accident took place. That train had been detained at Hazaribagh Road and the station master gave a caution order to the driver telling him to look out for 9-Up, which was late, and to see what had happened to it and then go on to the next station and report. When he arrived near the site of the accident he was stopped by the fog signals laid by the fireman of the derailed train, with whom he discussed the position. He then went on with the fireman and again stopped opposite the engine of the derailed train. It would not have been possible for him to stop opposite the train itself because by then the train was on fire and he would have endangered his own train. He had a consultation with the guard. He did not meet the engine driver of the derailed train because the latter had gone on to Chikaki. He then decided, as he had nobody on his own train who could render any real assistance, that the correct thing to do was to go on; and in this I think he probably did right. If he had stayed where he was, he would have blocked the line and 4-Up could not have come up and 4-Up did bring relief.

Immediately after 83-Up arrived at Chikaki, the station master, together with the guard of a goods train which happened to be standing there, and two porters left by a light engine for the site of the accident. The next train to arrive was 4-Down Mail. That left Hazaribagh Road at 4.31 and arrived at the site of the accident at 4.50 bringing with it the permanent way inspector and his wife, who is a trained nurse; the station master, Hazaribagh Road; the head mistry and a gang of coolies and two constables of the Government Railway Police; a sub-assistant surgeon with a compounder and hospital orderly with sufficient medicine and dressings to deal with 100 persons. That is the train that would have been delayed if the guard and driver of 83-Up Passenger had decided to stay at the site of the accident. This train, 4-Down Mail, embarked a certain number of passengers and 15 injured persons and proceeded to Gomoh, where the passengers were given medical attention.

The next train to arrive at the site of the accident was the relief train from Gomoh. That was the general breakdown train which is always ready at locomotive headquarters to go out to accidents. This train left Gomoh at 5.15 and arrived at the site at 6.45. It brought with it the assistant superintendent, way and works, running shed foreman, station master, sub-assistant surgeon, one dresser, medicines and dressings, permanent way inspector, head train examiner, Officer in charge of the Government Railway Police, Gomoh, a sub-inspector of the Government Railway Police, 8 constables and 35 coolies.

The Asansol relief train arrived at the site of the accident at 9.10, with the Divisional Superintendent, the District Medical Officer and other Divisional officers. This train had stopped at Dhanbad to pick up civil officials and further police. It stopped also at Gomoh so that the District Medical Officer could make a further examination of the injured. Finally, the General Manager, the Chief Engineer, the Chief Mechanical Engineer and the Senior Government Inspector arrived by special train from Calcutta at 15.15.

THE HONOURABLE THE PRESIDENT: Your statement is of great public importance and interest. Though I have no power to extend the time allowed you, I want you not to cut down your observations as your speech is very important. I shall take the sense of the House and I have no doubt they will allow you further time to complete your statement.

Is it your wish that further time be given to the Honourable Sir Guthrie Russell to make his observations?

(Several Honourable Members expressed assent.)

THE HONOURABLE THE PRESIDENT : You can now, Sir Guthrie, speak as long as you like.

THE HONOURABLE SIR GUTHRIE RUSSELL : Thank you, Sir.

Well, I trust that what I have said just now gives the Honourable Members more or less a picture of what actually happened after the accident and also before the accident. I have deliberately given these details because I want to show that the theory that things had been rigged up after the accident is an impossible one. There were no people there to do it. When a gang of coolies arrived, the police arrived with them, and surely no one is going to accuse the police of helping a gang of railwaymen to rig an accident. Another significant point is that this is the third serious accident which has happened on the E. I. R. in the last seven months ; that is not including the attempted derailment which happened a week ago. The other two cases have been definitely shown to have been sabotage. That finding has been accepted without question, the one by the Bihar police and the other by the United Provinces police. The technique adopted in each case has been practically the same.

I think it was my Honourable friend Mr. Hossain Imam who put forward the theory that it was on account of staff reductions that these accidents were taking place. Well, Mr. Bell, the General Manager of the E. I. R. was here the other day and I specially asked him if reductions had been made in gangmen, and he definitely told me that no reductions had been made since 1929 ; if anything, he thought the gangs had been increased.

Now, Sir, I will not keep you much longer, but probably the most important thing in the speeches of the Honourable Mr. Sapru and the Honourable Mr. Hossain Imam was the question of an inquiry. Now one of the Honourable Members said that the Bihar Assembly had unanimously passed a Resolution on the 19th of this month demanding an inquiry into the cause of the accident, the inquiry committee to be appointed by the Government of India. I may say that up till just roughly two hours ago no communication had been received from the Bihar Government. Then this telegram was handed to me, which I shall read. It says :

“ Legislative Assembly passed Resolution on 19th January advocating appointment of impartial tribunal to inquire into causes of recent railway disaster near Hazaribagh Road. Provincial Government feel that such an inquiry is very desirable in interest of all concerned and support the Resolution strongly. They trust Government of India will agree to it. Letter follows ”.

I can assure the House that the Government of India will give the most earnest consideration to this request of the Bihar Government. As I have already mentioned, we have received the preliminary Report of the Senior Government Inspector. This has been published, but it was only in the early hours of this morning that I got the Senior Government Inspector's final Report. This will immediately be placed before Government and they will consider that along with the communication which has been promised by the Bihar Government.

Now, Sir, I do not think I have very much more to say, but I would suggest, in view of what I have said about the accident, in view of the present position as regards a committee of inquiry and also as I know from what he has said that the Honourable Mr. Sapru does not wish to move a vote of censure, that he should withdraw his Motion and I hope he will do so.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) :
What is the number of the dead ?

THE HONOURABLE SIR GUTHRIE RUSSELL: 21 were killed and 71 injured.

THE HONOURABLE MR. HOSSAIN IMAM: What about the fire extinguishers, nothing has been said about them.

THE HONOURABLE SIR GUTHRIE RUSSELL: I am sorry. I had actually made a note of that. They could not get the water from the engine of the train itself. There were no buckets or probably only one or two on the train. The average fire extinguisher is useless except to put out a small fire. A theory as to the cause of the fire is that the grass and country round about there is like tinder. Passengers were looking for their goods under the coaches and were lighting matches, and also a number of kerosene oil tins were found and that may have helped the fire. As far as 83-Up is concerned that did not arrive till 40 minutes after the accident when the fire was raging. Again it was unsafe for the engine to get in front of the burning debris; and water would again have had to be carried by buckets which would have been quite useless.

THE HONOURABLE THE PRESIDENT: Mr. Sapru, under the circumstances would you agree to withdraw your Motion?

THE HONOURABLE MR. P. N. SAPRU: In view of the fact that earnest consideration is to be given to the request from the Bihar Government for an impartial inquiry, I would agree to withdraw the Motion.

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

THE HONOURABLE THE PRESIDENT: The Council will now adjourn to Saturday, the 28th January at 11 A. M. when the Income-tax Bill will be proceeded with.

The Council then adjourned till Eleven of the Clock on Saturday, the 28th January, 1939.