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THE

LEGISLATIVE ASSEMBLY DEBATES

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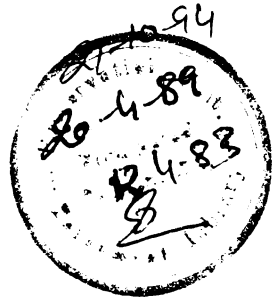
(6th March to 26th March, 1940)

ELEVENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,

1940



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Legislative Assembly

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LEGISLATIVE ASSEMBLY

Tuesday, 19th March, 1940.

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

STARRED QUESTIONS AND ANSWERS

(a) ORAL ANSWERS.

INDIAN OFFICERS IN THE GOVERNMENT OF INDIA DEPARTMENTS AND ITS ATTACHED OFFICES.

†448. *Bhai Parma Nand: (a) Will the Honourable the Home Member please state the number of Indian officers in each of the Departments of the Government of India and its attached offices located at New Delhi and Simla?

(b) How many of these are Hindus, Muhammadans, Sikhs and others?

(c) What percentage of representation is enjoyed by each community over the appointments now reserved or held by the Indians?

(d) What does he propose to do to bring up the percentage of communities which have got either no representation or very much less than their due share in each of the Department or offices?

The Honourable Sir Reginald Maxwell: The information is being collected and will be laid on the table in due course.

MOVE OF THE MIGRATORY PORTION OF THE IMPERIAL SECRETARIAT TO SIMLA.

†449. *Bhai Parma Nand: Will the Honourable the Home Member please state:

(a) what date has been fixed for move to Simla this year for the migratory portion of the Imperial Secretariat;

(b) whether it was originally intended to move up the migratory portion of the Secretariat to Simla sometime in May and move down to Delhi sometime in the beginning of September, i.e., to stay in Simla for only four months;

(c) whether he intends adhering to the decision originally announced in regard to Government's stay in Simla; if not, why not;

(d) up to what rank the officers of the Imperial Secretariat are moving up, and who are being permanently located in Delhi;

(e) whether it was ever the intention of Government to keep down the officers up to the rank of the Deputy Secretaries, and why that could not be followed; and

†Answer to this question laid on the table, the questioner being absent.

- (f) when it is proposed to keep down the officers up to the rank of Deputy Secretaries at least in Delhi; if not, what are the difficulties?

The Honourable Sir Reginald Maxwell: (a) 20th April.

(b) and (c). No. I invite the Honourable Member's attention to the Press Communiqué issued on the 25th May, 1939, in which it was stated that the stay of the Government of India in Simla will be reduced to about 4 or 4½ months. No decision was taken as to the exact date of the move.

(d) Officers of the rank of Under Secretaries and above are moving to Simla, with the exception of such Under Secretaries as are required for the supervision of the office staff in Delhi.

(e) No.

(f) There is no such proposal. Government are satisfied that it will be necessary for the prompt and efficient despatch of business to require Deputy Secretaries to move to Simla.

RECRUITMENT AND PROMOTION OF WARRANT OFFICERS IN THE SUPPLY AND ORDNANCE BRANCHES OF THE ARMY.

†450. ***Sardar Sant Singh:** (a) With reference to the reply to starred question No. 184 given on the 26th February, 1940, will the Defence Secretary please state the facilities provided by Government for the training of the Indian Military Assistant Storekeepers recruited as Warrant Officers, Class II in 1933, and thereafter to make them eligible for promotion to Class I? If none, why not?

(b) Were these Indian Military Assistant Storekeepers informed at the time of their recruitment or later on, that they will be promoted to Class I only after passing the course at the Indian Ordnance Corps Training Centre, Jubbulpore? If so, when and if not, why not?

(c) Has any course been prescribed, or laid down so far for the training and promotion of Warrant Officers from Class II to Class I? If not, why have Government taken so much time to lay down the courses for their promotion, and when do they propose to announce them?

(d) Is the Honourable Member prepared to see that suitable and qualified Indian Military Assistant Storekeepers are given promotion to Class I from the date from which their colleagues of other services have been promoted and complete the full required strength of Class I early? If not, why not?

Mr. C. M. G. Oglvie: (a) Courses of instructions at the Indian Army Ordnance Corps School are provided.

(b) No. Government orders of 1935 provided that promotion to Warrant Officer, Class I, would be after eight years' service. No Military Assistant Storekeeper has yet eight years' service.

Revised orders of 1939 provided that Warrant Officers, Class II, would be promoted to Class I if selected when they had passed the prescribed departmental tests.

†Answer to this question laid on the table, the questioner being absent.

(c) A syllabus was in course of preparation but since the outbreak of war, departmental examinations have been held in abeyance and special courses of training have been prescribed.

(d) Since the postponement of departmental examinations, orders have been issued to the effect that Military Assistant Storekeepers, Class II, may be promoted to Class I provided they are considered suitable and fit to carry out the duties of a storeholder.

UNEMPLOYMENT AMONG EDUCATED CLASSES.

451. *Mr. H. M. Abdullah: (a) Will the Honourable the Home Member be pleased to state whether Government are aware of the acute unemployment among educated classes?

(b) How many officials, officers and clerks, in the Government of India offices, located at Simla and/or Delhi have been re-employed after retirement or retrenchment or have been granted extensions of employment?

(c) On what grounds do Government justify the continued employment of these officials, and how do they reconcile this practice with the desirability of affording avenues of employment for youngmen?

The Honourable Sir Reginald Maxwell: (a) Yes.

(b) and (c). The required information is being collected and will be laid on the table of the House in due course.

NON-PROMOTION OF A MUSLIM AS ASSISTANT FINANCIAL ADVISER IN THE MILITARY FINANCE DEPARTMENT.

452. *Mr. H. M. Abdullah: (a) Will the Honourable the Finance Member be pleased to state whether any Muslim has been promoted to the post of Assistant Financial Adviser in the Military Finance Department since this post was created several years ago?

(b) If the answer to part (a) be in the negative, are Government aware that it is time that an effort were made in this direction to give the Muslim community a share in the bestowal of official patronage?

(c) Is it a fact that several members of the other Indian communities have held and are at present holding the appointment of Assistant Financial Adviser?

(d) If no suitable Muslim is available in the Military Finance Department, are Government prepared to appoint a Muslim from the Defence Department Secretariat, Army Headquarters or Air Headquarters, bearing in mind the fact that the expenses of these offices are met from the same source *viz.* Defence Budget, and the nature of work performed is similar?

The Honourable Sir Jeremy Baisman: (a), (b) and (d). Appointment to the post of Assistant Financial Adviser, Military Finance, is made by departmental promotion on considerations of merit and efficiency or from the Military Accounts Department and the "Pool". Officers with adequate financial training only can be appointed to this post, but I might add for the Honourable Member's information that last year a Muslim officer of the Military Accounts Department was appointed as Assistant Financial Adviser and a Muslim officer of the "Pool" is now under transfer to this post.

(c) Yes.

NON-PROMOTION OF A MUSLIM AS ASSISTANT SECRETARY OR OFFICER SUPERVISOR IN THE DEFENCE DEPARTMENT OR ARMY HEADQUARTERS.

453. *Mr. H. M. Abdullah: (a) Will the Defence Secretary be pleased to state whether any Muslim has been promoted to the posts of Assistant Secretary or Officer Supervisor (or equivalent post) in the Defence Secretariat, Army Headquarters or Air Headquarters (i) during the last 20 years and (ii) since the advent of the British rule in India?

(b) If no Muslim has ever been allowed to hold such an appointment during the last two or three decades are Government aware that it is time that an effort were made to redress the Muslim grievance?

(c) Is it a fact that at least half a dozen men of the other Indian communities are at present holding the appointment, permanent or officiating, of Officer Supervisor in the Army Headquarters?

(d) Is there any system under which the names of suitable Muslims are brought to the notice of the appointing authorities on the occurrence of such vacancies, and is there any central organisation to consider the whole matter from a broad angle?

(e) If the answer to part (d) be in the affirmative, is the Defence Secretary convinced that the system has been followed in the past and, will he kindly state how many Muslim names have been considered for such appointments during the past five years?

Mr. C. M. G. Ogilvie: (a) The post of Officer Supervisor has only been in existence since 1923. At present only three Officer Supervisors are Indians. None of these is a Muslim. There is only one Assistant Secretary in the Defence Department. No Muslim has yet been appointed to this post.

(b) Government cannot agree that there are grounds for a grievance.

(c) Yes, three Indians and four Anglo-Indians.

(d) When a vacancy occurs, the appointing authority who is the head of the Branch concerned considers the Superintendents serving at the time and selects the most efficient irrespective of his community. There is no central organisation for selection.

(e) The answer to the first part of the question is in the affirmative. As regards the second it is impossible to say how many Muslims have been considered for such appointments.

Dr. Sir Ziauddin Ahmad: Is it a fact that the Military Department observes the recommendations laid down in the Government of India Resolution of 1934, that is, 25 per cent. reservation for Muslims?

Mr. C. M. G. Ogilvie: As regards the Defence Department, yes.

Dr. Sir Ziauddin Ahmad: They observe it?

Mr. C. M. G. Ogilvie: Yes.

**PROFITS FROM THE WORKING OF THE ENEMY SHIPS SPENT ON THE
DEVELOPMENT OF INDIAN MERCANTILE MARINE.**

454. *Dr. Sir Ziauddin Ahmad: (a) Will the Honourable the Finance Member please state whether it is a fact that Government received £3,790,192-19-8 resulting from the work of Enemy Ships under the control of India Office up to March 1922?

(b) Is it not a fact that Sir Basil Blackett in his speech said that the profit of 3½ millions was made from the control of Enemy Ships belonging to India?

(c) Is it not a fact that the Scindia Steam Navigation Company wrote to the Secretary, Indian Mercantile Marine Company, on the 24th January 1924, that the money so realised should be spent on the building up and development of Indian Mercantile Marine Company?

(d) How did Government spend the amount? Is it lying in Suspense Account? If so, how do Government propose to utilise this amount?

The Honourable Sir Jeremy Raisman: (a) to (c). Yes.

(d) The net profit which turned out to be £3,718,002 was credited to revenue.

Dr. Sir Ziauddin Ahmad: May I ask when it was credited to revenue, and why was it credited?

The Honourable Sir Jeremy Raisman: It was credited in the years 1923-24—£1,675,000; 1924-25—£1,650,000; 1925-26—£393,002. If the Honourable Member will refer to the Budget speech of Sir Basil Blackett—I think it was the year 1924-25—he will find an explanation of how this amount was treated, and why.

Dr. Sir Ziauddin Ahmad: The Government of India's attention was drawn to this by the Scindia Steam Navigation Company on the 24th January, 1924. Did Government give any reply to this?

The Honourable Sir Jeremy Raisman: Government did reply to the proposal at that time.

Dr. Sir Ziauddin Ahmad: Was it the reply that the Government of India are not willing to spend the amount on the development of the Indian Mercantile Marine, but wanted to appropriate the money?

The Honourable Sir Jeremy Raisman: The reply was that items of revenue must be credited to revenue and not ear-marked for specific purposes, and that the question of assistance to the Indian Mercantile Marine must be dealt with separately, and any sums required must be voted separately by the Assembly.

ASSESSMENT VALUE OF HOUSES AND SHOPS IN THE KASAULI CANTONMENT.

455. *Bhai Parma Nand: Will the Defence Secretary be pleased to state:

- (a) if it is a fact that, in the newly prepared house tax assessment list of houses and shops at Kasauli Cantonment, the assessment valuations of most of the houses and shops have been fixed at twice or even thrice their annual renting values;
- (b) whether Government are aware that there is a great difference between the assessment valuations fixed now and the valuations of any of the previous years.
- (c) if it is a fact that in recent years both the market value and the annual renting value of the house property at Kasauli has gone down very much, so much so that during the last two years a good many houses remained vacant as there was no demand for them;
- (d) whether Government are aware that a good deal of sensation has been created at Kasauli owing to the excessive assessment;
- (e) if Government are prepared to place the copies of the new assessment list and the last assessment list on the table of the House which will show the difference between the two; and
- (f) what action, if any, Government are prepared to take in the matter to allay the apprehensions of the people concerned?

Mr. C. M. G. Ogilvie: I am collecting the information and will lay it on the table in due course.

DEMANDS OF THE SECRETARIAT STAFF PERMANENTLY LOCATED IN NEW DELHI.

456. *Bhai Parma Nand: (a) Will the Honourable the Home Member please state the concessions by way of extra casual and closed holidays, as also the grant of allowances, etc., which were asked for by the Imperial Secretariat Association for such of the staff which has been permanently located at New Delhi, and which demands have so far been acceded to and which are still outstanding or are under consideration and why?

(b) Is he aware that such of the Secretariat staff who have been permanently stationed at New Delhi consider it a breach of unwritten agreement or condition of their service whereby they have been deprived of not only the healthy climate of Simla but of many other allowances and concessions which they used to enjoy at Simla by way of free accommodation, etc.?

(c) Is he also aware that, by their location at New Delhi, they will hereafter be required to pay house rent for full twelve months as against six months they used to pay previously?

(d) Is he further aware that one of the reasons usually advanced by Government for the rejection of requests from the Imperial Secretariat Association and others for the grant of as many holidays as are enjoyed by the staff of the Government of the Punjab or Delhi Government, has been that the Government of India Secretariat enjoyed so many other

concessions, such as, Simla move, and that if holidays were not observed in the Secretariat on those lines, it did not matter? If not, what were the other reasons for not acceding to their requests previously, and what are they now doing?

(e) Is he further aware that many of the staff who have been permanently located in Delhi had been moving to Simla for the last 15 to 25 years and are now in a fix how to put up with the scorching heat of Delhi?

(f) Is he aware that many of their children were born and brought up in cool climate and that they entertain fear about sickness in the family entailing burden and more expense on that account?

(g) Is he also aware that they will be required to meet expenses in respect of conveyances and drinks in the summer?

(h) Is he aware that, by the stoppage of this move, many of the staff will be obliged to send their families to hills for some time at least which means extra burden on their income?

The Honourable Sir Reginald Maxwell: (a) It has been decided that 15 days' casual leave and all the local holidays falling during the months of May to September will be admissible to non-migratory staff in Delhi. As regards allowances I would refer the Honourable Member to the reply given by the Honourable the Labour Member to part (b) of starred question No. 446 on the 18th instant.

(b) It has been so stated in a representation submitted by the Imperial Secretariat Association.

(c) The Honourable Member is referred to the reply given by the Honourable the Labour Member to part (a) of starred question No. 311 on the 8th instant.

(d) No. The reason was that it is preferable to have a smaller number of real holidays than to have a large number of nominal holidays.

(e) The reply to the first part of the question is in the affirmative. As regards the second part, I am not aware that this is the case.

(f) I have no reason to suppose that there are apprehensions of this kind.

(g) Yes.

(h) I have no information. The staff remaining in Delhi will be in the same position in this respect as other non-migratory staff has been hitherto.

GRANT OF A SUMMER ALLOWANCE TO THE SECRETARIAT STAFF PERMANENTLY LOCATED IN NEW DELHI.

457. *Bhai Parma Nand: (a) Will the Honourable the Home Member please state what the approximate savings to Government would be during 1940-41 and each year thereafter on account of the location of the Secretariat staff at New Delhi, which they would have otherwise been required to pay to the staff by way of travelling allowance, Simla house rent, rent-free quarters, and other local allowances?

(b) What would be the expense if they had agreed to pay a small allowance for the hot weather only to such of the staff who have been located permanently at Delhi in order to meet extra burden on their purse?

(c) What would be the expense yearly for paying summer allowances to such of the staff until they retire?

(d) Will he please state the cases in which Government made appointments in higher grades of the Government of India, Federal Public Service Commission and other offices, in which written or unwritten and implied condition about their move to Simla was given and on written or unwritten representations from such of the officers, Government had to permit the officers to move up to Simla?

(e) Is he prepared to consider the desirability of affording some relief to such of the staff of the Secretariat who have been deprived of privileges on the violation of an implied condition of service about their move to Simla, by way of granting them some allowances for summer season at least? If not, why not?

The Honourable Sir Reginald Maxwell: (a) The approximate savings will be Rs. 8 lakhs.

(b), (c) and (e). A representation has been received from the Imperial Secretariat Association praying for the grant of a compensatory allowance and is under consideration. The cost of such an allowance cannot be calculated at this stage.

(d) There are no such cases.

GRANT OF MORE HOLIDAYS TO SECRETARIAT STAFF.

†458. ***Bhai Parma Nand:** Will the Honourable the Home Member please state whether he proposes to sanction the grant of more holidays to the staff as asked for by the Imperial Secretariat Association? If not, why not?

The Honourable Sir Reginald Maxwell: I would refer the Honourable Member to the reply which I have just given to part (a) of question No. 456.

LOCATION OF THE ARMY HEADQUARTERS IN NEW DELHI.

†459. ***Bhai Parma Nand:** (a) Will the Defence Secretary please state if the location at New Delhi of either the whole of the Army Headquarters or a part thereof on the lines of the Civil Secretariat was ever considered? If so, when and with what results on each occasion? If not, why not?

(b) Is he aware that while moving from Simla down to Delhi, the authorities did not allow any joining time to almost the whole of the staff of the Army Headquarters who were ordered to join office at New Delhi on the following day? Was it because of the war emergency?

†Answer to this question laid on the table, the questioner having exhausted his quota.

(c) Is it a fact that, Delhi being a station from where access or approach to all places in India is easier than from Simla, it was considered as the best station for transaction of Government business during emergencies and so the Army Headquarters as a whole moved down?

(d) Is he aware that some of the branches of the Army Headquarters used to stay as a whole in Simla for the whole of the year? If so, why could not all of such branches of the Army Headquarters or parts thereof, be located at New Delhi?

(e) What were the circumstances under which the Headquarters Royal Air Force stayed for some years at Delhi and for some period at Ambala throughout the year, and do those conditions not exist now, and can whole of that office or part thereof be stationed permanently at New Delhi now? If not, why not?

(f) Was it not with the idea of removing congestion at Simla that Government decided to locate the Civil Secretariat at New Delhi?

(g) What was the pre-war strength of each of the branches of the Army Headquarters and what is it at present?

(h) Are Government aware of the feeling that the underlying idea of removing the congestion of Simla will be frustrated, if the whole of the Army Headquarters is allowed to move up to Simla with its double-strength of the staff, than the pre-war strength?

(i) Does he propose to see that only such of the Army Headquarters staff moves to Simla from now, as is absolutely required? If not, why not?

Mr. C. M. G. Oglvie: (a) The matter has been considered; but in view of the different nature of the work in Army Headquarters it was decided that the system now adopted for the Secretariat would not result in efficiency.

(b) The reply to both parts of the question is in the affirmative.

(c) No. The reason is that Army Headquarters cannot work efficiently in the present emergency if divided. It is also necessary for it to be in the closest touch with the Government of India.

(d) The answer to the first part is in the affirmative. The answer to the second is contained in the answer to (c) above.

(e) Air Headquarters, India, remained throughout the year at Ambala between the winter of 1921 and summer of 1923. They have never been located at Delhi throughout the year. Ambala was abandoned in favour of Delhi/Simla in order to ensure close co-operation between the Army and Air Force.

(f) Yes.

(g) A statement is laid on the table.

(h) No.

(i) Yes.

Statement

	Pre-War Strength		Present Strength	
	Officers	Clerks	Officers	Clerks
(1) General Staff Branch	59	153	91	191
(2) Adjutant General's Branch (including Medical Directorate).	36	164	44	211
(3) Quartermaster General's Branch	41	119	45	126
(4) Master General of the Ordnance Branch (including Assistant Director of Ordnance Services (Provision)).	46	310	66	486
(5) Engineer-in-Chief's Branch	14	159	27	292
(6) Military Secretary's Branch	7	45	11	62
(7) Air Headquarters	28	84	33	93
(8) Judge Advocate General's Office	4	8	4	8
(9) *Contracts Directorate	6	91		
(10) Assistant Military Secretary (Personal).	6	4	6	5
Total	247	1,137	327	1,474

*Since placed under the administrative control of the Supply Department.

GIVING OF CERTAIN ASSURANCES TO INDUSTRIES AFFECTED BY THE EXCESS PROFITS TAX.

460. *Sir Abdul Halim Ghuznavi: (a) Has the attention of the Honourable the Finance Member been drawn to the circular of the Chamber of Shipping of the United Kingdom, dated London, the 2nd January, 1940, on the subject of Finance Act, No. (2) 1939—excess profits tax, where the following statement is made:

“When the above Act was passed through all its stages in the early days of October there was no time for the various interests concerned to give proper consideration to the measure and the Chancellor of the Exchequer gave an assurance that detailed examination and criticism of the provisions of the excess profits tax might be postponed until the regular budget in the Spring of 1940”

(b) If the answer to part (a) be in the affirmative, do Government propose to give a similar assurance to the various industries affected by the tax in this country?

(c) Is the Honourable Member aware that the following statement is also made in the circular referred to in part (a):

“Strong representations will be made that a special reserve should be allowed out of profits to replace vessels lost during the

war, or vessels in commission at the end of the war which would have to be replaced at a cost which would exceed the cost of the fleet replaced. This is of paramount importance if the shipping industry is to be maintained after the war'?

(d) If the answer to part (c) be in the affirmative, will a special reserve for special depreciation be allowed to the shipping industry in this country and the amount of such reserve for depreciation deducted before ascertaining the profits liable to the proposed profits duty?

The Honourable Sir Jeremy Raisman: (a) and (c). I have not seen a copy of the circular referred to by the Honourable Member, but I have seen the official report of the Parliamentary proceedings referred to therein.

(b) The Honourable Member is referred to paragraph 2 of the report of the Select Committee on the Excess Profits Tax Bill.

(d) The Honourable Member is referred to the provisions of the Excess Profits Tax Bill which is before the House.

ALLOWING OF CARRY FORWARD OF ARREARS AND LOSSES FOR PURPOSE OF CHARGING EXCESS PROFITS TAX FROM THE INDIAN SHIPPING INDUSTRY.

461. ***Sir Abdul Halim Ghuznavi:** (a) Has the attention of the Honourable the Finance Member been drawn to pages 81 and 82 of the Annual Report of the Chamber of Shipping of the United Kingdom 1937-38, where the following statement is made in regard to the national defence contribution:

“After full discussion in Parliament, the Government accepted these proposals and the tax as adopted fully met the views of ship-owners. In particular, it preserved the principle of income tax practice of allowing carry forward of all arrears of depreciation as well as six years' losses before the amount of profits is ascertained, a point of special importance to the shipping industry, who must rely upon good times to make up arrears of depreciation accumulated during depressions”?

(b) If the answer to part (a) be in the affirmative, will such carry forward of all arrears of depreciation as well as six years' losses be allowed to the Indian shipping industry before the amount of profits is ascertained for the purpose of the proposed excess profits duty?

The Honourable Sir Jeremy Raisman: (a) Government have not seen a copy of the report referred to but the position indicated in the extract quoted appears to be correct.

(b) The Honourable Member is referred to the provisions of the Excess Profits Tax Bill which is now before the House.

ELECTION OF MEMBERS TO THE STANDING COMMITTEE FOR ROADS.

Mr. President (The Honourable Sir Abdur Rahim): I have to inform the Assembly that upto 12 noon on Friday the 15th March, 1940, the time fixed for receiving nominations for the Standing Committee for Roads seven nominations were received. The candidature of one member was

[Mr. President.]

withdrawn by the proposer. As the number of remaining candidates is equal to the number of vacancies I declare the following Members to be duly elected, namely:

- (1) Haji Chaudhury Muhammad Ismail Khan;
- (2) Sardar Bahadur Captain Dalpat Singh;
- (3) Syed Ghulam Bhik Nairang;
- (4) Maulana Zafar Ali Khan;
- (5) Bhai Parma Nand; and
- (6) Mr. J. Ramsay Scott.

THE EXCESS PROFITS TAX BILL—*contd.*

Mr. President (The Honourable Sir Abdur Rahim): The House will now resume consideration of the Excess Profits Tax Bill, clause by clause. The question is:

“That part (d) of sub-clause (2) of clause 6 of the Bill be omitted.”

Dr. Sir Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, I was supporting yesterday the amendment moved by my friend, Maulvi Muhammad Abdul Ghani:

“That part (d) of sub clause (2) of clause 6 of the Bill be omitted.”

This clause was added by the Select Committee. It was not in the original Bill and I should like to point out that the addition of this clause has cost a good deal of money as far as the revenue is concerned. I said clearly that had it been a question of the remission of this amount, I will not mind it very much. But if the money so remitted is to be realised by some additional tax to be levied on persons who are comparatively poorer, then I think it is a matter for serious consideration of the Government. I repeat it once more. If the Government is pleased to dispense with their revenue to the extent of about two crores, then I do not mind if they remit it. If my wealthier friends become a little more wealthy, I do not mind it. But if that amount is to be transferred by means of some other taxation to the people who are poorer, such as a taxation on sugar, or high price of postcard or some other thing, then certainly we, who are not so wealthy, will object to such transfer and oppose the amendment made by the Select Committee.

Sir, I have got with me the Investors' Year Book and I have taken from it 12 companies only. I have put down their financial position on this paper which I will be willing to give to anybody who will take objection to my arguments. I have taken down their profits for the years 1936, 1937 and 1938. The profits of these 12 companies for the year 1938 comes to 6.19 lakhs, for the year 1937 it comes to 4.91 lakhs and for the year 1936 it comes to 4.71 lakhs. Now, if we adopt only the options given in the original Bill, then the standard profit will be 4.80 lakhs, taking the maximum of the average of 1935-36. So, if there be any income over and above 4.80 lakhs, it will be taken to be the excess income and the taxation will be levied on that. Now, by adding this particular option sub-clause (d) the

standard profit is raised. Instead of 4,80 lakhs, it now becomes 5,55 lakhs, that is, 75 lakhs more and therefore the tax that you will now levy will be 37½ lakhs less. I will give an illustration. Suppose the income of these 12 companies, during the chargeable accounting periods, is six crores, then, if we adopt the option of the Bill in its original form, the excess profit will be six crores minus 4,80 lakhs, or 1,20 lakhs, and we will get half of this profit, namely, 60 lakhs. But if we take the new option, then the standard profit will now be 5,55 lakhs and the excess profit will only be 45 lakhs and the money realised will be only 22½ lakhs. Therefore, we lose 37½ lakhs on these 12 companies only. Honourable Members may argue in any way they like, they may say that I do not understand the Bill, as an Honourable Member in his enthusiasm has said it, but nobody can deny these figures because they are taken from the Investors' Book. So, I maintain that on these 12 companies alone we lose by this option 37½ lakhs. And if we take up all the mills and the various industries—and I have not touched textile at all—then the sum will rise to an enormous figure and according to my estimate it will be in the neighbourhood of two crores. I think it is not correct on the part of the Government to let this very big amount go in this particular manner and transfer the tax from the richer people to the poorer people.

When the Finance Bill will be before us, we will implore the Government to reduce the price of the postcard from ~~one~~ pies to six pies and the Government will say that if they accept our recommendation, it will cost them 60 lakhs which they cannot afford to lose. But here you are prepared to lose two crores and give it to the richer people. If this money is to be remitted and the incidence would not have fallen on the poor then I do not mind it at all. Let the Government collect as they like. But if the incidence is to be transferred from wealthy persons to those who are comparatively poor and also those who are really very poor, then I object to it because it is not just and you will not be doing justice to the people at large. No doubt, these wealthy people have got a good deal of influence. They can afford to have propaganda. The smaller people have got no organisation and they can do no propaganda work and the Government alone can be the custodian of their interests. Government have to weigh in their mind whether this amount is to be realised from the wealthy classes, or this incidence should be transferred from the wealthier classes to the poorer classes. That is the real issue in this amendment. We have to decide whether we should collect about two crores from these wealthy people—and there are two industries of these wealthy people whom we have protected, namely, the iron and steel industry and the textile industry, I am not discussing these industries just now but will do so on the next amendment—or levy a tax on the poorer people. We are now handing over this additional amount to those persons who are already protected and who have already got enormous profits, about three times the profits which were given to them by the Tariff Board. I do beseech the Government to look after the interests of those persons who cannot speak for themselves and they should not be influenced by the richer people who can carry on their propaganda anywhere and everywhere because of the money they have, which we have put in their pockets because of the high tariff walls.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions: Non-Muhammadan Rural): Sir, I oppose this amendment. This change was made in the Select Committee in the interests of new industries and new

[Mr. Akhil Chandra Datta.]

businesses. The reason for this amendment is given in the report of the Select Committee where they say:

"Our amendment of sub-clause (1) is intended to provide that a business started after the 31st day of March, 1936, may at its option take as the standard profits"

The Honourable Sir Jeremy Raisman (Finance Member): I am afraid the Honourable Member is speaking to the wrong amendment. The amendment on which Dr. Sir Ziauddin Ahmad has just addressed is one which seeks to remove 1938 from the standard periods.

Mr. Akhil Chandra Datta: My impression was that we are now discussing amendment No. 56. A change was made as I was saying to give the option to new industries and new businesses, the option of taking either the standard profits

The Honourable Sir Jeremy Raisman: I am sure the Honourable Member is speaking on the wrong amendment. Amendment No. 56 seeks to omit part (d) of sub-clause (2) of clause 6 which was added by the Select Committee and which gives additional option for the purpose of statutory period.

Mr. Akhil Chandra Datta: I stand corrected. But I oppose the amendment all the same. This additional option was given by the Select Committee in the interest of the taxpayers because the whole complaint was that we wanted 1938 by itself, but the Government would not accede to that and by way of something like a compromise the average of 1937 and 1938 was adopted. We are strongly in favour of this additional option that was given by the Select Committee. There is some difficulty in dealing with this amendment as the Honourable the Mover did not give any reasons whatsoever in support of it.

Dr. Sir Ziauddin Ahmad: Yes, a saving of two crores.

Mr. Akhil Chandra Datta: But the Mover did not give his reasons. We do not know what is in his mind. It is rather unfair to move an amendment without giving reasons to the House. Now, this has been supported by Dr. Sir Ziauddin Ahmad in the interest of revenue. So far as that aspect of the question is concerned, I do not hold any brief for the Finance Member. If the Honourable Member thinks he has any right to hold any brief for the Finance Member in the interests of revenue, he is quite welcome to do it. We look at the provision not from the stand-point of the yield of duty, but from the point of view as to whether the additional option is fair to the assesseees in view of the fact that 1938 was comparatively a better year for the industries than 1937. Our case is that that would make the standard year a little more equitable. Sir, I oppose the amendment.

The Honourable Sir Jeremy Raisman: Sir, I must oppose this amendment. I accepted the provision which is in the Bill. This was put in after long and careful consideration and discussion in the Select Committee. My Honourable friend, Dr. Sir Ziauddin Ahmad, dealt with the matter purely from the revenue point of view, but as I pointed out in my speech on the motion for consideration of the Bill, there are other aspects to be taken into account and I believe that by adding this option we have given

a much broader and more equitable basis to the tax. I am, however, glad to have the full admission of the Honourable the Deputy President that he is entirely unconcerned with the revenue aspect of these provisions. That was exactly my trouble with him yesterday when he was supporting proposals which would have cut away the whole ground from under the tax. My own attitude is that I stand midway between those who would reduce the yield of this tax to a nugatory amount and those who, like my Honourable friend, Dr. Sir Ziauddin Ahmad, in their anxiety to secure the maximum yield would brush aside considerations of equity. Sir, I oppose the amendment.

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

"That part (d) of sub-clause (2) of clause 6 of this Bill be omitted."

The motion was negatived.

Dr. Sir Ziauddin Ahmad: Sir, I beg to move:

"That in part (d) of sub-clause (2) of clause 6 of the Bill, after the word 'determined' the words 'for the year ending on the 31st day of March, 1938, and' be inserted."

Sir, this is rather an important amendment. My Honourable friend rejected the previous amendment on the ground of equity. Of course the Bill was drafted by the Honourable Member himself and he forgot entirely this question of equity when he drafted the original Bill. This question of equity cropped up in the Select Committee. He just jumped upon the idea and said that it is a very important and equitable thing and he changed his mind consequently and he changed all his calculations on which his original Bill was based and then he adopted the kind of equity suitable for millowners.

Sir H. P. Mody (Bombay Millowners Association: Indian Commerce): The word "determined" occurs twice in this sub-clause. After which word, "determined", does he want this to apply?

Dr. Sir Ziauddin Ahmad: I am referring to part (d) and not to part (a). I was saying that this question of equity came only at the Select Committee stage. My friends, Sir H. P. Mody and Mr. James, were able to draw attention to this equity to business and the Finance Member accepted this principle of equity on their suggestion. Never mind. Let the profits of last year be included in that and that amendment is lost. I do not quarrel with that. Now, I move the second amendment and give them the benefit of 1939. Take the average of 1939 or 1938, but take the average of three years, 1939, 1938 and 1937—that is the last three years. In that case this is also equitable because you have included in the latest profits though the war had not commenced at that time, but certain industries were benefited on account of war conditions in Europe. If we accept this proposal, then for the same 12 industries which I have just quoted the loss will be reduced substantially, instead of losing 37½ lakhs, our losses will be reduced to about 12½ lakhs only. If your standard profit be taken to be the profit not of the last two years, but of three years together, which is the object of my amendment, then in that case the losses would be made up substantially. Instead of a loss of 37½ lakhs on these industries, you will be losing only 12½ lakhs. There will be a saving of 25 lakhs on these 12 industries alone. By taking this option and asking the industries combined I think our loss would be reduced from about two crores to about 50 lakhs, or perhaps less.

[Dr. Sir Ziauddin Ahmad.]

If it is quite equitable to give them the benefit of the enormous profits during last year, we should at the same time take the average of three years instead of two we will do justice to them and justice to us. If you have a combination of two years there is a proposal later on to take the profit of one year alone in which case the losses would still be greater. My friend thought it would be equitable to combine two years, and I want to add one year more in which case our losses will be reduced to about one quarter, as is shown by the result of these 12 industries.

As regards equity, I want to discuss that word. As far as steel industry goes, equity means giving them the profit which the Tariff Board gave. The Tariff Board gave them a profit of one crore, after meeting working expenses, depreciation, etc. And to give them that one crore very heavy duties have been put on the consumers and on the smaller industries. Their profit recently has been 3.64 crores, and so beyond one crore is excess profit which is inequitable. Therefore, in the case of these protected articles equity demands that we should give them the profit on account of which these heavy customs duties were levied. This principle of equity should be applied not only to the protected industries but also to the consumers and the smaller industries. The proper share of these industries is what was promised to them. To give them anything less is inequitable and also any profit over and above that is inequitable to the consumers and the smaller industries. So the word "equity" must be applied to India as a whole. So I assert that you have shown partiality to the protected industries and iron and steel but you have been inequitable to the consumers and smaller industries. Sir, I move.

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

"That in part (d) of sub-clause (2) of clause 6 of the Bill, after the word 'determined' the words 'for the year ending on the 31st day of March, 1938, and' be inserted."

Sir H. P. Mody: Sir, in spite of considerable provocation I shall not import either passion or levity in my reply to my Honourable friend. I must say that I am entirely unable to understand him. Has he constituted himself the custodian of India's purse, and is it his sole object to screw out as much money as he can through the operation of this measure? What is the object of the Excess Profits Tax Bill? The object is to tax half of the additional profits which arise as a result of the conditions generated by the war. My Honourable friend is not concerned with all that. He is all the time thinking in terms of two crores and 50 lakhs, 12½ lakhs, etc. Incidentally I do not know how he arrives at these figures. He must have been burning a considerable amount of midnight oil on them. He is only thinking in terms of figures, forgetting all the while that what is intended by this taxation is not to enable Government to put their hands into the pockets of industrialists and capitalists, but to tax profits which are supposed to accrue directly as a result of the war, in order to finance the war. The amendment that was adopted by the Select Committee was entirely because we were able to induce the Finance Member to consider the viewpoint of industrial and commercial interests. We proved that if this additional option were not given what would be taxed would be not

war profits but normal profits. My Honourable friend's whole argument seems to resolve itself into this : try and get as much money as you can and then put it aside as a reserve so that the quarter-anna post card may not someday be raised to half an anna, or that those wonderful consumers, —I do not know where they reside,— for whom he is perpetually talking in this House, may not be taxed.

Several Honourable Members: They are here, we are the consumers.

Sir H. P. Mody: The consumers in this House do not strike me as being particularly poor.

If Sir Ziauddin's amendment were carried it would mean only this that what would be subjected to the Excess Profits Tax would be not war profits but profits arising out of the normal expansion of business, normal prosperity and normal development. That is surely not the object of this measure and I strongly oppose the amendment.

Dr. Sir Ziauddin Ahmad: Is it not a fact that the Tariff Board gave the steel industry one crore and they are now realising as much as 3½ crores?

Sir H. P. Mody: The steel industry is almost becoming a King Charles' head to my Honourable friend. Every time he gets up he trots out the Tariff Board report and invokes its aid for whatever argument he has to advance. I want to know what that has got to do with this Bill. If and when any question of extending the measure of protection which was given to the textile, steel or any other industry comes up before the House, I can understand my Honourable friend advancing this argument. But he seems to advance it on every conceivable occasion. I do not know whether he has now got into the habit of reciting it in his sleep. Sir, I do not think there is either any logic or sense in what my Honourable friend has advanced.

The Honourable Sir Jeremy Baisman: Sir, in opposing this amendment I shall only deal with one point. Sir Ziauddin Ahmad asked where my considerations of equity were when I first introduced this Bill. I think I made it quite clear at an earlier stage that in putting before the House a measure which was substantially identical with the Excess Profits Tax Act in the United Kingdom I was prepared to go into the matter very thoroughly in the Select Committee and to consider in what respects it might work inequitably in Indian conditions and in what respects it was not entirely suited to Indian conditions. I did not pretend that the Bill in the first instance was my last thought on the subject, and in the Select Committee I was convinced that the addition of this option was necessary in order to secure fair working over the whole field of trade in Indian conditions.

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

“That in part (d) of sub-clause (2) of clause 6 of the Bill, after the word ‘determined’ the words ‘for the year ending on the 31st day of March, 1938, and’ be inserted.”

The motion was negatived.

Maulvi Muhammad Abdul Ghani (Tirhut Division : Muhammadan) :
Sir, I move :

"That to sub-clause (2) of clause 6 of the Bill the following further proviso be added :

'Provided further that in case of protected industries the standard profit shall be the profit allowed by the Tariff Boards.'

The amendment is a very simple one. There have been various objections to the methods of realisation of the tax as mentioned in the Bill : there have been several calculations, but there is a Tariff Board authority which is accepted and quoted by several capitalists in this House, and it is an authoritative body. It is especially referred to whenever the question of sugar-cane profits accrued to cane producers comes in. However, I agree with them and here is the chance for me to urge the same principle which they have advocated : it will be very fair that the profit worked out by the Tariff Board in case of protected industries should be regarded as the standard profit. There are protected industries which are being benefited at present at the expense of the taxpayer, and on account of the war they are making enormous profits. Why should they not give half of those profits over and above the standard profit to the Government? Take the case of the iron and steel industry. A huge profit is going to be made especially due to the war. There may be a question whether they secured the profit before the war broke out or after, but actually foreign countries were afraid of the consequences of the war from before and they indented for iron and steel in large quantities simply to full the necessities of the war and that profit should surely be regarded as profit due to war, and there is no excuse for them not to give half of that enormous profit, over and above the standard profit fixed by the Tariff Board. With these few words I move my motion.

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

"That to sub-clause (2) of clause 6 of the Bill the following further proviso be added :

'Provided further that in case of protected industries the standard profit shall be the profit allowed by the Tariff Boards.'

Dr. Sir Ziauddin Ahmad : Sir, there are no two other persons in the whole of the British Empire who are better friends and who understand each other more intimately than Sir Homi Mody and myself. If I have some jokes with him on the floor of the House, they consist only of mathematical figures taken from published reports. Tariff Board reports are bibles to millionaires. I know that they always quote the Tariff Board and always try to get the last drop of blood. They must have their full pound of flesh, and if there is an iota less they always go to the Tariff Board and say "The Tariff Board gave us so much protection and we must have it".

I think this amendment embodies a very equitable proposal: it says the standard profit should be the standard profit given to the industries by the Tariff Board, and it only demands that in the case of protected industries these parts (a), (b), (c) and (d) of clause 6(2) should not be applicable and there should be only one thing, that the standard profit should be the standard profit allowed by the Tariff Board and anything over and above that should be taken to be the excess. In the first place, I would say

that the Fiscal Commission Report, on the basis of which this protection was given, has made it clear that whatever burden we are levying on the consumers of India and whatever bounties we are giving to these industries, they are really in the shape of a loan, and when the industries are in a position to stand on their own legs, then these loans will be paid back in some shape—either in the shape of a reduction in prices, the benefit of which will go to the consumers, or in the shape of additional revenue to the exchequer in which case the relief will be given to the taxpayers. So, sooner or later these things ought to come in. The time has, therefore, now come when we should according to the Fiscal Commission's Report take our share. I am not discussing today the question of protection because it is really outside the scope of this particular amendment. I am not also discussing now whether there should be a permanent tariff board or an *ad hoc* tariff board. I should only like to point out that unfortunately the word 'tariff board' is used in two different senses and, on account of that, confusion has arisen resulting in this controversy. If we had the simple word 'inquiry' to find out how the whole thing was working and then appoint an *ad hoc* tariff board to make investigations as regards particular industries, then the confusion would have been avoided. Had there been a permanent committee of inquiry—call it a permanent tariff board if you like—which could have drawn our attention to the working of this thing, then all the confusion that has arisen about the sugar industry and other industries would have been avoided, and the question would not have become so complicated as it is now, by the inaction of the Government of India and by the wrong action of two Provincial Governments. I draw Sir Homi Mody's attention to the Tariff Board Report on the Iron and Steel Industry, which he quoted so often in the year 1934. On page 43 they clearly say that they gave them a profit of 199 lakhs or nearly two crores: they say:

"Overheads—

	lakhs.
Depreciation	78
Interest on Working Capital	11
Managing Agents' Commission and Head Office expenses	10
Manufacturers' Profit	100
Total	199

They give a profit of one crore over and above other overhead charges; and the whole figure comes to 199 lakhs. They have given a profit of one crore: that is their share. That is the item which is necessary for the protection of this industry. I do not object to that. If they have not realised this particular amount, I think we should make every effort to see that this amount is fully realised by them. I do not mind even if we increase the quantum of protection to ensure that they may get the benefit and advantage which the Tariff Board has given to them. But it works the other way too. In case they are deriving more than what the Tariff Board have given to them, is it not just and fair that we should request the Government of India to look after the other industries also? We tell them to keep the one crore with them, but we want them to give back to the country the profit which they make over and above that one crore, and they can give it back in three different ways. Either they should reduce their prices when all the consumers will be benefited, or they should sell their articles to smaller industries at lower prices than they get them from elsewhere

Mr. President (The Honourable Sir Abdur Rahim): It has nothing to do with this amendment. The Honourable Member is clearly going beyond the scope of the amendment before the House.

Dr. Sir Ziauddin Ahmad: Very well, I shall leave out the details for the moment and concentrate on the main issue. The main issue is that the standard profit in the case of these industries should be the profit which the Tariff Board have laid down, and if they are realising any profit over and above that, it ought to be taken as excess profit. It might be said that whatever the profits may be, only the profits made after the war conditions should be taxable, but the war conditions in the case of these industries really began when the war in Europe commenced, and these industries began to flourish on account of the war conditions in Europe, though not to the same extent as the industries in England. Therefore, Sir, according to the promises given by the Fiscal Commission of 1922 and also according to the promises held out on the floor of this House when these protections were given, the excess profits which these people make should be taxed properly. On this occasion when large sums are required for the prosecution of the war, I would request these industries to give back to the exchequer the excess profits they are making not on account of any pressure of Government or of the Legislature, but of their own accord, and they ought not to wait for any kind of legislation. This is a very reasonable demand. Do they require pressure from the Finance Member? I think anybody who is interested in the general prosperity of the country will himself come forward and say that not only 50 per cent. but the whole of the profits should be given to war fund. After getting the entire amount which was due to them according to the recommendations of the Tariff Board, it is not unreasonable to expect them to give back to the exchequer 50 per cent., if they cannot give more, for the prosecution of the war. Sir, I support the motion.

Mr. Muhammad Nauman (Patna and Chota Nagpur *cum* Orissa: Muhammadan): Sir, I rise to support this amendment though, in doing so, I may be courting some amount of unpopularity among certain sections of the industrial friends of this country. There is no doubt that protected industries have a first charge to come forward for the relief of the State when there is an occasion for it. Let us examine what is it that is wanted in this amendment? The position is, that the Tariff Board made recommendation for protective duties on certain industries stipulating particular rate of standard profit. Now, on account of certain circumstances, those industries are able to make unusually greater profits than expected and we say that any profit made over and above the statutory or standard profit laid down by the Tariff Board in granting them protection should be regarded as excess profits. I hope the House will realise that whatever profits these industries are making now they are making these profits at the cost of the consumers and at the cost of the State. The State came to their relief by granting them suitable protection in the interest of the capital invested and to increase resources of the country and at the cost of the consumer. Now, when certain circumstances have arisen and these people are able to make bigger profits as a result of that circumstance, are they not morally bound to give back to the State the debt which was given to them in the hope that as soon as they would be in a position to stand independently on their own legs they would repay that debt to the State or to the consumers? In the circumstances created by the war, I

hope the industries which are protected and which are now able to make huge profits as a result of the war conditions will be reasonable enough to realise the gravity of the situation and pay back at least half of the excess profits they are making. I mean profits over and above what is laid down by the Tariff Board. It might injure a section of the people, a thousand or two thousand people, but I have no doubt that it will be to the interest of the general consumers who form the entire population of India.

It must be remembered, Sir, that whenever protection is granted it is granted at the cost of the consumer, and the industry has certainly a moral obligation to repay those consumers by way of relief as soon as they are in a position to stand on their own legs or to earn more profits than they were expected to make out of their investments. It will be a good thing in other ways also. Circumstances may be created in future by which other countries of the world may be in a position to compete with our industries, and those industries will have again to face a situation which will compel them to approach the Governments and ask for bigger protection to develop or even maintain their industries, on the ground that because they helped the State when they were in a position to do so, and that when other countries of the world were competing with them adversely they require bigger protective duties to compete with other countries and deserve to get better protection

Bhai Parma Nand (West Punjab: Non-Muhammadan): Can you give an instance of any country in which statutory profits are fixed for industries?

Mr. Muhammad Nauman: Unfortunately, I have not looked into the legislations of all other countries in this respect, and so I am not in a position to give the information just at the moment. My submission is this, that protection is given to industries on the recommendation of the Tariff Board by fixing average or minimum profits, and now when these protected industries are able to make bigger profits than what they were expected to earn when protection was granted to them, it is the duty of the State to see that these industries come to the rescue of the State at a time when exchequer is facing deficit. If after some time our industries feel that the protection given to them is not enough, then they can ask for further protection and it will certainly be given to them. I think the House will be well advised to accept this amendment, because it will help the Government in giving relief to the middle classes and poorer classes of people out of the funds that the "excess profit" on protected industries may yield.

It has been the principle of taxation everywhere that the incidence of a tax should fall on the class of people best able to bear it and that the burden should be avoided on the shoulders of the middle class or the poor class people, especially in the case of direct taxation. I think this principle should have been very well cared for in this particular Bill and we are trying to impress on the Government that here is a case where more money can be had from those class of people who have been nursed by the State at the cost of the consumer, and who have been nursed at the cost of the State as well. If we get more money out of that, then you will be able to give relief to the smaller section of the people in other activities of life, or even in the same sphere of activities as in this Bill when later on we propose to move that the limit should be raised from

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[Mr. Muhammad Nauman.]

Rs. 30,000 to 40,000. That will give some relief to the middle class people. With these few words I commend this amendment to the Government and to the House for acceptance.

Mr. M. S. Aney (Berar: Non-Muhammadan): My Honourable friend, Dr. Sir Ziauddin Ahmad, and my Honourable friend, Mr. Muhammad Nauman, are extremely liberal in asking Government repeatedly, "Why don't you take more and why are you satisfied with the little that you want?" That is, in brief, the meaning of the various amendments that have been moved by them. I want to remind my Honourable friend, Dr. Sir Ziauddin Ahmad, that here we are not laying down any ideal definition of excess profits. The Bill is brought in with the clear object mentioned therein and the Government want to raise taxation for the purpose mentioned in the preamble itself. What is laid down in the preamble is this:

"Whereas it is expedient to impose a tax on excess profits arising out of certain businesses in the conditions prevailing during the present hostilities . . ."

So, the profits must have some relation to the conditions that prevail during the continuance of the present hostilities.

Mr. Muhammad Nauman (Rising from one of the Front Seats): May I interrupt my Honourable friend? Is it not a fact that because of . . .

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is not in his seat. He must be in his seat if he wants to put any question.

Mr. M. S. Aney: I have listened to my Honourable friend very patiently and I know what he has in mind. I will try to give my reply to his criticism as intelligently as I possibly can. Here we are not concerned with the broad question which my Honourable friend, Dr. Sir Ziauddin Ahmad, wants to raise. He says that when protection was given to the industries certain calculations of profits were made in order to find out the quantum of protection that must be given, and he regards anything earned by the industry over and above the minimum profit that was calculated for the purpose of determining the quantum of protection must be taken as a maximum and anything in excess of that should be treated as excess profit.

Dr. Sir Ziauddin Ahmad: During the war.

Mr. M. S. Aney: The words, "during the war" really mean that you are not concerned with the figure laid down in the Tariff Board's report at all. You are concerned with what they have been able to make as their highest income at any time before the hostilities broke out, and for that purpose the words come in and any other discussion is, in my opinion, outside the scope of this Bill itself. In you, Sir, I have found an ideal tolerant President. You have been interpreting the law of relevance in a very liberal spirit and, therefore, much of what could have been ruled out as irrelevant is, out of your magnanimous interpretation of the rules of relevance, being allowed here. I am not concerned with that. That is your business.

Mr. President (The Honourable Sir Abdur Rahim): The Chair does not think the Honourable Member is justified in making any such remark. If any speech was irrelevant according to the Honourable Member, he should have drawn the Chair's attention to it.

Mr. M. S. Aney: I am sorry. I did not mean any reflection on the Chair at all. But very often I have felt that much of the criticism of my Honourable friend was not to the point at any rate.

Mr. President (The Honourable Sir Abdur Rahim): The Chair has not allowed any irrelevant remarks in the speech of the Honourable Member.

Mr. M. S. Aney: I know you have now and then repeatedly drawn attention to irrelevant portions.

Mr. President (The Honourable Sir Abdur Rahim): The Chair would have pointed out to the Honourable Member, if he had drawn its attention, how the remarks that were allowed by the Chair were relevant.

Mr. M. S. Aney: My Honourable friend, Dr. Sir Ziauddin Ahmad, is a great story teller in this House, and I am reminded of a story which I would like to narrate here with your permission. There was a story teller and a king. The king was enamoured of that story teller and he wanted him to tell a story which shall never end. The story teller thought over the matter and then began telling a story. He said, there was a big tree. It was full of fruits, a number of birds were sitting on that tree, and somebody came and wanted to scare away the birds. One bird flew away, then another bird flew away, a third bird flew away. The king asked, 'How long are you going to repeat that?' 'I have to repeat the thing, Sir, till all the birds have flown away. They are innumerable'. In the same way Dr. Sir Ziauddin will repeat the story of this Tariff Board's report and the profits made by the textile industry as well as the steel industry till the whole protection is removed. Till then this story will continue, and if we are asked whether it is going to end at all, the answer is, till all the protection goes away and nothing remains of it. It seems to me that my Honourable friend's story is a never ending story which he is determined to narrate to this House.

Dr. Sir Ziauddin Ahmad: Your story is very unmathematical.

Mr. M. S. Aney: It goes into infinity as a matter of fact. I find that the mention of the textile industry and the steel industry and the profits made by them on this Bill has practically assumed the same form which the story teller had taken in narrating the story of the flying away of the birds. My point is this. The Honourable the Finance Member has brought forward this Bill in order to make a certain definite amount of money. He cannot put down the particular amount but he has got a certain definite amount to raise to cover the expenses of the war, and the suggestions that are made here are with a view to giving him the money that he wants. Therefore, any suggestion which is being made to give much more than what he wants is, I believe, neither in the interests of the consumer nor in the interests of the so-called exploiter which my

[Mr. M. S. Aney.]

Honourable friend is so much enamoured of criticising every now and then. I, therefore, oppose the amendment of my Honourable friend, Mr. Abdul Ghani.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar (Member for Commerce and Labour): I intervene in this debate because I feel that there is a certain amount of plausibility about this amendment. My Honourable friend, Dr. Sir Ziauddin Ahmad, has pointed out that the Tariff Board gave a certain percentage of profit to the industries which had to be protected and that, therefore, any profit over and above that would be unreasonable and that it might be appropriated to the State. My Honourable friend, Mr. Aney, has already pointed out the scope of this Excess Profits Duty Bill and stated that, therefore, that logic will not apply. But since the point about the consumer has been raised

Dr. Sir Ziauddin Ahmad: On a point of personal explanation, Sir. The scope of my amendment is taking only one half, not the whole of it, during this emergency on account of war conditions.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: There are certain considerations which I should like to point out even from the point of view of the consumer whose case Dr. Sir Ziauddin Ahmad has, and if I may say so, very rightly presented to the House on more than one occasion. The voice of the consumer is so rarely heard in this House that I shall be the last to deprecate any attempt to put forward as forcibly as possible his interests in this House.

Now, Sir, the fallacy underlying the argument is that the profits of the industry are taken into consideration without considering the profits of each individual concern. It is the same fallacy that is expressed when my Honourable friend, Sir Homi Mody, says that the textile industry for instance during the last so many years has been suffering such an amount of loss. He knows very well that he is only like the person who tried to cross a river depending upon the average depth of the river. It is no more true to say that the industry as a whole suffered loss. It does not give any more correct picture than the picture of the average depth of the river. Several concerns have lost and some concerns have made much more than the profit which the Tariff Board suggested they might reasonably expect. In the first place, the Tariff Board did not suggest that that should be the maximum profit for every concern. In the second place, the Indian Fiscal Commission, as my Honourable friend knows, suggested that reserves might be built up for the industry which might stand it in good stead later in years of depression. From the point of view of the consumer, I should like to put forward one other consideration. At the present time owing to conditions necessarily arising out of the war, certain industries get an artificial amount of protection owing to the impossibility of importing competitive goods into this country. If the Government felt that the protective tariff was too high, the course open to the Government would be to either reduce the tariff or even remove it altogether. Either of these remedies is inapplicable to the conditions which prevail now, because the quantum of imports is already reduced and competition, therefore, does not exist. Apart from that I would like to point out how the consumer would benefit. If at the present time, therefore, that remedy is not open to the Government and protected industries do make larger profits than were at one time

thought they were capable of making, I hope they would build up reserves so that the period of protection will be shortened thereafter. One of the most important considerations which the Indian Fiscal Commission had in mind when it granted protection was that the period of protection may be considerably shortened owing to the rationalisation of the industry and owing to the reserve profits which that industry would build up. I am certain that it does not require any warning from me for the protected industries to understand that if on the next occasion when they come up for protection and when they face another inquiry, the way in which they have dealt with the profits which have arisen during the war will be one of the foremost considerations which any Tariff Board will take into account. If any particular industry, steel or textiles, wants the period of protection to be renewed at the expiry of the present period, I cannot conceive of any Tariff Board, sitting and doing its duty, which will not take into consideration how the extra profits that are being now made owing to the conditions arising out of the war are being utilised. If they find that those profits have been frittered away, that they were distributed as they were distributed during the last war, I can safely assume that the Tariff Board will look upon that industry with very little sympathy.

Sir H. P. Mody: I have nothing to say with regard to the warning that profits made during the war should not be frittered away but, surely, my Honourable friend recognises that larger profits must mean larger dividends.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: I have put it in the way in which I think it ought to be and in the way in which the industries will understand what I am aiming at and, therefore, from that point of view also it is not as if the consumers' interests will be entirely ignored but, in the long run, the consumer himself will benefit out of the conditions that have now arisen under which extra profits will be made by some of the protected industries. On all these grounds, I oppose the amendment on behalf of Government.

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

"That to sub-clause (2) of clause 6 of the Bill the following further proviso be added:

'Provided further that in case of protected industries the standard profit shall be the profit allowed by the Tariff Boards.'

The motion was negatived.

Mr. S. P. Chambers (Nominated Official): Sir, I move:

"That in the proviso to sub-clause (3) of clause 6 of the Bill, before the words 'the capital' the words 'the average amount of' be inserted."

This is a small drafting point and is intended solely for the purpose of clarification. Sir, I move.

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

"That in the proviso to sub-clause (3) of clause 6 of the Bill, before the words 'the capital' the words 'the average amount of' be inserted."

The motion was adopted.

Mr. Akhil Chandra Datta: Sir, I move :

"That in sub-clause (4) of clause 6 of the Bill, for the word 'thirty', wherever it occurs, the word 'forty' be substituted."

Before proceeding further, I understand that there is another motion, No. 63, which proposes to raise the limit from thirty thousand to thirty-six thousand. I understand that Government are quite agreeable to accepting amendment No. 63. If I get an assurance from Sir Ziauddin or Sir Raza Ali or from Mr. Essak Sait that that amendment will be moved, then I am quite prepared to ask for the leave of the House to withdraw my amendment.

Sir Syed Raza Ali (Cities of the United Provinces: Muhammadan Urban): I can say that the next amendment will be moved.

Mr. Akhil Chandra Datta: In that case, I beg leave of the House to withdraw my amendment.

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

Sir Syed Raza Ali: Sir, I move :

"That in sub-clause (4) of clause 6 of the Bill, for the word 'thirty', wherever it occurs, the word 'thirty-six' be substituted."

I understand that the Government are probably prepared to accept this amendment. As a matter of fact, I must say that the attitude of the Government Members on the Select Committee was extremely sympathetic. A very important alteration was made in Select Committee to which Government Members readily agreed and which has been greatly appreciated in the country. This House will remember that the amount of the profits in clause 6 of the Bill, which was to remain exempt from excess profits taxation, stood at 20,000. That figure was raised from 20,000 to 30,000. That was a very important alteration and we appreciate that, and the feelings of the classes and sections concerned have been expressed very freely in the Press and the change has been viewed with considerable appreciation. But it seems that the alterations that were made in the Select Committee were on the whole more favourable to big business than to small companies or small men. I am not complaining; I myself was a party to that. In fact, I moved the amendment, and, therefore, I will be the last man to complain that Government had been so ready to alter the important provisions of the Bill. On the whole, the fact remains that if we compare the amount of benefit that big business is to derive under the Bill as amended by the Select Committee with that which will go to small men or small business, we cannot but find that the former will get more proportionately than the latter.

Mr. Akhil Chandra Datta: They are going to accept your amendment.

Sir Syed Raza Ali: I do not want to make an unnecessary speech.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member will go on.

Sir Syed Raza Ali: Very well, Sir, I will go on. The position is this that if this amendment is accepted, the effect of the amendment on clause 6 of the Bill will be that the standard profits shall be taken to be Rs. 36,000 in any case in which the standard profits computed in accordance with sub-section (1) are less than this sum. I think that will be a very substantial improvement. I do not think it is necessary for me to go into it at any great length. If this amendment is accepted by Government, I believe Government will earn the thanks of a large section of people whose incomes are by no means large.

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

"That in sub-clause (4) of clause 6 of the Bill, for the word 'thirty', wherever it occurs, the word 'thirty-six' be substituted."

The Honourable Sir Jeremy Raisman: Sir, I am happy to say that I am prepared to accept this amendment. I agree with the Honourable the Mover that possibly the changes made in the Select Committee were more favourable to larger assesses than to smaller firms and partnerships. Now, I want to make it quite clear that my reason for accepting this increase in the amount of exemption as it is called is because I feel that something more than the Bill at present provides should be done for partnerships. I shall, however, not be prepared to go any further than this in response to the suggestions that something special should be done in regard to partners. The position in the United Kingdom is that there is a higher exemption limit for partnerships and I think that is the most suitable way of dealing with that type of hardship. I also am attracted by this form of solution because it reduces the administrative difficulties with which we shall be faced. I prefer to have to deal with a smaller number of assesses and to simplify the cases of those with which I have to deal. Sir, I accept the amendment.

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): Sir, I am glad that Government have accepted this amendment, but I am not satisfied with the reasons which have been given by the Honourable the Finance Member that he is accepting this amendment so as to please the partnerships because this amendment cannot be a substitute for the amendment which I have got on the order paper under clause 14.

Mr. President (The Honourable Sir Abdur Rahim): When that amendment is reached, the Honourable Member can deal with it.

Babu Baijnath Bajoria: I am only saying this at present that this amendment cannot be a substitute for that amendment.

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

"That in sub-clause (4) of clause 6 of the Bill, for the word 'thirty', wherever it occurs, the word 'thirty-six' be substituted."

The motion was adopted.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That clause 6, as amended, stand part of the Bill."

The motion was adopted.

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

Mr. President (The Honourable Sir Abdur Rahim): The Chair understands that clause 7 has already been adopted by the House. The question is:

"That clause 8, as amended, stand part of the Bill."

Babu Baijnath Bajoria: Sir, I move;

"That in sub-clause (3) of clause 8 of the Bill, before the words 'A business shall not', occurring in the first line, the following be inserted:

'Unless it is proved to the satisfaction of the Excess Profits Tax Officer that a *bona fide* sale or transference of a business has been made for reasonable consideration.'

Sir, the object of my amendment is that *bona fide* sale or transference of business should be recognised under this Bill. Sub-clause (3), as it stands does not recognise *bona fide* sale and transfer of the business for purposes of computing the amount of capital employed in the business after the change. Under section 10 of the Income-tax Act, 1922, such consideration is allowed for the purpose of depreciation on the original cost. There are ample provisions already in this Bill that if an artificial or a dishonest transaction takes place or any fraudulent transfers are made, such actions will be duly penalised. I do not understand why all *bona fide* sales or transfers made after the 1st day of September, 1939, or even after the 1st of January, 1940, are not considered as genuine. Why they should be presumed to have been done only to save something for the excess profits tax. I have worded the amendment in such a way that it will leave no loophole for a fraudulent operator. I have laid down three conditions before such a sale can be recognised by the Government. First, it has been left to the discretion of the Excess Profits Tax Officer. Unless and until the assessee proves to his satisfaction, he will not have the benefit of this transfer being recognised. Secondly, it must be a *bona fide* sale or transfer. Thirdly, I lay special stress that it should be for a reasonable consideration. This will stop all loophole. Supposing a business the assets of which are worth a lakh and it has been sold for three lakhs or 2½ lakhs out of all proportion to its reasonable value, then it can be said that there has been a fraudulent transfer. If these three conditions are all satisfied, then it cannot be said to be a *mala fide* or fraudulent transfer. I hope the Government will accept this amendment and will not insist on presuming that all transfers or sales made after 1st January, 1940, are bogus and *mala fide*. Sir, I move:

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

"That in sub-clause (3) of clause 8 of the Bill, before the words 'A business shall not', occurring in the first line, the following be inserted:

'Unless it is proved to the satisfaction of the Excess Profits Tax Officer that a *bona fide* sale or transference of a business has been made for reasonable consideration.'

Sir H. P. Mody: Sir, I support the amendment. I think my Honourable friend made out a very reasonable case for reconsideration of the position. If clause 8, sub-clause (3) stood in the form in which it is here, it would have the effect of hampering the course of business, particularly during these abnormal times. If, for instance, I want to erect a factory and I find that it is extremely difficult to get machinery out or that I cannot get it except at very exorbitant cost, it may pay me to buy an existing concern, and in order to induce those who own or control that concern to part with it, I may have to pay special consideration. It might pay me to pay a special price, rather than wait until I can get the machinery or plant out from another country or to pay an exorbitant price for the plant. What is the special reason why these transactions should be regarded as outside the Bill? My Honourable friend, Babu Baijnath Bajoria, has laid down various safeguards in his amendment, and one of them is that the authorities would have to be satisfied that a reasonable consideration had been paid. Now, if they come to the conclusion that even though the business was actually worthless, taking into consideration all the circumstances, a reasonable price had been paid, why should not relief be given? I know of a very important transaction which was under negotiation before this Bill was published where the price that was to be paid was going to be a great deal higher than the business was worth precisely because of the circumstances which I have just pointed out. That transaction has naturally fallen through. My submission is that if you allow the clause to stand as it is, then the ordinary course of business will be hampered greatly. I submit that a good case has been made out for the amendment moved by my Honourable friend.

Mr. S. P. Chambers: Sir, I oppose the amendment, and I do it as much in the interest of my Honourable friends as in the interest of the Government. The position in the Bill, as it stands at present, is that a business is not to be deemed to be discontinued if there is a change in the ownership after 1st September, 1939, that is to say, the owners of that business are entitled to have the standard profits of the old business related to their chargeable accounting period. If the profits in the standard period were abnormally low, then the firm or the company has a right to go to the Board of Referees or the Central Board of Revenue for special relief. If, on the other hand, the profits are high, much higher than the statutory percentage, they will have the right to have that higher profit taken as their standard profit. This amendment, as it is tabled, would do this. It would force all businesses changing hands after 1st September, 1939, to have the statutory percentage, that is to say, it would force them to have something which they may not want and which, if there was a good case for them, they could already have under the Bill as drafted. It does Government no harm, but it does quite definitely take away a right which already exists. I, therefore, oppose.

Sir H. P. Mody: If this amendment was at the end of the sub-clause, it would be perfectly all right.

Mr. S. P. Chambers: The Honourable Member says it is in the wrong place. I am not concerned with that.

Babu Baijnath Bajoria: I beg leave of the House to withdraw the amendment.

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

Mr. A. Aikman (Bengal: European): Sir, I beg to move:

"That in sub-clause (2) of clause 8 of the Bill, for the words and figures '1st day of September, 1939' the words and figures . . ."

With your permission, I should like to substitute 'January' for 'February' which is printed in the agenda.—

'1st day of January, 1940' be substituted."

Sir, this is an amendment in the series, the first of which, No. 68, was adopted in the House yesterday, and I move for the same reason.

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

"That in sub-clause (3) of clause 8 of the Bill, for the words and figures '1st day of September, 1939' the words and figures '1st day of January, 1940' be substituted."

Mr. S. P. Chambers: Sir, I oppose this amendment, and, before I say anything on it, I should like, with your permission, to make, a short explanation of something which I said yesterday and which I think might have been misunderstood. I referred to certain information I had received from Calcutta with regard to the corresponding amendment on sub-clause (2). I think certain Honourable Members inferred that I was imputing improper motives to the Mover of the amendment. I should like to say at once that there was nothing whatever of that kind in my mind and that the information I had received had anything whatever to do with the Honourable Member or with any of the Honourable Members of the Group of which he is a member. I should like to make it clear that there was no suggestion whatever. I was opposing the amendment on the purely technical grounds that the provision in the Bill, as it originally appeared, was better. That is the first thing I wanted to say. The second thing is that all these amendments substituting "1st January, 1940" for "1st September" are all interrelated, and that if it is taken as the 1st day of January in sub-clause (2), then, in order to make sense, the same day, 1st day of January, 1940, must be in sub-clause (3). The reason for that I will come to in a moment. But I make that point, because there was a considerable misunderstanding yesterday. I had already made my speech and I could not, therefore, make a further speech explaining in greater detail what I had already said. But as they are related and as there has been so much misunderstanding, I should like to give a more complete analysis of the whole clause explaining why the "1st September, 1939" is a good date and why the "1st January, 1940" is a bad date, and I hope that, when I have finished, some of the Honourable Members, who used certain adjectives in regard to my attitude, may see fit to withdraw those adjectives. That applies to my Honourable friends, Mr. James and Mr. Aney, who thought I was a little eccentric. It is just possible that when I have finished, certain Honourable Members will consider that I am eccentric in this way that I am seeking to oppose an amendment which itself would do Government less harm than it would do the industries concerned. I have been informed since yesterday that, in one large case at least, this amendment would be nothing short of disastrous for them, and they implored me to oppose this amendment. The present concern was not dissociated with the group of Members in the House who have moved this amendment.

Now, with regard to the sub-clauses. Sub-clause (1) lays down a general principle that any change in the ownership or partnership of a business shall have this effect that the business shall be deemed to have

been discontinued and a new business started. That is the general overriding sub-clause. Then, as we follow with sub-clauses (2) to (6), there are subsequent modifications of that solely for the purpose of determining standard periods and standard profits: Sub-clause (2) merely gives the option in the case of partnership changes to be treated as the old business notwithstanding sub-clause (1). And the effect of the amendment that was accepted yesterday is to extend the option to changes which took place up to the 1st January, 1940. As I explained yesterday, that would mean that any large sums paid on the taking over of a business will have to be taken into account, and certain other points will have to be taken into account which would have the effect of giving a favourable extra option to the firm. When we come, however, to sub-clauses (3), (4) and (5) the position is very different. Under sub-clause (3), as it stands, if there is a change in the ownership after the 1st September, 1939, the business is to be treated as old business. As I have explained on the previous amendment moved by my Honourable friend, Mr. Bajoria, that gives the right to have the profits of the standard period taken as the standard profits. If that profit is too low, there is a right of appeal to the Board of Referees and a right of application to the Central Board of Revenue under clause 26. But, at the end of that sub-clause appear these words:

"and, in particular, in computing the capital employed in the business after the change, no regard shall be had to any consideration given in respect of the transfer of the business or any of the assets thereof on the occasion of the change."

Now, whereas with partnership changes the matter may be unimportant, changes in the ownership of other concerns, it may be concerns owned by companies, are much more important. My Honourable friend, Mr. Bajoria, thought that we should not treat as improper any transactions which took place earlier and we should not assume that they were entered into for the purpose of avoiding excess profits tax. The point about that is that this is intended not merely or solely to avoid artificial transactions. There is another clause which deals with that. It is common knowledge that the values at which commodities and shares and assets have changed hands since 1st September, 1939, have been definitely somewhat artificial. They may have been unduly high or unduly low. Mostly, I think that, in the concerns in which we are interested, the prices may have been unduly high; and prices may have gone down considerably since. That is to say, the prices may have been unduly high in the very period which is affected by this amendment,—1st September, 1939 and 1st January, 1940. So that this amendment would have the effect of giving certain concerns the right to take a statutory percentage on what may be an inflated capital value, whereas what we have done in the Bill is to give those concerns a right to the standard profits in a standard period, with a right of appeal to the Board of Referees and the Central Board of Revenue if that standard profit is too low. I suggest that the provisions of the Bill as they existed before that amendment are in that respect satisfactory and that the amendment of this sub-clause would only give option in a case in which the price of the asset was unnatural or artificially high, and that there is no special reason why we should do that.

I will not deal with each sub-clause by itself because the amendment is only on this sub-clause, but I should like to refer to the effect of this amendment on sub-clause (5) which reads thus:

"(5) Where, on or after the 1st day of September, 1939, part of a business is transferred as a going concern by the person theretofore carrying it on to another person, the part transferred and the part not transferred shall each be deemed for

[Mr. S. P. Chambers.]

the purposes of the provisions of this Act relating to the computation of standard profits to be a continuation of the original business, and the said provisions, including the provisions of this section relating to amalgamations, shall apply accordingly, subject to any necessary modifications."

The important part about this is that there may have been changes of ownership and transfers of parts of business between 1st September, 1939 and 1st January, 1940. If so, under the Bill, as drafted at present, these concerns will have the benefit of the standard profits of the old business. To take a concrete case,—it is not a hypothetical case, I have been told that this represents an actual case,—if a business in December, 1939 owned by a company was split up into four or five parts and each part taken by a separate company, then, under the Bill, as drafted, these separate companies would have the right to the standard profits of the old company for the purpose of computing their standard profits and their excess profits. Under this amendment, these companies would not have that right. That right is taken away, and even under sub-clause (6) they would have no right to have anything above the statutory percentage of the capital employed in the business, that is to say, on the capital paid for the business on the change. In a particular case, I am informed that the capital happened to be small and the standard profits happened to be large and the result would therefore be disastrous. That is a type of case one has to keep in mind. If one takes the clause, as it stands, these companies have their right to the standard profits. If those profits are abnormally low, they can have them increased by reference to the Board of Referees and the Central Board of Revenue which can, in all reasonable cases, give them adequate relief and could even go to approximately the figures which, in a favourable case, they might be given under this amendment. But the amendment excludes definitely and permanently all cases in which there have been these partial changes between the 1st September, 1939 and the 1st January, 1940.

Mr. F. E. James (Madras: European): In spite of the proviso?

Mr. S. P. Chambers: The proviso says:

"Provided that, for the purposes aforesaid, such apportionments shall be made of the profits made, and losses incurred, and the capital employed, in the original business, and of any assets of the original business as may appear to the Excess Profits Tax Officer, or on appeal in the prescribed time and manner to the Board of Referees, to that Board, to be just."

All that it says is that if you have got one business and divide it into five parts, then the Excess Profits Tax Officer must, in treating the part businesses as successors to the original business, apportion the capital of the original business and apportion their assets and apportion their profits so as to make a fair division as between the five companies. That is the only effect of that. I feel that the Movers of these amendments had not in mind these facts, and perhaps I should add that yesterday, when I was speaking on sub-clause (2), I was speaking strictly to that sub-clause, and, therefore, I could not have referred to all these other matters. I was not aware that all these would be moved and pressed. I feel that, having regard to this explanation, the Honourable the Mover may feel disposed to withdraw his amendment. Sir, I oppose the amendment.

Mr. A. Atkman: Sir, we are very grateful to Mr. Chambers for his technical explanation, and, in the circumstances, I ask for leave of the House to withdraw the amendment.

Mr. S. P. Chambers: May I add this? As my Honourable friend has asked for leave to withdraw, it may, I think, be necessary to make the whole clause consistent by tabling an amendment to sub-clause (2) reversing the amendment accepted yesterday. That I undertake to do in the Council of State.

Mr. President (The Honourable Sir Abdur Rahim): Has the Honourable Member the leave of the House to withdraw the amendment?

Several Honourable Members: Yes, yes.

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

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

"That clause 8, as amended, stand part of the Bill."

The motion was adopted.

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

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

"That clause 9 stand part of the Bill."

Sardar Sant Singh (West Punjab: Sikh): Sir, I move:

"That after sub-clause (8) of clause 9 of the Bill, the following new sub-clause be added:

(9) the principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group."

The intention underlying this clause is that the profits for the purposes of the Excess Profits Tax Bill, of all the companies, principal as well as subsidiary, be consolidated and the profits collected on the total amount arising as profits from all this group of companies. This is only a technical point and empowering the principal company, if the money is paid by the principal company, to get their share of excess profits tax paid by the principal company from the subsidiary company. I do not think the Government will have any objection to accepting the same.

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

"That after sub-clause (8) of clause 9 of the Bill, the following new sub-clause be added:

(9) the principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group."

Mr. S. P. Chambers: Sir, I accept the amendment.

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

"That after sub-clause (8) of clause 9 of the Bill, the following new sub-clause be added:

'(9) the principal company shall be entitled to allocate to its subsidiary company or companies the respective proportionate shares of the excess profits tax payable by the whole group.'

The motion was adopted.

Dr. Sir Ziauddin Ahmad: Sir, I beg to move:

"That after sub-clause (9) of clause 9 of the Bill, the following new sub-clause be added:

'(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.'

I think equity really lies here. It is really on account of this equity of the distribution of the taxes that I move this amendment. Sir, I move.

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

"That after sub-clause (9) of clause 9 of the Bill, the following new sub-clause be added:

'(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.'

Mr. S. P. Chambers: Sir, this amendment is acceptable to Government.

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

"That after sub-clause (9) of clause 9 of the Bill, the following new sub-clause be added:

'(10) The excess profits tax payable by virtue of this section by the principal company in respect of the profits of any subsidiary company shall, for the purposes of section 12, be deemed to have been paid by the subsidiary company and not by the principal company.'

The motion was adopted.

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

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

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

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

"That clause 10 stand part of the Bill."

Sardar Sant Singh: Sir, I move:

"That for clause 10 of the Bill the following be substituted:

'10. No deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.'

Clause 10 deals with artificial transactions, and, as it has emerged from the Select Committee, it consists of three parts : the first is that provision is made for entering into fictitious or artificial transactions or carrying out any fictitious or artificial operation. The explanation to this part explains as to what acts will be included in the term artificial transaction or operation. Then, part (2), as it stands, declares these transactions to be null and void; and part (3) penalises further the operation of these artificial transactions. I move this amendment to do away with all these things and say that such artificial transactions or operations shall be null and void. I take this amendment from the United Kingdom Act as given in the Finance Act, II of 1939, in Schedule VII, in para. 9. I have taken it verbatim from that. The United Kingdom Act only declares such transactions to be null and void. The effect of this would be that if any artificial transaction or operation is included in the accounts, the Excess Profits Tax Officer can say "I will not have any regard for this and I will treat it as non-existent." But certainly it will be going too far to penalise the person in the manner in which it is proposed to penalise him under the Bill. Therefore, I submit that the onus lies upon the Government Members to convince us as to why they want to take additional precaution in India which has not been taken in the United Kingdom. In this connection, I may be permitted to add that the mental background of the Tax Collector in India is that of a police officer which was made clear in one of the standard books on evidence written by Mr. Field. While describing the difference between the mental attitude of a police officer and a magistrate, Mr. Field said that the reasons why a police officer, whatever high post he may hold, is not regarded as reliable witness in a Court of law are that the police officer starts with the presumption that everybody is guilty. The magistrate, on the contrary, starts with the presumption that everybody is innocent unless he is proved guilty. The mental attitude of the Income-tax Officer and the Excess Profits Tax Officer is that of the policemen. Why do you start with the presumption that every man is dishonest unless he is proved to be so? You should regard him as honest until he is proved to the contrary. That is the mental attitude which I would recommend the Honourable the Finance Member to bring to bear upon this matter. Therefore, I commend this amendment for acceptance of the House.

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

"That for clause 10 of the Bill the following be substituted :

- "10. No deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits."

Mr. S. P. Chambers: Sir, I oppose this amendment, and I would like to start where the Honourable Member has just finished. He said that the attitude of Income-tax officers is to treat people as dishonest, and that he thought that their attitude should be to treat them as honest until they are found out. Let me say at once that I agree entirely with the Honourable Member's attitude, and it is an attitude which I have been trying to instil into officers in this country that they should treat assesses as honest and they should treat them fairly and courteously

Sir Homi Mody: They don't give the assessee a chance of being dishonest.

Mr. S. P. Chambers: If as my friend suggests, they don't give the assessee a chance of being dishonest, so much the better. I am sorry if my friend is disappointed. But that is the very reason, and a very good reason why, when we have found them doing things which we think they ought not to do, we should penalise them and penalise them adequately. In all these matters, I think, the assumption should be that the assessee is honest but when we look into his accounts if we find that he is not honest, then we will treat him accordingly, and it is a fact, I think, that the fairer the officer treats honest assessee the better case he has for dealing severely with the other assessee. We are not concerned with those who are dishonest here or those who are not entering into such transactions. The clause, as it appears at present, gives what I might call a sporting chance to a man who wants to dodge excess profits at something like a 50 : 50 chance. If he is found out, he pays Government twice, if not, he does not pay once. That is, if he is not found out, then he avoids all the tax; if we find him out, then the effect of this amendment, as drafted, will be, we shall be leaving all the chances on his side. I suggest that that is neither fair nor equitable.

Now, reference has been made to the position in India in the 1919 Act and also to the position in the United Kingdom. In so far as the 1919 Act is concerned, that Act, which was only in operation for one year, was full of defects. No doubt it will have been amended if it had been in existence longer, and there are very few provisions in the 1919 Act which are still appropriate to the conditions in India in 1940

Sir H. P. Mody: If the Income-tax officer happens to over-assess, he also will be liable to a penalty?

Mr. S. P. Chambers: If the Extra Profits Tax Officer attempts to over-assess, what will happen is, the assessee will have a right of appeal. May I remind the Honourable Member that, under the Income-tax Act, there are full time Inspecting Assistant Commissioners, and the Inspecting Assistant Commissioner will severely reprimand the Excess Profits Tax Officer, and his penalty may be severe—he may actually lose his job.

The other matter referred to was the position in the United Kingdom. There clearly the position is that no penalty is shown in the Finance Act of 1939. There the position is, if a man enters into transactions of this nature or in any way defrauds the revenue, the only remedy is penal action. That course is not easy in the United Kingdom. I think it is still more difficult in India, and, I think, in a monetary matter of this kind, the provision we have at present is more satisfactory,—we say he should pay the tax, and also something more by way of penalty, which is a simple process, and I think it is a simple and equitable process and better than attempting to enter into a long and difficult prosecution which may end in imprisonment. I am sure that those who would enter into transactions of this kind would rather pay the tax than go to prison.

Mr. M. S. Aney: Sir, I am afraid my Honourable friend has not given us any very convincing reason for discriminating the Indian position from the

practice followed in the United Kingdom. He stated that in the United Kingdom the remedy is to proceed against the defaulter penally. I believe that remedy still exists under the present Act

The Honourable Sir Jeremy Raisman: We have excluded it. In any case in which departmental action is taken prosecution is excluded; it is an alternative. See clause 16 (2).

Mr. M. S. Aney: The offences for which he is liable under the Indian Penal Code or any other penal law are not at all excluded, because in a composition proceedings are taken under this Act. What is excluded here.

The Honourable Sir Jeremy Raisman: 16 (2).

Mr. M. S. Aney: No prosecution for an offence against this Act shall be instituted in respect of the same facts as those in respect of which a penalty has been imposed. It will not be an offence under this Act, but it will be an offence under the Indian Penal Code. That is not excluded at all in this section. In terms of the wording of section 25, what is excluded is any criminal action against this Act and for having violated the provisions of this Act only.

Now, it not only amounts to a violation of the provisions of this Act, but it may amount to a violation of the provisions of any other Act and a prosecution under that Act is left open. Therefore, if the existence of a penal remedy is considered as a sufficient ground for not making a provision for recovering an additional penalty in this form in the United Kingdom, that ground holds good here also. Either we must provide no prosecution under any criminal law arising out of the facts which amount to a violation of anything under this Act—or we must do away with the clause of penalty that exists here. That requires to be clarified.

The Honourable Sir Jeremy Raisman: The intention was to exclude prosecution in every case.

Mr. M. S. Aney: I believe it requires to be made more specific and clear.

The Honourable Sir Jeremy Raisman: I am prepared to take steps to ensure that this intention shall be carried out, namely, no prosecution will lie on the same facts on which a penalty has been imposed on the assessee under this section.

Sardar Sant Singh: In view of this assurance, I beg leave of the House to withdraw this amendment.

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

Babu Baijnath Bajoria: I move :

“That in sub-clause (3) of clause 10 of the Bill, after the words ‘a penalty not exceeding’ the words ‘half of’ be inserted.”

I do not go so far as my Honourable friend, Sardar Sant Singh, that no penalty should be levied, but what I want is that the penalty should not exceed half of the tax evaded. In a Bill of this type, which is a Bill of heavy taxation, the amount of tax, if the penalty is equal to the tax—it

[Babu Baijnath Bajoria]

will amount practically to whole of the 100 per cent. of profits and even more than that. Probably on the 50 per cent. for which the penalty is imposed he will have to pay income-tax and super-tax. So it is not fifty-fifty as my Honourable friend, Mr. Chambers, has put it. If my amendment is accepted, it will be more than deterrent for any one who wants to dodge the tax under the provisions of this Bill. He will have to pay 25 per cent. further, it will be 75 per cent. of the profits and then on 50 per cent. he will have to pay income-tax and super-tax, and that will take away cent. per cent. of the profit. I hope that my amendment will be accepted.

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

"That in sub-clause (3) of clause 10 of the Bill, after the words 'a penalty not exceeding' the words 'half of' be inserted."

Mr. S. P. Chambers: I am afraid I must oppose this amendment also, and I do so because I feel that the Honourable Member's arithmetic is not altogether correct. If the excess profits tax was not paid, the amount saved by the tax-payer is not the full 50 per cent., because he pays income-tax on the excess profits saved. He has to pay income-tax on the whole of the profits without having any deduction for the excess profits tax payable. I think, therefore, that the ratio is approximately 50:50. I may add that under the Income-tax Act the penalty is $1\frac{1}{2}$ times. I oppose the amendment.

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

"That in sub-clause (3) of clause 10 of the Bill, after the words 'a penalty not exceeding' the words 'half of' be inserted."

The motion was negatived.

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

"That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

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

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

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

"That clause 11 stand part of the Bill."

Mr. Muhammad Nauman: Sir, I move:

"That in sub-clause (3) of clause 11 of the Bill, for the words 'one half thereof or to one-half' the words 'the full amount thereof or the full amount' be substituted."

The object of this amendment is that full relief to the extent of double taxation should be given to those merchants who are having their business

in such foreign countries where their Governments have legislated for Excess Profits Tax. They are liable to Excess Profits Tax in those countries of origin and it is very fair that they should be given relief to the extent of the full amount that they have to pay in those countries. The Bill provides for rebate or relief of only half of the amount so paid as tax in those foreign countries or in India whichever is less. I think equity demands that they should have full relief. Otherwise double taxation remains at least to the extent of half that they are compelled to pay under the present Bill as it is. Already, under the income-tax, after the introduction of the world income system of taxation, they have to pay full one and again half income towards income-tax. I think risk of trade in foreign countries has increased and this is not the time, Sir, when instead of giving them any encouragement such a stringent legislation should be made as would rather involve them in further difficulties. I think risk of trade in foreign countries has increased with war conditions and there are greater amounts of risk for them now than in usual conditions and security of relief must be provided. I do not of course know what amount will be involved as a loss to the revenue by granting this full relief. I do not suppose it will be at all large enough to make the Government feel shy of accepting this modest amendment. I do not know how many countries have already legislated for excess profit but even those who have not legislated yet may follow suit soon.

I want to illustrate my point by quoting a concrete example to the House in order to impress upon the House the hardship which will fall if Excess Profits Tax is invoked in other countries and which is not very unexpected. When I say foreign merchants having foreign trade, naturally it includes a lot of people. It is not only those Sindhis for whom my friend, Mr. Lalchand Navalrai, has been pleading. After the separation of Burma, Aden and other places, which were parts of old India, all those people who have been trading in those colonies will be sailing in the same boat and so naturally things deserve more serious consideration than they are usually considered to be. Now, I want to impress upon the House by a concrete example how this taxation is going to affect the foreign merchants if they are not going to be refused relief to the full extent of the amount paid in other countries. Suppose a person trading in Java has a standard profit of Rs. 1,00,000 and a profit of Rs. 1,50,000 in the chargeable accounting year. If the rates of income tax and excess profits tax are the same in the two countries, the approximate amount of excess profits tax and the income tax payable on this income would be as follows. Standard Profit, Rs. 1,00,000. Profit in chargeable year Rs. 1,50,000. Excess chargeable Rs. 50,000. Tax at 50 per cent. in India, Rs. 25,000. Tax at 50 per cent. in Java Rs. 25,000. Less 50 per cent. of tax paid in Java refund due in India Rs. 12,500. The net Excess Profit Tax will be Rs. 37,500. Now, Honourable Members will see that it becomes really hard when they have to pay Rs. 37,500 out of fifty thousand excess and they get no relief. Unless the Government accept this amendment and give them full relief, that is to the extent of Rs. 25,000 paid in Java, this will work as a great hardship in countries where legislation similar to ours has been passed, or may be passed. With these words I move my amendment.

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

"That in sub-clause (2) of clause 11 of the Bill, for the words 'one half thereof or to one-half' the words 'the full amount thereof or the full amount' be substituted."

Mr. S. P. Chambers: Sir, I oppose this amendment. I would like to draw the attention of the House to the fact that clause 11 of the Bill deals with double excess profits taxation, whereas clause 12 deals with the allowance of excess profits tax in arriving at income chargeable to income-tax. I mention this at this stage because there is on the paper a further amendment to clause 12. The effect of that amendment is to allow, as a deduction for income-tax purposes, the whole of the foreign tax paid in respect of profits arising in a foreign country whether that foreign country is part of the British Empire or not. That amendment will be accepted by Government if it is put, but this amendment to clause 11 would place us in rather an embarrassing position. The normal process of double taxation relief is for one country to grant part of the relief and for the other to grant further relief, so that in total the tax paid does not exceed the greater of the two amounts. Now, if the amendment were carried, the effect would be that India, without any effort on the part of the other countries, would have to allow the whole relief for the excess profits tax payable.

Mr. Muhammad Nauman: May I interrupt? You said "without any effort on the part of the other countries". I could not follow that. As a matter of fact, if there is no legislation, this clause is useless.

Mr. S. P. Chambers: May I point out that it says "allowing the full amount". This amendment is not an amendment of sub-clause (1). It is an amendment to sub-clause (2) of clause 11, and I will read the sub-clause so as to make it intelligible:

"(2) If any person, who has paid excess profits tax under this Act for any chargeable accounting period in respect of profits arising outside India in a country the laws of which do not provide for any relief in respect of excess profits tax charged in British India, proves that he has paid excess profits tax under the laws of the said country in respect of the same profits, he shall be entitled to the deduction from the excess profits tax payable in British India of a sum (in the Bill it is one-half, in the amendment it is the full amount) thereof or to one-half of the excess profits tax payable in the said country, whichever is the less."

The question about this is that this would involve no effort on the part of the other country to enter into reciprocal arrangements. The full burden of the whole of the foreign excess profits tax would fall on the Indian exchequer. That goes further than we could allow, because, under that amendment, there will be no inducement to any country either an Empire country or any other country to enter into any arrangement with India for reciprocal relief. We would have to allow the whole of the relief, and the whole burden would fall on the Indian exchequer. That is the difficulty. We have sympathy with the Honourable Member, but I think that by allowing one-half here and allowing the whole tax paid, whether Indian or foreign, as a deduction for income-tax purposes in clause 12, we have gone as far as we can reasonably go. Sir, I oppose the amendment.

Mr. Muhammad Nauman: In view of the very good explanation given by Mr. Chambers, I wish to withdraw the amendment. I appreciate the point that it will give other countries no chance of making a settlement with us.

Mr. Deputy President (Mr. Akhil Chandra Datta): Has the Honourable Member the leave of the House to withdraw his amendment?

Mr. Husenbhai Abdullahai Laljee (Bombay Central Division: Muhammadan Rural): I rise on a point of order, Sir. I wished to speak on this amendment, but in the meantime my Honourable friend, Mr. Muhammad Nauman, has withdrawn it.

Mr. Deputy President (Mr. Akhil Chandra Datta): Is the Chair to understand that the Honourable Member is opposing the leave being granted to withdraw the amendment?

Mr. Husenbhai Abdullahai Laljee: Yes, if it comes to that, because I am one of the seconders of this amendment and I wish to speak on it.

Mr. Deputy President (Mr. Akhil Chandra Datta): The Honourable Member has every right to oppose the leave being granted.

Mr. Husenbhai Abdullahai Laljee: Sir, the position is this. Mr. Chambers has nicely put the case by saying that unless and until we make some such provision the other Governments will not be prepared to make a reciprocal arrangement with us. But so far as the Indian people are concerned, may I draw the attention of Mr. Chambers to the peculiar position in which we are. It is a fact that so far as the Indian Government is concerned, they are nowhere in the British Empire or outside barring Great Britain: Nobody cares for us and nobody would care for us. There is nobody to represent us. It is only our poor merchants who are trading in foreign lands on their own without any help or protection. Surely, those persons who have to have any connection with India they will certainly make their treaties through Great Britain. But so far as we Indians are concerned, we are helpless and very few and far between. We have got no Ambassadors, no Counsel, to fight about our cases there, and, further, it is preposterous to consider that for a small business that the Indians do in foreign countries, the Governments of those powerful foreign countries will try or care to make a reciprocal agreement with the Government of India. This would have been a fair proposal if we were in the same position as the Dominions. But that is not the case. Sir, as I have repeatedly said it is with a great handicap that we have been exporting our things and it is also, with a great handicap that we have been working the cause of our country outside. Of course, we do make at times a little profit. (Laughter from European and Government Benches.) My friends are laughing. I am very sorry to see my friends laugh. I feel very much that they do so when they are in a comfortable position. When Europeans come out from their countries, they have the advantage of Government support, while I need not repeat the tale of our pitiable condition. I do not wish to say more at this stage. But I must say this that they ought not to laugh but that they should be ashamed of themselves when they see that India has nobody to help or to support her. If we get any representation or representatives in our country from the Colonies or from Great Britain, our Government is always ready to help them. Sir, this is our position—most pitiable. I do not want to introduce any heat but, surely, it is absurd to think that any little consideration will be shown to the Indian trader by those strong foreign Governments or that they will ever reciprocate or offer to give something out of their taxes. That is why I appeal to the Honourable the Finance Member to realise the actual true-

[Mr. Husenbhai Abdullabhai Laljee]

position. Do not go by theory but realise the peculiar and pitiable position of Indians and also the position of our Indian Government as the subordinate Government of the British Empire.

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

"That in sub-clause (2) of clause 11 of the Bill, for the words 'one half thereof or to one-half' the words 'the full amount thereof or the full amount' be substituted."

The motion was negatived.

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

"That clause 11 stand part of the Bill."

The motion was adopted :

Clause 11 was added to the Bill.

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

"That clause 12 stand part of the Bill."

Dr. P. N. Banerjee (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I beg to move :

"That for sub-clause (2) of clause 12 of the Bill the following be substituted :

'(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accounting period to the extent that such profits arose in the said country, after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in British India :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without British India relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the chargeable accounting period in which the deficiency of profits occurs.'

Sir, the amendment is a rather long one, but I shall explain its significance in a very few words. Sub-clause (1) of clause 12 of the Bill provides that the amount of excess profits tax payable shall be allowed to be deducted as an expense incurred in the course of carrying on the business. This is good. Sub-clause (2) of this clause further provides that the amount of the excess profits tax payable under any law in force in the United Kingdom or in any Indian State or in any other part of His Majesty's Dominions shall also be deducted as expense. This also is good so far as it goes. But the application of the principle should not stop at the frontiers of His Majesty's Dominions. What I urge is that this principle should be extended to foreign countries. If that is done, the ends of justice will be satisfied. That is why I move this amendment. There should not be any distinction in respect of Indian business carried on within the Dominions of His Majesty

and the Indian business carried on in any foreign country. This is a very reasonable amendment and I hope my Honourable friend, Mr. Chambers, will accept it.

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

"That for sub-clause (2) of clause 12 of the Bill the following be substituted :

'(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accounting period to the extent that such profits arose in the said country, after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in British India :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without British India relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the chargeable accounting period in which the deficiency of profits occurs."

The Honourable Sir Jeremy Raisman: I accept the amendment.

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

"That for sub-clause (2) of clause 12 of the Bill the following be substituted :

'(2) There shall also be so deducted the amount of any excess profits tax payable under any law in force in a country outside British India on the profits of the business in respect of any chargeable accounting period to the extent that such profits arose in the said country, after diminishing such amount by any amount which is allowable by way of relief by repayment, set off or otherwise under any law in the country where the tax is payable providing for the granting of relief in that country where excess profits tax has also been charged in British India :

Provided that where, under the provisions of this Act relating to deficiencies of profits or under any corresponding law in force in the said country without British India relief is given by way of repayment from excess profits tax chargeable for any chargeable accounting period previous to that in which the deficiency occurs, the amount of the deduction allowed under sub-section (1) or sub-section (2) shall not be altered, but the amount repayable shall be taken into account in computing the profits and gains of the business for the purposes of income-tax as if it were a profit of the business accruing in the chargeable accounting period in which the deficiency of profits occurs."

The motion was adopted.

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

"That clause 12, as amended, stand part of the Bill."

The motion was adopted.

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

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

"That clause 13 stand part of the Bill."

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

"That to sub-clause (2) of clause 13 of the Bill the following proviso be added:

'Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the year 1935-36.'

Sir, sub-clause (2) of clause 13 gives power to the Excess Profits Tax Officer to call for accounts without any limit of time. Now, if we look at the Income-tax Act, we find that under section 22, sub-section (4) proviso the period of time is limited to three years. After careful examination of the whole Bill it was settled when the Income-tax Act was passed that three years was a reasonable period of time. Now, why should we not stick to that limit?

There is another important consideration in this regard. Clause 22(b) of the Excess Profits Tax Bill provides that all information obtained in respect of the excess profits may be used in respect of the income-tax. If the present sub-clause is allowed to stand as it is, it would amount to amending the Income-tax Act by the backdoor. That would not be a very desirable state of things.

I do not know whether this limitation of the period has been omitted through oversight or by deliberation. I believe it has been omitted through oversight, and if it be so, I hope the Government will accept the amendment. If, however, it has been a deliberate act on the part of the Government, it deserves the strongest condemnation, because for sometime past the feeling has been abroad that the Government has not been quite straightforward in its dealings. The Government should now do their best to remove such a feeling. I hope the Government will find their way to accept my amendment.

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

"That to sub-clause (2) of clause 13 of the Bill the following proviso be added:

'Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the year 1935-36.'

The Honourable Sir Jeremy Raisman: I accept the amendment.

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

"That to sub-clause (2) of clause 13 of the Bill the following proviso be added:

'Provided that the Excess Profits Tax Officer shall not require the production of any accounts relating to a period prior to the year 1935-36.'

The motion was adopted.

Mr. Lalchand Navalrai (Sind: Non-Muhammadan Rural): Sir, I beg to move:

"That to sub-clause (2) of clause 13 of the Bill the following proviso be added:

'Provided that in respect of profits accruing or arising without British India the Excess Profits Tax Officer may not require production of account books maintained at the places of business without British India if statements of accounts verified by affidavit of the tax-payer or any other person on his behalf are produced.'

Under the Income-tax Act, a notice is given to the taxpayer for submitting returns and the same kind of notice is given under clause 13 of this Bill for filing returns within 60 days, this period being fixed by the Select Committee. Further, sub-clause (2) says:

"(2) The Excess Profits Tax Officer may serve on any person, upon whom a notice has been served under sub-section (1), a notice requiring him on a date to be therein specified to produce, or cause to be produced, such accounts or documents as the Excess Profits Tax Officer may require and may from time to time serve further notices in like manner requiring the production of such further accounts or documents or other evidence as he may require."

The difficulty in the matter of account books has been mentioned to the House not only now but even at the time of the new Income-tax Act. Now, due to the war, the difficulty is greater because people do not get visas or passports to come here from foreign countries and their books and documents are all there. Apart from this it has been said that Indian merchants and specially Sindhi merchants keep their accounts in a particular way and auditing consists in the Manager going there after two or three years and going through the accounts. Again, these accounts will be of no use to the officers and so their production should not be insisted upon. What I ask in my amendment is for some facility to satisfy the officers with regard to these accounts, in the shape of a statement of accounts supported by an affidavit sworn by the tax-payer or any other person on his behalf. An affidavit is a serious thing and for swearing a false affidavit he may be sent to jail. Therefore I submit this little facility should be allowed.

Again, they might be asked to produce audited accounts, as under the Income-tax Act. But in those parts even to get audited accounts in these days is difficult owing to lack of qualified auditors. So I submit it should not be insisted on, specially when an affidavit is produced before the Excess Profits Tax Officer. As Government are showing reasonableness on certain amendments I hope they will see the reasonableness of this amendment and accept it.

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

"That to sub-clause (2) of clause 13 of the Bill the following proviso be added:

'Provided that in respect of profits accruing or arising without British India the Excess Profits Tax Officer may not require production of account books maintained at the places of business without British India if statements of accounts verified by affidavit of the tax-payer or any other person on his behalf are produced.'

Mr. S. P. Chambers: Sir, when the Income-tax Amendment Bill was under discussion in this House, a similar amendment was tabled and the then Finance Member, Sir James Grigg, explained that in some respects the amendment did not go quite far enough and in other ways it went a little too far. He gave an assurance that instructions would be issued to all Income-tax Officers that the foreign books should not be called for if audited statements of accounts could be produced or—he went much further,—if the assessment could be determined in any other way without calling for the books. That goes further, because in some cases the verified statement of accounts might not be the proper kind of evidence. And, in fact, if there were no accounts maintained in exceptional circumstances, the assessee could not produce anything and this amendment would

[Mr. S. P. Chambers]

not help him. I think, Sir, the method adopted, when the Income-tax Bill was in this House, is more suitable, and I understand it has been working quite well. I suggest that that is the better course here and I am prepared to give an assurance that similar instructions will be issued to all Excess Profits Tax Officers.

Mr. Lalchand Navalrai: Will the Honourable Member allow me to amend it accordingly, so that there may be a statutory provision?

Mr. S. P. Chambers: I was explaining that it is difficult to make this a matter of statutory provision, because it is really more a matter for the discretion of the Excess Profits Tax Officer, having regard to the peculiar difficulties of each individual case, and I think that the method of giving an assurance is more suitable on this occasion. If I give that assurance, perhaps the Honourable Member may see fit to withdraw his amendment with the permission of the House.

Mr. Lalchand Navalrai: Sir, I will accept the assurance, and I take it that the Honourable Member will issue instructions in the way he has said here today, because it is a very comprehensive one, and, under these circumstances, I beg leave of the House to withdraw my amendment.

Mr. Deputy President (Mr. Akhil Chandra Datta): Has the Honourable Member the leave of the House to withdraw his amendment?

Several Honourable Members: Yes, yes.

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

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

"That clause 13, as amended, stand part of the Bill."

The motion was adopted.

Clause 13, as amended, was added to the Bill.

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

"That clause 14 stand part of the Bill."

Babu Baijnath Bajoria: Sir, I move :

"That to sub-clause (3) of clause 14 of the Bill the following proviso be added :

'Provided however that in the case of registered firms the assessment will be made on the partners thereof in accordance with the provisions of the Indian Income-tax Act, 1922.'

This is an important amendment. Sub-clause (3) reads:

"Where two or more persons were carrying on the business jointly in the chargeable accounting period, the assessment shall be made upon them jointly and, in the case of a partnership, may be made in the partnership name."

It means that even if the business is carried on in partnership, either as a registered firm or an unregistered firm, or whether the business is carried on by an association of individuals, still the assessment will be made jointly and no consideration will be given that the business is

carried on by different individuals or partners. I am leaving out the case of the association of individuals: I am also leaving out the case of the unregistered firm; I am also leaving out the case of the Hindu Joint family, though I would very much like that the adult male members of a Hindu joint family also should be assessed separately, because we fought that battle on the Indian Income-tax Amendment Bill and lost. I do not want in this amendment to make any departure from the Indian Income-tax Act as it obtains now. The assessment of a registered firm is made, not on the firm itself, but on the partners in accordance with their shares, and I do not understand how in this case the Government wants to assess the profits of the business in a lump sum and do not want to assess the individual partners separately. This will mean a very real hardship to the partners of the firm. I will give an illustration. Suppose the standard profit of a registered firm in a standard period was, say, Rs. 40,000: whereas in the chargeable accounting period, their profits amounted to say, Rs. 60,000; and there are four partners in the firm. That profit of Rs. 60,000 has been made with the joint efforts of the four partners and so each partner gets only Rs. 15,000 as his share, if their share is equal. Whereas in the standard period their personal standard profit was Rs. 10,000 only. So each of them has received only Rs. 15,000 which is much less than the minimum standard provided in this Bill. But if they are assessed collectively, in the name of the firm, then the Government will get Rs. 10,000 as they will say that there has been an excess profit of Rs. 20,000 and they are entitled to get half of that amount. This is absolutely unjust and unfair. If one person makes an excess profit of Rs. 10,000—supposing he made 30,000 before and he makes 40,000 now, then he will be charged excess profits tax on the excess of 10,000: whereas in this case, because he is doing business in partnership with others and even if his share is only 15,000, even then he will have to pay excess profits to the tune of 2,500 rupees as his share. This is not just. Earlier this morning, the Finance Member agreed to raise the minimum limit from Rs. 30,000 to Rs. 36,000—it was very kind of him to do so—but as I objected at the time to his remarks that he is making that concession so that he will not make any more concessions to partnership firms, but that concession of 6,000 rupees was given to individuals as well as to partnership and to all assessees. But that is very small compensation—practically nothing compared to the just rights of the partners of a registered firm.

There is another difficulty which I have not been able to understand. In the definition section, clause 2, it is said:

“Provided further that all businesses to which this Act applies carried on by the same person shall be treated as one business for the purposes of this Act.”

I quite agree that if a person does several businesses, the businesses should be taken together and assessed collectively; but in the case of partnership, supposing one firm consists of persons A, B and C and in another firm the partners are A, B and D and in a third firm the partners are A, C and D, how is the business to be taxed? If they say that we are taxing the businesses, then will they tax those businesses separately or calculate the share of A, B and C separately, so that A, B and C can be properly assessed on the profits which they have each made during the chargeable accounting period? This is a very important point. I would like this to be explained.

[Babu Baijnath Bajoria]

Then, there may be different partners in a firm and the business may be carried on in different places; they will have to calculate the profit of separate individuals: but are they going to assess the firms? A firm is an entity here and it is an entity there. So there will be a good deal of confusion if this sub-clause remains as it is and if the definition remains as it is. The best and the easiest course and the most equitable course is to allow this amendment so that we may follow the same procedure as is being followed for the purpose of the Income-tax Act. After all, this measure is said to be only a temporary measure. We do not know whether it will be temporary or permanent, because when any income-tax is levied it is generally said to be temporary, but somehow it always remains as a permanent measure. The same thing happened with regard to the surcharges on income-tax and super-tax, and they were at last incorporated in my Honourable friend, Mr. Chambers' slab system with compound interest

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House): It will not pay the Government to make this a permanent measure, I assure you.

Babu Baijnath Bajoria: Sir, I commend this amendment for the acceptance of the House.

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

"That to sub-clause (3) of clause 14 of the Bill the following proviso be added :

"Provided however that in the case of registered firms the assessment will be made on the partners thereof in accordance with the provisions of the Indian Income-tax Act, 1922."

Mr. Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): Sir, I have not been able to follow my friend, Mr. Bajoria's arguments in support of his amendment. How can you differentiate between his proposal and the proposal about other companies? If there are a hundred shareholders in a company, is it intended that each shareholder should be assessed separately in a company?

Babu Baijnath Bajoria: I have already stated that in my first speech, and so I did not repeat it.

Mr. Muhammad Azhar Ali: You ought to have explained it. If you want that this principle should be applied, it ought to be applied to every shareholder of every company.

Babu Baijnath Bajoria: That is a corporation tax.

Mr. Muhammad Azhar Ali: But it ought to apply to every shareholder of every company.

Mr. Lalchand Navalrai: Just as under the Income-tax Act when the partners are registered, they are charged according to their share; will that happen here or no?

Mr. Muhammad Azhar Ali: That is for the Government to decide, but I don't see much force in the arguments of my friend, Mr. Bajoria.

Babu Baijnath Bajoria: On a point of personal explanation, Sir. As regards the question of shareholders, I stated in my first speech on the general discussion of this Bill that the shareholders cannot claim that, because the tax will be levied as a corporation tax just as supertax is levied, and it is not refunded to the shareholders.

Mr. Lalchand Navalrai: Sir, if I intervene in this debate, it is only to point out a way out of the difficulty. Under the Income-tax Act, if a firm is registered and the partners show their shares separately, then the income-tax is assessed on each partner's share, and a particular share may be excluded if it is to be excluded. The same principle will apply here too. As my friend said, every partner will require that it should be made separately. Why not, I ask? It can be done because it is under the Income-tax Act. The only requirement is that those partners should register their firm with the income-tax officer. Similarly, in this case also they may register their firms with the Excess Profits Tax officer. I think there should be no difficulty in accepting this amendment.

The Honourable Sir Jeremy Raisman: Sir, I am afraid that the hardships which my friend, Mr. Bajoria, apprehends to partners would pale into insignificance beside the hardships to which the revenue would be subjected if his amendment were adopted and if every additional partner in a firm could bring with him an immunity of Rs. 30,000 from Excess Profits Tax. I realised that there was some force in Mr. Bajoria's first case as put to the House, and I was ready to advance the exemption limit from Rs. 20,000 in the first instance to Rs. 30,000 as it is now, and I made it clear this morning that this was one of the reasons, and to this extent Mr. Bajoria may regard himself as a public benefactor, because the case he has put was very prominently in my mind, but having advanced to that point, I regret that it is quite impossible to accept the amendment which my friend has put forward and which would have a most serious effect not only on the revenue, but on the administration of the Act. Sir, I oppose the amendment.

Babu Baijnath Bajoria: What about the firms?

The Honourable Sir Jeremy Raisman: There will be no difficulty about that. The unit for assessment is a business.

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

"That to sub-clause (3) of clause 14 of the Bill the following proviso be added:

'Provided however that in the case of registered firms the assessment will be made on the partners thereof in accordance with the provisions of the Indian Income-tax Act, 1922.'

The motion was negatived.

Bhai Parma Nand: Sir, I move:

“That after sub-clause (4) of clause 14 of the Bill the following be added :

“(5) That small shareholders in the registered limited companies shall be given refund on the same lines out of the Excess Profits Tax as they get under the Income-tax Act’.”

Sir, this is a very simple amendment. Under the Income-tax law the rule is that big companies are charged income-tax at a very high rate, and in those companies shareholders who get only a small amount of dividend and who are not liable to pay income-tax at that higher rate charged to the company, are allowed a refund from the income-tax office. The object of my amendment is that the same privilege of getting a refund should be allowed to shareholders in the companies under this Excess Profits Bill. The underlying principles of this measure are two, one is that only excess profits accruing as a result of the war conditions are to be taxed, and the second is this that the companies making profits below Rs. 30,000 or Rs. 36,000 are exempted from that taxation.

Now if a shareholder who gets only a small sum by way of dividend, say a thousand or two thousand rupees a year, is taxed according to the Excess Profits Tax ratio, that means that all those profits much below Rs. 30,000 or Rs. 36,000 are also equally taxed at the rate of 50 per cent. according to the new Bill. Therefore, my amendment only seeks that just as in the income-tax law the small shareholders are allowed to get a refund such shareholders of these companies, that pay the Excess Profits Tax, should be permitted to claim a refund, and if they are not allowed a refund that means that the exemption that is given to profits below Rs. 30,000 becomes meaningless in their case. If they are not exempted, then business men who make profits, say, Rs. 2,000 or 5,000 should be equally taxed as the small shareholders in these companies are. It is most unfair that those private business men who make much income during the war, though amounting to less than Rs. 30,000 or 36,000 should not be taxed, while small shareholders should be charged on account of excess profits made by the company.

In a way this is quite different from the partnership question because in this case, the shareholders are all registered and their income is definitely known, there is no indefiniteness about it. One plea, that the Finance Member may raise, is that this might reduce the amount of revenue very much. It will be better in that case that they should levy this tax upon all incomes that go beyond Rs. 4,000 or 5,000, and then, of course, the shareholders too could be taxed just like all other people who are doing private business. This is a simple amendment and I commend it to the Honourable the Finance Member.

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

“That after sub-clause (4) of clause 14 of the Bill the following be added :

“(5) That small shareholders in the registered limited companies shall be given refund on the same lines out of the Excess Profits Tax as they get under the Income-tax Act’.”

Mr. Lalchand Navalrai: The former amendment dealt with the partners in a registered firm. Now, this amendment does not deal with general partnerships, but the words used are “small shareholders” and my Honourable friend, Bhai Parma Nand, has explained that phrase, that if a

partner's share comes to Rs. 2,000 or 3,000 or 4,000 he will have to be assessed along with the other partners so that he also bears the burden of this excess profits tax.

An Honourable Member: What is the meaning of small shareholders?

Mr. Lalchand Navalrai: The Government can make a definition and we shall have no objection to it. My Honourable friend has put down, a man whose profit is Rs. 2,000. According to the Income-tax Act also, under the slab system Rs. 1,500 will be excluded and then he has to be charged. That equitable way of doing things is going to be absent from this Excess Profits Tax Bill and there is no reason for it. Justice and fairness require that we should recognise this. This Bill is even more stringent than the Income-tax Act, and therefore consideration should be shown for poor shareholders, and my Honourable friend has been very particular in using the words small shareholders. I think this concession should be given and I hope the Honourable the Finance Member will do it from two points of view, namely, one, he should show a little mercy towards the small shareholders, and secondly, equity and fairness require it.

Mr. Huseinbhai Abdullabhai Laljee: I have some difficulty in supporting this amendment, but it is but fair that small shareholders should be protected. I do not know how we should define the term small shareholders, whether a person who has got five shares in a concern but worth 5,00,000 or a small shareholder means a person who has five shares but worth 5,000 is a small shareholder. That is my difficulty, but Government can devise ways and means of defining what is really meant by a small shareholder, that is, a person of small means or a person whose income is under the taxable limit, that is, Rs. 1,000, if the Government is really inclined to help the poor people. It can also be said that shareholders who are not ordinarily charged to income-tax or those persons who are ordinarily charged to income-tax on Rs. 2,000 and not more—some such thing may solve the difficulty. Some comparison was recently being made between a limited company and a partnership firm. I do feel that was not at all a right comparison. So far as limited concerns are concerned, they are more or less industrial concerns with a definite object for doing a certain business. The articles of association lay down their activities of their business and so far as ordinary partnership firms are concerned it is not so and there is a lot of difference. In partnership firm in one business they make money, and in another they lose. I am very sorry that Pandit Krishna Kant Malaviya is absent, otherwise one of his amendments was really very important so far as Indian overseas partnership is concerned and I can only appeal at this juncture to the Honourable the Finance Member. He has, of course, shown fair consideration with regard to the producing of books, with regard to Indian foreign business and the assurance that has been given is quite fair. I do hope that he will also consider this Indian foreign partnership with regard to the partnership firms, when there are partners who are non-resident

The Honourable Sir Jeremy Raisman: The Honourable Member is speaking to an entirely different amendment.

Mr. Husenbhai Abdullabhai Laljee: In that case I will withdraw, but I only wish to say that hard cases may be favourably considered, both regarding Indians in India and outside.

The Honourable Sir Jeremy Raisman: The Honourable the Mover said that this case was different from the partnership case. It is, and, in my opinion, it is infinitely weaker. Since I am opposed even to the amendment of my Honourable friend, Mr. Bajoria, I certainly could not accept an amendment of this kind. It is based, I think, on a complete confusion of thought and non-realisation of the character of an excess profits tax. The tax is a tax on the excess profits made by businesses and the machinery which is appropriate to the readjustment of the tax on the total income of a company when it comes into the hands of small shareholders seems to me to be entirely inappropriate to this special tax. Sir, I oppose the amendment.

Bhai Parma Nand: Why do you exempt all private business who make, say, Rs. 5,000 a year excess profits on account of the war?

(No reply.)

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

"That after sub-clause (4) of clause 14 of the Bill the following be added:

'(5) That small shareholders in the registered limited companies shall be given refund on the same lines out of the Excess Profits Tax as they get under the Income-tax Act.'"

The motion was negatived.

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

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

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

"That clause 15 stand part of the Bill."

Babu Baijnath Bajoria: Sir, I move:

"That in clause 15 of the Bill, for the word 'five' the word 'four' be substituted."

This is a revision clause for profits escaping assessment. The period which has been mentioned in this clause has been given as five years whereas in the Income-tax Act it is four years.

An Honourable Member: It means four years.

Babu Baijnath Bajoria: If it is four years, then I have no objection. For the sake of uniformity, the same number of years should be there. If I am wrong I will be prepared to withdraw my amendment. Sir, I move.

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

"That in clause 15 of the Bill, for the word 'five' the word 'four' be substituted."

Mr. S. P. Chambers: Sir, this amendment has been moved on a misapprehension. Let me explain to the Honourable Member that in the case of the income-tax assessment the assessment is made for one year on the basis of the income of the previous year. The right to re-assess is given for four years beyond the year of assessment, that is to say, it is five years beyond the accounting period in which the profits arose. Here we have no assessment years in the same sense, and, therefore, if we make a provision that re-assessment can be made for five years after the end of the accounting period, that time limit is the same as in the Income-tax Act. Perhaps after this explanation the Honourable Member will see fit to withdraw his amendment.

Babu Baijnath Bajoria: In view of the explanation given, I would like to withdraw this amendment.

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

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is: "That clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

Mr. Deputy President (Mr. Akhil Chandra Datta): The question is: "That clause 16 stand part of the Bill."

Sardar Sant Singh: Sir, I move:

"That in part (a) of sub-clause (1) of clause 16 of the Bill, before the words 'the amount' the word 'one-fourth' be inserted, and, after the existing proviso to the sub-clause, the following further proviso be added:

'Provided further that the penalty under this section shall in no event exceed the sum of Rs. 10,000.'

Under clause 16, certain penalties are provided for two acts. One is, if, without reasonable cause, the assessee fails to furnish the return required, under sub-section (1) of section 13, and the other relates to furnishing deliberately inaccurate particulars of profits or capital. Under these circumstances, it is laid down that in the first case the penalty proposed to be levied is the amount of excess profits tax payable, and, in the other cases, he is liable to penalty of the amount of excess profits tax which would have been avoided if the return had been accepted as correct. Then, further on, in sub-clause (2) of this section, an attempt to avoid the prosecution for an offence is made. It has not, however, been made clear whether the offence under any other penal law of the country, will be applicable or not. This was the discussion this morning in relation to another clause, and I understand that the Government are willing to make it more clear than it is at present in clause 2. My amendment refers to this—that the maximum penalty should be fixed as one-fourth of the excess profits tax and that too should not exceed the limit of ten thousand rupees as a maximum. I know that it is not always the maximum that is imposed in all cases. The discretion is left. The circumstances of the case govern the penalty that is levied. But, taking all the circumstances into consideration, one fact is clear, that ten thousand rupees is sufficient penalty

[Sardar Sant Singh.]

for any such negligence or offence which may be discovered later on by the taxing officer. I suggest, therefore, that in the circumstances the majesty of the law will be fully vindicated by the maximum penalty being at rupees ten thousand. Sir, I move.

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

"That in part (a) of sub-clause (1) of clause 16 of the Bill, before the words 'the amount' the word 'one-fourth' be inserted, and, after the existing proviso to the sub-clause, the following further proviso be added:

'Provided further that the penalty under this section shall in no event exceed the sum of Rs. 10,000.'

Mr. M. S. Aney: Sir, I will only put in one word in support of the amendment. The object of the penalty is not to make revenue. Its main object is to make the violation of the rules laid down deterrent. So, what the Government have to find out is what shall be the really deterrent amount. I think, Sir, that the amount provided in the amendment will be sufficiently deterrent. If the provisions are allowed to stand as they are, they are not merely deterrent, but they are really oppressive. I will characterise them as oppressive. So, if the object is not to take advantage of the mistakes or the violation with a view to making revenue and I presume that is not the object—I do not see any reason why Government should not be satisfied with having an amount of ten thousand as the maximum limit for penalty which they should recover from the defaulter. I, therefore, support the amendment.

Mr. S. P. Chambers: This amendment has two parts to it. The first part intends to reduce the penalty to one quarter of the amount of the tax. I will deal with that first. Under the Income-tax Act, the maximum penalty is one and a half times the tax, but, of course, the amount of income-tax is a smaller proportion of the income than the amount of excess profits tax, but, during the discussion on the Income-tax Bill, this question of penalty was ventilated and it was explained by the then Finance Member, Sir James Grigg, that having regard to the very greatly increased responsibilities of Income-tax Officers in relation to penalties, an organisation was to be set up to see that all penalties were "vetted"—that was the expression used—or examined at headquarters to see that none of them were either unduly harsh on the one hand or unduly lenient on the other. One reason for that is that a local officer may be over-zealous and he may wish to show good results by imposing high penalties so that he may be regarded as a very good and efficient officer. That is a weakness which is difficult to stop, but a Headquarters officer, who is examining the work of another officer is in a different position, and a senior Headquarters officer will examine all penalties, however large and however small.

Babu Baijnath Bajoria: Has he refunded any penalties?

Mr. S. P. Chambers: No, on the contrary, the penalties are not imposed until they are examined, and I can say that in quite a large number of cases the recommendation of the local officer that a penalty should be imposed has been altogether over-ruled and no penalty has been imposed,

because the Headquarters officer who examined the case came to the conclusion that the mistake was a genuine one of ignorance or a petty mistake of negligence and not a deliberate attempt to avoid tax. In all these cases, the penalties have altogether been cancelled.

Now, the machinery adopted for income-tax is proposed to be used for excess profits tax, and, of course, the excess profits tax penalties are still more onerous and will, therefore, require still more careful examination. Given that, I think that to be really deterrent, the penalty should be allowed to reach the amount of the tax in the really bad cases. In other cases, it can be much smaller. But, I think, in the really bad case, where there is a definite and deliberate attempt to avoid the tax or to produce false information, there should be a right to impose a penalty equal to the amount which the assessee seeks to avoid.

Sardar Sant Singh: Where do you draw the line between the vindictive punishment and the right punishment?

Mr. S. P. Chambers: There is no attempt whatever to award vindictive punishment. The whole object is to avoid the imposition of any vindictive penalty, and I think what I have said about the examination of these cases at the Headquarters is sufficient to show that any element of vindictiveness which may be present in the local officer's mind is balanced by the separate, quiet and cold judgment of the officer or officers at the Headquarters.

Sardar Sant Singh: Suppose you want to have a vindictive punishment, what limit will you fix?

The Honourable Sir Jeremy Raisman: The Honourable Member had better look at some of the penalties that are provided under the Sea Customs Act. Sometimes they are as much as three times the duty involved.

Mr. S. P. Chambers: I now come to the second part of the amendment which provides that the penalty should in no event exceed Rs. 10,000. I am afraid this is very much like one law for the rich and another one for the relatively poor. If a man avoids ten lakhs of excess profits tax, then a penalty of Rs. 10,000 will be very insignificant. Moreover, there is always this to be borne in mind that the Excess Profits Tax Officer may not have found the whole tale even when he has imposed his penalty. There may still be an item which is not discovered. In that event, if the amount of tax is of the order of lakhs, the imposition of Rs. 10,000 would probably still leave a very large margin of profit to the assessee. For that reason, the maximum of Rs. 10,000 is altogether inappropriate.

Mr. M. S. Aney: Are you prepared to accept the first part of the amendment?

Mr. S. P. Chambers: No.

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

"That in part (a) of sub-clause (1) of clause 16 of the Bill, before the words 'the amount' the word 'one-fourth' be inserted, and, after the existing proviso to the sub-clause, the following further proviso be added:

'Provided further that the penalty under this section shall in no event exceed the sum of Rs. 10,000.'

The motion was negatived.

Babu Baijnath Bajoria: Sir, I beg to move:

"That in part (a) of sub-clause (1) of clause 16 of the Bill, before the words 'the amount' the words 'half of' be inserted."

Sir, my amendment is much better than that of Sardar Sant Singh. Instead of one-fourth, I am prepared to give one-half. Besides, my amendment has not got the objection of having one law for the poor and another for the rich. In view of the suggestion of my Honourable friend, Mr. James, I am prepared to make half the speech and I request the Honourable Member to accept half the penalty.

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

"That in part (a) of sub-clause (1) of clause 16 of the Bill, before the words 'the amount' the words 'half of' be inserted."

Mr. S. P. Chambers: The Honourable Member has very kindly agreed to make half a speech and I will, therefore, make half a reply because most of the reply I have already given in reply to another amendment. I have said that I consider that as a maximum we should go as far as the amount of tax involved. Sir, I oppose the amendment.

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

"That in part (a) of sub-clause (1) of clause 16 of the Bill, before the words 'the amount' the words 'half of' be inserted."

The motion was negatived.

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

"That clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

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

"That clause 17 stand part of the Bill."

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

"That in sub-clause (2) of clause 17 of the Bill, for the word 'thirty' the word 'forty-five' be substituted."

Sir, this is merely a drafting error, and I want to correct it by moving this amendment.

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

"That in sub-clause (2) of clause 17 of the Bill, for the word 'thirty' the word 'forty-five' be substituted."

The motion was adopted.

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

"That clause 17, as amended, stand part of the Bill."

The motion was adopted.

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

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

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

"That clause 18 stand part of the Bill."

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

"That after sub-clause (2) of clause 18 of the Bill the following new sub-clause be inserted and the subsequent sub-clause be re-numbered accordingly:

(3) Any person aggrieved by the decision of the Commissioner may appeal to the High Court within thirty days of such decision."

We have heard a good deal about equity and justice in connection with this Bill. Sir, when it is the desire of the Government ^{4 P. M.} to do justice, let the assessee also feel assured that he will get justice. Now, how can he get justice? In this Bill, it is provided that from the decision of an Income-tax officer, there will be an appeal to an appellate Assistant Commissioner and from his decision an appeal to the Commissioner. Now, Sir, an Appellate Excess Profits Tax Commissioner as well as Excess Profits Tax Commissioner belongs to the department which is under the Central Board of Revenue. This Board of Revenue is a tax-collecting or tax-gathering department. Therefore, all these officers look at the question from the angle of vision of the tax-gatherer. Besides, the pay, promotion and prospects of these officers depend upon the good wishes of the Board of Revenue. So long as the Board of Revenue decides the claims of promotion, etc., all officers will naturally look at this question from the point of view of the amount of revenue which is realised. Therefore, it is desirable that an appeal should lie to an independent authority

As regards income-tax, a tribunal is to be set up, but it has not yet been done. Probably it will be set up a year hence. Now, during that time there will be no real appeal to a court of justice. I desire to emphasize the necessity of appeal to a court of justice. The High Court is the most competent court to take up these appeal cases. (Interruption.) There is an appeal on question of law in regard to income-tax cases, but that has not been provided for

Mr. S. P. Chambers: May I explain to the Honourable Member that clause 21 provides that?

Dr. P. N. Banerjea: If that be so, I stand corrected. But it is desirable that on questions of fact also there should be an appeal and if this concession is made by Government a great deal of the unpopularity of the

[Dr. P. N. Banerjea.]

new tax will go away. It may be said that it is a temporary measure, but because it is a temporary measure and because people have not become familiar with it, it is necessary to give them greater confidence and in order that justice may be properly and fairly done, I urge strongly that an appeal to the High Court should be provided.

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

"That after sub-clause (2) of clause 18 of the Bill the following new sub-clause be inserted and the subsequent sub-clause be re-numbered accordingly:

(3) Any person aggrieved by the decision of the Commissioner may appeal to the High Court within thirty days of such decision."

Mr. S. P. Chambers: Sir, may I start by saying that, in so far as questions of law in income-tax matters are concerned, there is a right of reference to the High Court under section 66 of the Indian Income-tax Act, and that the provisions of section 66 of that Act are brought into this Bill under clause 21, so that there will be a right of reference to the High Court on questions of law. In income-tax matters, there is no right of reference to the High Court on questions of fact and the attitude on this is the same in this country as in other countries, because it is deemed to be inappropriate to take questions of fact as distinct from questions of interpretation to the High Court. Questions of fact can be subject to appeal, first of all, to the appellate Assistant Commissioner. The Honourable Member suggested that the appellate Assistant Commissioner would in all cases be prejudiced against the assessee, because his prospects of promotion would depend upon the amount of revenue he obtains for the Government or the amount of revenue which he prevents the Government from losing under appeals.

Dr. P. N. Banerjea: That will be the angle of vision.

Mr. S. P. Chambers: I should like to say, first of all, that that attitude is not the attitude of persons responsible for making promotions of appellate Assistant Commissioners, who are very senior officers of the Department. The new Income-tax Act gives very wide powers, and it is specifically provided under section 5 of the Act that no orders of the Central Board of Revenue may interfere with the discretion of the appellate Assistant Commissioner in the exercise of his appellate functions. That is being put in in order to make it quite clear that the appellate Assistant Commissioner should act judicially and should not have the interests of revenue in mind. He should get the correct result and not merely try to overassess.

Then, Sir, as to the setting up of an appellate Tribunal; one must be set up before the 1st April next year. An undertaking has been given, and I think it is stated in the Select Committee Report that it would be set up as soon as possible. How soon that will be is very difficult to say, because there is a lot of work involved in setting it up, but in any event, the process of assessment which must precede any question of appeal is likely to take several months, so that the number of cases which are likely to go to appeal before an appellate Tribunal is set up is likely to be small. As far as possible the provision that an assessee should go before an independent appellate Tribunal is being made effective as soon as possible.

Then, Sir, as to the way in which difficult questions of fact are dealt with for excess profits tax purposes, there are several very difficult questions of fact, and it is for that reason that there is a right of appeal on these questions to Boards of Referees. I am referring to the provisions of clause 6 where the assessee claims that he made unduly low profit in his standard period. That is not a question of law, but a question of fact whether his circumstances are peculiar and owing to the peculiar circumstances, he has made an unduly low profit. That is a difficult question of fact, and on that there is a right of appeal to the Board of Referees. Similarly, on the question of dividing the profits and capital under clause 8, where parts of business have been transferred, there again there is a right of appeal to the Board of Referees. I suggest, therefore, that the rights of appeal which have been given on points of law are adequately dealt with in the Bill and that the rights of appeal on questions of fact are also properly dealt with, and any extension given to the High Court's jurisdiction on matters of detail affecting questions of fact would clutter up the administration in quite an unwarranted manner. Sir, I oppose.

Mr. Lalchand Navarai: Sir, I support this amendment. An appeal lies from the Assistant Commissioner to an appellate Assistant Commissioner and now what is asked for is a right of second appeal. It is urged on the other side that the case can be submitted to the High Court as under the Income-tax Act. But questions of fact also arise and why should not there be a second appeal to the High Court from the decision of the appellate Assistant Commissioner? It is said that under the Income-tax Act a tribunal must be set up. In that case I submit that until then these decisions against which appeals would otherwise go to the High Court may, in the meantime, go to the High Court. Why should the people suffer during these months? Another suggestion that I make is that decisions in which appeals may be made may be kept pending until this tribunal is set up and considered by them. The acceptance of this suggestion will give the relief which is asked for in this amendment.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "That after sub-clause (2) of clause 18 of the Bill the following new sub-clause be inserted and the subsequent sub-clause be re-numbered accordingly.

(3) Any person aggrieved by the decision of the Commissioner may appeal to the High Court within thirty days of such decision."

The motion was negatived.

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

"That clause 18 stand part of the Bill."

The motion was adopted.

Clause 18 was added to the Bill.

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

"That clause 19 stand part of the Bill."

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

"That in sub-clause (2) of clause 19 of the Bill, for the words 'any person made liable under this Act for the payment of excess profits tax, or any Excess Profits Tax Officer' the words 'any Excess Profits Tax Officer or any person in respect of whose business an order under section 14 has been passed' be substituted, and after the words 'Appellate Assistant Commissioner' the words 'under section 16 or section 17' be inserted."

[Mr. S. P. Chambers.]

The object of this amendment is to make it possible for the assessee to appeal even where there is no excess profits tax payable. The Bill provides for the computation of deficiencies, and, as originally worded, only the person made liable for the payment of excess profits tax had the right of appeal. This has now been amended, so that in all cases there is a right of appeal. It is merely a drafting point.

Sir, I move.

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

"That in sub-clause (2) of clause 19 of the Bill, for the words 'any person made liable under this Act for the payment of excess profits tax, or any Excess Profits Tax Officer' the words 'any Excess Profits Tax Officer or any person in respect of whose business an order under section 14 has been passed' be substituted, and after the words 'Appellate Assistant Commissioner' the words 'under section 16 or section 17' be inserted."

The motion was adopted.

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

"That clause 19, as amended, stand part of the Bill."

The motion was adopted.

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

Clauses 20 to 25 were added to the Bill.

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

"That clause 26 stand part of the Bill."

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

"That in the proviso to sub-clause (1) of clause 26 of the Bill, before the words 'the capital' the words 'the average amount of' be inserted."

This is a small drafting point which is inserted for clarification only.
Sir, I move.

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

"That in the proviso to sub-clause (1) of clause 26 of the Bill, before the words 'the capital' the words 'the average amount of' be inserted."

The motion was adopted.

Babu Bajjnath Bajoria: Sir, I move:

"That in part (a) of sub-clause (2) of clause 26 of the Bill, for the word and figures 'December, 1938' the word and figures 'September, 1937' be substituted."

Under part (a) special relief is given where a new business is started after 1st December, 1938. It is a very recent date and very few companies or business can take advantage of this provision. I should like this date to be altered to September, 1937, so that companies which started business two years before the chargeable accounting period under this Act begins will get special relief.

This clause No. 26 has often been referred to by Mr. Chambers as providing a cure for all diseases and hardships in respect of this Bill. I hope and trust that hard cases will not have hard luck when they come up to the Central Board of Revenue. I wish the Honourable the Finance Member to tell me whether it will be for the assessee to go up to the heights of Simla or come up here in Delhi for each and every relief and to employ highly paid advocates and lawyers to represent their case; or whether in cases of hardship the Excess Profits Tax Officer or the inspecting Assistant Commissioner will themselves take up the case to the Central Board of Revenue for relief under this clause, and as regards these new businesses I would like the date to be changed from 1st December, 1938 to 1st September, 1937. This is a modest amendment and I think the Government will see their way to accept it.

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

"That in part (a) of sub-clause (2) of clause 26 of the Bill, for the word and figures 'December, 1938' the word and figures 'September, 1937' be substituted."

Mr. S. P. Chambers: Sir, this sub-clause gives power to the Central Board of Revenue to give relief in certain special circumstances. The object of putting in a date there was to give relief to those new businesses—run more by partnership and individuals than by a company—where the business having been started quite recently the amount of capital employed owing to the nature of the business is very small, and, therefore, a percentage on capital might be a quite ridiculous standard profit. Let me take the example of a broker in a jute exchange or produce exchange or something of that kind. In this case, the amount of capital is small in relation to the total volume of the business; and having started after a date when they have any access to a standard period, they have to take a percentage on capital which would be quite unfair. In putting in the date 1st December, 1938, what was in mind was that there was a period of at least nine months between that date and the 1st September, 1939, and it was thought at that time that there would be in those cases an available standard period. But it has since been pointed out that the last standard period available must under clause 6, as it now stands, end not later than the 31st March, 1939, and not on the 1st September, 1939. For this reason, the date, the 1st day of December, 1938, should, therefore, go back, at least as far back as July, 1938, so that there is at least nine months of available standard period. To go back beyond that would be giving extra relief in cases where, although special circumstances were present, there are available standard periods, and, therefore, the ordinary process of appeal against the profits of a standard period would be more appropriate. What I would like to suggest therefore is that although we are unable to accept the date suggested by my Honourable friend, if he could, with the permission of the House, substitute for his date, the date 1st day of July, 1938, we could accept that amendment. May I ask the Honourable Member whether he will be prepared to accept that suggestion?

Babu Baijnath Bajoria: I am prepared to accept that suggestion. Sir, may I substitute the words "1st July, 1938" for "September, 1937"?

Mr. President (The Honourable Sir Abdur Rahim): The amendment has to be withdrawn and a fresh amendment moved.

Babu Baijnath Bajoria: All right, Sir. I beg leave of the House to withdraw my amendment.

Mr. President (The Honourable Sir Abdur Rahim): Has the Honourable Member the leave of the House to withdraw his amendment?

Several Honourable Members: Yes, yes.

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

Babu Baijnath Bajoria: Sir, I move:

"That in part (a) of sub-clause (2) of clause 26 of the Bill, for the word and figures 'December, 1938' the word and figures 'July, 1938' be substituted."

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

"That in part (a) of sub-clause (2) of clause 26 of the Bill, for the word and figures 'December, 1938' the word and figures 'July, 1938' be substituted."

The motion was adopted.

Sardar Sant Singh: Sir, I move

"That after part (b) of sub-clause (2) of clause 26 of the Bill, the following be inserted:

(c) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in British India before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937."

In commending this amendment to the Government for acceptance, I want the Central Board of Revenue, when considering other suggestions where the relief is not full in accordance with the other provision of the Act, may be pleased to consider the case of the nascent industries also. The importance of this has been emphasised in the various speeches, and I need not repeat the same arguments over again. I think the Honourable the Finance Member is fully aware of the anxiety of the small industries to be protected from the Excess Profits Tax, but what I want is whether the income-tax year 1937-38 is to be included with regard to this consideration and also whether the profits made in the year 1938-39 or after are entitled to claim for relief. Under the circumstances, if my amendment is accepted

Sir H. P. Mody: Do not raise too many hares.

Sardar Sant Singh: All right, Sir. Without raising any other points, I move my amendment.

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

"That after part (b) of sub-clause (2) of clause 26 of the Bill, the following be inserted:

(c) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in British India before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937."

The Honourable Sir Jeremy Raisman: Sir, I am glad my Honourable friend has brought this amendment forward, and I have pleasure in accepting it. I think that it will be a considerable improvement on the clause 26 as it already stands and will afford a channel for a very desirable form of relief.

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

"That after part (b) of sub-clause (2) of clause 26 of the Bill, the following be inserted:

'(c) that the business is of a pioneer nature, that is to say, is concerned with an industrial process or a form of manufacture or production not undertaken in British India before the 1st day of April, 1932, and has not been in existence long enough to have paid income-tax for the previous year as determined for the purpose of the income-tax assessment for the year beginning on the 1st day of April, 1937.'

The motion was adopted.

Sardar Sant Singh: Sir, I move:

"That in sub-clause (3) of clause 26 of the Bill, for the word 'either' the word 'any' be substituted."

Sir, my proposal is that the word 'either' is not applicable and the word 'any' is the proper word and it will be applicable.

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

"That in sub-clause (3) of clause 26 of the Bill, for the word 'either' the word 'any' be substituted."

Mr. S. P. Chambers: We have no objection to accepting this amendment.

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

"That in sub-clause (3) of clause 26 of the Bill, for the word 'either' the word 'any' be substituted."

The motion was adopted.

Sir Abdul Halim Ghuznavi (Dacca cum Mymensingh: Muhammadan Rural): Sir, I move:

"That in part (a) of sub-clause (3) of clause 26 of the Bill, after the words 'or repairs' the words 'or replacement of original asset' be inserted."

Sir, the shipping industry is in its infancy in India, and this amendment is very important so far as the shipping industry is concerned. The sub-clause in question provides for allowances in cases where, owing to postponement or suspension or renewals or repairs on account of reasons connected with the war, the basis of computation of profits provided in the Schedule is negligible. Let us take an instance. There may be occasions when the whole asset may be lost on account of the war, and the loss of a ship is an instance in point. The benefit of the allowance would justifiably, therefore, be extended to replacement of the original asset which has also to be postponed on account of the war. In the Finance Act, No. II of 1939, the Report of the Joint Taxation Committee of the Chamber of

[Sir Abdul Halim Ghuznavi.]

Shipping and the Liverpool Steamship Owners' Association mention this. It is very important, and I should like to place a portion of what they say before the House. They say:

"Temporary investments from proceeds of sales or losses and of accumulation of reserves for annual wear and tear should be treated as capital employed in the business, as far as the proceeds from sales or losses are concerned, if the investments are applied to the purchase of new tonnage within a period of say 6 years. In the administration of the old Excess Profits Duty the practice was to allow the invested proceeds as capital employed in the business, subject to proof of subsequent utilisation of the investments within a reasonable period in the business. It is important that shipping should secure that similar treatment will be accorded for Excess Profits Tax and if an assurance to this effect is not obtained, amending legislation should be pressed for."

Sir, I move.

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

"That in part (a) of sub-clause (3) of clause 26 of the Bill, after the words 'or repairs' the words 'or replacement of original asset' be inserted."

Mr. S. P. Chambers: Sir, I think this amendment has been tabled on a complete misapprehension of the position. I am aware that a similar representation has been made in the United Kingdom, and in the law of the United Kingdom a provision of this kind would be a reasonable provision and would be necessary, if the conditions are as stated by my Honourable friend, but in India we have a much more liberal allowance in respect of replacement of assets. In the United Kingdom, if an asset has become obsolete or has been lost and subsequently replaced, and the amount of loss is an allowable deduction, then there is an overriding condition laid down in Schedule D of the United Kingdom Income-tax Act of 1918 saying that no allowance shall be given unless and until the asset is replaced. That, however, is not the law in India. The allowance can be given if it is due, whether or not it is replaced. Therefore, the postponement of replacement of the assets in the event of being lost does not in any way affect the allowability or otherwise of the deduction claimed. For these reasons, the amendment is unnecessary, and I oppose it.

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

"That in part (a) of sub-clause (3) of clause 26 of the Bill, after the words 'or repairs' the words 'or replacement of original asset' be inserted."

The motion was negatived.

Dr. Sir Ziauddin Ahmad: Sir, I beg to move:

"That to part (b) of sub-clause (3) of clause 26 of the Bill the word 'or' be added at the end, and after the part, as so amended, the following new part be inserted:

(c) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India."

Sir, we had more than a dozen speeches on this particular topic for a long time. Some of my friends wanted to give certain facilities to those people trading in foreign countries where restrictions exist about taking money out of the country. It was also pointed out that there were certain

exchange difficulties. Suppose we charge the Excess Profits Tax in a particular year at a given rate of exchange and the money is not brought to this country but it is brought at a later date when the rate of exchange is altered, and on account of this fluctuation in the rate of exchange the amount of profit will be seriously affected. Therefore, some of my friends wanted to have some kind of provision to help such traders abroad. But my difficulty is this, if you have this facility, then more Germans and Russians will come in than the Allies; the other difficulty was that the Indian States not being within British India will come under that clause. In this particular case I give power to the Central Board of Revenue to consider such cases and remove the hardships if any, so that the Central Board of Revenue will be able to distinguish between genuine cases in which difficulties have arisen from those of a purely trivial nature. I think my friends, Messrs. Nauman and Lalchand Navalrai, pressed their case in season and out of season more often than I pressed the case of excess profit of iron and steel, but I think the right place to give them relief is this particular amendment, though I have not found out a right place as yet for iron and steel. Perhaps, somebody may help in this particular matter. We all desire that some relief may be given in genuine cases and the Central Board of Revenue is the best authority where this relief can be given. They will examine each case and if they are satisfied that the case is a genuine one, they will give relief according to merits.

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

"That to part (b) of sub-clause (3) of clause 26 of the Bill the word 'or' be added at the end, and after the part, as so amended, the following new part be inserted:

- (c) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India;."

The Honourable Sir Jeremy Raisman: I accept this amendment.

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

"That to part (b) of sub-clause (3) of clause 26 of the Bill the word 'or' be added at the end, and after the part, as so amended, the following new part be inserted:

- (c) difficulties in bringing into British India income arising outside British India where the country in which the income accrued prohibits or restricts by its laws the remittance of money to British India, and loss in the remittance to British India of such income because of fluctuations in the rate of exchange between that country and British India;."

The motion was adopted.

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

"That clause 26, as amended, stand part of the Bill."

The motion was adopted.

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

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

"That clause 27 stand part of the Bill."

Dr. Sir Ziauddin Ahmad: Sir, I move:

"That to sub-clause (1) of clause 27 of the Bill the following proviso be added:

'Provided that a copy of these rules is deposited in the Library of the House'."

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

"That to sub-clause (1) of clause 27 of the Bill the following proviso be added:

'Provided that a copy of these rules is deposited in the Library of the House'."

Mr. S. P. Chambers: The rules in question are rules which, under the law, as framed, will be published, and as they have to be published, there is no use in providing specially in the Bill itself that copies should be deposited in the Library of the House. They have to be published for criticism.

Dr. Sir Ziauddin Ahmad: I beg leave of the House to withdraw the amendment.

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

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

"That clause 27 stand part of the Bill."

The motion was adopted.

Clause 27 was added to the Bill.

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

"That Schedule 1 stand part of the Bill."

Mr. S. P. Chambers: I move:

"That in Rule 1 of Schedule I to the Bill, the words 'or would be so computed if income-tax were chargeable on those profits' be omitted."

The object of the words that were originally there was to make sure that, even if the income-tax was not chargeable, the profits should be properly computed for excess profits tax, but since a new rule has been inserted which is now rule 2, these words are unnecessary, and, therefore, as a consequential amendment, I move that they be deleted.

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

"That in Rule 1 of Schedule I to the Bill, the words 'or would be so computed if income-tax were chargeable on those profits' be omitted."

The motion was adopted.

Mr. Lalchand Navalrai: I move:

"That to Rule 1 of Schedule I to the Bill, the following further proviso be added:

'Provided further that in computation of profits accruing or arising without British India, the standard profits and the profits of the chargeable accounting period may at the option of the person carrying on the business be computed at the rate of exchange appropriate to the standard profit or the chargeable accounting period.'"

This Schedule makes rules for the computation of profits for the purpose of Excess Profits Tax. This amendment which relates to traders whose profits arise without British India—the question is with respect to the exchanges. The exchange rate may be one appropriate to the standard profit, and at the time of the chargeable accounting period the exchange may be different, and this amendment asks that an option should be given to that person to choose the exchange at which his profits should be computed. The option should be either the rate of exchange at the time of the standard profit or the rate at the time of the chargeable accounting period. As regards amendment No. 117 it was left to the discretion of the Central Board of Revenue, and I submit that in this case also a provision be made that the Central Board of Revenue or the income-tax officer should give the option to the person to have his profits determined according to one or the other rate of exchange. Many difficulties arise in considering the rates of exchange, and people who are there will know exactly what the exchange there was at a particular time which may not be known to the Government here, and if the Government say that there is no such provision to give an option the man suffers. Therefore, I submit that this amendment should be accepted, but if the Honourable Member is not in a mood to do so, if he can give an assurance that this will also be considered by the Central Board of Revenue—if an assurance to that effect is given, then I may ask for leave to withdraw the amendment. But I want an assurance that the question of option will be considered by the Central Board of Revenue with regard to these exchanges.

Under clause 26 even this point can be considered by the Central Board of Revenue. Either this amendment may be accepted by the House or an assurance to that effect may be given. That would also be sufficient. Sir, I move.

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

“That to Rule 1 of Schedule I to the Bill, the following further proviso be added :

‘Provided further that in computation of profits accruing or arising without British India, the standard profits and the profits of the chargeable accounting period may at the option of the person carrying on the business be computed at the rate of exchange appropriate to the standard profit or the chargeable accounting period.’”

Mr. S. P. Chambers: Sir, I oppose this amendment. Relief has already been given by the acceptance of amendment No. 117 and the effect of the relief which will be given under that sub-clause is this, that where any exchange loss was incurred during the chargeable accounting period, or where, owing to difficulties in bringing in the profits in that period, the profits could only be brought in at a later date and were then brought in when the exchange was less favourable, in all those circumstances the exchange loss will be allowed in the chargeable accounting period. Therefore, as far as I can gather, all possible cases have been provided for, but this amendment goes further and suggests that the assessee should have the best of both worlds. He should be able to go back to the standard period and have his profits in the chargeable accounting period computed by reference to a rate of exchange which may have no relation whatever to the rates in force during the chargeable accounting period. The rates in 1935, and 1936, in many countries in relation to India are entirely different or may be entirely different from what there are in 1940 or will be in

[Mr. S. P. Chambers.]

1941 and to give the assessee an option to choose one or the other seems to be quite inappropriate. We have given them all the relief which can reasonably be asked for in No. 117. Sir, I oppose the amendment.

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

"That to Rule 1 of Schedule I to the Bill, the following further proviso be added :

'Provided further that in computation of profits accruing or arising without British India, the standard profits and the profits of the chargeable accounting period may at the option of the person carrying on the business be computed at the rate of exchange appropriate to the standard profit or the chargeable accounting period.'

The motion was negatived.

Mr. Husenbhai Abdullabhai Laljee: Sir, I move:

"That to Rule 1 of Schedule I to the Bill, the following further proviso be added :

'Provided further that in the computation of the profits of the chargeable accounting period the profits arising out of exchange and currency fluctuations shall be excluded for the purposes of this Act.'

Sir, in the previous motion that was moved, option was asked for the assessee so that he can adjust his profits and loss according to the condition of the market. As the man will make losses owing to war circumstances, why should he not make a profit if luckily he gets it. The object of the Act is if the profits arise out of business then the Government can legitimately tax it but if the business was of a special kind, then the currency and exchange profit should not be taxed. In view of the fact that the Government have accepted Amendment No. 117, the Central Board of Revenue can very well consider this aspect of the question and try to meet those persons who make profit not out of actual business. A great stress has been laid with regard to the business and not any extraneous matter. In fact even the partners are not considered. That is the very element of the constitution of the firm is not considered. The business is only considered. I say that if the business was of exchange, certainly profit and loss of the exchange may be charged but if the profit is not as a result of the actual exchange business of the firm, in all fairness, the Central Board ought to take that into consideration. With these words I move my amendment.

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

"That to Rule 1 of Schedule I to the Bill, the following further proviso be added :

'Provided further that in the computation of the profits of the chargeable accounting period the profits arising out of exchange and currency fluctuations shall be excluded for the purposes of this Act.'

Mr. S. P. Chambers: Sir, there is a little more in this amendment than may appear at first sight. There are certain exchange profits which are not liable to income-tax. Where an assessee remits capital sums and where that results in a profit that profit may normally not be liable to income-tax. If he is not liable to income-tax, he will not be liable to excess profits tax unless there is a specific provision in the Bill to make it so liable. My Honourable friend said that if profits are made which do

not arise out of the actual transactions of business they should not be charged to excess profits tax. If I understood him correctly, he also said that as these were not chargeable to income-tax they should not be chargeable to excess profits. The answer is that if they are part of the ordinary trading profits and are liable to income-tax, there is no reason why they should not be liable to excess profits tax because corresponding losses are allowable both in the income-tax assessment and in the excess profits tax assessment. If they are not liable to income-tax, they are also not liable to excess profits tax. Therefore, no amendment of this kind is necessary. I oppose the amendment.

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

"That to Rule 1 of Schedule I to the Bill, the following further proviso be added:

'Provided further that in the computation of the profits of the chargeable accounting period the profits arising out of exchange and currency fluctuations shall be excluded for the purposes of this Act.'

The motion was negatived.

REPORT OF THE COMMITTEE ON CONVEYANCE ALLOWANCES ADMISSIBLE TO MEMBERS OF THE INDIAN LEGIS- LATURE.

The Honourable Sir Muhammad Zafrullah Khan (Leader of the House): Sir, I beg to present the report* of the Committee appointed in pursuance of the Resolution adopted by the Legislative Assembly on the 12th February, 1940, to consider the question of conveyance allowances admissible to Members of the Indian Legislature.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 20th March, 1940.

*Printed as an appendix to these debates, *vide* pages 1582-84.

APPENDIX.

Report of the Committee appointed in pursuance of the Resolution adopted by the Legislative Assembly on the 12th February, 1940, to consider the question of conveyance allowances admissible to Members of the Indian Legislature.

On the 12th February, 1940, the following Resolution was moved in the Legislative Assembly:

"This Assembly recommends to the Governor General in Council to amend the rules governing the grant of travelling and other allowances to Members of the Indian Legislature so as—

(1) to abolish the right to draw free haulage of a motor car or of a carriage and two horses from the station nearest to the Member's official headquarters or other place of residence to New Delhi and back and in addition a petrol or forage allowance at the rate of Rs. 75 per mensem for the period for which a Member is entitled to draw daily allowance with the result of leaving all Members to draw the conveyance allowance now admissible to a Member who does not bring a conveyance for his own use, and

(2) to confine the right to the enhanced conveyance allowance of Rs. 5 per diem, now admissible to any Member who resides outside New Delhi, to such Members residing outside New Delhi as have applied for and failed to obtain Government accommodation in New Delhi".

As the result of an amendment moved by Mr. Boyle, the following Resolution was adopted:—

"This Assembly recommends to the Governor General in Council to appoint a Committee representative of all parties in both Chambers to consider the necessity or otherwise of amending the rules governing the grant of conveyance allowances to Members of the Indian Legislature".

2. We, the undersigned members of the Committee appointed in pursuance of this Resolution, have discussed the question of the allowances of Members of the Indian Legislature in all its aspects but we have confined our practical conclusions to the two questions raised by the original Resolution moved on behalf of Government and reproduced in paragraph 1 of this Report. On the first of those questions the majority of us feel that, if the free haulage concession were abolished, the allowances admissible to Members should, in fairness to them, be increased to an extent which would more than counter-balance the saving to public revenues accruing from the abolition of the haulage concession. We, therefore recommend that the haulage concession be retained as it stands. We feel, however, that the question would merit further consideration if arrangements could be made with a contractor for the supply of hired cars for the whole-time service of Members at more economical rates than now prevail and we recommend an examination of the possibility of such arrangements.

3. On the second question, we considered an alternative to the proposal embodied in the Resolution moved on behalf of Government, namely, that, in view of the fact that living in Old Delhi is generally speaking less expensive than living in New Delhi, the extra concessions admissible to Members living in Old Delhi should be wholly abolished. We were, however, unable to agree to the adoption of this alternative and we have decided to recommend the adoption of the proposal embodied in the original Resolution, namely, that the right to the enhanced conveyance allowance should be confined to such Members residing outside New Delhi as have applied for and failed to obtain Government accommodation in New Delhi.

ZAFRULLA KHAN.

M. MUAZZAM.

F. E. JAMES.

*M. A. GHANI.

*SANT SINGH.

S. N. MAHTHA.

M. S. A. HYDARI.

H. IMAM.

K. GOVINDACHARI.

NOTE.

We think that the present rules governing the grant of travelling and other allowances to Members of the Indian Legislatures contain some anomalies and therefore require re-examination. We were glad therefore, when Government came forward with their Resolution to amend those rules. The Committee of both Councils of Legislatures was appointed and held sitting on 17th of March last. We regret to say that fuller details were not made available to the Committee to deliberate on all aspects of this important question. We therefore suggested that this committee should continue to function and should be asked to further investigate into the matter.

We, however take this opportunity to record our view on the matter of allowances for use in any future enquiries on the subjects. We submit that the line of approach to the question should be such as to facilitate the work of the Legislators by providing necessary conveniences consistent with the dignity and status befitting the position of Members of the Central Legislatures. The object of allowance is obviously to indemnify the Members for any expenditure that they may incur on travel from and to their headquarters and for maintaining an additional establishment in Delhi. For this purpose the Government has built good and decent quarters for the Members in New Delhi and permits free haulage of motor cars from the station nearest to the Member's official headquarters to New Delhi and back. In addition to free haulage conveyance allowance at the rate of Rs. 75 p. m. is admissible to Members living in Old Delhi. The present motion was to abolish free haulage and the right to enhanced conveyance allowance of Rs. 5 per diem now admissible to any Member who resides outside New Delhi. We agree that now that the facilities for residence in New Delhi have considerably increased and the new quarters have been built by the Government at a great expense the distinction between the residence in New Delhi and Old Delhi should be done away with. As a matter of fact the rules should be for Members to reside in quarters built by the Government. It is only in such cases as where such accommodation is not available for Members for their residence that exception should be made. There are at present 141 Members in the Legislative Assembly of which 21 are Officials and 58 Members in the Council of State of which 11 are Officials. The accommodation thus necessary for Members of Central Legislature is about 168. If we include some of the Official Members who require residence as well the accommodation for about 180 will be necessary. The quarters now available in Delhi do provide such accommodation either in orthodox bungalows or in Western Court. Therefore, there does not seem to be any reason why the Members should ordinarily live outside such accommodation. But we do not recommend the hard rule compelling every Member to live in such quarters. We will recommend that discretion should vest with the President of respective Houses to grant permission under special circumstances to a Member to live in any other place which is neither his residence nor the Government quarters.

As regards the haulage of motor cars total cost of the Government is estimated to be about 65 thousand rupees per annum. In addition to it the Government incurs something like 80 thousand rupees in the shape of conveyance allowance to Members who do not bring their cars with them. Thus the total amount comes to something like 1 lakh 45 thousand rupees. We will, therefore, suggest that if a flat rate of 150 rupees per Member be sanctioned for conveyance allowances in Delhi and haulage is stopped the total cost will come to about 30 thousand rupees a month. Taking both the Sessions to extend over a period of $3\frac{1}{2}$ months the total cost will be about a lakh of rupees. Thus the saving to the Government will be 45 thousand rupees annually, 150 rupees a month in Delhi would enable the Members to hire a decent car and the Committee has suggested that the Labour Department should investigate into the question of hiring the cars for the use of Members during the Session of the two Houses. We take this opportunity to draw the pointed attention of the Government to the high rents charged for quarters in New Delhi. The general rule governing the rents of such quarters is that certain percentage of the cost price of a quarter or 10 per cent. of the salary of the occupier whichever is less. Thus the maximum amount chargeable is 10 per cent. of the salary of the occupier. In such a case it can safely be presumed that all Government quarters are not fetching that much rent which its cost probably warrants. Therefore if the Members demand that the rent charged for these quarters should not exceed 10 per cent. of the allowances which are eligible to a Member; this demand is very reasonable and should be conceded in order to further persuade the Members to occupy these quarters. We therefore recommend:

- (a) That the free haulage of motor cars be stopped.
- (b) That a convention, if not a rule, be established in pressing the desirability on the Members to live in accommodation provided by the Government.

- (c) That a flat rate of Rs. 150 a month for the period during which the Central Legislature is in session be sanctioned.
- (d) That the rate of the rent of Government quarters be reduced to 10 per cent. of the daily allowances eligible to a Member.

In the end we will suggest that the Government should examine the following two questions as well :

- (a) That the Members of the Central Legislature should be paid at the basis of monthly allowances eligible throughout the year as is the case in Great Britain regarding the Members of Parliament;
- (b) That instead of allowing $1\frac{3}{5}$ first class fares to Members from and to their headquarters, first class passes for travel in all Railways be granted to Members. These passes should be available for a Member for use in their constituency throughout the year in order to enable the Members to educate their constituencies in matters relating to their duties as legislators whenever the occasion demands.

SANT SINGH.

M. A. GHANI.