

11th November 1941

THE
LEGISLATIVE ASSEMBLY DEBATES

Official Report

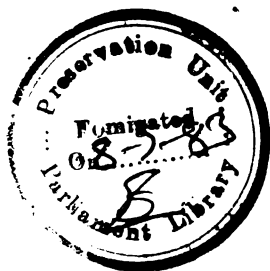
Volume IV, 1941

(27th October to 18th November, 1941)

FOURTEENTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1941



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LEGISLATIVE ASSEMBLY

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Deputy President:

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Assistants of the Secretary:

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Marshal:

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Petitions:

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SARDAR SANT SINGH, M.L.A.

MR. L. C. BUSS, M.L.A.

SIR ABDUL HALIM GHUZNAVI, M.L.A.

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

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CORRIGENDUM.

In the Legislative Assembly Debates, Budget Session, 1936, Volume I, dated the 10th February, 1936, page 471, for the subject heading "DEMAND OF SECURITY FROM THE ABHYUDAYA OF ALLAHABAD." substitute the following independent heading, namely:—

"MOTION TO DISCUSS A QUESTION OF PRIVILEGE, NAMELY, HOW FAR PRESS PUBLICATION OF A MEMBER'S SPEECH IN THE ASSEMBLY IS PRIVILEGED."

LEGISLATIVE ASSEMBLY.

Tuesday, 11th November, 1941.

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.

CONTROL OF INDIAN MILL-MADE PAPER.

111. ***Mr. Lalchand Navalrai:** (a) Will the Honourable the Commerce Member be pleased to state whether his attention has been drawn to a United Press message dated Calcutta, the 16th September, 1941, in regard to the Indian Journalist Association, Calcutta, requesting immediate control of Indian mill-made paper? If so, what action was taken in the matter?

(b) What were the prices of Indian made paper in Calcutta, Bombay and Karachi in (i) August 1939, (ii) July 1941, and (iii) September 1941?

(c) If the prices show considerable rise, what are the reasons for the increase, and do Government propose to control it?

(d) Have Government any proposal in view not to allow hoarding of large stocks of paper either of Indian or foreign make with a view to profiteering by merchants? If not, why not?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) I have not seen the message. The question of prices charged for 'Paper' is engaging my attention.

(b) A statement giving the prices of certain common types of Indian made paper is laid on the table.

(c) The answer to the first part of the question is that the rise in prices is partly due to increased cost of production and partly to demand exceeding supply. As for the latter part of the question I would refer the Honourable Member to my answer to part (a) above.

(d) The matter is under consideration by the Government.

Statement giving Prices of certain common types of Indian made Paper.

	Calcutta.						Bombay.						Karachi.					
	White Printing.			Brown.			White Printing.			Brown.			White Printing.			Brown.		
	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
August 1939 per lb.	0	3	0	0	2	4	0	3	0	0	2	4	0	3	1	0	2	5
July 1941 per lb.	0	4	7½	0	4	1	0	5	0	0	4	5½	0	5	0½	0	4	6
September 1941 per lb.	0	4	7½	0	4	1	0	5	0	0	4	5½	0	5	0½	0	4	6

Mr. Lalchand Navalrai: May I know if there is hoarding of large stocks for profiteering?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: I have no information about hoarding. The demand is so great that I do not myself think that there is much hoarding, but I am prepared to accept my Honourable friend's statement that there is profit above normal.

Mr. Lalchand Navalrai: Is the Honourable Member going to control it?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: I have already answered that the matter is under consideration.

Lieut.-Colonel Sir Henry Gidney: Is the Honourable Member aware of the fact that a large number of these firms, especially retail dealers, are hoarding paper, supplying only in limited quantities at certain rates which they change as rates increase and for this reason refuse the quantities ordered? I have myself suffered from this difficulty, because I myself have been refused enough paper for my journal when ordered and when in stock.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: What paper is the Honourable Member referring to? Newsprint or ordinary paper manufactured in this country?

Lieut.-Colonel Sir Henry Gidney: Newsprint.

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: Users of newsprint can get as much as they have licence for through dealers, and they can choose their own dealers. I do not think there is any question of hoarding of newsprint.

FAILURE OF THE CIVIL PUBLICATION DEPARTMENT TO SUPPLY CERTAIN MOTOR VEHICLE RULES TO THE MOTOR TRANSPORT, LAHORE.

†112. ***Qazi Muhammad Ahmad Kazmi:** (a) Will the Honourable the Commerce Member please state whether he has received a communication from the Motor Transport, Lahore, addressed to the Honourable Member for information, dated the 18th September, 1941, bringing to his notice the failure of the civil publication department in supplying them with Motor Vehicle Rules of Delhi-Ajmer-Merwara and Baluchistan up to that date, in spite of money having been sent to the said department by money order in February 1941, and also whether he is aware that their enquiry regarding the Bengal Motor Vehicle Rules has met with the same fate?

(b) Have Government considered the advisability of making them available to the public with ease and facility?

(c) Have Government taken any steps in this direction? If so, what?

Mr. H. C. Prior: (a) The communication referred to by the Honourable Member was received in the Department of Labour. An enquiry is being made into the matter and the result will be laid on the table in due course.

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

(b) and (c). Steps are being taken to make available to the public on payment, copies of Motor Vehicle Rules, Delhi, Ajmer-Merwara and Baluchistan. I may add that the 'Bengal Motor Vehicle Rules' is a publication of the Government of Bengal and is not available in the Central Publication Branch.

CARRIAGE OF QUOTA AND NON-QUOTA CARGO BY THE BRITISH INDIA, SCINDIA AND ASIATIC SHIPPING COMPANIES.

113. *Sardar Sant Singh: (a) Will the Honourable the Commerce Member be pleased to state which of the three shipping companies, British India, Scindia and Asiatic, were short or in excess in carrying under the Coastal Conference Quota Scheme for the year 1940, and which of these companies was short or in excess in carrying of non-quota cargo?

(b) Will Government lay on the table a statement showing the quantity of short carrying by any of these companies in the rice trade of Burma for 1941?

(c) Is it a fact that while Burma and Coastal rates show an increase of freight of less than 100 per cent. coal and salt rates show an increase of about 500 per cent.?

(d) Has any shipping company diverted its tonnage into more remunerative trade of coal and salt in preference to an essential foodstuff, such as, rice? Will Government state the approximate tonnage diverted by any company from the rice trade to coal and salt trades?

(e) Do Government propose to take steps to force the Companies to give preference to carrying of foodstuffs?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) As regards the first portion of this part, the British India and the Scindias were short, while the Asiatic were in excess in carrying quota cargo during the year 1940. As regards the second portion, I may explain that the non-quota cargo consists of coal and salt. The British India and the Scindias were in excess, while the Asiatic were less in carrying coal; the Scindias were in excess, while the British India and the Asiatic were short in carrying salt.

(b) According to figures available up to the end of August 1941, the Scindias were short by 56,308 tons.

(c) This is approximately the case.

(d) Government have no definite information in the matter but from available figures it appears that the Scindias carried more coal and salt during the war period than before, while the British India carried more salt during this period.

(e) Government do not see any necessity at present to take such steps.

REDUCTION IN THE RATE OF INTEREST ALLOWED BY CIVIL COURTS ON DECRETAL AMOUNTS.

114. *Sardar Sant Singh: (a) Will the Honourable the Law Member be pleased to state if it is a fact that all over British India the civil courts allow only 6 per cent. interest on the decretal amounts and that practice had been based on the fact that the bank rate of interest used to rule at the rate of about 6 per cent.?

(b) In view of the fact that for the last several years the bank rate of interest has been ruling at about 3 per cent., have Government issued any intimation to the civil courts that this rate should be correspondingly brought down to the prevailing bank rate of interest? If so, when? If not, why not?

The Honourable Sir Sultan Ahmad: (a) The question whether interest should be allowed from the date of decree to the date of payment, and if so at what rate, is a question of judicial discretion in each case. Where such interest is allowed, the rate has in recent years commonly been six per cent. The Bank rate may have been one of the factors which the Courts have taken into account, but it has certainly not been the only basis for the exercise of judicial discretion.

(b) No. Government have no status to advise Courts on matters within their judicial discretion.

LEGISLATION PROHIBITING LAND ALIENATION EXCEPT AT FAIR MARKET PRICE AND EXECUTION OF MORTGAGE DECREES DURING THE WAR.

115. *Sardar Sant Singh: Will the Honourable the Law Member please state whether it is a fact that the British as well as Dominion and Colonial Governments passed legislation some time after the war to the effect that no land alienation should take place except at a proper market price with the consent of the parties and that no mortgage decrees should be executed on the land during the pendency of the war? If so, why have the Government of India not taken such action in view of the fact that there are many moneylenders and *sowcars* who are taking advantage of the panicky state, due to the international situation, in this country?

The Honourable Mr. N. E. Sarker: The only relevant Acts of Parliament of which I am aware are the "Possession of Mortgaged Land (Emergency Provisions) Act, 1939" and the "Courts (Emergency Powers) Act, 1939", which restrict the rights of mortgagees to obtain possession of mortgaged lands during the present emergency but make no other provision in the sense referred to by the Honourable Member. I regret I have no information regarding relevant legislation in British Dominions or Colonies.

With regard to the concluding portion of the question, Government have no information that moneylenders are taking advantage of the present situation in the way suggested.

Mr. Govind V. Deshmukh: Was there not sufficient time to get the information as to what the rules or law are in the Colonies?

The Honourable Mr. N. E. Sarker: I will try to obtain them.

SOLICITORS TO THE CENTRAL GOVERNMENT IN THE PROVINCES.

116. *Sardar Sant Singh: (a) Will the Honourable the Law Member be pleased to state in how many Provinces the Government of India have appointed Solicitors to the Central Government and for how many years?

(b) What remuneration has been fixed for each of them?

(c) Besides their fixed remuneration, do they get additional fees and, if so, on what scale, and for what sort of work?

(d) What are the qualifications of these gentlemen, and what has been their standing in the profession?

(e) Are the Government Solicitors required to consult the Advocates-General in their Provinces, or are they at liberty to consult any counsel of their choice?

(f) What is the procedure adopted in making an acting appointment, when the Solicitor to the Central Government in a Province is on leave?

(g) Are the Solicitors to the Central Government in the Provinces paid any additional remuneration for attending to work in connection with the war, and, if so, on what scale?

(h) Is any annual statement of work presented by each Solicitor to the Central Government showing a summary of the work done, fees realized, etc.? If so, will the Honourable Member kindly place the same on the table of the House?

The Honourable Sir Sultan Ahmad: (a) Solicitors to the Central Government have been appointed for the towns of Calcutta and Bombay. The existing incumbents have been appointed for five years but their appointments are renewable.

(b), (c), (f) and (g). The Honourable Member is referred to the agreements with the existing incumbents, copies of which are laid on the table.

(d) The Solicitor at Calcutta is Mr. S. C. Sen, a Solicitor of 22 years standing and head of the firm of Dutt and Sen. The Solicitor at Bombay is Mr. D. H. Nafavati, a Solicitor of 27 years standing and a partner in the firm of Mulla and Mulla.

(e) The Solicitors do not consult Counsel when their advice is sought on a matter not involving court proceedings. When occasion arises to brief Counsel in connection with court proceedings the Solicitors brief the Advocate General of Bengal or Bombay, as the case may be, in cases of special difficulty. In other cases they select the Counsel to be briefed.

(h) No.

ARTICLES OF AGREEMENT made the Eighteenth day of May, One thousand nine hundred and thirty-eight BETWEEN SUSIL CHANDRA SEN, C.B.E., of Temple Chambers, 6, Old Post Office Street, Calcutta, Solicitor (hereinafter called "the Solicitor") of the one part and the Governor General in Council (hereinafter called "the Government") of the other part.

WHEREAS the Government has appointed the party of the first part as Solicitor to the Central Government in Calcutta and the Solicitor has taken over charge from the 23rd day of April 1937, AND WHEREAS it has been agreed that the Solicitor shall hold office as such Solicitor to the Central Government as aforesaid for a period of five years on the terms and subject to the conditions herein contained.

NOW these presents witness and the parties hereto respectively agree as follows :

1. The Solicitor shall be the Solicitor to the Central Government in Calcutta and as such shall perform the following duties :

(a) Such portion of the Civil legal business of the Central Government as may be done in Calcutta including all litigation in Courts and advising State Railway Administrations (if required) and Departments of the Central Government located in Calcutta and attending to the conveyancing work of such Departments.

(b) Criminal business of an advisory nature for the Departments of the Central Government in Calcutta.

2. The Solicitor will be paid (a) a monthly retainer of Rs. 1,000 which will include all in pocket or profit costs chargeable in respect of work done for the Government and (b) an office allowance of Rs. 150 *per mensem* which will include staff, office rent, telephone, postage and all other establishment charges excepting stationery. Stationery will be supplied by Government.

3. The Solicitor shall not be entitled to any remuneration or charges in addition to those mentioned in the foregoing clause but he shall nevertheless be entitled to retain in Civil suits all costs which may be awarded to the Central Government in respect of Solicitor's fees if such costs are realized from the party concerned and in conveyancing matters all Solicitor's fees recovered from the party liable to pay the same to the Central Government under the terms of a contract or by usage.

4. The Solicitor will be allowed private practice but he will in no case accept a retainer for any Provincial Government and further he will not appear or act for or advise any other party in any matter which is likely to affect the Central Government. If he is a member of a firm and his advice is sought by the Central Government in a case or matter which is either in litigation or likely to lead to litigation the firm will not advise another client in the same case or matter and if it has been advising such a client upto the point at which the Central Government ask for his advice in respect of the case or matter the firm will cease at once to act for such other client.

5. The appointment will be for a term of five years commencing from the 23rd day of April, 1937, renewable at the option of the Government at the end of that period, such renewals not being restricted in number but never to exceed 5 years at a time.

6. The service of the Solicitor may be terminated as follows :

(1) By the Government without previous notice if the Government is satisfied on medical evidence that the Solicitor is unfit and is likely for a considerable period to continue unfit by reason of ill-health for the discharge of his duties PROVIDED ALWAYS that the decision of the Government that the Solicitor is likely to continue unfit shall be conclusively binding on the party of the first part.

(2) By the Government or its officers having proper authority without any previous notice if the Solicitor shall be guilty of any insubordination, intemperance or other misconduct or of any breach or non-performance of any of the provisions of these presents or of any rules pertaining to his office.

(3) By six calendar months' notice in writing given at any time during service under this agreement either by him to the Government or by the Government or their authorised officer to him without cause assigned :

PROVIDED ALWAYS that the Government may in lieu of any notice herein provided for, give the party of the first part a sum equal to the amount of his retainer for the period by which such notice falls short of six months.

7. The Solicitor shall not except as provided in this Agreement resign his appointment without the sanction of the Government.

8. The Solicitor shall if required to travel on Government business be entitled to such travelling allowances as may be prescribed from time to time.

9. The Solicitor shall not be entitled to any pension or leave with pay. He may however, during his absence with the permission and subject to the approval of the Government appoint a substitute who will be entitled to the emoluments payable to the Solicitor during such period and discharge the duties of the Solicitor under this agreement.

IN WITNESS whereof the party of the first part and George Hemming Spence, Esq., C.S.I., C.I.E., I.C.S., Secretary to the Government of India in the Legislative Department, for and on behalf of the Governor General in Council have hereunto set their hands the day and year first above written.

SIGNED by the party of the first part in the presence of— } SUSHIL C. SEN.

Sudhansu Sekhar Banerjee,
Assistant to Messrs. Dutt and Sen,
Solicitors, Calcutta.

SIGNED by George Hemming Spence, Secretary to the Government of India in the Legislative Department, for and on behalf of the Governor General in Council in the presence of— } G. H. SPENCE.

S. A. Lal,
Deputy Secretary to the Government
of India, Legislative Department.

ARTICLES OF AGREEMENT made the 16th day of April, One thousand nine hundred and forty BETWEEN Dhanjisha Hoshangsha Nanavati, B.A., LL.B., 51, Mahatma Gandhi Road, Fort Bombay, Solicitor (hereinafter called "the Solicitor") of the one part and the Governor General in Council (hereinafter called "the Government") of the other part.

WHEREAS the Government has appointed the party of the first part as Solicitor to the Central Government in Bombay and the Solicitor for the purpose of this Agreement is deemed to have taken over charge from the 2nd January, 1940, AND WHEREAS it has been agreed that the Solicitor shall hold office as such Solicitor to the Central Government as aforesaid for a period of five years on the terms and subject to the conditions herein contained.

NOW these presents witness and the parties hereto respectively agree as follows :

1. The Solicitor shall be the Solicitor to the Central Government in Bombay and as such shall perform the following duties :

(a) Such portion of the civil legal business of the Central Government as may be done in Bombay including all litigation in Courts and advising State Railway Administrations (if required) and Departments of the Central Government located in Bombay and attending to the conveyancing work of such Departments.

(b) Criminal business of an advisory nature for the Departments of the Central Government in Bombay.

2. The Solicitor will be paid a monthly retainer of Rs. 1,000 which will include all in pocket or profit costs chargeable in respect of work done for the Government and charges for staff, office rent telephone, postage and all other establishment charges excepting stationery. Stationery will be supplied by Government.

3. The Solicitor shall not be entitled to any remuneration or charges in addition to those mentioned in the foregoing clause but he shall nevertheless be entitled to retain in civil suits all costs which may be awarded to the Central Government in respect of Solicitor's fees if such costs are realized from the party concerned and in conveyancing matters all Solicitor's fees recovered from the party liable to pay the same to the Central Government under the terms of a contract or by usage.

4. The Solicitor will be allowed private practice but he will in no case accept a retainer for any Provincial Government and further he will not appear or act for or advise any other party in any matter which is likely to affect the Central Government. If he is a member of a firm and his advice is sought by the Central Government in a case or matter which is either in litigation or likely to lead to litigation the firm will not advise another client in the same case or matter and if it has been advising such a client in the same case upto the point at which the Central Government ask for his advice in respect of the case or matter the firm will cease at once to act for such other client in respect of that case or matter.

5. The appointment will be for a term of five years commencing from the 2nd day of January 1940, renewable at the option of the Government at the end of that period, such renewals not being restricted in number but never to exceed 5 years at a time.

6. The service of the Solicitor may be terminated as follows :

- (1) By the Government without previous notice if the Government is satisfied on medical evidence that the Solicitor is unfit and is likely for a considerable period to continue unfit by reason of ill-health for the discharge of his duties PROVIDED ALWAYS that the decision of the Government that the Solicitor is likely to continue unfit shall be conclusively binding on the party of the first part.
- (2) By the Government or its officers having proper authority without any previous notice if the Solicitor shall be guilty of any insubordination, intemperance or of any breach or non-performance of any of the provisions of these presents or of any rules pertaining to his office.
- (3) By six calendar months' notice in writing given at any time during service under this agreement either by him to the Government or by the Government or their authorised officer to him without cause assigned.

PROVIDED ALWAYS that the Government may in lieu of any notice herein provided for, give the party of the first part a sum equal to the amount of his retainer for the period by which such notice falls short of six months.●

7. The Solicitor shall not except as provided in this agreement resign his appointment without the sanction of the Government.

8. The Solicitor shall if required to travel on Government business be entitled to such travelling allowances as may be prescribed from time to time.

9. The Solicitor shall not be entitled to any pension or leave with pay. He may however, during his absence with the permission and subject to the approval of the Government appoint a substitute who will be entitled to the emoluments payable to the Solicitor during such period and discharge the duties of the Solicitor under this agreement.

IN WITNESS whereof the party of the first part and Sir George Hemming Spence, C.S.I., C.I.E., I.C.S., Secretary to the Government of India in the Legislative Department for and on behalf of the Governor General in Council have hereunto set their hands the day and year first above written.

SIGNED by the party of the first part in the presence of A. Krishna Rao.

DHANJISHA HOSHANGSHA
NANAVATI.

SIGNED by Sir George Hemming Spence, Secretary, to the Government of India in the Legislative Department for and on behalf of the Governor General in Council in the presence of D. N. Mitra, Solicitor to the Government of India.

G. H. SPENCE.

Mr. Husenbhai Abdullabhai Laljee: Can the Advocate General appear against the Central Government?

The Honourable Sir Sultan Ahmad: No, Sir.

DEFECTS IN THE LAND ACQUISITION ACT.

117. ***Bhai Parma Nand:** (a) Will the Honourable the Law Member please state whether the attention of Government has been drawn to the serious defects in the Land Acquisition Act as pointed out by various High Courts in India?

(b) Is it a fact that there is no remedy in the Act if the Collector refuses to abide by section 18 of the Act, as has been held by the Allahabad High Court and other High Courts?

(c) Is it a fact that there is no provision in the Act for a transfer application when the matter is referred to the court under section 18 of the above Act?

(d) Are Government aware of a land acquisition case of Sidhu Ram *versus* the Collector, Dera Ismail Khan?

(e) Is it a fact that in the above referred case, the District Judge, Dera Ismail Khan, to whom the case was referred, was directly concerned?

(f) Is it a fact that the part of the land in the above case was acquired at the request of the District Judge and actually a bungalow was provided for him on the acquired land?

(g) Is it not against all rules of justice and equity to refer a case to the court where the trying judge himself is directly concerned?

(h) Are Government prepared to resubmit this case to some arbitrator, or exempt the applicant from the court fees in case of an appeal to the Judicial Commissioner, North West Frontier Province, in order to meet the ends of justice?

The Honourable Mr. N. B. Sarker: (a) No.

(b) and (c). These are questions of interpretation on which Government must leave the Honourable Member to form his own opinion.

(d) to (h). Compulsory acquisition of land is a provincial subject and the Government of India are unable to take any action in the case referred to.

FILTERED WATER RATES CHARGED BY THE DELHI AND NEW DELHI MUNICIPAL COMMITTEES.

118. *Sardar Sant Singh: (a) Will the Honourable the Education Member please state whether it is a fact that charges for filtered water have been enhanced by the New Delhi Municipal Committee since April or May last? If so, why?

(b) Was any notice given to the residents of New Delhi that these charges will be increased? If not, why not? Is any such notice due to be issued under the law?

(c) Is it a fact that on a previous occasion, the Committee proposed to increase these charges and gave due notice to the residents of New Delhi of their proposal?

(d) Is it a fact that the proposal mentioned in part (c) was dropped by the Committee on account of a general protest from the New Delhi residents?

(e) What are the charges for filtered water in the Delhi City? Are they less than even the old lower rate charged by the New Delhi Committee? If so, what are the reasons for the New Delhi Committee charging higher rate?

The Honourable Mr. N. B. Sarker: The information has been called for and a reply will be furnished to the House when it is received.

NEWLY BUILT ORTHODOX QUARTERS FOR THE GOVERNMENT OF INDIA STAFF.

†119. *Sardar Sant Singh: (a) Will the Labour Secretary please state whether it is a fact that last season a number of orthodox quarters for the Government of India staff were built?

(b) Were any "C" type orthodox quarters built? If not, why not? Do Government propose to construct some more "C" type quarters in the near future? If not, why not?

Mr. H. C. Prior: (a) Yes.

(b) No. With a view to avoid the loss of rent in future when the revised rates of pay would become fully operative it has been decided to limit the new construction to lower classes and to meet the shortage in the upper classes by upgrading quarters from the lower classes. In pursuance of this policy, 'C' class orthodox quarters were not constructed during the last summer season, and the shortage in that class is proposed to be met by upgrading certain 'D' class quarters as 'C' class quarters. The question of constructing additional residential accommodation in New Delhi during the next financial year is under consideration and it is too early to say whether the construction of 'C' class quarters will be included in that building programme or not.

APPOINTMENT OF A SIKH OR HINDU OFFICER AS SECRETARY OF THE DELHI AND NEW DELHI MUNICIPAL COMMITTEES.

†120. *Sardar Sant Singh: (a) Will the Honourable the Education Member please state whether the predecessor of the present Secretary of the Delhi Municipal Committee belonged to the Christian community?

(b) Is it a fact that the present Secretary of that Committee is a member of the Muslim community?

(c) Is it a fact that the late Secretary of the New Delhi Municipal Committee belonged to the Christian community?

(d) Is it now proposed to appoint a Muslim officer as Secretary of the New Delhi Municipal Committee?

(e) Will Government please state whether these posts are reserved for Muslims and Christians? Or, are not Sikhs and Hindus with suitable qualifications available for appointment in these posts?

(f) If the answer to the first part of part (e) be in the affirmative, will the Honourable Member please state the reasons for such reservation?

(g) If the answer to the first part of part (e) be in the negative, why is not an officer belonging to the Sikh community or the Hindu community appointed to these posts?

The Honourable Mr. N. R. Sarker: (a), (b) and (c). Yes.

(d) No decision has yet been reached regarding the filling of this appointment.

(e) and (g). The posts are not reserved for any particular community. The appointments are made by the Municipal Committees, subject to the

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

approval of the Chief Commissioner, and Sikhs and Hindus stand an equal chance of appointment with members of other communities.

(f) Does not arise.

ONE HOLIDAY FOR DIWALI AND TWO FOR ID-UL-FITR ALLOWED IN NEW DELHI MUNICIPAL GIRLS HIGH SCHOOL AND MUNICIPAL INSTITUTIONS.

†121. *Sardar Sant Singh: (a) Will the Honourable the Education Member please state whether it is a fact that in the Municipal Girls High School, New Delhi and some other Municipal institutions, only one day was allowed as holiday for Dewali?

(b) Is it a fact that in these institutions, the authorities observed two days' holidays on account of Id-ul-Fitr?

(c) If the answers to parts (a) and (b) be in the affirmative, will Government please state the reasons for allowing only one day's holiday for Dewali and two days for Id?

The Honourable Mr. N. R. Sarker: (a) Yes.

(b) No.

(c) Does not arise.

INSANITARY CONDITION OF KAROL BAGH, DELHI.

†122. *Sardar Sant Singh: (a) Is the Honourable the Education Member aware that on account of extension in the Western area, *i.e.*, Karol Bagh, Delhi, a new colony has cropped up?

(b) Is he aware of the complaints that all round the newly built colony and also within the built area of Karol Bagh, the Delhi Municipal Committee has failed to enforce sanitation to preserve public health?

(c) Is he also aware that the rock and open places all round the colony and the built area are used for answering calls of nature by people every day?

(d) Do Government propose to take over this area from the Municipal Committee and either hand it over to the New Delhi Municipal Committee, or to some other body which can enforce sanitation in the interest of public health or convenience? If not, why not, and what measures do Government propose to take in the matter?

(e) Is he aware that certain members, who are also responsible for this insanitary state of the locality, advise the staff of the Health Department of the Delhi Municipal Committee not to take any action against the uneducated offenders, such as *tonqawalas*, etc., etc., as they happen to be their voters?

(f) Is the Honourable Member prepared to issue orders that the locality is made scrupulously clean without any delay by the Committee?

The Honourable Mr. N. R. Sarker: With your permission, Sir, I shall answer questions Nos. 122, 123 and 124 together. The information has been called for and replies will be furnished to the House when it is received.

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

DAIRY FARM FOR KAROL BAGH, DELHI.

†‡123. *Sardar Sant Singh: Will the Honourable the Education Member please state if Government have provided any dairy farm for supply of milk in the Karol Bagh area, Delhi? If not, are they prepared to arrange for a dairy either themselves or by allotting plots of land to persons who may be prepared to undertake this work at their own cost?

DILATORINESS OF THE MUNICIPAL OFFICE, DELHI, IN RECEIVING PAYMENTS OF AND PASSING RECEIPTS FOR MUNICIPAL DUES.

†‡124. *Sardar Sant Singh: (a) Is the Honourable the Education Member aware that a large number of persons have either to go themselves, or send their messengers, to pay Municipal dues every month at the Municipal Office, Delhi?

(b) Is he aware that it takes every person two to three hours to pay the dues and obtain receipts for same, whereas in the local Electric Company Office it hardly takes 15 to 20 minutes to make the necessary payment and obtain receipts?

(c) Is he aware that the Delhi Municipal Committee, in spite of protests from the general public against this inconvenience and waste of time, have failed to remove this complaint of the public in a satisfactory way, and will the Honourable Member state what steps he proposes to take to save the public from this harassment at the public office of the Capital city of India?

COMPROMISES OF SUITS SUGGESTED BY THE DELHI CIVIL COURTS.

†125. *Sardar Sant Singh: (a) Is the Honourable the Law Member aware of the public complaints in the press and outside that in the Delhi courts, particularly the Small Cause Court (Additional), suits are made to be compromised at the suggestion of the courts?

(b) Will Government kindly lay on the table a statement showing the number of suits filed in that court during the first quarter of the financial year 1941-42, and the number compromised, stating where the court suggested the course?

(c) Are Government prepared to issue instructions to the courts that they should on no account suggest a compromise, especially before hearing the arguments?

(d) Are no working hours laid down for such courts? If so, is it not a fact that by suggesting compromises, etc., the courts actually work for hardly an hour or two daily? Who is responsible for seeing that the Small Cause Courts actually work full hours in Courts in Delhi, etc.?

The Honourable Sir Sultan Ahmad: I have called for a report and will lay a report on the table of the House in due course.

ENHANCEMENT OF PRICE OF NEWSPRINT PAPER BY BOMBAY PAPER DEALERS.

§126. *Mr. N. M. Joshi: Will the Honourable Member for Commerce be pleased to state:

(a) whether it is a fact that the pre-war price of the newsprint paper in the Bombay market for ready stock was about Re. 0-1-3

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

‡ For answer to this question, see answer to question No. 122.

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

per pound, while the present price of the same paper in the Bombay market for ready stock is about Re. 0-6-6 per pound;

- (b) whether it is a fact that the present c. i. f. Bombay price of newsprint paper imported from the United States of America is about Re. 0-3-10 per pound; and
- (c) whether it is a fact that paper dealers in Bombay and other places at present sell their stock at about 70 per cent. profit?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) The prices of newsprint had come down to Re. 0-1-3 per lb. during the pre-war period. The price quoted during the last month is round about Re. 0-5-9 per lb.

(b) The information placed before me corroborates the statement made by the Honourable Member.

(c) I have no information regarding the rates of profit charged by individual dealers.

ENHANCEMENT OF PRICE OF BOOK-PRINTING AND WRITING PAPER BY PAPER DEALERS.

†127. ***Mr. N. M. Joshi:** Will the Honourable Member for Commerce be pleased to state:

- (a) whether it is a fact that the supplies of different varieties of M.F. white book-printing and writing paper largely come from the Indian Paper Mills;
- (b) whether it is a fact that the selling prices of these varieties are controlled by the Indian Paper Sales Association;
- (c) whether it is a fact that these prices include the commission of their selling agents or distributors;
- (d) whether it is a fact that comparative figures of pre-war rate and present mill rate indicate that the mill prices have gone up above the pre-war prices only by about 50 per cent.; and
- (e) whether it is a fact that paper dealers have increased their selling prices by about 80 per cent. over and above the mill prices?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) Supplies of writing paper come largely from Indian Paper Mills. Approximately 50 per cent. of the supplies of printing paper are imported.

(b) and (c). I am not aware of the arrangements made by the Indian Paper Sales Association with its agents.

(d) Prices of different varieties of paper have risen by different percentages.

(e) I have received complaints of the high prices charged by dealers and these are receiving attention.

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

MEASURES FOR CONTROL OF PRICES OF VARIOUS VARIETIES OF PAPER.

‡128. ***Mr. N. M. Joshi**: Will the Honourable Member for Commerce be pleased to state:

- (a) whether Government are aware of measures taken by the Burmese and Ceylon Governments to control the prices of paper;
- (b) whether they intend to adopt any such measures in India; and
- (c) whether they intend to adopt any other measures adequately to control the prices of various varieties of paper; if so, what measures they intend to take; if not why not?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) Certain announcements in the Burma and Ceylon Gazettes have just been brought to my notice.

(b) and (c). The question of prices of paper is receiving the attention of the Government of India.

‡129*.

ARRANGEMENTS, ETC., FOR CARRYING INDIAN HAJ PILGRIMS TO JEDDAH.

130. ***Manvi Abdur Rasheed Chaudhury**: (a) Will the Honourable Member for Indians Overseas please state what arrangements have been made this year for carrying the Indian Haj pilgrims to Jeddah?

(b) What passage fares have been fixed and how much of those fares represents Kamaran and Jeddah dues and food charges?

(c) Have Government agreed to contribute any expenses to the shipping company to meet the increased cost of running steamers as a result of the war as was done last season? If so, what part of the expenses have Government agreed to contribute and what will be the estimated cost thereof?

The Honourable Mr. M. S. Aney: (a) and (b). The attention of the Honourable Member is invited to the press communique dated the 21st October, 1941, issued by Government. A statement showing the amounts representing the Kamaran quarantine fee, Jeddah sanitation dues and food charges which have been included in the price of steamer ticket is laid on the table.

(c) The attention of the Honourable Member is invited to paragraph 1 of the press communique issued by Government on the 17th October, 1941. His Majesty's Government and the Government of India have agreed to meet the loss, if any, proved to them to have been suffered by the ship owners taking the pilgrim season as a whole and taking into account receipts from freights carried during and between voyages, subject to a maximum liability by the Governments limited to cost of items attributable to war conditions, such as war risk insurance premium and expenses arising out of abnormal delays. Any sum that may become payable to the shipping company under this arrangement will be contributed by His Majesty's Gov-

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

‡This question was withdrawn by the questioner.

ernment and the Government of India in the ratio of 2 : 1. It is not possible to estimate at present the sum that might become payable to the shipping company in the event of their suffering a loss.

Kamaran quarantine fee	. Rs. 3 per head.
Jedda Sanitation dues	. Rs. 25-9-5 per head.
<i>Food charges—</i>	
<i>Deck passengers—</i>	
Bombay to Jedda Rs. 28.
Karachi to Jedda Rs. 19.
Calcutta to Jedda and back to Bombay Rs. 33-8.
<i>Cabin passengers—</i>	
Bombay to Jedda Rs. 107.
Karachi to Jedda Rs. 76.
Calcutta to Jedda and back to Bombay Rs. 127-8.

Mr. Husenbhai Abdullahhai Laljee: Was any sum paid last year to the shipping companies?

The Honourable Mr. M. S. Aney: I shall require notice of that.

Maulvi Abdur Rasheed Chaudhury: What is the amount of the quarantine dues?

The Honourable Mr. M. S. Aney: I have laid a statement on the table, but for the information of Honourable Members, I can say that the Kamaran quarantine fee is Rs. 3 per head.

131. *Maulvi Abdur Rasheed Chaudhury: Sir, I will not ask this question.

PARTICIPATION OF THE SCINDIA SHIPPING COMPANY IN THE HAJ TRAFFIC.

132. *Maulvi Abdur Rasheed Chaudhury: (a) Will the Honourable Member for Indians Overseas please state if it is a fact that at the conference of shipping interests held at Simla in August 1941, in connection with the Haj traffic, the Scindia Steam Navigation Company showed their willingness to enter the Haj traffic during the current pilgrim season?

(b) Is it a fact that they agreed to carry pilgrims at whatever rates that may be fixed by the Government of India?

(c) Is it a fact that they requested for the release of their most popular pilgrim ship s.s. "El Madina" and that even when Government showed their unwillingness to release the same, they agreed to participate in the Haj traffic with their two steamers s.s. "El Hind" and s.s. "Englestan" only if the other two cargo ships were released by the Government?

(d) Is it a fact that the Honourable the Commerce Member who was present at the conference, realising the reasonableness of the Scindia Company's demand asked the representative of the Scindia Company to discuss the matter further on the basis that Government would release two cargo steamers?

(e) Is it a fact that later on Government intimated the Scindia Company that they would be able to release only one steamer?

(f) Is it a fact that the Scindia Company even agreed to wait till January for the release of their second ship if the defence requirements permitted?

(g) Is it a fact that, without receiving a definite note from the Scindia Company, Government assumed that the Scindia Company would not be prepared to participate in the Haj traffic and made arrangements with the Mogul Line only?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: (a) and (b). Yes.

(c) and (d). The Scindia Company expressed their willingness to enter the Haj Service on condition that they were given back two requisitioned ships. It was explained on behalf of Government that, in view of the impossibility of forecasting defence requirements, no such guarantee as was desired by the Company could be given but that every endeavour would be made to release two ships from requisition.

(e) Yes.

(f) and (g). Throughout the negotiations with the Company Government made it clear that they could give no assurance regarding the release of any requisitioned vessel without reference to defence requirements. The Company, however, continued to press for a guarantee of release of a second ship before a given date, and in reply to a final telephonic enquiry on the 19th September they stated that an assurance by Government that a second ship would be released provided that defence requirements admitted of such release would be unacceptable to them. They were, therefore, informed that Government were regretfully compelled to assume that they were not prepared to participate in the traffic on the conditions offered and that Government were, therefore, proceeding to make alternative arrangements. Three days later the Company intimated their willingness to accept the qualified assurance proposed by Government, but it was too late then to alter the arrangements finally made.

Maulvi Abdur Rasheed Chaudhury: May I know if the telephonic communication was subsequently confirmed by a letter from the Scindia Company?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: No, Sir.

Maulvi Abdur Rasheed Chaudhury: May I know why it was found necessary to conclude, without getting a confirmation of that telephonic communication, that the Scindia Company was not participating in the Haj traffic?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: The telephonic conversation was clear and there was no time to wait. The season was advancing and arrangements for the shipping had to be made.

Maulvi Abdur Rasheed Chaudhury: Was it made certain that somebody in authority was having the telephonic conversation?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: I believe so.

Mr. Lalchand Navarai: When the Scindia Company refused to accept the terms offered to them and the shipping contract was given to another company, was it given on the same terms that were offered to the Scindia Company or on better terms?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: The terms that were offered were identical to both the companies. My Honourable friend has not followed the issue. Certain ships of Scindia's were requisitioned by the Defence Department and Scindia Company required an assurance that two of those ships would be released by a certain date. That condition obviously was inapplicable to the other company.

Mr. Husenbhai Abdullabhai Laljee: Has the Honourable Member read the report of the Directors of the Scindia Company giving quite a different version with regard to these negotiations?

The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar: It has been I shall not say my privilege, but my duty to read every report of the Directors of the Company and to find that in most of those reports their version differed from the Government version.

†133*.

RECOMMENDATIONS MADE BY THE INDIAN MEDICAL ASSOCIATION.

134. *Mr. Govind V. Deshmukh: Will the Honourable Member for Education, Health and Lands please state what recommendations were made by the Indian Medical Association, as passed by its Central Council last July, to the Government of India, and of these, which were accepted and which were rejected and the grounds for rejecting the same?

The Honourable Mr. N. R. Sarker: This question should have been addressed to the Additional Secretary, Defence Department.

SEEKING CONSULTATION OF INDIAN MEDICAL ASSOCIATION FOR NON-OFFICIAL PERSONNEL OF CENTRAL AND PROVINCIAL COMMITTEES FOR ADVISING EMERGENCY RECRUITMENT TO INDIAN MEDICAL SERVICE.

135. *Mr. Govind V. Deshmukh: Will the Honourable Member for Education, Health and Lands please state if the Indian Medical Association, through its Central Council or otherwise, is consulted in the selection of non-official personnel of the Central and Provincial committees to advise on emergency commissions in the Indian Medical Service? If not, what are the reasons for doing so?

The Honourable Mr. N. R. Sarker: The Indian Medical Association was not consulted regarding the selection of the two members of the independent medical profession for the Central Advisory Committee. Selection was made by the Central Government from among the non-officials

who attended the Simla Conference in July and no medical organisation was consulted in the matter.

As regards the personnel of the Provincial Committees, the Central Government appointed the medical men recommended by the Provincial Governments: it is not known whether the latter consulted provincial branches of the Indian Medical Association or any other organisation of medical graduates before making their recommendations.

Lieut.-Colonel Sir Henry Gidney: In view of the great confusion that exists in the minds of medical men in India and the diversity of views held between them and Government, particularly in the recruitment of emergency commissions in the I. M. S., will the Honourable Member inform this House whether or not Government are prepared to issue an Ordinance conscripting medical men for service during the war, as Burma has recently done? If not, why not?

The Honourable Mr. N. E. Sarker: I think the Defence Secretary will be the proper person to give a reply to that.

Lieut.-Colonel M. A. Rahman: May I know if the new arrangement that has been set up is working satisfactorily as regards provincial committees in the selection of candidates for emergency I. M. S. Commissions?

The Honourable Mr. N. E. Sarker: I have not got that information yet.

Mr. Govind V. Deshmukh: Did Government consider it necessary to have the co-operation of the Indian Medical Association in the recruitment of persons for the I. M. S.?

The Honourable Mr. N. E. Sarker: Many of the prominent members of the Indian Medical Association are members of the provincial committees or the Central Committee.

Mr. Govind V. Deshmukh: Will the cause of recruitment be promoted if the popular side or the Indian Medical Association is discontented with the procedure observed by Government in the selection of I. M. S. personnel?

The Honourable Mr. N. E. Sarker: I think they have no legitimate grievance.

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member please inform this House whether or not Government intend to pursue a policy of co-operation with the Indian Medical Association and Councils in such vital matters and by doing which they will themselves benefit?

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member is really arguing.

The Honourable Mr. N. E. Sarker: Government would very much like to get the co-operation of the Indian Medical Association. But up

till now they have not seen any indication that the Association will co-operate with Government except on their own terms.

APPOINTMENT OF A TECHNICAL OFFICER TO AN ADMINISTRATIVE POST IN THE ARCHÆOLOGICAL DEPARTMENT.

136. *Maulvi Abdur Rasheed Chaudhury: (a) Will the Honourable Member for Education, Health and Lands please refer to answers to supplementary questions put by Sir Syed Raza Ali in connection with his question No. 166 on the floor of this House on the 26th February, 1941, and kindly state whether there exists a case in which any technical officer of the Archæological Department, such as, Archæological Chemist, Government Epigraphist, etc., was appointed in the past to the administrative post either of the Director General of Archæology or of the Deputy Director General of Archæology? If so, will he please state the name of that officer?

(b) Why was the present officer working in the post of the Deputy Director General of Archæology, not appointed forthwith to the post for the full term when he was found to have "shaped remarkably well" during his four months' training; that is to say, why was his appointment to the post kept in an officiating capacity? Do Government now propose to appoint him for the full term of the office?

(c) What literary work had he done prior to his appointment to the post of the Deputy Director General except the editing of routine epigraphical accounts which qualified him to selection for the four months' training to the post of Deputy Director General of Archæology, and what archæological memoirs, guides, etc., has he so far published? Has he published any literary work of some importance during or before his career as an Archæological Officer? If so, will the Honourable Member place a list of those works on the table of the House?

(d) Will the Honourable Member also kindly place on the table of the House a list of works, published during and before his career as Archæological Officer, of the seniormost Muslim officer on the administrative side?

The Honourable Mr. N. R. Sarker: (a) The Honourable Member's attention is invited to the reply to part (b) of question No. 166 put on the 26th February, 1941.

(b) The appointment was made provisionally pending a decision regarding the reorganisation of the Department. The matter is still under consideration.

(c) A statement showing the major literary works of the officer in question is placed on the table.

(d) Government are not aware of any archæological publications by the seniormost Muslim officer on the administrative side.

WORKS BY DR. N. P. CHAKRAVARTI.

1. Books.

1. L'Udanavarga Sanskrit, Texte Sanscrit en Transcription, Avec Traduction et Annotations, Suivi d'une Etude Critique et de Planches. Pt. I (Published as the 4th Volume of the very well known series 'Mission Pelliot en Asie Centrale')—Paris, 1930.

Part II (Publication delayed due to war).

2. India and Central Asia.

3. India and Java—Part II (Inscriptions).

4. Thesis for Ph.D. degree at Cambridge, discussing the historical linguistic and epigraphical value of the Kharoshthi documents discovered by Sir Aurel Stein in Central Asia (not published—thesis examined, among others, by Professor E. J. Rapson of Cambridge University and editor of the Cambridge History of India and Dr. F. W. Thomas, Librarian, India Office Library and later Bodleian, Professor of Sanskrit at Oxford).

2. Other Contributions.

1. Sanskrit Udanavarga and its Prakrit Originals.
 2. Les Mots Bhashadans leCommentaire de Sarvananda Sur l'Amarakosha.
 3. Nivina Copper-plate grant of Dharmarajadeva.
 4. Kharod Inscription of Ratnadeva III—Chedi Samvat 933.
 5. Two brick Inscriptions from Nalanda.
 6. A Buddhist Inscription from Kara.
 7. Bhopal plates of Mahakumara Harishchandradeva.
 8. Lucknow Museum plate of Jayachandradeva, V.S. 1237.
 9. Rewah plates of the time of Trailoyamalladeva (Kalachuri) year 963.
 10. A note on the Halayudha stotra in the Amaresvara Temple.
 11. Rajaprasasti.
 12. James Prinsep (His life and works).
3. Since 1934, edited *Epigraphia Indica*, Vol. XX, Part VII (July 1932) to Vol. XXVI, Part IV (October 1941).

Dr. P. N. Banerjea: Is it not a fact that Mr. Page and Mr. Blackiston, who were technical experts, that is to say, architects, were appointed as Deputy Directors General?

The Honourable Mr. N. R. Sarker: Sir, I want notice to answer this question.

Dr. P. N. Banerjea: Is it not a fact that the Ceylon Government have recently appointed an Epigraphist as the head of the Archæological Department?

The Honourable Mr. N. R. Sarker: I have no information.

137. Maulvi Abdur Rasheed Chaudhury: Sir, I don't want to ask this question.

ALLEGED INSULT TO THE IMAM OF A MOSQUE IN QUTAB AREA BY A HINDU SUBORDINATE OF ARCHÆOLOGICAL DEPARTMENT.

†138. ***Maulvi Abdur Rasheed Chaudhury:** Will the Honourable Member for Education, Health and Lands please state:

- (a) if it is a fact that there is a small mosque in Qutab Area, opposite the Dak Bungalow which is open to public for religious purposes;
- (b) if it is a fact that recently a certain Hindu subordinate of the Archæological Department entered the said mosque with shoes on and insulted the *Imam* there;
- (c) if it is a fact that the Muslims of Delhi brought the matter to the notice of the Government of India in the Education Department and the Chief Commissioner, Delhi;

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

- (d) if it is a fact that the Chief Commissioner, Delhi, detailed a magistrate to enquire into the matter;
- (e) the result of this magisterial enquiry and also what action Government propose to take against the Hindu subordinate; and
- (f) if it is a fact that there is a general impression that the Director General of Archæology is supporting the subordinate in his action?

The Honourable Mr. N. R. Sarker: (a) Yes.

(b) This allegation has been made and denied and forms part of the subject matter of a magisterial inquiry.

(c) and (d). Yes.

(e) The inquiry is not yet concluded.

(f) No.

RECOMMENDATION FOR PROMOTION OF THE FORMER CUSTODIAN OF MOHENJODARO BY THE DIRECTOR GENERAL OF ARCHÆOLOGY.

†139. *Maulvi Abdur Rasheed Chaudhury: (a) With reference to the answer to part (h) of starred question No. 373, given on the 17th March, 1941, will the Honourable Member for Education, Health and Lands Department please state the result of his enquiry about the claim of former Custodian, Mohenjodaro, to higher travelling allowance?

(b) Do Government propose to take any action against the man? If not, why not?

(c) Are Government aware that recently this man's application for a first class officer's post in the Department has been forwarded by the Director General of Archæology with very high encomiums?

(d) Will Government please state if this action of the Director General in recommending a man of this type for such a high post of responsibility, with full knowledge of the man's character and conduct, is justified, and is it in the interest of future good service to Government?

The Honourable Mr. N. R. Sarker: (a) and (b). I would invite the Honourable Member's attention to the statement laid on the table of the House on the 27th October, 1941.

(c) No. The application was forwarded without any recommendation.

(d) Does not arise.

REDUCTION OF PAY OF CLERKS OF HIS OFFICE BY THE DIRECTOR GENERAL OF ARCHÆOLOGY.

†140. *Maulvi Abdur Rasheed Chaudhury: Will the Honourable the Education Member please state:

- (a) whether there have been any instances within the last fifteen months where the Director General of Archæology reduced the pay of clerks in his office by Rs. 20 per mensem;

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

- (b) if so, what is the community of such staff; and
- (c) the reasons for this reduction in pay in each case?

The Honourable Mr. N. R. Sarker: (a) There was one such instance.

(b) Muslim.

(c) The reduction was on the ground of inefficiency.

UNSTARRED QUESTIONS AND ANSWERS.

SUPERSESSION OF THE CLAIMS OF CERTAIN MUSLIM CANDIDATES FOR APPOINTMENT IN THE IMPERIAL VETERINARY RESEARCH INSTITUTE.

47. Qazi Muhammad Ahmad Kazmi: (a) With reference to the information supplied by Government and printed on page 1917 of the Legislative Assembly Debates, Volume III, in answer to unstarred question No. 506, asked in this House by Mr. Umar Aly Shah on the 25th March, 1941, regarding paucity of Muslims in the staff of Veterinary Research Institute, will the Honourable the Education Member please state the total number of instances where the names of Muslim candidates in addition to others were recommended as suitable by the Federal Public Service Commission for appointment and were appointed in preference to non-Muslims since 1934 or even before?

(b) On the other hand, is it not a fact that in a certain gazetted Class I post, it was recommended by the Federal Public Service Commission sometimes in 1935 that, should any communal adjustment in the gazetted staff be necessary, the Muslim candidate placed second in the list might be taken in preference to non-Muslim placed first both having equal qualifications?

(c) What were the circumstances in which the case of the Muslim candidate was not considered favourably?

(d) Are there any more instances where Muslim candidates included in the list of candidates recommended by the Federal Public Service Commission as suitable, have been passed over?

(e) Did the Department ever indicate in the requisition form sent to the Commission that a Muslim will be preferred? If not, why not, when there was an alarming shortage of Muslims in gazetted staff at the Institute?

The Honourable Mr. N. R. Sarker: The information asked for is being collected and a reply will be laid on the table in due course.

OFFICIATING APPOINTMENTS OF MUSLIMS TO GAZETTED POSTS IN THE IMPERIAL VETERINARY RESEARCH INSTITUTE.

48. Qazi Muhammad Ahmad Kazmi: (a) Will the Honourable the Education Member please state how the officiating appointments to gazetted posts in the Imperial Veterinary Research Institute are filled up?

(b) Are these posts advertised and filled on the basis of recommendations of the Federal Public Service Commission?

(c) How many such appointments have been made in the Institute after 4th July, 1934?

(d) How many of these posts were filled after due advertisement?

(e) How many of these posts were offered to Muslims?

The Honourable Mr. N. R. Sarker: The information asked for is being collected and a reply will be laid on the table in due course.

FACILITIES FOR STUDIES IN AND OUTSIDE INDIA TO THE STAFF OF THE
IMPERIAL VETERINARY RESEARCH INSTITUTE.

49. Qazi Muhammad Ahmad Kazmi: (a) Will the Honourable the Education Member please state how many members of the staff of the Imperial Veterinary Research Institute were offered facilities for further studies in and outside India within the last ten years?

(b) How many such chances were given to Muslims?

(c) If none, was it not necessary to give facilities to the member of this community also?

The Honourable Mr. N. R. Sarker: The information asked for is being collected and a reply will be laid on the table in due course.

SCHOLARSHIPS FOR STUDIES IN THE IMPERIAL VETERINARY RESEARCH
INSTITUTE.

50. Qazi Muhammad Ahmad Kazmi: (a) Will the Honourable the Education Member please state whether there is any scholarship offered for further studies in the Imperial Veterinary Research Institute?

(b) For what duration are these offered?

(c) What is the amount paid monthly to the scholarship holders?

(d) How many such scholarships have so far been offered to Muslims?

The Honourable Mr. N. R. Sarker: The information asked for is being collected and a reply will be laid on the table in due course.

PROCEDURE FOR SELECTION OF CANDIDATES FOR CLERICAL VACANCIES IN THE
IMPERIAL VETERINARY RESEARCH INSTITUTE.

51. Qazi Muhammad Ahmad Kazmi: (a) With reference to the answer to question No. 153 (a) by Haji Chaudhury Muhammad Ismail Khan on the 18th November, 1940, regarding paucity of Muslims in the ministerial staff in the Imperial Veterinary Research Institute, will the Honourable the Education Member please state the procedure for recruitment of candidates to the clerical vacancies in the past, say, from 1925 to 1934, and what is the present procedure?

(b) Was any competitive examination at regular periods being held, as in other departments of the Government of India, for the selection of candidates for clerical posts?

(c) If so, how many posts were filled in after holding competitive examination?

(d) How many posts have been filled in since 1934, and what procedure was adopted by the department in selecting the present incumbents of such posts?

(e) What was the community to which the candidates selected after competitive examination belonged?

(f) Are there any cases where candidates were selected without any competitive examination from 1925 to 1940? If so, what was the number and the community of the successful candidates?

(g) Is it a fact that since 1925 many unqualified candidates were appointed in preference to qualified Muslim candidates? If so, what were the circumstances in which unqualified non-Muslim candidates merited the selection and not the Muslims?

The Honourable Mr. N. R. Sarker: The information asked for is being collected and a reply will be laid on the table in due course.

CHANGE IN PROCEDURE FOR APPOINTMENT TO CLERICAL VACANCIES IN THE IMPERIAL VETERINARY RESEARCH INSTITUTE.

52. Qazi Muhammad Ahmad Kazmi: (a) Will the Honourable the Education Member please state whether it is a fact that some time in 1937 the question of paucity of Muslims in the services at the Imperial Veterinary Research Institute was taken up in the press and in the Legislative Assembly and consequently the department made out a rule that departmental candidates who had been tried for one year in a particular line should necessarily be taken in regular vacancies in preference to outsiders?

(b) Is it a fact that the procedure as mentioned in part (a) above was laid down to give due regard to merits and seniority of the departmental candidates and also to provide promotion to qualified candidates serving on lower posts?

(c) How many candidates were in employment and awaiting promotion or selection to clerical vacancies from the year 1938 and how many of them were Muslims and how many non-Muslims?

(d) Following the above procedure, how many non-Muslim candidates were provided in clerical vacancies and how many Muslims have since been provided?

(e) Is the same procedure being adopted at present? If not, what was the necessity to revise the same?

(f) Was any necessity to revise the current procedure felt; and if so, did the revision affect adversely all the Muslim candidates while all the non-Muslim candidates had already received the favour?

(g) Why were Muslim candidates not provided in clerical vacancies before the revision of the old procedure?

(h) Is it a fact that before the revision of the old practice, all the non-Muslim candidates awaiting promotion, were provided with permanent or long vacancies? If so, were Muslim candidates not eligible for this favour?

(i) What remedy the Honourable Member now proposes to make amends?

(j) What was the necessity to change the procedure so far adopted?

The Honourable Mr. N. R. Sarker: The information asked for is being collected and a reply will be laid on the table in due course.

SENIORITY OF CERTAIN HINDUS *vis-a-vis* CERTAIN MUSLIMS IN THE BINDING DEPARTMENT OF THE GOVERNMENT OF INDIA PRESS, NEW DELHI.

53. Qazi Muhammad Ahmad Kazmi: (a) Will the Labour Secretary be pleased to state whether in the Government Press, New Delhi, Binding Department, some Muslims were recruited on the 2nd January, 1934, and some Hindus were also recruited after the 2nd January, 1934?

(b) Is it a fact that Muslims who were employed on the 2nd January, 1934, were confirmed in the year 1937, but Hindus who were employed after the 2nd January, 1934, were confirmed during 1934?

(c) Is it a fact that some Muslims were recruited during 1935 and some Hindus were taken in the same year, *i.e.*, 1935, but later on those Hindus who were junior to Muslims were confirmed and thus made senior to the Muslims, but after a period of five years, *i.e.*, in 1941, the Controller rectified the mistake and made the Muslims senior?

(d) Are Government prepared to do the needful and rectify the mistake by making the Muslims senior to the Hindus of the recruitment of 1934?

Mr. H. C. Prior: (a) to (d). The information is being collected and will be laid on the table in due course.

CERTAIN MEN TAKEN FROM OUTSIDE THE STAFF IN THE BINDING DEPARTMENT OF THE GOVERNMENT OF INDIA PRESS, NEW DELHI.

54. Qazi Muhammad Ahmad Kazmi: (a) Will the Labour Secretary be pleased to state whether it is not a fact that some 19 men were taken from outside the staff in the Binding Department of the Government of India Press, New Delhi, to handle the piece-work and that the employees were deprived of this benefit?

(b) Is it not a fact that after some time those men were made paid employees of the Press and the persons who were working for the last 10/15 years were made junior to them?

(c) Is it not a fact that several times, questions were raised in the Works Committee for those 19 men, urging the stoppage of their increments till the old employees of the Press of the Binding Department got ahead of their salaries?

(d) Is it not a fact that the Members of the Works Committee went on the 20th July, 1941, to see the Controller to request the stoppage of the increment of those 19 men?

(e) Is it not a fact that in the same way there was a dispute regarding the temporary and permanent hands and this was decided on the 6th March, 1937, by the Controller by stopping the increment of the temporary hands until the permanent hands got ahead of the salaries of the temporary hands?

(f) Are Government prepared to stop the increment of those 19 men in the same way till the old employees of the Government of India Press, Binding Department, get ahead of their salaries?

Mr. H. O. Prior: (a) On the transfer of 19 posts of binders on piece from the Government of India Press, Calcutta, to the Government of India Press, New Delhi, the employees in the bindery of the latter press were given the option to work on piece but as none exercised the option, outsiders were recruited to the posts. -

(b) The above 19 posts on piece were converted into salaried posts in 1938 without any change in their incumbents whose salary was fixed on the basis of their class rates while on piece. Other employees in the bindery had no claim on these posts and there has been no supersession. In 1940 both the cadres of binders were merged into one and the seniority of the men was fixed according to the dates of their appointments in the particular grades.

(c) There is no incremental rate of pay in the bindery and so the question of stoppage of any increment does not arise. Men are, however, promoted according to their seniority and suitability on the occurrence of vacancies in the higher grades.

(d) The representative of the bindery in the Works Committee saw the Controller on the 22nd July, 1941, and the question raised by him is under consideration.

(e) The case referred to is different as it involved other principles.

(f) Does not arise in view of reply to part (e). •

ANNUAL INCREMENTS IN THE BINDING DEPARTMENT, GOVERNMENT OF INDIA PRESS, NEW DELHI.

55. Qazi Muhammad Ahmad Kazmi: (a) Will the Labour Secretary be pleased to state how many memorials, questions in the Works Committee and questions in the Assembly were submitted regarding annual increment in the Binding Department, Government of India Press, New Delhi, since the year 1928 till 1941?

(b) Are Government prepared to grant annual increments to the Binding Department, Government of India Press, New Delhi? If so, at what rate and since when?

Mr. H. O. Prior: (a) The labour involved in furnishing the information will not be commensurate with the result. It is regretted, therefore, that the information cannot be furnished.

(b) The reply to the first part is in the negative. The second part does not arise.

Mr. Govind V. Deshmukh (Nagpur Division: Non-Muhammadan): Sir, may I ask one question in connection with the motion which the Honourable Mr. Aney has tabled on the Ceylon Agreement? The Joint Report has not been distributed so far. Will the Honourable Member kindly see that it is distributed to the House so that we may be able to take part properly in the debate when the Report is taken into consideration?

The Honourable Mr. M. S. Aney (Member for Indians Overseas): I will see that all the Members receive a copy of the Report.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): Today, I hope.

The Honourable Mr. M. S. Aney: Yes, if possible.

THE MADRAS PORT TRUST (AMENDMENT) BILL.

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

“That clause 2 stand part of the Bill.”

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

“That in clause 2 of the Bill, in the proposed section 7, for the word ‘eighteen’ the word ‘nineteen’ be substituted.”

My object in moving this amendment is, Sir, to make it possible for the Honourable Member to include the representation of the Piecegoods Association, Madras. For that purpose I have given a separate amendment, which comes later on, that this body should be added at the end. My reasons are, Sir, that the speech of the Honourable Member, which he made at the time when he moved for circulation of this Bill, was very definite on one point, and that point was that he did not see the reason why the Madras Trades Association should continue to hold representation thereon and he went on so far as to say—these are his words:

“That a body which is almost entirely European, although I think there is at least one Indian member, and which includes retailing firms. It also includes a very prominent newspaper which is represented, I think, also in the Madras Chamber. I do not feel myself that bodies of this kind have in present times a very direct interest in Port Trust affairs. They are obviously interested, but if you carry the interest in Port Trust affairs into the indirect field, there is hardly any limit to the bodies which could claim consideration.”

After making that statement, Sir, at that time, I am surprised to find that in the Bill as it emerged from the Select Committee that body has been given representation. Although there is a serious objection to that but there is no reason why the Piecegoods Association, which has been represented on this body for a very very long time even in that restricted Port Trust provisions, should have been excluded at all. The claim of that body had been put forward at that time by the Honourable Mr. M. S. Aney in this House when that motion was before the House. Now that body has been excluded entirely. Therefore, in order to bring in that body, whose representation has been continuous for a very very long period, it is necessary that the number should be increased from 18 to 19. I do not want to go into other questions which have been discussed during the debate on the general consideration of the Bill, but I will appeal to him very strongly that by adding one number and by continuing to give representation to the Piecegoods Association which it enjoyed in this Trust, he will be doing nothing but an act of fair and equitable justice to that association. That association has got material interests to protect in the Madras Port Trust, and I hope, Sir, that the Government will favourably consider this amendment of mine.

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

"That in clause 2 of the Bill, in the proposed section 7, for the word 'eighteen' the word 'nineteen' be substituted."

Mr. Jamnadas M. Mehta (Bombay Central Division: Non-Muhammadan Rural): Before you proceed further with it, Sir, may I ask one question? I am opposed to several other things in this Bill. I want to reduce the number. Supposing this amendment is passed, then all my amendments will go.

Mr. President (The Honourable Sir Abdur Rahim): I did not follow the Honourable Member's question.

Mr. Jamnadas M. Mehta: This amendment of my friend, Sardar Sant Singh, wants to increase the number of trustees on the Madras Port Trust to 19, whereas my amendments which follow this amendment want to reduce the number.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can argue that his amendment should be adopted.

Mr. Jamnadas M. Mehta: But, afterwards, my amendments won't be argued on merits. Therefore, I suggest that voting on this amendment may be postponed. It is a consequential thing. If we add, the number will be increased; but if we reduce, the number will be less.

Mr. President (The Honourable Sir Abdur Rahim): It cannot be helped. The Honourable Member knows it very well. The proper course is for the Honourable Member to argue in support of his own amendment. That is the only way. Is the Honourable Member going to speak?

Mr. Jamnadas M. Mehta: I would give way to my friend, Dr. Banerjea.

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): Sir, I rise to support this amendment, but for a purpose different from the purpose that my friend, Sardar Sant Singh, has in view. My object in supporting this amendment is that I wish to move later on that the number of members allotted to the Southern India Chamber of Commerce be raised from 3 to 4 in order that that Chamber may be placed on a footing of equality to the Madras Chamber of Commerce. I will not say anything about that amendment just now, because it is not before the House, but in order to give an indication of my desire, I am mentioning this fact. In the meantime, I support this amendment, that the number be raised from 18 to 19.

Mr. President (The Honourable Sir Abdur Rahim): Which is the amendment of Mr. Jamnadas Mehta where he wants to reduce the number?

Mr. Jamnadas M. Mehta: I have reduced the number of the Madras Trades Association,—that is Amendment No. 7 on the Agenda Paper.

Mr. President (The Honourable Sir Abdur Bahim): That is not reducing the number. If he has got any other amendment simply for reducing

the number from 18 to something less, then I can allow that amendment also to be moved now, and then there will be a debate on both the amendments. This is for substitution. I want to know if there is any amendment which seeks simply to reduce the number.

Mr. Jamnadas M. Mehta: My friend, Sardar Sant Singh, himself has joined me in amendment No. 5:

“That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word ‘two’, occurring in line 10, the word ‘one’ be substituted.”

Mr. President (The Honourable Sir Abdur Rahim): That refers to a different thing. It is not reducing the total.

Sardar Sant Singh: My object is, the number is not to be

Mr. President (The Honourable Sir Abdur Rahim): I want to know whether the number eighteen occurs in clause 2.

Mr. Jamnadas M. Mehta: Yes.

The Honourable Sir Andrew Clow (Member for Railways and Communications): In the beginning of new clause 7.

Mr. President (The Honourable Sir Abdur Rahim): That is in another sub-clause. That won't do. The debate will now go on on the amendment of Sardar Sant Singh.

Mr. Jamnadas M. Mehta: May I know the Chair's decision in this matter? If we pass this amendment, we shall be committed to 19.

Mr. President (The Honourable Sir Abdur Rahim): Yes, I have already said that in order to give the Honourable Member a chance of moving an amendment by which the total is sought to be reduced, so that there may be a debate on both, I asked him if there was any such amendment in his name.

Mr. Jamnadas M. Mehta: I would prefer to allow 19 to remain.

Mr. President (The Honourable Sir Abdur Rahim): I cannot allow the Honourable Member to have any preference.

Mr. Jamnadas M. Mehta: I do not want to have any preference.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can argue his case on this amendment.

Mr. Jamnadas M. Mehta: If that is the decision of the Chair, I shall anticipate my amendments and make my submission.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member can give his reasons, but he must confine himself to the amendment and use any argument that is relevant in order to induce the House not to accept the other amendment.

Mr. Jamnadas M. Mehta: Sir, I am not disposed to favour this increase of the number to 19, the reason being it will make the Bill much

[Mr. Jamnadas M. Mehta.]

worse than it is today. The object of my friend, Sardar Sant Singh, is acceptable, but he has chosen the line of least resistance. He has not chosen the justest or fairest line or the line which will be more in consonance with the interests of the presidency of Madras. He has chosen, looking at the fact that the forces arrayed against him are formidable he has chosen the line of least resistance, which is not worthy of a Sikh Sardar. A Sikh fights with bare breast and he goes for the enemy, and if my friend really wants to support the claims of an association which, in his opinion, deserves a seat on the Madras Port Trust, he should have definitely confined his number to 18 and fought for the removal of the other seats which are not in his opinion justified to be placed on the Port Trust. For instance, if you increase this number to 19, the implications of it would be that you are thereby giving place to every sectional interest which deserves or does not deserve it, more probably does not deserve it, as I shall try to show presently, and, therefore, the Bill will be a conglomeration of interests, which do not deserve to be represented on the Madras Port Trust. I am sure that my friend, Sardar Sant Singh, never wanted that. On the other hand, if the number is increased from 18 to 19 and if the House gives me two seats for labour, perhaps I may accommodate myself to the number 19, but there being no guarantee about the additional seat going to labour, I say that, if it is going to other interests, it will make the Bill much worse than it is today, and it will perpetuate sectional interests. Only from that point of view I oppose this amendment, and I hope my friend, Sardar Sant Singh, will understand me.

The Honourable Sir Andrew Clow: Sir, I oppose this amendment. Sardar Sant Singh has referred to previous statements of mine, and I am quite candidly prepared to repeat what I virtually admitted myself last night,—I rather liked the Bill as it was originally. But I have not taken up a rigid attitude; and when I found that an increase was proposed by the Select Committee and that some good reasons were given for it, I agreed to the increase to 18, although, I admit, somewhat reluctantly. Now I am asked to go a bit further and increase the number to 19, but as I am very far from clear what purpose it will serve. Sardar Sant Singh was quite clear. He wanted a seat for the Piecegoods Association, but Dr. Banerjea wanted, I think, a seat for the Southern India Chamber of Commerce. Mr. Jamnadas Mehta wanted the seat for labour, but he has also slipped in an amendment about Piecegoods Association, so that he seems to be of two minds in the matter.

In all the three cases there are very good reasons for not going further. As regards the Piecegoods Merchants' Association, we were given last night, very reluctantly indeed by Mr. Lalchand Navalrai, the text of a telegram which the Piecegoods Merchants' Association had sent to him. I am not at all surprised at his reluctance because it contained the astonishing statement that their interests were as large as those of the Skin and Hide Merchants' Association. The telegram was not sent to me. I would not like to suggest that that is because I have statistics at my disposal, I would prefer to take the more charitable view that the Piecegoods Merchants' Association is so out of touch with the general trade statistics that they were not aware of the position. But actually the Madras skin and hide trade which is, I believe, almost entirely in the hands of its Association, forms 25 per cent. of the total import and export trade of the Port.

The trade in piecegoods has diminished greatly, and I understand, as regards the export trade, that a considerable portion of it probably the bulk is in the hands of firms which are not in this Association at all.

As regards the Southern India Chamber of Commerce, we have increased their representation from two to three. If I had found that Honourable Members would have preferred to add one seat and not to have the Andhra Chamber of Commerce, which I understand includes some members who are also members of the Southern India Chamber of Commerce, I would have seen no great objection to that course, but the Andhra Chamber of Commerce put forward a strong plea and Members from Madras appeared satisfied that it had a cogent claim and I think the arrangement under the Bill is better. As regards labour, I was a signatory of the report of the Royal Commission which recommended that a nominated seat should be given to labour in these Port Trusts and I have not seen any ground for changing the view which I then expressed.

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

“That in clause 2 of the Bill, in the proposed section 7, for the word ‘eighteen’ the word ‘nineteen’ be substituted.”

The motion was negatived.

Mr. Jamnadas M. Mehta: I beg to move:

“That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word ‘one’, occurring in line 3, the word ‘two’ be substituted.”

The Honourable Sir Andrew Clow: I would like to ask if this amendment is in order, in view of what fell from you

Mr. President (The Honourable Sir Abdur Rahim): What is the point of order?

The Honourable Sir Andrew Clow: This is a motion definitely increasing the strength of the number of Trustees. We have just taken a decision to keep it at eighteen.

Mr. President (The Honourable Sir Abdur Rahim): That is not the decision. The amendment is in order.

Mr. Jamnadas M. Mehta: Yesterday I had made my submission on the claims of labour briefly. I shall not therefore repeat the same ground again, but two or three observations have been made in the course of this debate to which I shall refer. The Honourable Member in charge of the Bill has claimed that he as a member of the Labour Commission in 1929 had made certain recommendations which should enure to the benefit of labour but that no more will be permitted. Sir, nearly thirteen years have gone by or are about to be completed since the Labour Commission was appointed. The Honourable Member in charge himself has brought forward a Bill in which he proposes to increase the number of Trustees of the Port of Madras.

Sir Oowasji Jehangir (Bombay City: Non-Muhammadan Urban). How long ago was this?

Mr. Jamnadas M. Mehta: In 1929 the Labour Commission was appointed.

Sir Cowasji Jehangir: Since then you have become a labour leader.

Mr. Jamnadas M. Mehta: Since 1924 I have been a humble labour worker and have remained the same. The leader is yourself, with crores of rupees in the pocket, your leadership is undisturbed. My right to work cannot be disturbed. Therefore, I claim to be a very humble worker in the case of the poor and the down-trodden. I claim no leadership.

Sir Cowasji Jehangir: In how many companies?

Mr. Jamnadas M. Mehta: I may say I earn my bread and butter out of it and no more. (Interruption.)

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member need not take notice of all that.

Mr. Jamnadas M. Mehta: He was trying to show that I was competing in millions with him. I have not done, it is not intention.

Mr. President (The Honourable Sir Abdur Rahim): I do not think it is necessary for the Honourable Member to take notice of all that.

Mr. Jamnadas M. Mehta: The Honourable Member tried to show that I was both a capitalist and a labour leader at the same time.

Mr. President (The Honourable Sir Abdur Rahim): The Honourable Member need not explain. Everybody has to earn his living.

Mr. Jamnadas M. Mehta: I can only say that the interruption made by the Honourable the Baronet from Bombay is very, very untimely.

I was going to say that the Honourable Member in charge of this Bill, as a member of the Royal Commission, knew that the number of Port Trustees at that time was smaller. He proposed to increase it himself to 15, and it has been subsequently increased to 18. In that case he is bound to consider the claims of labour in whose interests he thought he had done something in 1929. Therefore, there is every reason why he should support this amendment and not try to oppose it. I have tried to show yesterday that without labour the Port Trust of Madras will be a jungle. What is a Port Trust without workers? Sir Frederick James asked, where would be the workers without ships? May I ask, who built the ships? The workers. Who built the Ports? The workers. Who are running the Port of Madras? The workers. Without them nothing can be done. Has he not read Karl Marx's reference to the surplus value which accumulates in the hands of those who employ labour? It is really the excess of compensation to the capitalist and comes out of the pockets of the workers. Therefore, if my Honourable friend built ships, they were built out of the labour of the workers. The Port Trust was built out of the labour of the workers. If he is carrying on the Port Trust work, he is doing so because of labour. What is the number that I ask for? Did I ask for nine out of eighteen? Yesterday it was represented as if I was claiming the whole for labour. Yet Honourable Members know that the only thing I ask is a very small morsel from the table of these capitalists. I ask only for two instead of one, two out of eighteen.

cannot swamp the capitalist. Two out of eighteen will give a fair share; because they could not give less than one, therefore they have given one. What less could they have given? The minimum is one. Where is the generosity? There is no fairness, much less generosity. Therefore, the interests of the workers could only be protected if there was one to support the other. Very often the single member will find himself isolated without any one to support him, and that is ample justification for giving two,—a very moderate and reasonable number, no extravagant claim is made. I think the House should certainly support a modest amendment of this kind.

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

“That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word ‘one’, occurring in line 3, the word ‘two’ be substituted”

Sir Cowasji Jehangir: I will support this amendment on one condition, and that is, that, although I will miss my old Honourable friend a great deal from Bombay, he be exported to Madras and be made a Labour Member of the Port of Madras. If that undertaking is given, I will support the amendment.

Mr. Jamnadas M. Mehta: I shall try to stand.

The Honourable Sir Andrew Clow: My Honourable friend, Mr. Jamnadas Mehta, has asserted that the recommendation of the Labour Commission which was made in 1931 was made in view of certain strength in the Port Trust, and that, as we have now increased that strength, we should give two. But he is mistaken in supposing that the original Bill increased the strength of the Trust. The strength of the Trust is at present 15 and the original Bill proposed to keep it at that. Obviously if you add a seat for labour you do increase the strength of the Trust, so that that is one seat you are adding. I do not think the addition of two other seats justifies giving a further seat to labour.

As regards the suggestion made by the Honourable the Baronet from Bombay, he will observe that in the new sub-section which the Select Committee has added to the Bill, it is provided that the Trustee appointed to represent labour interests shall be chosen after consultation with the registered trade Unions, if any, composed of persons employed in the Port. If their choice should fall upon Mr. Jamnadas Mehta, I have no doubt it would be endorsed by Government.

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

“That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word ‘one’, occurring in line 3, the word ‘two’ be substituted.”

The motion was negatived.

Mr. Jamnadas M. Mehta: Sir, I move:

“That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for all the words beginning with the word ‘four’, occurring in line 6, and ending with the word ‘commerce’, occurring in the last but one line, the following be substituted:

‘eleven shall be elected by a constituency consisting of the organisations of Trade, Commerce and Industry in Madras of not less than five years’

[Mr. Jamnadas M. Mehta.]

standing wherein the right to vote for the election of the eleven members shall be confined to members assessed to income-tax on not less than Rs. 5,000 per year."

I have deplored the constitution of the Madras Port Trust as suggested in this Bill. I am not merely a critic. I am also willing to make helpful suggestions as to how to bring about an ideal kind of personnel on the Port Trust of Madras. I was very happy to find that the Honourable Member in charge of the Bill and my friend, Sir F. E. James, both are in agreement with that point of view and that nothing will please them more than a joint electorate of this kind.

The Honourable Sir Andrew Clow: I did not say that.

Sir F. E. James (Madras: European): Nor did I.

Mr. Jamnadas M. Mehta: That is your fear. My two friends are suffering from self-forgetfulness. They definitely stated and the transcript of their speeches can be produced here to show that I am right and that they are not right. They endorsed my suggestion that they would be happy if any such thing can be brought about and, therefore, I am hoping that as the discussion on this amendment proceeds, they will come round and bless my amendment with their vote.

I shall briefly describe what are the merits of this amendment. One is that it would abolish racialism, communalism and sectionalism altogether out of this Bill. If the House accepts my amendment, we give an equal chance to every trader of some standing and respectability. I know that if you gave a general franchise to everybody the interests will not be rightly served. The right kind of people will be swamped out and a crowd will come in, which would have no substantial interest in the working of the Port Trust. I have, therefore, taken care to see that only those associations will be allowed to join and those members from amongst them will be allowed to vote, who have standing in Madras. I have submitted that these Associations must be of not less than five-years' standing. No mushroom growth of any enterprising number of people should be allowed to invade the Port Trust. They must be genuine, *bona fide* trading interests who have organised themselves into some association and having done so, have survived for five years. They should be free from the infantile diseases which are common not merely to human beings but to all associations. After such associations are all put together in a common electoral college, the right to vote would also be scrutinised. Not every man who is a member of these associations shall be entitled to vote. Only that person who pays income-tax on not less than Rs. 5,000 or over a year will be a voter. Therefore, if there are 20 associations in Madras and each has a hundred members, there will be two thousand members but those amongst them who are not paying income-tax on Rs. 5,000 or over shall be barred from voting and only the residue which consists of *bona fide* traders and merchants, say, about 150 in number, shall be entitled to vote. They will be a body of men with common interests and common responsibilities, with common outlook on trade and commerce. They will be men who may belong to any race but they will combine whenever the interests of trade and commerce are invaded from any quarter. As we saw in the case of the Burma

Agreement, all associations combined, because the interests were partly commercial and so there is a precedent for my proposal. In the Provincial Legislative Assemblies, commercial bodies were allowed the privilege of sending a member. But they cannot allow every one of their members to vote. Only those members who pay income-tax on over Rs. 10,000, I think I am right in saying, will be allowed to vote. Therefore, there will be no invasion of vested interests.

I have taken care to put two limitations, one regarding the standing of the association and the other is that the right of the members to vote is limited by their capacity to pay income-tax. Now, I will be told—I was told by Sir F. E. James yesterday—where is the necessity? The Madras Chamber of Commerce is not a European Association, he said. He asserted that on the floor of the House. Is he prepared to repeat that, that the Madras Chamber of Commerce is not an European Association? I know and he knows that the Madras Chamber of Commerce is an European Association and nothing more. Yet, he has tried to show and I think the Honourable Member in charge of the Bill fell a victim to it, that this Madras Chamber of Commerce was not an European body. It is an European body. The very fact that in the constitution of the Madras Legislative Assembly the seats given to the Madras Chamber of Commerce are given on the ground that they are Europeans is a conclusive test of their being European and not cosmopolitan. Yesterday, an attempt was made to mislead this House because one or two people are occasionally allowed to become members. The Government themselves have torn off the mask and treated them as an European constituency in settling the number of seats. Therefore, I hope that no attempt will be made in further discussions on this Bill or in future to show that this association is anything but an European body. Then I was told that even the Madras Trades Association did send occasionally an Indian Member. Sir, an Indian who is elected by an European electorate is a European with a black face. He may be an Indian in name but he knows what are the forces behind him that impel him to vote in a particular way. I think any member going from the Madras Trades Association would not be an Indian at all. These are the main points, I mentioned yesterday the advantages of having a joint constituency. They are briefly these. There will be no further trouble about the Europeans, 12 noon. Hindus, Musalmans, Madrasis, Andhras and so on. All these things will disappear. There will be one interest only of trade and commerce. I therefore hope the House will support my amendment.

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

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for all the words beginning with the word 'four' occurring in line 6, and ending with the word 'commerce', occurring in the last but one line, the following be substituted:

'eleven shall be elected by a constituency consisting of the organizations of Trade, Commerce and Industry in Madras of not less than five years' standing wherein the right to vote for the election of the eleven members shall be confined to members assessed to income-tax on not less than Rs. 5,000 per year.'

The Honourable Sir Andrew Clow: Sir, I am rather shocked by this amendment. I am not shocked by the quite candid admiration for prosperity embodied in it by which those who have had a good year and paid

[Sir Andrew Clow.]

a lot of income-tax are entitled to vote and those who have been less fortunate are excluded, or by the implicit suggestion that I should compel the Income-tax authorities to evade the law and disclose the amount of income-tax that various people pay. What has shocked me is the complete departure in this sphere from trade union principles. The Honourable Member has shown himself in other spheres as a doughty and responsible champion of the principle of organisation and of working through organisation. But in this case because, unfortunately for him and unfortunately for me, there is found to be more than one organisation with a substantial share in the trade of the port, he proposes to go behind them altogether and have a kind of plebiscite. I feel sure that in the labour sphere he would never countenance an attempt of this kind. Nor would a miscellaneous body like this of diverse interests and diverse kinds really be a sound electoral college. He has suggested that I have already accepted the principle of the amendment in my speech last night. Very far from it. I said that I would welcome, and I think most Members of this House would welcome, the organisation of the important trade interests in a single body, and I would then be very ready to give adequate representation to that body. But this involves ignoring all these organisations, whatever their history, whatever their trade and whatever their representative character and simply trying to ignore the fact that they exist. For that reason, I oppose the amendment.

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

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for all the words beginning with the word 'four', occurring in line 6, and ending with the word 'commerce', occurring in the last but one line, the following be substituted:

'eleven shall be elected by a constituency consisting of the organisations of Trade, Commerce and Industry in Madras of not less than five years' standing wherein the right to vote for the election of the eleven members shall be confined to members assessed to income-tax on not less than Rs. 5,000 per year.'

The motion was negatived.

Mr. Jamnadas M. Mehta: Sir, I beg to move:

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word 'three', occurring in line 8, the word 'four' be substituted."

I am sorry to say that the Honourable Member in charge is trying to show that what I am doing is something inconsistent with my labour stand. Probably he will again come forward and tell me that I am trying to increase the number of a capitalist body to four. I am sure he understands that my stand is absolutely non-sectional in the beginning and I stand for no particular section. I want to allow labour and capital a fair field. But if, unfortunately, under his inspiration, this House does not listen to me on this principle, then what I will try to do is to prevent the evil of sectionalism as much as is possible. If I do not succeed 100 per cent., I should try to succeed 50 per cent. I should try to do good till the last ditch is reached. Never give up the attempt. That is not inconsistent; it is to fight to the end; to fight the rearguard action and, ultimately to retire. But you must not give up the struggle at the first attempt. Therefore, there is nothing inconsistent in my first taking a non-sectional stand. If, unfortunately, the Bill perpetuates sectionalism, then I must try to prevent as much evil within the orbit of the Bill and shape my

proposals accordingly. Nor is it part of labour to do injustice to capital. If the Honourable Member in charge wants that a labour worker must always be hostile to capital, I think he is referring to a communist. I am not a communist. I am one who is still of opinion that until we have got the freedom in this country, a cohesion of interests between capital and labour is occasionally necessary. The Honourable Member himself is not a communist and he really does not want me to do what he apparently says he wants me to do. But, today, because I do not oppose the fair representation of capital he thinks I am unworthy of being a labour worker. Well, Sir, if I am unworthy I shall no longer remain. It is a question of putting forth work. If there is anxiety for work, the field for work is never wanting. But I cannot allow my position to be misrepresented either by my old dear friend, Sir Cowasji Jehangir, or by the Members of Government or any other Member.

With this clarification of the little confusion which was deliberately caused in order to damage my amendment, I may now say that the Southern Indian Chamber of Commerce is a body whose representation which was sent to the Select Committee was the most cogent, most conclusive and fair representation that could ever be sent by a body consisting of merchants. That body has demanded that it should be treated as equivalent to the European Chamber of Commerce. That is the claim which the Southern Indian Chamber of Commerce has made and it has made it on very reasonable and conclusive grounds. This representation will be found to be embodied in the yellow paper which has been circulated to Members. They say that the Southern Indian Chamber of Commerce is a body which has been in existence for over a quarter of a century, that it has in its fold members from all parts and from all interests in the Presidency, that every sectional interest which is seeking separate representation on the Port Trust is today already in the Southern Indian Chamber of Commerce in full number and is getting fairplay whenever an occasion for representation comes. Not only that, His Excellency the Governor of Madras in a speech which he made recently has admitted that the Southern India Chamber of Commerce is a body fully representative, is doing very good work, is a body not of politicians but of merchants. For the benefit of the House, I shall read a short quotation from the speech of His Excellency the Governor of Madras where he paid a complaint to the excellent work that this Chamber is doing. His Excellency was opening the silver jubilee celebrations of this Chamber on 7th December, 1935. That means that the body was born in 1910 and, therefore, today, it is 31 years old. A body as venerable as 31 years, celebrating its silver jubilee six years ago, representing all sections of trade and doing justice to everybody was complimented by His Excellency the Governor of Madras in the following manner :

“And, if the work of this Chamber is conducted in the same fashion I can well understand how it is that, while still in the full bloom of youth as counted in terms of human years, it has already attained the dignity and discretion of a venerable maturity. From humble beginnings, the Chamber has worked its way up to a position of real influence in public and commercial bodies and has deservedly won the esteem of all.”

Mark you, these are not the words of any Member of the Southern India Chamber of Commerce, not of any stray political agitator, nor even that of a man not being a resident of Madras, but these are the words of the highest man in the Madras Presidency, the head of the administration, six years ago telling this Chamber that it was from humble

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beginning now on its way to a position of real influence in public and commercial bodies and has deservedly won the esteem of all. If there are five Madrasis on the side of the Honourable Member, I hope they will read, mark and inwardly digest the sense of these words. His Excellency further says :

“Unlike the politician, so frequently accused of an indiscriminate habit of joining public bodies and sitting on Committees, you hardheaded businessmen would not, I take it, attend and even subscribe to an organisation of this nature, unless it were of active service to your community, and there can, I think be no higher testimony to the value of the services which the Chamber has performed in the interests of commerce of Southern India than the strength and widely representative character of its membership. Moreover, in matters political and administrative, I would like to pay a tribute to the courteous assistance which the Chamber has so frequently rendered to my Government and its officers.”

Sardar Sant Singh: I thought it was a disqualification not to be a politician.

Mr. Jamnadas M. Mehta: I do not think in commercial bodies politicians are of good help. The fate of the Indian merchants representation in this House tells its own tale, because there are politicians. His Excellency further continues :

“There have, I fear, been occasions—perhaps more often than not—when the Chamber has failed to see eye to eye with the policy of the Government.”

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member need not read out the whole thing. He has read enough to show the importance of the Southern Indian Chamber of Commerce.

Mr. Jamnadas M. Mehta: I was not intending to read out the whole speech. There are only two lines which I would like to read if you permit me, Sir.

Mr. President (The Honourable Sir Abdur Rahim) : All right.

Mr. Jamnadas M. Mehta: His Excellency, the Governor of Madras further says :

“But a Government that does not welcome responsible criticism is not worth its salt, and it is to organisations such as yours that my Government must look for helpful and constructive advice”.

Well, Sir, this is the unsolicited testimonial of the head of the Madras Government which sums up in one paragraph all that I have said and which I need not repeat. Still this body has got a representation which is so attenuated by rival Chambers, which is less than Europeans by two. Therefore I move that this body should have four representatives.

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

“That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word ‘three’, occurring in line 8, the word ‘four’ be substituted.”

The Honourable Sir Andrew Clow: Sir, I should be the last to deny the representative character of the Association for which my Honourable friend, Mr. Jamnadas Mehta, is pleading, and I do not think that in anything that

I have said in this Bill, I suggested that there should be any hostility between capital and labour or that he stood for any hostility in that sphere. I have listened with interest to the remarks which he has cited from His Excellency the Governor of Madras. But I saw nothing in them to lead me to suppose that His Excellency would support this amendment. In fact, we have the opinion of the Government of Madras before us and there is no suggestion in that opinion, which reviews the claims put before it, that another seat should be given to this Chamber. Actually, it is in consequence, it is in recognition of its importance that we have increased its representation from two votes to three. As I said earlier, if those who advocated the interests of the Andhra Chamber of Commerce had taken the view that they would be better represented by giving another seat to this Chamber, in which I understand a number of them are members, that is not a view that I should have felt able to contest. The wiser view seems to be that the Andhra Chamber of Commerce should be given separate representation and I am sure that the Bill at present, which largely reverses the positions held by the Associations which Mr. Jamnadas Mehta described as European and those he described as Indian, does justice to the extent of Indian trade in the Port. Sir, I oppose the amendment.

Dr. P. N. Banerjee: Sir, I have very great pleasure in supporting this amendment. It is not denied even by the Honourable Member in charge of the Bill that the Southern India Chamber of Commerce is an important and influential body. It is clear from the pronouncements of the head of the administration in the Madras presidency that this body has rendered very great services to the cause of commerce. Therefore, it is desirable that this further recognition should be given to this body. My Honourable friend, Sir Andrew Clow, pointed out that the representation of this body has been increased from two to three. That is all right. He has done the right thing. But would it not be desirable to go a little further in order that the Indian Commercial Association may be placed on a footing of equality with the European commerce body? If this is not done, then there will be a great deal of jealousy and unhealthy rivalry between these two commercial organisations. It is our desire that there should be no rancour, no ill-will between the Europeans and the Indians. What is the best way of preventing this? The best way to prevent this is to put Indian commerce and European commerce on a footing of equality.

The Honourable Sir Andrew Clow: I might point out that they are on a footing of more than equality. As far as I can make out, if I take the Madras Trades Association as a European Association then there are five seats for predominantly European Associations and six for predominantly Indian Associations, apart from other Indian interests.

Sardar Sant Singh: Is that a fair proportion?

Dr. P. N. Banerjee: That is not a proper understanding of the situation. I am speaking of the two Associations, the Madras Chamber of Commerce and the Southern India Chamber of Commerce. The question is, whether the Southern India Chamber of Commerce should be placed in a position of inferiority as compared with the Madras Chamber of Commerce. I say that is very unfair and undesirable. If you do that, you promote ill-will.

[Dr. P. N. Banerjea.]

you promote discord, you promote rancour. Therefore, in order to avoid this evil effect, I want the two Associations to be placed on an equal footing. Sir, it has not been denied that this Association has been doing good work and that it is of long standing. What, then, prevents Government from securing equality as between these two Chambers of Commerce? I have not heard anything which goes against this view. I hope the House will give very careful consideration to this matter and accept the amendment.

Sir F. E. James: Sir, I must say one word as otherwise my silence might be misunderstood. As far as the Madras Chamber of Commerce and the Madras Trades Association are concerned, we have always made it perfectly clear that we shall welcome increased representation for the South Indian Chamber of Commerce. That body has a distinguished record of service and I may say that my original proposal to the Select Committee was that this body should receive an additional seat. But it was thought by the Committee, and by colleagues of mine who come from Madras, that it was better that the Southern Indian Hides and Skin Merchants' Association should have one additional seat and that the Andhra Chamber of Commerce should be given a seat. That being the case, therefore, the representation of the South Indian Chamber of Commerce remains at three. But I should like to correct an impression that perhaps Dr. Banerjea may have created. He, of course, cannot speak for Madras in quite the same way that I and others can. But I should like to assure him and the House that there is a complete and absolute absence of rancour in the relations between the Madras Chamber of Commerce and the South Indian Chamber of Commerce. These bodies work in the closest possible harmony and I do not think for one moment that the decision of the Select Committee with regard to the representation of the Chamber will have the slightest effect upon those relationships. It is a matter for argument as to whether the Andhra Chamber of Commerce seat should be given to the South Indian Chamber of Commerce, but the Committee had an opportunity of doing that, and it is unfortunate that those of my colleagues who come from South India did not support my original proposal.

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

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word 'three', occurring in line 8, the word 'four' be substituted."

The motion was negatived.

Mr. Jamnadas M. Mehta: Sir, I move :

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word 'two', occurring in line 10, the word 'one', be substituted."

This again is one more case of how Sir Frederick James has helped himself. It was not that his love for the Madras Hides and Skin Association was overflowing, but he thought that as he wanted one seat for the Three Tailors of Tooley Street of the Madras Trades Association, he would get that representation if he also supported the Hides and Skin Merchants' Association in getting one more seat. The contrast between his attitude on the addition of one member for the South Indian Chamber of Commerce and his going out of the way to support an increase of one for a body which

was in no way equal to the South Indian Chamber of Commerce can only be understood if the House knows what is at the back of it. And that is the Madras Trades Association. You saw me and I saw you,—that was the arrangement under which Sir Frederick James succeeded and hopes to succeed in getting one member for a body which is insignificant, as I shall show later on. But if the South Indian Chamber of Commerce gets three, surely the Hide Merchants' Association, its importance being undoubted, should not ask for two. If the principle of sectionalism is to be followed, I recognise the importance of the Hides and Skin Merchants' Association, and therefore its separate representation by one member I would support. But to give it two as against three for the South Indian Chamber of Commerce is absurd. The South Indian Chamber of Commerce, if I remember aright,—and my Honourable friend, Mr. Boyle, wanted figures yesterday,—has some 500 members of whom nearly 88 are representatives of the hides and skin merchants. And they are represented in the South Indian Chamber of Commerce whom you give three. And then they separately get a representation of two. No explanation is forthcoming for that; no explanation can be given because there is none. And the South Indian Chamber of Commerce has shown in its representation that all the interests, whether they are Tamilians or Andhras or the hides and skin merchants, have been elected again and again from the South Indian Chamber to represent them on a dozen representative institutions to which they have a right to send members. The press reporters have taken away my copy of the memorial of the South Indian Chamber of Commerce and therefore I will not quote anything, but I know that for nearly ten to fifteen years in succession that Chamber has sent one member for the hides and skin merchants' Association. Therefore, it is no longer necessary to increase the representation of the hides and skin merchants as they are adequately and most fairly and justly represented in the South Indian Chamber of Commerce. Their importance is undoubted but their representation is already secured in the South Indian Chamber of Commerce and one more seat for them is not therefore a compliment which they should get.

Sir, I move.

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

“That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word ‘two’, occurring in line 10, the word ‘one’, be substituted.”

The Honourable Sir Andrew Clow: Sir, I oppose this amendment. I am glad that Mr. Mehta recognises the very great importance which this trade has in the Port of Madras. As I indicated earlier, the statistics which I have looked at appear to indicate that the skin and hides trade, export and import, amounts to practically a quarter of the total trade of the port; and we are not giving the Association anything like a quarter of the representation given to commercial interests. That, perhaps, he will recognise, gives a little recognition of the fact that they have a voice in another Chamber. But I am quite sure that they themselves would not agree with his contention that their interests are adequately protected by the fact that a certain number of them form a minority in the Southern India Chamber of Commerce. He alluded last night to the absence of certain Members which we regret. I am confident that if one Party which recently left the House were here they would give very strong support to this amendment and I do

[Sir Andrew Clow.]

not think it gives unreasonable representation to a very important body in the port.

Sardar Sant Singh: Before the Honourable Member sits down, may I know if it is a fact, as mentioned by Mr. Mehta, that the South Indian Chamber of Commerce has been sending one representative of theirs in the Port Trust from the hides and skins merchants' representatives?

The Honourable Sir Andrew Clow: I think they have at times but I have not got the figures in front of me. Perhaps Sir Frederick James can answer that question better than I can.

Sir F. E. James: Whoever goes there from the South Indian Chamber of Commerce goes as a representative of the South Indian Chamber of Commerce and cannot represent any other body.

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

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the word 'two', occurring in line 10, the word 'one', be substituted."

The motion was negatived.

Mr. Jammadas M. Mehta: Sir, I beg to move:

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, the words 'the Madras Trades Association'"

The Honourable Sir Andrew Clow: Sir, on a point of order, we have already agreed that the number of trustees should be 18. This amendment could only be carried if amendment No. 8. . .

Mr. President (The Honourable Sir Abdur Rahim): The House has not decided that the number should be 18.

Sardar Sant Singh: The House has decided that the number will not be 19.

The Honourable Sir Andrew Clow: I will put it as a suggestion, instead of on a point of order that this amendment and amendment No. 8, standing in the name of Sardar Sant Singh, are really combined in No. 7. Therefore, I think it will suit the convenience of the House if my Honourable friend moves No. 7.

Mr. Jammadas M. Mehta: I think these amendments should be moved together.

Mr. President (The Honourable Sir Abdur Rahim): Do you mean 6 and 7?

The Honourable Sir Andrew Clow: I suggest that only No. 7 be moved because that covers the two points made in amendments 6 and 8.

Mr. President (The Honourable Sir Abdur Rahim): Very well, But 8 is out of order. There cannot be any increase as that has been vetoed.

Sardar Sant Singh: If No. 6 is carried, then it will be in order. Sir, the suggestion is that 6 and 8 deal with amendment as it is drafted in No. 7, so, instead of Nos. 6 and 8, No. 7 may be moved.

Mr. President (The Honourable Sir Abdur Rahim): If that is the suggestion, then the Honourable Mr. Mehta can move No. 7 instead of No. 6.

Mr. Jamnadas M. Mehta: Sir, I move:

“That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the words ‘Madras Trades Association’ the words ‘Madras Piece-goods Merchants’ Association’ be substituted.”

We have agreed to move No. 7 with your permission in place of Nos. 6 and 8, as it covers all the points intended to be submitted to the House. Yesterday we had a prolonged discussion about the merits of the Madras Trades Association. I beg of my European friends in this House to live in this country as ourselves and not to claim any excessive representation in some or other. We are building up a commonwealth and let us all be colleagues. It would give me a great satisfaction if our European colleagues in this House voluntarily give up the bolstering of the claims of this Madras Trades Association. This will test—I fear that the votes will probably be against me—whether they are prepared to live in this country as equals or as dominants. This amendment of mine will be an acid test of their earnestness. I do not know whether my Honourable friend, Sir Frederick James, will respond to my appeal, but it will be in the interest of all of us that no such feeling should remain—that a body consisting of six at the minimum and thirteen at the maximum should claim a representation on the Port Trust. My friend, the Honourable the Mover of the Bill, told us that the hide merchants had a substantial share in the Port Trust of Madras. But this Trades Association, at any rate, cannot claim a representation. It is a body of indentors. They are not wholesalers at all. Simply because eight shopkeepers in the city of Madras combined to form an association and because they are Europeans, they should be given a representation is to my mind an anachronism in 1941. Yesterday my Honourable friend, Mr. Boyle, wanted some figures. I may tell him that the Madras Piecegoods Association has a membership of 145.

Mr. J. D. Boyle (Bombay: European): And figures of trade?

Mr. Jamnadas M. Mehta: I gave the figures yesterday. The trade in piecegoods has fallen on account of the war, on account of the freezing of the trade with Japan, on account of the expansion of the Indian textile industry. It has fallen from nearly 7,000 to 8,000 tons, which was normal, to nearly 2,300 tons. But the membership as against seven is 145. Has not the trade of the Madras Trades Association shrunk also? Will my Honourable friend come forward with a statement of the business which the Madras Trades Association members do? Let me have those figures against the figures of membership and trade which I have quoted. Then there will be some comparison. But this is a comparison of skin against skin—black skin against white skin—not against trade and membership. This is a demand by privilege, this is the demand of a favourably situated body of individuals. This is not just and equitable. Therefore, I beg of my

[Mr. Jamnadas M. Mehta.]

European friends here to show some consideration for our feelings that they wish to live as our fellows-citizens and not a dominant class in this country. I need not add anything except to say that so long as the Madras Trades Association gets a seat, no matter what the shrinkage of the business of the Madras Piecegoods Association may be the latter are entitled to one seat because they did enjoy one seat from 1923. On a parity of reasoning will my Honourable friend the Member in charge of the European Group be able to show that there is a single point which is in favour of the Madras Trades Association and against the Madras Piecegoods Merchants Association. Everything is in the latter's favour—their long standing, their membership, their trade—and everything is against my friends of the Madras Trades Association. Sir, I move.

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

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the words 'Madras Trades Association' the words 'Madras Piecegoods Merchants' Association' be substituted."

Sardar Sant Singh: Sir, I was surprised to hear the reply coming as it did from the Honourable Sir Andrew Clow to my amendment which I moved for raising the number from 18 to 19. That reply. . .

Mr. President (The Honourable Sir Abdur Rahim): That amendment is concluded now. The Honourable Member cannot re-open that question.

Sardar Sant Singh: Sir, I am not re-opening that question. My point is this that in defending the action for including the Madras Trades Association and excluding the Piecegoods Merchants Association he gave certain reasons which came to me as a shock and not merely as a surprise. I have always been regarding the Honourable Member in connection with the several pieces of legislation that he had the good fortune to pilot, that he was a reservoir of all wisdom and he was above all criticism from any part of the House. But here is a case in which he has given away his own wisdom. In his first speech, he gave expression to some sweeping statements. With your permission, I will repeat one sentence out of the same:

"I do not feel myself that bodies of this kind have in present times a very direct interest in Port Trust affairs. They are obviously interested."

This is a very sweeping statement which he made in his first speech. Why he went back, he has not told the House. Was it because he had a soft corner for political reasons for the European Members of the Select Committee that he went back from his words and quietly yielded in the Select Committee for the retention of a seat for the Trades Association? He had to find out some reasons, and he discovered it by saying that the piecegoods trade had fallen in recent years on account of the war. May I ask him, is this a war measure? Will this Bill be amended after the war is over and the piecegoods trade shows an increase? At the same time, Sir, I will like to compare it with the Trades Association's membership. I am told that there are six members, and the House will be interested to know what trade they are doing. One of them is Messrs. Spencer & Company, Hotel Keepers and General Merchants,—probably General Merchants mean merchants who deal in that merchandise which is connected with hotel keeping,—then the next is Addison & Company, Motor Car Dealers, and Retailers of Motor Accessories and Stationery. Then there is a curious case that of a daily newspaper, the *Madras Mail*, they are associated printers and publishers and proprietors of a printing press; then Messrs.

Simpson & Company, Motor Car Dealers; and then Gordon & Woodroffe, Motor Car Dealers. Out of these six, three of them are motor car dealers, one is a hotel keeper, one is a daily newspaper, and another is a keeper of a printing press. May I know, Sir, what interest they have in the Madras Port Trust? My friend was very pleased to tell us that hide and skin merchants had 25 per cent. interest in the Port Trust, but what is the percentage of interest of the Trades Association? He has not given us that information; he has not given the House the benefit of his information on this point. The Honourable Member has gone back from the sweeping statement he made in his first speech and has again agreed to give representation to this body. May I ask him, while advocating the cause of the piece-goods merchants, whether it is a fact that the piecegoods trade will not revive after the war, and is it not a fact that, if the piecegoods trade has shrunk, the motor car trade has shrunk as well? This is no reason, Sir. Comparing one with the other, we find that undue preference has been given to this Association. The piecegoods Association has been enjoying representation on this body for 23 years, I am told, and for a very long time. Why should that right be taken away now, and why should that right be retained for the other body which, according to my friend, should not find a place there at all? They have a direct interest, and direct interest should not find a place,—these are his expressions and not mine. I hope, Sir, the Honourable Member will reconsider the position and he will get out of the inconsistency he has allowed himself to fall in by what he said in the beginning and what he is saying today. Sir, I support this amendment.

Sir F. E. James: Sir, my friend, Mr. Jamnadas Mehta, has claimed that the acid test of our position in this country is whether we support or oppose his amendment. In a previous speech on the same Bill, he definitely dissociated himself from any idea of racialism. May I put this to him, that this amendment is his acid test also. If his object is not purely and exclusively a racial one, he should withdraw it. If he presses it, then he is acting in a manner contrary to the views which he put forward at an earlier stage. The Madras Trades Association has, as I have explained, no racial basis as far as its membership is concerned. If the House wants figures, I understand the membership of the Association, together with its affiliated associations is about 45, and of that number ten are Indians,—and there is no reason why a representative of this body on the Port Trust should not be an Indian. I take the strongest exception to the suggestion that Mr. Jamnadas Mehta made a short while ago that when the Trades Association was in fact represented on the Port Trust by an Indian for several years, that that Indian was not an Indian in fact, but had only a black skin covering a European heart. What a commentary, what a deplorable commentary upon his own claim for joint electorates? What would happen to any representative coming from a joint electorate if what my friend says about this unfortunate Indian Member of the Port Trust representing the Madras Trades Association were true? He has given away his whole case, and I am astonished that a person of the intelligence and position in public life of Mr. Jamnadas Mehta should betray himself to such an extent. Sir, we have claimed throughout all this discussion that we are not asking for the representation of the Madras Trades Association on the Port Trust on a racial basis. That is completely absent from our minds, though, I know, it is not absent from the mind of Mr. Jamnadas Mehta. We claim that the representation of these

[Sir F. E. James.]

bodies should have a direct relation to the interests in the Port which the members of these bodies have, and on that basis let the House examine the amendment before the House. I have taken the trouble to look up the figures immediately before the war, because the figures now are obviously affected by the abnormal conditions of war. The Madras Piecegoods Merchants' Association was interested in the Port of Madras to the extent of 44 per cent. of the total trade; and the Madras Trades Association is interested in the trade of the Port to the extent of 12·96 per cent. Therefore, if the test is to be the interest in the trade of the Port, then there is no case whatever for the substitution of the Madras Trades Association by the Madras Piecegoods Merchants' Association, . .

Sardar Sant Singh: Does this percentage include the import of the affiliated Associations too?

Sir F. E. James: No; this deals with the imports in which the members of the Madras Trades Association are directly interested. My friend keeps on saying six as the number of members of that Association—the figure is more than twice that number, and in any case he quoted a certain firm as being a member of the Trades Association, which is not a member. He ought to get his figures direct from Madras—and I can supply them to him if he wants,—rather than *via* Lyallpur. I am very glad he is not fighting with bare breast as was suggested earlier.

But the other point which I made in the Select Committee,—and I have made it before in this House,—is that the Madras Trades Association has enjoyed representation on the Port Trust since 1884 for precisely the reasons for which I have urged its continuance on the Port Trust. It is represented on other public bodies, and I feel that the Honourable Member for Communications has not made out a case for the abolition of this representation. I repeat that our point of view is that in the distribution of seats in the Port Trust the main consideration should be the direct interest which the members of the various bodies have in the Port which is affected, and on that basis I claim that the Madras Trades Association has a definite place on the Port Trust which the Madras Piecegoods Merchants' Association cannot justifiably have. Therefore, I oppose this amendment.

The Honourable Sir Andrew Olow: I have very little to add to what has fallen from my Honourable friend, Sir Frederick James. Sardar Sant Singh, has with the deftness of a lawyer, put me in a dilemma, because, if I adhere to my previous opinions, then I am charged with being unduly rigid and unwilling to listen to criticism of my views, and if I change them, then I have gone wrong. So that in neither case can I possibly hope to please the Sardar Sahib. What actually happened in this case was that I was assured that the impression that I had regarding the activities of the Madras Trades Association and the extent of its direct interest in the Port was mistaken, and Sir Frederick James has quoted figures which will convince the House that those who held the view I then expressed were also somewhat mistaken. There has been an appeal to history. I am very far from being one of those who say that we should ignore history, but if Honourable Members are going to claim on the ground of past association, representation of other interests in the Port, surely there is no other association which has a better claim than

this. Finally, it was suggested that in acceding to the claim of this Association to be allowed to retain half the representation it at present has, for we are reducing its representation, I had been guided by racial motives. Surely, the best answer to that is, that of the three seats which I agreed to add, two belong to exclusively Indian interests and this one, as pointed out by Sir Frederick James, is not exclusively European.

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

"That in clause 2 of the Bill, in sub-section (1) of the proposed section 8, for the words 'Madras Trades Association' the words 'Madras Piece-goods Merchants' Association' be substituted."

The Assembly divided:

AYES—9.

Bajoria, Babu Baijnath.
Banerjee, Dr. P. N.
Chattopadhyaya, Mr. Amarendra Nath.
Dam, Mr. Ananga Mohan.

Datta, Mr. Akhil Chandra.
Deshmukh, Mr. Govind V.
Mehta, Mr. Jamnadas M.
Parma Nand, Bhai.
Sant Singh, Sardar.

NOES—43.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawaz Khan, Major Nawab Sir.
Aney, The Honourable Mr. M. S.
Ayers, Mr. C. W.
Bewoor, Sir Gurunath.
Bhagchand Soni, Rai Bahadur Seth.
Boyle, Mr. J. D.
Buss, Mr. L. C.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Chettiyar, Dr. Rajah Sir S. R. M. Annamalal.
Clow, The Honourable Sir Andrew.
Daga, Seth Sunderlal.
Dalal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.
Dehejia, Mr. V. T.
Gidney, Lieut.-Colonel Sir Henry.
Gopaldaswami, Mr. R. A.
Gwilt, Mr. E. L. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Ismail Ali Khan, Kunwar Hajee.
James, Sir F. T.

Jawahar Singh, Sardar Bahadur Sardar Sir.
Kamaluddin Ahmed, Shams-ul-Ulema.
Kushalpal Singh, Raja Bahadur.
Lawson, Mr. C. P.
Manavedan, Raja T.
Maxwell, The Honourable Sir Reginald.
Miller, Mr. C. C.
Mody, The Honourable Sir H. P.
Muazzam Sahib Bahadur, Mr. Muhammad
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Pillay, Mr. T. S. S.
Prior, Mr. H. C.
Rahman, Lieut.-Colonel M. A.
Raisman, The Honourable Sir Jeremy.
Scott, Mr. J. Ramsay.
Sheehy, Mr. J. F.
Sivaraj, Rao Sahib N.
Spence, Sir George.
Sultan Ahmad, The Honourable Sir.
Thakur Singh, Captain.

The motion was negatived.

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

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 and 4 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Sir Andrew Clow: Sir, I move:

"That the Bill, as reported by the Select Committee, be passed."

Mr. Jamnadas M. Mehta: Sir, at this last stage I do not wish to speak on the merits except to record my protest against the manner in which this Bill has been spoiled from its original shape. Why I emphasise my protest is that the evil example which this Bill will set, if it is passed into law, will be repeated when the amendment of the Port Trust Acts of Bombay, Calcutta and Karachi may take place. The principle being so vicious

An Honourable Member: What is the principle?

Mr. Jamnadas M. Mehta: The principle is of racial domination.

An Honourable Member: Rubbish.

Mr. Jamnadas M. Mehta: You will call it rubbish until you are turned out. I have nothing more to say than that the Port Trusts of Calcutta, Bombay and Karachi will now be exposed to the same danger that this Bill embodies. I can sympathise with my Madras friends. Most of them are not here and those who are here are plaster saints. That is all I have to say. I can sympathise with the Madras Presidency in the misfortune with which it will be visited, if this Bill passes into law. Sir, I oppose it.

Mr. President (The Honourable Sir Abdur Rahim): The question is: "The the Bill, as reported by the Select Committee, be passed."

The motion was adopted.

THE EXCESS PROFITS TAX (SECOND AMENDMENT) BILL.

The Honourable Sir Jeremy Raisman (Finance Member): Sir, I move:

"That the Bill further to amend the Excess Profits Tax Act, 1940 (Second Amendment), as reported by the Select Committee, be taken into consideration "

The main points which exercised the Select Committee will be clear from a perusal of the report and the minutes of dissent. The principal provision in this Bill related to the treatment of borrowed money as capital for the application of standard profits and the Bill provides that this clause and the clauses connected with it shall have effect in relation to the assessments to be made in the forthcoming financial year. That is roughly speaking the position. It was urged upon me that retrospective effect should be given to this as from the beginning of the Excess Profits Tax Act, and as I think I pointed out to the House before, the change which we are making is not by way of the admission of a mistake. It is a change of policy. It extends a concession to the taxpayers, the justification for which is arguable. As I explained before in the course of the passing of the original Bill, in the course of the Select Committee proceedings, I reached a stage when I was prepared to allow certain types of advance to be treated as capital but would not go further. I

have, subsequently decided, to remove from myself the suspicion of discrimination as between different types of financing institutions and to include borrowed money advanced whether by banks or by others but I cannot agree that there was anything wrong in the position which I took up before. It was a different position but it was by no means unjustifiable and I am not prepared to give retrospective effect to this provision. It would, among other things, cause a good deal of administrative inconvenience. It would mean the reopening of a number of assessments which have already been made. For this reason, the Bill as it stands gives effect to assessments for chargeable accounting periods which will take into consideration any assessments made during the year ending on the 31st March, 1943.

I must apologise to the House. I have momentarily confused here two provisions regarding which the Bill regulates the date of coming into effect. The borrowed money provision takes effect from the beginning of the current financial year. It will relate to assessments of profits made at any time from April of this year but it will not relate to assessments of profits made in the course of the year 1940-41. The new treatment of borrowed money will take effect in any computation for a chargeable accounting period ending after the 31st of March, 1941.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): That is on the accounts of the previous year.

The Honourable Sir Jeremy Raisman: No, that is the period of which the accounts are being dealt with.

Mr. Husenbhai Abdullahhai Laljee (Bombay Central Division: Muhammadan Rural): Then what is the period left if you want to give retrospective effect?

The Honourable Sir Jeremy Raisman: It does not apply to any chargeable accounting period which ended on or before the 31st day of March, 1941. That is the position. In other words, it does not apply to the computation of profits made in this period but it will apply in the computation of profits made in any chargeable accounting period which ends after the 31st day of March, 1941. That is the position. I am sorry to have imported a little confusion, but these are highly technical matters and even experts may slip up in referring to them.

Sir Cowasji Jehangir: My point is this. There may be a chargeable accounting period, but the accounts of the previous year are taken into account in order to assess the income. Even income-tax and super-tax is charged on the previous year's income and the excess profits tax should follow the same lines.

The Honourable Sir Jeremy Raisman: Perhaps I may make it clear by an example. If a chargeable accounting period ended on April 30th, 1941, then this provision would apply in relation to that one month of April but not in relation to the previous eleven months. That is regulated by another provision in the Bill. In other words, so much of the profits, to put it boldly and simply, as are deemed to have been earned or are earned on or after the 1st of April this year will be calculated by the application of this provision, so that we may say that the concession takes

[Sir Jeremy Raisman.]

effect from the 1st of April of this year. It takes effect in relation to profits made on or after the 1st of April this year.

Sir Cowasji Jehangir: Payable next year.

The Honourable Sir Jeremy Raisman: Whereas the signatories of the Minute of Dissent desired that it should take effect in relation to profits before the 1st of April, 1941. I do not think I need say any more on that particularly as there is an amendment on the subject.

Another aspect of the clause which indicates from what date provision shall take effect is that relating to profits arising in Indian States where we have brought this Bill into line with the amended Income-tax Bill

Mr. President (The Honourable Sir Abdur Rahim): Perhaps the Honourable Member might stop now.

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.

The Honourable Sir Jeremy Raisman: Sir, I dealt before the Lunch interval with the question of the treatment of borrowed money as capital and the date from which that would have effect. I would only add that it will apply to profits which are assessed to the rate of 66 $\frac{2}{3}$ per cent excess profits tax. It follows exactly the same period of application as the enhanced excess profits tax. The next important change made in the Bill by the Select Committee is the substitution for the existing section 10 of the Act of a new section. The reason for this is that it was suggested that if we insert the new section 10-A as clause 6 seeks to do, we shall have armed ourselves with more weapons than the United Kingdom Act confers on the Revenue and in order to meet that suggestion, I was prepared to apply the exact rule which is in force in the United Kingdom corresponding to the existing section 10. The only difference is that I have retained in the new section 10, the sub-section 2 which provides a sanction or penalty clause.

Now, Sir, coming to the new section 10-A, we have made an important change and in this respect we have followed the final form which the corresponding provision has taken in the United Kingdom legislation. The Bill as originally introduced gave the Excess Profits Tax Officer powers in relation to certain transactions of which one of the purposes was in his opinion avoidance or reduction of liability to tax. The clause as now amended only applies to cases where the Excess Profits Tax Officer is of the opinion that the main purpose of such transactions is the avoidance or reduction of liability. That, Sir, is a very important change. It was made in the United Kingdom after considerable discussion and we have agreed to follow that model. Some of our friends were still not satisfied and as they will no doubt explain in due course they desire to insert an Explanation. I am afraid I shall have to oppose that, but I shall deal with it in more detail when the amendment is moved.

The only other matter of importance relates to the second part of clause 8, namely, the insertion of a new rule 12 which gives the Excess Profits Tax Officer, the power to disallow expenses in excess of the amount considered reasonable and necessary, having regard to the requirements of the business. This was the subject of considerable discussion and I have no doubt that the signatories of the Minute of Dissent will explain their objections to this rule and I shall deal with their arguments at that stage. Sir, I move.

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

“That the Bill further to amend the Excess Profits Tax Act, 1940 (Second Amendment), as reported by the Select Committee, be taken into consideration.”

Mr. T. Chapman-Mortimer (Bengal: European): Mr. Deputy President, Sir, as this House is aware the Bill now before us is designed to meet the demand from almost the whole commercial community for a change to be made in regard to the treatment of borrowed capital. It will come into force at once; that is to say, it will affect the chargeable accounting periods after the 31st March, 1941. There is however one important exception to that, namely, clause 3. Clause 3 is consequential on changes which have been made in the Income-tax Act by the Bill passed by this House the other day, and I need not waste the time of the House by discussing it now. It is purely a consequential point. There is, however, one question of a general nature with which I should like to deal at this stage and that is the question of assessment generally. As the House is aware and as I believe the Government are themselves fully aware, there has been a great deal of criticism in all parts of the country regarding the delays in assessments under the Excess Profits Tax Act. Now, Sir, the Bill just being introduced will probably be passed, in the course of the next few days, through both the Houses and become law, no doubt by the end of this month. I do hope, Sir, that this Bill is not going to mean that there will be further delay such as we have unhappily experienced. I am quite sure in my own mind that that will not be the case. At the same time, the point is one that is causing so much anxiety among the commercial community that I hope in his reply the Honourable Member in charge will be able to tell us something of his understanding of this position and of what steps he is taking to put it right. In that connection, Sir, I should also like to hear from him something of the proportion of appeals under section 26 to the Board of Revenue that have been settled completely one way or the other, and at the same time, perhaps he will be good enough to tell us the proportion—again I do not ask for actual figures which are possibly confidential—the proportion of appeals before the Board of Referees that has been settled. I do not know, but I should think it is quite likely that in one or the other of these cases, the rate of settlement of these appeals has been very much faster than in the other case.

I am sure that the general taxpaying public would like to know what the position is in both these cases. There is a feeling which I have experienced myself that an appeal under the Board of Referees is perhaps the best way to get prompt and fair settlement of claims. On the other hand Government contended at the time when the Act was passed that probably in most cases the correct procedure would be to act under section 26; that is to say, to present an appeal to the Board of Revenue. I do not want to say more on that now, but I shall be grateful if the Honourable

[Mr. T. Chapman-Mortimer.]

Member can see his way to give us some indication about these two questions. I am sure it is common knowledge that hundreds of important excess profits tax assessments are still unsettled and that that is the same whether you live in Bengal or Bombay or elsewhere. There may be various reasons for this. One reason might be that the department is dilatory and not able to tackle its job. I do not believe for one moment that that is the case. For one thing I do not think anybody in this House, having heard some of the speeches the other day, will imagine that the department is dilatory; so I think we can wash that out. Nor do I think, from my own indirect knowledge of those who are members of the staff of the department, that they are not competent to deal with the problems before them; so I think we can wash that out. It may be that the department is under-staffed. If that is so, I should like to know what steps the Honourable the Finance Member proposes to take in this matter. He may consider that on a long view the staff is fully adequate; on the other hand he may feel that it is not fully adequate. That is a matter that only he and his expert advisers are really in a position to judge. I think myself that the probability is that the staff that they now have would, in normal circumstances, be adequate; but the circumstances are not normal, and they are not normal for this very good reason.

In 1939 this House passed an important amendment to the income-tax law, and it was inevitable after the passing of that Act that there should be a considerable amount of congestion in the department. That in its turn must, I think, have reacted on those who are trying to administer the Excess Profits Tax Act which followed only one year after the other Act has been brought into force. I do not say for a moment that that is in fact the position; but I believe that that has something to do with it and no doubt the Honourable Member, or one of those who are intimately concerned with these matters, will afterwards inform the House which of these reasons they think is responsible for this trouble. It is a well-known maxim of taxation that taxation if it is to be fair must not merely be fair in fact and in legal theory but it must be promptly and efficiently administered. I am certain that that is also the view of the Honourable the Finance Member; and, as I have said, I think he is fully alive to the very serious delays in excess profits tax assessments. At the same time I have spoken on this subject at some length because I know the feeling in Calcutta and I am perfectly certain that the feeling in other large centres is the same. People would like to see a more prompt settlement of assessments and that also is in the interest of Government, because quite clearly at a time when you have to finance a gigantic war it is obvious that if Government do not get an adequate supply of funds sufficiently quickly to meet their requirements they will have to resort to other means of financing war expenditure. So, both from the point of view of the assessee and from the point of view of Government, it is to my mind most urgent that this matter of delayed assessments should be given the earnest consideration of Government, and if they have already given it that consideration this House and the public outside should know what in fact they are doing about it.

Now, Sir, I should like to deal very briefly with some of the main features of the Bill. The main feature of course, is, as I have already said; that relating to the computation of capital by inclusion now of all types

of borrowing. Sir, when the Finance Member agreed, as he did a year ago, to a modification in his original proposals, he said that he did so with some misgiving. He repeated that phrase,—I think I am quoting him correctly,—when he told the House the other day that in order to meet the widespread demand of the business community he was going to include all borrowed capital in the computation of capital employed in the business. He said that he did so with some misgiving. I can quite sympathise with him in that. I was one of those who had misgivings myself when he gave way as he did a year ago and admitted borrowings from banks; and now if some of the cases which have been placed in my hands are even accurate as to five or ten per cent., it does mean that the change now being made will by no manner of means work to the advantage of everybody. In fact I know quite definitely that it will not. In that connection I see that my Honourable friend, Mr. Bajoria, and others, have tabled an amendment for the deletion of clause 4, which is part of their general purpose of making the new provision with regard to borrowings retrospective to the beginning of the Act. I have no doubt that they have very good reasons for seeking to do this. As the Honourable the Finance Member has told us, this question is one of balancing the chances one way or the other—balancing the odds in favour as against those that are not so favourable. So there is no clear and definite line where you can say that this is a hundred per cent. right and this is a hundred per cent. wrong. Quite obviously in all these matters of taxation that is never possible; you have always to balance the varying and conflicting factors. And I do suggest that my Honourable friends who propose to make this provision in the Bill retrospective should think twice before they press their point. I believe it is most desirable that their point should be ventilated and thoroughly threshed out on the floor of the House. But I am sure that when they get back to Calcutta, Bombay, Madras, Lahore and elsewhere they will find some rather surprising results. I have seen them myself; they were given to me in confidence by a famous firm of chartered accountants. And they showed me that whatever may be the case in the vast majority of assessments the benefits wrought by this change will not be universal.

Having said that I do not want to leave the House with the impression that I do not support the change; because I most emphatically do. I believe that, weighing all the conflicting elements in the balance, Government are doing the right and wise thing at this stage to meet this widespread demand on the part of the commercial community; I am sure too that I am speaking not only for this Group but for my constituents as a whole and that they also will feel that this is a wise decision. I have only stressed the other side because I want to draw the attention of the House to the fact that it is not going to be all beneficial and that there will be some people who, in fact, will not reap the same advantage as others. Now, Sir, another point arises out of that phrase of the Honourable the Finance Member—his misgivings about this Bill. Quite obviously to the degree that it is a concession to a very large percentage of assesseses,—as it is, and as I think every one will admit it is,—to that extent the Honourable the Finance Member stands to lose revenue. It is needless to labour this point, but in war when every rupee is of the utmost importance it is quite obvious that if the taxpayers are going to get a concession in one direction they will have to pay it back in another! Then, Sir, there is another point

[Mr. T. Chapman-Mortimer.]

about this. The change that is now being made may encourage some unwise managements to borrow unduly. Well—after the last war we all know what happened in that connection. Hundreds of companies—not only in India but elsewhere—were embarrassed because of an unwise borrowing policy. I mention the point because

Babu Baijnath Bajoria (Marwari Association: Indian Commerce): You were only a child then.

Mr. T. Chapman-Mortimer: I was young enough to be able to study afterwards and see what happened! I have also been able to read since, and anyone who has read Indian history of these recent years knows that after the last war, as a result of the dissipation of inflated profits which were relatively lightly taxed and as a result of the inflation of capital that took place in so many companies—European and Indian—industry was afterwards very seriously embarrassed. I do not want to labour this point either because quite clearly we *are* getting advantages—we all know that we are getting advantages. I only mention it because of a remark which was made by the Honourable the Commerce Member at the end of the last Session when he warned the House very clearly about the dangers of reckless and improvident financing of the industry during the war. That I think covers the main point about the Bill so far as I want to deal with it now.

Clause 5 was introduced in the Select Committee and is a most important clause. It was really largely inserted because of the change made in clause 6. From Calcutta and Bombay and other places exception was taken to the original wording of clause 6 and in the Select Committee, Government were prepared so to amend clause 6 as to bring it into line with the United Kingdom Finance Act. That has been done but in doing that they have amended, at the instance of the Committee, clause 5—or rather I should say they introduced clause 5 and brought in a new section 10 in place of the old section 10 of the Act. The result is that this Act now is, in this respect, precisely the same as the United Kingdom one. I think that is a matter which will also be welcomed by the commercial community. We have heard that great hardships may result as a result of the wide terms in which clauses 5 and 6 are drawn. Now, Sir, I do not very seriously believe that. Hardship may arise in certain cases. In these cases, where hardship may arise, there is provision under the Act for appeal under the proper procedure as laid down, and there are different kinds of appeals that are provided for. But, in addition to that, I would remind the House that these special provisions are designed not to attack and harass the ordinary taxpayer but to deal with those who are, shall I say, extraordinary—the type of man who is trying to arrange his affairs or rearrange his affairs in such a way that he may avoid paying as much tax as it was the intention of Government that he should pay. I mentioned that the other day, Sir, when I cited the case of ten men with equal incomes and similar assets, one of whom is not paying the same tax as the others, because he takes the trouble to get certain legal advice. Well, Sir, that is not the intention of the legislature. It is perfectly right and proper that each one of us should work in such a way that we do not have to pay more tax than is

absolutely necessary, but that is not the same thing. It is not the intention that if one class of taxpayers have to pay at a certain given rate or rates, some in that class should escape and others should bear the full tax. I am perfectly certain that in cases where hardship may arise, the provisions for appeal are fully adequate to meet the case.

Now, Sir, in regard to clause 7, which was clause 6 in the original Bill, a provision has been made for mining companies, oil companies and so on with wasting assets. I am certain that all those who are interested in these industries will welcome the opportunity that is now given to them to apply for some measure of relief under section 26.

With regard to clause 8 (b), that is a clause which, like clauses 5 and 6, gives some wide powers to the administration. I believe that clause 8 (b) is most necessary. We know that there are cases of people who, in order to pay less tax than they should, appear to be generous to their employees by paying them rather more than, in normal circumstances, they would, or they may give a large salary to relations. And other means of "avoidance" are used too. Now, Sir, this new provision is intended to deal with such cases. It is not, as I believe, intended to deal with a case such as the following:

"A company has an Assistant who, in the standard period, received no bonus. In the chargeable accounting period he received a bonus because he was doing more important work or working harder. He was an elder man and not only was he doing more important work but he was also probably doing much more work because people who are engaged on the manufacture of munitions and other war supplies naturally are strained to the last limit and every member of the staff is working all out. It is, therefore but just that in such circumstances the Assistant should share, to some extent, in the prosperity of the business."

But that, Sir, is a very different thing from the case of a company or a man in business who deliberately, to avoid taxation, gives away money that he had really no intention of giving away and in normal circumstances would not have given away. In the case that I quoted a moment ago, I am sure the position is quite clear, and that Government will issue instructions to see that their officers give proper and fair consideration to a case such as I have put, I am sure that they will not avail themselves of the new section 12 (1) to harass assesses unnecessarily. Sir, I have nothing more to say except that we in this Group fully support the Bill now before the House.

Sir Cowasji Jehangir: Mr. Deputy President, I am not going to follow the example of my friend, Mr. Chapman-Mortimer, by going
 3 P.M. into the sections of the Bill. We shall have opportunities of discussing those sections under the amendments which are being moved. The prerogative of the Honourable the Finance Member is to explain the Bill to the House, and he has done so. I will only speak for two or three minutes at this stage to answer one or two points that have been raised.

My friend who sits behind me, Mr. Chapman-Mortimer, is against giving retrospective effect to the provision which is decidedly a concession about borrowings. When the amendment comes before us we shall discuss it in detail, but there are some guiding principles which must not be forgotten. The first is that a principle must be maintained, and, secondly, one must see whether the provision is for the advantage of the majority. Every amendment that is made here may adversely affect

[Sir Cowasji Jehangir.]

some assesses, but it is not the minorities' interests we have got to consider, but the interests of the majority, and if those interests of the majority fit in with the main principle, then I think it is the duty of the Government to concede that principle.

Now, another objection taken on general principle to these facilities given in this Bill is that it will encourage reckless borrowing. We have heard a good deal about the financial affairs of companies in boom times, and not only have we been warned in this House, but we have had experience in the past. But the amendment that is sought to be introduced in this Bill and the amendment that will be moved to give it retrospective effect will not encourage reckless borrowing. Reckless borrowing will not help any company. Reckless or heavy borrowing more than is necessary for the interests of the company or the firm will not help that company or firm with regard to the Excess Profits Tax. It is a point which Mr. Ayres will explain, and therefore the question of reckless borrowing or going more deep than is good for one is not involved in this Bill at all. Sir, I have nothing further to say just now. I will deal with all the points when the amendments come before the House.

Mr. Husenbhai Abdullabhai Laljee: Sir, I agree with most of the remarks that have fallen from my friend, Mr. Chapman-Mortimer. I am glad that the Honourable the Finance Member has acceded to the request of the commercial and industrial community that borrowed capital should be treated as part of the capital, but the Honourable the Finance Member is still saying that the justification for that action is arguable. At the same time he has admitted that he does not wish to have any discrimination of any kind whatsoever. There is no doubt that, so far as this country is concerned, a lot of capital is coming from persons who act as Shroffs or moneylenders, and very little comes from Banks. Therefore, I really feel that the Honourable the Finance Member, in acceding to our request in this matter, has done a great good to the people of this country.

My friend, Mr. Chapman-Mortimer, alluded to the fact that there will be a lot of borrowing and over-capitalisation in industrial and commercial concerns, but let me tell him that the results in India with regard to industrialisation up to the time of the Great War were anything but satisfactory. That is my humble opinion. In fact, at present when we want everything to be done in this country and outside to prosecute the war,—and when my friend, Mr. Chapman-Mortimer, was so very anxious to get a couple of crores from the excess profits tax to finance the war,—should not the people who are much more eager to take up big and small industries to meet the great requirements of the war, be encouraged and helped?

Mr. T. Chapman-Mortimer: On a point of explanation, Sir. I think my point has been slightly misunderstood. All I said was that they should be careful lest they overborrow. I did not say that it would inevitably result. I merely said that some unwise and reckless people should not be carried away by rosy pictures of the future and borrow heavily. That is not the same thing as saying what my friend thinks I said.

Mr. Husenbhai Abdullabhai Laljee: I am very glad, Sir, that this explanation will help us a good deal. We have got to be very careful, and I think every industrialist is very careful, but this note from saner and more experienced people will always be helpful to us. Still what I was telling was that we want industries, and at the present moment we want them for a double purpose,—one is to meet the requirements of the war, and the second is to meet the requirements of our country, and if money is borrowed and sunk in industries from *sowcars* or others, the ultimate result would be for the prosperity of the people of this country which has to depend so much on the export of raw materials, and the country which is so overfull with raw materials at present that she does not know what to do with them.

With regard to the remarks that the excess profits tax settlement should be done earlier, I quite agree, because in that case industrialists and commercial people will know where they stand. These are very complicated things, and it is really very necessary for every industrial and commercial concern to know where it stands. But I admit one thing, and that is, that every endeavour is being made in important cities to expedite matters, but my own view is that the department, so far as its work is concerned, is probably under-staffed or overworked. It is none of my business to go further into this matter, but as one who knows something about the working of the Government departments, I feel that the department is overworked or under-staffed, at present.

I must also congratulate the Honourable the Finance Member on voluntarily agreeing without much persuasion to insert a section from the English Act in place of the present section in order to make matters quite explicit. I hope and trust that this policy will be adopted whenever such occasions arise. With regard to this matter, we will have to say a little more later when the amendments are being moved.

Now, Sir, I will follow my friend, Sir Cowasji Jehangir's advice, and I will not go into the details of the sections, because we have to move some amendments, but I do feel that the attempt of the Honourable the Finance Member to amend this measure is in the interests of the community, and we certainly welcome it.

Babu Baijnath Bajoria: Mr. Chapman-Mortimer has referred to the delays in assessment and I will say something about that subject. There are very many reasons for delays in assessment. The first and foremost is, in my opinion,—I must apologise to the House for my voice, I have got a bad throat—that the Excess Profits Tax Officer does not know the implications of the Act very well. The Act is so complicated, is so confused that it requires a super-human brain to understand it thoroughly. This has been said before. That is the reason why the Excess Profits Tax Officer cannot make up his mind as to what is the correct assessment which he should make. The basis of the excess profits tax assessment is, firstly, what is the standard profit, and secondly, what is the average capital employed. These two factors have to be determined before any assessment can be made. There are so many options, there are so many *pluses* and *minuses* which have to be taken into account that it is very difficult to say what

[Babu Baijnath Bajoria.]

is the correct standard profit or what is the correct average capital employed. Indeed we saw something of the confusion in this Act this morning when the Honourable the Finance Member himself was confused a little about this Bill. He did not know what he was referring to. I do not want to make capital out of that. (Interruption). Yes, he had to borrow capital from Mr. Sheehy who is sitting behind, to put himself right.

This Act, it will be admitted by all, is very complicated. I would have preferred a general training class for the assesseses and the officers so as to guide them as to how to fill up the returns, how to make assessments, and give general guidance to the assesseses and to the staff about this Excess Profits Tax Act.

An Honourable Member: Who would be the teachers?

Babu Baijnath Bajoria: The experts who are sitting behind my Honourable friend the Finance Member.

Dr. P. N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): They themselves do not know.

The Honourable Sir Jeremy Raisman: Prof. Banerjea will teach us.

Dr. P. N. Banerjea: You must pay me handsomely.

Babu Baijnath Bajoria: Mr. Chapman-Mortimer referred to appeals under section 26 to the Central Board of Revenue and he compared that with appeals made to the Board of Referees. He said that under the latter method appeals are heard more quickly.

Mr. T. Chapman-Mortimer: No. On a point of explanation, Sir. I did not say that. What I said was that I should like to hear from the Honourable Member what was relatively the speed with which appeals were settled under 26 on the one hand, and appeals under 6 (3) on the other.

Babu Baijnath Bajoria: I may inform my Honourable friend that there is a good deal of difference between the two appeals, between the powers which the Board of Referees have got and the powers which the Central Board of Revenue have got. When an appeal is made to the Central Board of Revenue the applicant may get much more benefit beyond the statutory percentage even, while the powers of the Board of Referees are limited only to giving relief up to the statutory percentage. The Central Board of Revenue as the overlords, have got unfettered freedom and they can give as much as they like but I doubt whether they will be so generous. I would ask Mr. Chapman-Mortimer to keep delays in mind when the amendment about borrowed capital comes up before the House, because that was the main objection raised both in the House and in the Select Committee. It was said, because many assessments have already been made, we cannot go back and give the benefit of this new clause about borrowed capital from the beginning of this Act.

As far as my knowledge goes, as regards current year's assessment, comparatively very few cases have been decided, and it should be very easy for the Government to agree to give retrospective effect to this clause, from September, 1939, or, if not that, at least from the 1st April, 1940. As regards borrowed capital, I have received a telegram from several banks in Lahore, and I think probably the Honourable the Finance Member also has received similar telegrams. What they say is that the bank's deposit in another bank should be treated as capital. I want to be enlightened about this matter. I do not know whether a bank's deposit in another bank is treated as capital at the present moment or not. I shall follow the advice of my Honourable friend, Sir Cowasji Jehangir, and we shall deal with the points fully when the amendments are moved in this House. This Bill has got its good features and bad. As regards borrowed capital, the privilege which is being allowed at the present moment will be beneficial to most of the assesseees but there may be some who may suffer, as pointed out by Mr. Chapman-Mortimer. But you cannot, as he has said, benefit hundred percent of the people. With these few words I support the motion that the Bill be taken into consideration.

Mr. C. W. Ayers (Government of India: Nominated Official): Sir, I should like to say a few words on the subject raised by my Honourable friend, Mr. Chapman-Mortimer, about the delay in making assessments. Primarily I should like to make a plea to the House on behalf of the staff, not for indulgence, but for understanding. In the first place, the Excess Profits Tax Act was passed in March 1940. Now, quite inevitably I believe, and as a fact, work did not commence up till July of that year, there was an interval of three months when nothing was done. When the work commenced, the work had to begin with the central authority, that is to say, the drafting of forms, the making of notifications including rules which were necessary under the Act, the drawing up of carefully considered instructions to the staff as to what the sections meant, how they should apply them, or how in relation to the calculation of average capital they were to apply the arithmetic that they knew, to the Act they were hardly acquainted with. In passing I might say that at a later stage the instructions given to the staff were made accessible to the public, so that any assessee knows just what the official interpretation of any section or rule is, rightly or wrongly, but what the official interpretation is and what instructions have gone out to the staff on general principles.

Babu Baijnath Bajoria: Is that available to the public?

Mr. C. W. Ayers: Yes, at one rupee a copy. Now, as a result of all that, the forms could not be issued by the Excess Profits Tax staff until November-December 1940. The assessee, on receiving a notice that he has to make a return, is given two months in which to make it and the Excess Profits Tax Officer is empowered to grant any reasonable extension of time. In fact, I know cases where extensions up to six, seven or nine months have been given for good reasons. As soon as the officer gets the returns, he has to set to work to decide how to make the assessments and how to make the computation. Now, I need not

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tell the House that this is a new, difficult and complicated Act to administer and moreover, if we had gone on the principle of rough and ready computations, we probably could have got the assessments made a lot quicker and got the money. But my experience extends back to the last war and the excess profits duty in the United Kingdom and I know what are the dangers of those rough and ready computations which may be accepted quite easily in the early days when patriotism mounts high, money does not seem to matter and moreover, the Act itself has not been appreciated fully. So, rightly or wrongly, the department did set to work with the primary purpose of having the work done as well as it could be done and to get as close to the actual liability as was possible. Probably I myself am very considerably guilty of slowing down the work of assessment, because I called for numbers of files in the early days to look at the computations and see whether they were made properly or not and whether rules and sections had been totally overlooked or misapplied, with the result that I had to enter into long correspondence with the officers to give them such instructions as would ensure that in future the computations should be reasonably correct. Where mistakes were found, they were put right under section 20. Now, I will quote one case as an example. It is rather exceptional but in this case the computation was altered by Rs. 5,000. One computation was Rs. 12,000, the other was Rs. 7,000. The original assessment was Rs. 12,000 and the amended assessment was 7,000. I may point out here that neither the Excess Profits Tax Officer at that early stage nor the assessee at any stage knew that he had been over assessed and the assessee received that refund of Rs. 5,000 without any action being taken on his side. Now, so long as I can quote cases done in good faith on both sides and so badly, the House must realise that it is most important that the work should be thoroughly scrutinised and that a measure of slowness is not culpable. It is something to be taken as almost admirable in the early stages. As a result we have not made a lot of assessments yet. We have not collected a very great amount of duty. Some speak as though we have made only a score or a hundred assessments but we have done a good deal more than that. At the end of September last assessment orders had been issued in 1,127 cases. 900 other cases had been examined generally and broadly and put on one side as cases where there is no need to worry about detailed computations or to ask for any further particulars and the tax assessed was one crore, 40 lakhs which I admit is not very much but there has been a great deal of work

An Honourable Member: Does it include part payment?

Mr. C. W. Ayers: No. We have got other demands in addition, though it does not amount to a very great deal but there has been a good deal of work done. This has been very largely education and the result will be that your future assessments will be very much better made and there should be far less complaint. That result would not have been achieved if we had not done such an enormous amount of work on these early cases.

Now, we come to the point when we can say that officers should by now have learnt by experience with a certain amount of tuition how to

apply this Act and how to make the computations. With that experience they could now deal with the larger cases promptly and make the assessments.

This brings me to a point I ought to have made at the beginning. In 1939 you had a staff which was, I might say, no more than adequate. I know it was not too much and on that staff was thrown the task of administering the Income-tax Amendment Act of 1939. On top of that, came this work in connection with the excess profits tax, something which is new to them and something of which they had no experience, something which is full of pitfalls. You could easily charge the assessee to a tax of Rs. 1,000 where the amount should be Rs. 500 and you might easily undercharge other assessee to the same extent. Now, as I said, the officers are carrying this double burden. The Central Board of Revenue is doing all that it can do with regard to increasing the staff but you, gentlemen know, particularly those of you who are in business, that you cannot produce a trained staff at a moment's notice. You can take on raw hands and give them three to four years' training and if you are fortunate, you will have a first rate officer at the end of five years. You cannot do that in a year or two, so that you will see that we are building here for the future, just as I was building for the future right through the latter half of 1940 and I would suggest that on this question of delay and the achievement or the lack of achievement of the staff you will be generous, and I believe that in time to come instead of complaining of what this limited staff has done you will be almost prepared to give them a vote of thanks for the extra work and the difficult work that they have put in.

Sir F. E. James (Madras: European): It looks as though you are preparing for Excess Profits Tax after the war!

Mr. C. W. Ayers: Now, there are one or two other points which I should like to touch upon.

Then, Sir Cowasji Jehangir was speaking of the application of rules as regards the borrowed money in relation to capital. What he had in his mind is that the clause says after 1st April, 1941, and that in computing capital for a charging period ending after the 31st March, 1941, and in relation thereto in computing the capital of the standard period also, the borrowed money shall not be deducted in computing capital, which has the effect of putting borrowed money into line with its proprietor's capital. In a normal case, what you are concerned with is a standard profit and what is the increase of capital used in earning the increased profits in respect of which you give an allowance of eight or ten per cent., or, in the case of the borrowed money, the difference between eight or ten per cent. and the rate of interest you pay. Now, I think, that covers the point.

There was another specific point put to me and that was about the applications for what are now usually termed substituted standards made to the Central Board of Revenue or to the Board of Referees. I would like to preface my short remarks on that point by saying in fairness to everybody that it is the Department which is ultimately responsible both for the Central Board of Revenue cases and for those that go to the Boards of Referees. It is the Department that receives the applications, makes the necessary inquiry to get the statement of facts and draws up the statement that it is going to make either in support of or against the claims made.

[Mr. C. W. Ayers.]

The initiative for putting the case down rests with the Department. Having said that, I might mention that the number of effective applications received by the Central Board of Revenue is 27. Of these, seven are settled and as soon as this Session is finished and we are free to deal with them two other applications will be heard. That is effectively 33 1/3 per cent. So far as the Board of Referees is concerned, 22 applications have been received of which two have been settled and two will be given a hearing during the course of the next few weeks, which is a little less than 20 per cent. The figures are so small that the comparison is not of any particular value.

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

“That the Bill further to amend the Excess Profits Tax Act, 1940 (*Second Amendment*), as reported by the Select Committee, be taken into consideration.”

The motion was adopted.

Mr. Deputy President (Mr. Akhil Chandra Datta): The House will now consider the Bill clause by clause.

Clauses 2 and 3 were added to the Bill.

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

“That clause 4 stand part of the Bill.”

Babu Baijnath Bajoria: Sir, I move:

“That clause 4 of the Bill be omitted.”

The intention with which I move this amendment is that the benefit of the new provisions about borrowed capital should have retrospective effect from the beginning of this Act. If this amendment is carried by the House, there are other amendments down below in the list which will be moved to carry out my object. When the Excess Profits Tax Bill was before this House last year, it was myself who moved an amendment that there should be no discrimination between the capital borrowed from banks and the capital borrowed from any other person. At that time, the Government of India did not see their way to accept my amendment. But now I am glad that they have become wiser and they have accepted the principle which I was then asking them to follow. What they are proposing under this Bill is that the benefit of this clause will only be given from the 1st of April, 1941, whereas the commercial people in general feel, and that is the opinion of the Federation of Indian Chambers of Commerce and other commercial bodies also, that if the Government feel that the existing provision in the Act is not fair they must give retrospective effect to these provisions in the Bill before us. As has been pointed out by me before, after all there are not many cases which have been decided. Apart from the question of the trouble which the Government may have to undergo, I would like to know what reasons they have for not re-opening the cases. So far as the assesseees are concerned, they will be quite pleased to undergo that trouble because they will be benefited by this proposed change.

Sir, the section dealing with borrowed capital in the present Act is leading to several distinctions being made. I will refer to one point in Rule 5 of Schedule I. I would like to speak about this borrowed capital only once so that I may not have to repeat the same thing when the other amendments are moved. Under this rule, benefit is given by the Central

Board of Revenue to businesses started after the 31st of March, 1939, though they have no standard period but have adopted the statutory percentage basis.

The Honourable Sir Jeremy Raisman: Will the Honourable Member state precisely which rule he is quoting?

Babu Baijnath Bajoria: I am quoting Rule 5 of Schedule I. I will read the first line:

"If at any time after the close of the standard period any increase in the capital employed in a business has been effected, etc."

What I want to draw the attention of the House to is the wording "after the close of the standard period". There may be many companies which have got no standard period as companies started after March, 1939. Then, they do not get the relief, but as far as I understand by rules and by instructions, the Central Board of Revenue has given the benefit of this rule 5 to businesses started after the 31st March, 1939. I think I am correct.

The Honourable Sir Jeremy Raisman: That is correct.

Babu Baijnath Bajoria: There is also the case of companies which have been started after the 31st March, 1936. They may have or they may not have complete standard period. In my opinion, the benefit of this rule should also be extended to them. Government may contend that if they choose the standard period, then they cannot have this benefit. But if they choose the statutory percentage basis, then he gets the benefit of this rule. I do not think it is very fair. This is a point which I want to understand from the Honourable the Finance Member and I would request him to apply this rule giving the benefit to all companies which have started after the 31st March, 1936, whether they adopt the standard period or whether they adopt the statutory percentage basis.

As regards the borrowed capital, what we want is that there should be no discrimination from the beginning of this Act between capital borrowed from a bank and capital borrowed from any other party. The present clause 4 only gives the benefit to capital borrowed from parties other than a bank after the 31st March, 1941. I should like the Honourable Member to go a bit further and to give this benefit from the commencement of the Excess Profits Taxes Act.

Sir, I move.

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

"That clause 4 of the Bill be omitted."

Mr. Huseinbhai Abdullabhai Laljee: Sir, I rise to support the amendment that my Honourable friend, Babu Baijnath Bajoria, just moved. My ground in supporting that is that it has been conceded that regarding borrowed capital, no discrimination should be made. I quite concede that the department has had to do a good deal of work. That may be. But equity demands and it is but fair that this concession asked for in the amendment should be conceded. What after all is due to somebody legitimately should be given to them. The Honourable the Finance Member will say that they are not legitimately entitled because we are amending the Act from now. But we must proceed on the fact that the principle that has been acceded to does require to be taken furthermore.

[Mr. Husenbhai Abdullabhai Laljee.]

and that those who have really suffered must be given back their money. A large amount of capital, as I have been repeatedly saying, is being taken not from banks, but from other sources for commercial and industrial concerns. As such, if really speaking something is due to the people and we have found that it has not been given to them, then we must be prepared to give it in all fairness. We have just been told, and I congratulate the Income-tax Department that they did find people making mistakes and it is quite possible that large mistakes may be made and that the Government do not wish to take benefit of these things. In fact, when I was supporting my Honourable friend, Mr. Chapman Mortimer, that this Excess Profits Tax Act should be expedited, I did feel that the only reason I could give and which I honestly believed was that we should know where we are and not that hastily we should be rightly or wrongly assessed. The thing is so complicated that we do hope the Government will take into consideration all these difficulties and we do hope they will come forward, as they have come forward and accepted the principle now to give back those from whom they have taken before this principle was accepted what they have taken. This is my main objective in supporting this amendment moved by my Honourable friend, Babu Baijnath Bajoria

Sir Cowasji Jehangir: Sir, I support this amendment, on grounds of principle more than anything else. I am perfectly aware of the fact that it might adversely affect a few assessees. But the principle is this. Whether the Honourable the Finance Member in his individual capacity agreed to the principle that certain borrowed monies should be taken as capital employed in the business or not is not the point. The point is that certain monies borrowed have to be taken as employed in the business. These are monies borrowed from a Bank or raised by way of debentures. That is the principle accepted by the Government and this House, and is part of the Act. We then argued that in India there are a large number of companies, firms and others who finance themselves from deposits. There are a large number of companies where the managing agents have to finance the companies. All that borrowed capital, under the Act as it stands today, cannot be taken into calculation as capital employed in the business. Therefore the concession that this House and the Government desired to give was withheld from a large number of business houses and companies. The Honourable Member and the Government have now seen their way to correct that. If it was wrong then and admitted now that it was wrong, if it is admitted that there was discrimination by the provision in the Act as it stands today whereby the assessee borrowing monies only from banks and through debentures got a concession while assessees obtaining money from managing agents and deposits did not then I say that that is all the more reason why on principle you should give retrospective effect. There may be inconveniences both to the Government and to the assessees and I will repeat that even some assessees might lose by it, but still on principle I think retrospective effect should be given to such a correction made in the Act.

The Honourable the Finance Member may not agree with the principle completely, he may conscientiously feel that no such concession should have been given for borrowed monies. I can sympathise with that point of view. But that is neither here nor there just now. The principle has been conceded. Whatever I may feel with regard to that principle, whatever the Finance Member may feel with regard to that principle we are not

discussing that principle. The principle has been conceded. It is only a question of how far that principle should go in equity and having decided that in equity it should go the full length, then I cannot see how you can turn round and refuse to give it retrospective effect. Of course administrative difficulties have been pointed out. There may be a few hundred cases which, I am told, have been settled. In a large number of these you have got part payments. So far as I know, in Bombay a large number of companies have made part payments because a settlement has not been made. It was not fair to retain the money; it was done at the request of Government and the companies conceded to that request. A large number of companies did it to my personal knowledge. Where the companies thought that the assessment ought to be X rupees they paid it in advance practically before the settlement was completed. But that does not mean that the settlement was completed.

Mr. C. W. Ayers: It does not include those cases.

Sir Cowasji Jehangir: Even then I maintain that a principle must be followed by the House and by Government. However adversely some people may be affected, and I may be affected adversely myself, a principle must be maintained and I do think that on this ground alone Government ought to give retrospective effect.

Mr. T. Chapman-Mortimer: Sir, I regret that I cannot support the amendment of my Honourable friend, Mr. Bajoria. The Honourable the Baronet from Bombay has dealt a great deal with two main points; the point of equity and the point of principle. For myself I cannot see why he should expect Government to accept the point of view of what he calls equity or principle because neither enters into this issue at all. It is one of policy. You can either choose road A or you can choose road B, and you may decide which you are going to choose. I am bound to say that I support Government in the road that they have chosen, and I am afraid that in these circumstances I cannot support my Honourable friend, Mr. Bajoria, in suggesting that some further modification should be made and that we should ask Government to make some departure from the decision which was arrived at in the Select Committee.

Sir Vithal Narayan Chandavarkar (Bombay Millowners' Association: Indian Commerce): Sir, I should like to support the amendment. I should also like to bear out what Sir Cowasji Jehangir said. As far as I know, many of the members of the constituency which I represent have paid their excess profits tax on a provisional basis.

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

It is possible that since making such provisional payments certain cases may have been finally settled. But very often Government in many other transactions have unsettled settled cases if they found that such un-settlement was just and equitable. The point of view which I should like to place before the House is that, Government having accepted the public demand regarding the allowances on borrowed capital, it would be very graceful on their part if they go further and give retrospective effect to it. Mr. Chapman-Mortimer in his first speech as well as the speech he made on the amendment was defending the view put forward by Government.

[Sir Vithal Narayan Chandavarkar.]

He gave us some information as regards the principles underlying taxation. I admit that in the matter of taxation income-tax is more unpleasant than other taxes. Super-tax and excess profits tax are equally unpleasant. There is, therefore, all the greater reason that in imposing such taxation Government ought to be equitable. They should not only be just but also seem to be just, and while we know that Government in war-time must have excess profits duties,—we do not challenge the right of Government to impose this duty,—we should like at the same time to feel that in regard to such taxation, specially when Government make concessions they, the Government, should not hesitate on a small point like this to make the concession gracefully and they should do so in this case by giving retrospective effect to the new legislation. My Honourable friend, Mr. Chapman-Mortimer, talked about two roads. Yes, Sir, we have to make a choice between two roads very often. Sometimes we have a straight road and also a crooked road. I certainly think we all like to take the straight road, and I invite Government to accept this amendment and to go along the straight road and make people feel that they have made a concession very handsomely and gracefully.

Dr. P. N. Banerjea: Sir, when the Excess Profits Tax Bill was first passed a provision similar to this which has now been inserted in the Bill was urged from this side of the House. Government then did not consider it necessary to accept it. But now it seems Government have realised their mistake and have come to the conclusion that this provision should be inserted. If they have now come to that conclusion why should they not give retrospective effect to it? It is only a fair demand, which has been made by my Honourable friend, Mr. Bajoria, in his amendment, and I commend this amendment to the acceptance of the House.

The Honourable Sir Jeremy Raisman: Sir, I regret that I must oppose this amendment, ungracious as it may seem. I find it impossible to see any point of principle in the giving of retrospective effect to an amendment of this kind. I have already made it clear that I do not think that what we did before was wrong. We are making a change and I can see no reason why it should go beyond a certain point. My Honourable friend, Sir Cowasji Jehangir, says that my individual opinion in this matter is not what counts. I quite agree with him; but as the initiator of certain changes I have to have a clear idea in my own mind of exactly what I am doing and how far I am prepared to go. Now, every amendment that is ever introduced to any legislative measure can theoretically be given retrospective effect. What would my friend say if I proposed that the 66½ per cent. excess profits tax should be given retrospective effect? There is absolutely no reason in principle—if 66½ per cent. is the appropriate share for the State to take of excess profits accruing in war-time—there is no reason why that should not be applied to all profits which have accrued since the beginning of the war. But the fact is that you must draw the line somewhere; and why I keep on repeating the first personal pronoun; to which I think Sir Cowasji Jehangir takes some exception, is that I must make clear exactly what I have in mind in bringing forward the amendment. I say that I am prepared to concede the demand up to a certain point, but I will not go beyond that. My Honourable friend says that having conceded that I should concede a lot more; it follows automatically and it

does not matter what I say I want or intend to do; that has nothing to do with the matter; it follows automatically that this goes back to the year one. I will only remind him that the initiative does remain with us in regard to reduction of taxation. It is an important point in the constitution that an initiative of that kind must remain with Government and that the only effect of arguments of that kind and pressure of that kind is, as I have pointed out, to induce considerable hesitation and nervousness in Government in coming forward with amendments of that kind. If they find that every time they are prepared to give away a little they are going to find themselves on a slippery slope which may take them they know not where, then obviously they will think a dozen times before they touch it. The tendency will be to say, "Oh, very well, the shouting is practically over now and we had better leave it alone." This though Government may feel that they have a concession which they would like to give if they could keep it within reasonable limits. In this case the position quite simply is that Government are prepared to meet public opinion but are not prepared to go back beyond a certain point.

Sir, I oppose the amendment.

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

"That clause 4 of the Bill be omitted."

The motion was negatived.

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

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 was added to the Bill.

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

"That clause 6 stand part of the Bill."

Sir Cowasji Jehangir: Sir, I beg to move:

"That in clause 6 of the Bill, to sub-section (1) of the proposed section 10A, the following *Explanation* be added:

Explanation.—The provisions of sub-section (1) shall not apply to any transaction which could have been reasonably and *bona fide* effected by a person if this Act had not been in force."

Now, Sir, in order to explain the significance of this explanation I will have to go into the amendment made by the Select Committee to the new section 10 (a) contained in the same clause to which I want this Explanation added. As the Honourable the Finance Member informed the House, the change made was that the mischief of proposed section 10 (a) affected not a purpose or one of the purposes that the assessee may have in mind but the main purpose of it must be proved before he can fall within the mischief of the section. Now, that is a very big and material change made in the section and if it had not been for that amendment, it would have been my duty to oppose the section altogether. Now, what happened was this that in the Bill as it was brought before this House we found this section extraordinarily wide and I for one could hardly believe that such a section could appear in any Bill. I was then not aware of the English legislation, and as a matter of fact I asked where this was obtained from. I was informed then that there was such a corresponding clause in the British statute which had only been passed a few months ago. Well,

[Sir Cowasji Jehangir.]

when we came to examine that section, we found it very different from the proposed section in the Bill because the section in the Bill was copied from the English Bill. The English Bill went through a radical change in the House of Commons and the Act was not in the possession of Government at that time when this Bill was drafted. Naturally, they copied the Bill and not the Act and they readily agreed to amend the section as amended by the House of Commons, but that made a very big difference,—a world of difference,—in the section. In the section, as it stood in the Bill, the authorities could say that any reduction in the revenue was evading the excess profits tax and should not be taken into consideration—doesn't matter what the purpose was, even if one of the purposes was evasion. But if the assessee does anything whereby his profits are reduced and he does it in his own interest—the main purpose is not to evade the tax, the main purpose is something else—then the authorities cannot come down upon him and demand that he should exclude that expenditure from the account. That is the radical change made by the House of Commons and now adopted by us. Now, Sir, what is the foundation for that change? What is the main governing principle which tempted, I should think, the House of Commons to accept that amendment? We have mentioned that main principle in our dissenting minute. The main principle is that no assessee should be prevented from effecting any transaction, operation or expenditure which he would have effected in his own interests, had the Excess Profits Tax Act not been in force. In other words, Government must not prevent an assessee from doing what he would have done, had there been no inducement or temptation to reduce his profits with the object of evading the tax." That is the main guiding principle which must be admitted by Government, and which must be admitted by this House. It is the very foundation on which the Excess Profits Tax Act is built, *viz.*, that a man should be allowed to do what he would have done, had the excess profits tax not been in existence. If the authorities are satisfied that he would have gone in for that transaction or operation, in his own interest, regardless of whether their revenue went up or down, then they must admit that expenditure. He would have done it under any circumstances, but if an assessee deliberately does a transaction in order to reduce his profits so that he pays less excess profits tax, then certainly catch hold of him and make him pay. But the main principle must not be forgotten, which has been enunciated in our minute of dissent and which I have repeated here, before the authorities take any action, and that was the guiding principle in the amendment made by the House of Commons to the proposed section 10 (a). Therefore, I desire that that Explanation which I have read out should go into the Act below the proposed section 10 (a). The Honourable the Finance Member has said that he is going to oppose it. Can he possibly oppose the principle as laid down by us in our dissenting minute? He cannot. It is impossible for him to do so. It is against the whole principle of excess profits tax—either in England or in India. Therefore I am surprised that he desires to oppose it. He may read into it something that was never intended, he may put an interpretation upon it which I cannot, but if he will read it as plain English he cannot oppose adding this Explanation.

Sir, I once stated to this House when the Excess Profits Tax Bill was brought before it for the first time, that it was blindly copied from the English Act. Now, I am advocating blindly copying two sections from the

English Act, because I find that a legislature, perhaps much more experienced than our own, have had a good examination of those sections, and when the principle was admitted that if we copy sections bodily from the English Act, it should be word for word according to the English Act, we found that section 10 of our Act, as it stands today, is much wider than that in the English Act. I pointed out that to the House when that section was being inserted; but no,—Government would not have it. They wanted to go much further. They copied a section from the 1919 Act. Now, when the House of Commons amended the proposed section 10A, Government have very kindly agreed to amend section 10 of the Act as it stands today and bring it into conformity with the English Act. But they have retained the penal clause, to which I see no great objection. Having gone so far, it may be argued that there is no such explanation in the English Act. I know there is no such Explanation in the English Act, but I do desire that the Explanation should be inserted in our Act, because this Act is new to us. In England they have worked this Act right through the last war, and as Mr. Ayers has told us, they have gained considerable experience, and I cannot see any objection to including in the Act a principle so sound and so equitable, a principle which the authorities must always keep in mind when administering this Act. I earnestly desire that the House should support me in asking that this Explanation should be inserted in the Act in the interests of equity and fairplay.

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

‘That in clause 6 of the Bill, to sub-section (1) of the proposed section 10A, the following *Explanation* be added:

‘*Explanation*.—The provisions of sub-section (1) shall not apply to any transaction which could have been reasonably and *bona fide* effected by a person if this Act had not been in force.’

Babu Baijnath Bajoria: Sir, I rise to support this amendment. After all, what does it seek to do? It only wants that the word main purpose of ‘transaction’ should be clarified; otherwise, what is the meaning of the word ‘main purpose’. Where a transaction had been done, what was the main purpose of that transaction? Without such clarification there may be a source of great discontent amongst the assesses and it may also be the subject of many appeals to higher authorities. What my friend, Sir Cowasji Jehangir, wants by this amendment is that any transaction which an assessee might have reasonably done if this Act had not been in force should not be challenged by the Excess Profits Tax Officers. This is a very reasonable demand. The case will come up before the Excess Profits Tax Officers, I think, after 12 months or in some cases 18 months, after the transaction has been done. It will be very easy to be wise after the event. What may have been done with the best of intentions and in the interests of the firm may not prove to be so beneficial to it, and the firm may not have achieved the main purpose it had in view. Then the Excess Profits Tax Officer may come along and say: ‘You have done this transaction, it has reduced the profits, and so we would not take this into account’ Sir, this is not fair. You will have to admit that every transaction that is done is to be deemed *bona fide* until the contrary is proved. You cannot say that every transaction which is done is done with the object of reducing the profits and evading taxation. That is the principle which I want the Honourable the Finance Member always to keep in mind.

[Babu Baijnath Bajoria.]

Then again, Sir, the word 'transaction' also requires some clarification. Does it also come within the mischief of sections 5 and 6, if the constitution of a firm is changed? Suppose a person has got a business. He wants to expand it, and takes in another partner; or he converts his business into a limited company. Will the Government say that that transaction has been done with the object of avoiding taxation, because it becomes an entirely separate business? Suppose a firm takes in another man as a working partner, on the retirement of a partner, who has some technical knowledge of the business. Then there will be a change in the firm, the partners will be different. I would like to know definitely from the Honourable the Finance Member whether such a change in the constitution of a business from an individual to a partnership concern or to a limited liability company will come under the mischief of sections 5 and 6? If it does, then I say it will mean a great injustice because that will hamper the expansion of the business and growth of industries. Sir, the Explanation which my friend, Sir Cowasji, wants to add is very simple. Government may think that it has a much deeper meaning than what is implied in it or much more is sought to be got by this Explanation. If that is so, let them come out and tell us what is the apprehension in their mind about adding this Explanation. I for one cannot see in these words any further implication than what I could see on the surface. Sir, I support this amendment.

The Honourable Sir Jeremy Raisman: Sir, I must oppose this amendment. I don't see that the plain wording of sub-section (1) requires any further explanation. Unlike so many provisions of this Act, it bears its meaning, in my opinion, on its face. The question is, what was the main purpose for which a transaction was effected. If the Excess Profits Tax Officer is of opinion that the main purpose was the avoidance of tax, then he may act in a certain way, and there is an appeal to the Appellate Tribunal. Now, the Explanation which the amendment will introduce says—The provisions of sub-section (1) shall not apply to something or other. Either that Explanation is unnecessary, or it adds something to the clause as it stands in the Bill. In either case I am opposed to it.

Now, Sir Cowasji Jehangir has dwelt at some length on the question of principle. I must say that his statement of the principle that should guide us in these matters sounded reasonable and plausible. But we have to remember that in war time there are restrictions and limitations arising from the necessities of the emergency on all kinds of transactions made by citizens. For instance, Sir Cowasji Jehangir in normal times might like to remit a certain amount of money to America, perhaps for the use of his friends or for himself if he ever went there,—he might like to purchase something in America. He cannot do that,—why? Not because there is anything immoral or any turpitude involved in that, but we have reached a stage, as it were, where, unfortunately, we have to interfere with the exercise of a perfectly innocent right, because an action of that kind in the emergency has effects which are entirely undesirable.

Sir Cowasji Jehangir: That is by law I cannot remit.

The Honourable Sir Jeremy Raisman: It is by a statutory rule.

Sir Cowasji Jehangir: That is law.

The Honourable Sir Jeremy Raisman: I am dealing with the first principle which my Honourable friend tried to lay down, namely, that it was entirely wrong in connection with a measure of this kind to restrict the freedom which the individual would have in normal times to perform certain transactions in regard to the organisation of his business. I say that that seems a reasonable principle, but, yet, if you think of it, it is not necessarily a reasonable principle at the present moment. Now, suppose a perfectly innocent reorganisation of a business results in the complete extinction of the liability to excess profits tax. Well, it will be open to the assessee to argue that it was not the main purpose of that transaction, that the main purpose of that transaction was not to extinguish his liability to excess profits tax, and if he proves his case, well and good. But my Honourable friend would go further. He would say the only question was, could he have done it whether there was an Excess Profits Tax Act or not? If he could have done it at any time, then you have no right to question him. That is an extraordinary state of affairs. Here is a company which yesterday on the organisation of its business and the disposal of its assets was liable to, say, five lakhs of excess profits tax. It passes a resolution or performs what is called a transaction, which today puts it in the position of having to pay nothing of that tax. I say, "well, prove that the main purpose of that transaction was not the avoidance of tax". The company may be in a position to say, "We have often discussed this. There were various disadvantages in our present organisation, and our object is to avoid those disadvantages and not to avoid this liability". But my Honourable friend would, by the Explanation as he calls it. But I think it is a very considerable change, substituting another criterion—he would say, "The only question I want to know is, could you have done it in 1939 when there was no excess profits tax?" Well, they could have done it. Then, there is no further question, the department is powerless.

Sir Cowasji Jehangir: Not at all.

The Honourable Sir Jeremy Raisman: That, as I see it, would be the effect of this amendment and it seems to me that it is capable of cutting completely at the root of the new section which it is the object of this clause of the Bill to introduce.

Bahu Baijnath Bajoria: I should like to know whether the word "transaction" also includes changes in the constitution of the firm or conversion of business into a company?

The Honourable Sir Jeremy Raisman: "Transaction" is a general term.

Sir Cowasji Jehangir: Am I not entitled to a right of reply?

Mr. President (The Honourable Sir Abdur Rahim): No. There is no right of reply on an amendment.

Mr. Husenbhai Abjullabhai Laljee: I rise to support the motion made by my Honourable friend, Sir Cowasji Jehangir. The point that Finance Member has made with regard to this amendment is that he has provided there, what will be the main object. He stresses a great deal on the word "main" and rightly too. It is on that that we have

[Mr. Husenbhai Abdullabhai Laljee.]

agreed to the whole section. But the explanation is necessary inasmuch as Sir Cowasji Jehangir has made quite clear,—whether a person would or would not do if the excess profits tax were not in existence. If a man was entitled to do a thing in his own interests and because he would like to do what is to his interest in the ordinary course, why should he be stopped from doing so in these times? My Honourable friend, the Finance Member, says, these are war times and extraordinary things have to be done. Quite right. Do it by the law. We do not wish you to do anything which you cannot openly say you wish to do by this way. Say openly that you will not mean this or that and then we know where we are. On the other hand, the explanation that my Honourable friend frankly wants, to go in is, could he have done it? Not only that, but he has added the words “reasonable” and “*bona fide*” there. If he could reasonably and *bona fide* have done,—there the *bona fides* are there. Again, you are the judge. The things are not beyond you. Could he have *bona fide* done it? Was it in his interest to do it, or was it essential or not? If you like, you can make those words still better or clearer you can change them. Sir Cowasji Jehangir makes you the judge; he does not say, I am the judge but makes the matter clear. Why should we keep something ambiguous? If you have something else in the meaning of the word “main”—it is not fair, it creates a suspicion, and rightly also. So long as I am prepared to ask you to be the judge and am in your hands, why should you not make matters clear and accept the Explanation? It is a simple and fair thing. By not accepting this Explanation, it means that you have something more than the word “main” means and we are more suspicious specially after what the Finance Member has said that these are extraordinary times. In fairness I submit that some explanation is required, if not in these words,—put it in any other way, but some explanation is needed so that all sorts of suspicions may go away. We are thankful to you let me repeat for what you have brought in this Bill but at the same time it must be made clear to be useful in the interests of everybody concerned.

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

“That in clause 6 of the Bill, to sub-section (1) of the proposed section 10A, the following *Explanation* be added:

‘*Explanation*.—The provisions of sub-section (1) shall not apply to any transaction which could have been reasonably and *bona fide* effected by a person if this Act had not been in force.’”

The motion was negatived.

Sir Cowasji Jehangir: I beg to move:

“That in clause 6 of the Bill, in sub-section (3) of the proposed section 10A, after the words ‘Appellate Tribunal’ the following be added:

‘and, if aggrieved by a decision of the Appellate Tribunal, may appeal in the prescribed time and manner to the High Court.’”

Sir yesterday when the amendment of the Income Tax Act was before this House, a great deal was said about the assesses’ safety in the right of appeal. We know that rightly or wrongly there is a great deal of agitation in India with regard to the administration of the Income Tax Act and it was said yesterday that the assesses’ safety lay in his right of appeal. A great deal of truth lies in that statement. If the assessee feels that he is aggrieved, he can appeal. Now in this very wide section, to which even an explanation was refused just now, the appeal lies to

the Appellate Tribunal and there it ends. It is only a new body. We know that in India the High Courts are held in the greatest respect. We know that the peoples of India feel that in the High Court they have a tribunal of appeal where they are likely to get justice. After the remarks that fell from the Honourable the Finance Member on the last amendment, this amendment becomes all the more important. The amendment seeks to give the assessee the right to appeal to the High Court from a decision of this new tribunal and if the assessee gets that right, he will feel that he will have the highest tribunal in the land to appeal to, if injustice is done to him down below. We will be told the old old story that on a point of law you can appeal to the High Court but this section will deal with a point of fact and it is on a point of fact that we desire that the assessee shall be able to go to the High Court. We also have experience that many points can be made into points of facts and the High Court will refuse to hear any question of facts. Only on a point of law are they bound to hear an appeal. In this particular section, we desire that the High Court should be forced to hear appeals on facts and not only on law, and that is why we desire this addition to the powers of appeal given under the section.

Now, Sir, if an explanation such as the one I moved can be refused by Government in which they are the judges of whether the main purpose is to evade the tax or not, which lays down the principle that the action of the assessee shall be *bona fide*, even if that is refused, then I think it is absolutely essential that this House should give the power to the assessee to appeal to the High Court and let me tell the Honourable the Finance Member and the Government that that is the only appeal which will satisfy the assessees. I sincerely hope that the tribunal will build up a reputation equal to that of the High Court in which case people will not appeal from that tribunal to the High Court but till that reputation has been built up and till the method of appointing this tribunal is radically changed, I think it is essential and I trust that this House will insist upon giving the assessee a right to go to the High Court. If this is resisted, it will only show that there is something in this section which we have not been able to understand. If we have understood this section correctly then I can see no reason why Government should be afraid of an appeal to the High Court on facts. What you may consider a main purpose may not be accepted by the High Court. Surely on a matter like this, which is one of great importance, where lakhs of rupees may be involved, as to what is the main purpose, what was the intention of the man, a question of fact, an appeal to the High Court should be allowed.

Mr. President, the other day, yesterday I think it was, it was sought to move an adjournment of this House and you very rightly ruled it out of order on the ground that there was a right of appeal and those who are agitating today against the administration of the Income-tax Act were rightly told that the matter can be taken to the High Court. In the opinion of many Honourable Members, including myself, it was a correct interpretation. A man may grumble, he may feel that the greatest injustice has been done to him, but if there is a right of appeal to the High Court and he does not take advantage of it, then there can be no sympathy for such a man; but if you prevent an appeal to the High Court, then surely we have a right to feel aggrieved suspecting that there is something behind it all, and that Government are unwilling

[Sir Cowasji Jehangir.]

to face the High Court. It is not all assessees who can afford to go to a High Court. It will be only in really grave instances that an assessee will take his case to the High Court and it is duty of Government to face the High Court and not evade it through legislation in an important section like this. If this is denied to us, then I believe there will be agitation. I believe assessees will feel that when this section is being put into operation justice may not be done to them. Personally I would rather have an appeal to the High Court than even this Explanation. I would rather have a right of appeal to the High Court where I know that the case would be properly argued, the case will be patiently heard in open court and a decision given for or against the Government. I trust that this House will insist upon this appeal to the High Court in this instance.

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

"That in clause 6 of the Bill, in sub-section (3) of the proposed section 10A, after the words 'Appellate Tribunal' the following be added:

'and, if aggrieved by a decision of the Appellate Tribunal, may appeal in the prescribed time and manner to the High Court'."

Babu Baijnath Bajoria: Sir, I rise to support this amendment. The powers under this section 10A are very wide. The Excess Profits Tax Officer under the inspiration of the Inspecting Assistant Commissioner may arrive at a decision about the main purpose of any transaction, which may be very prejudicial to the assessee. Then, though there is the right of appeal to the Appellate Tribunal, still when such wide powers are given, the assessee must be given the right to appeal to the High Court. The assessee will not go to the High Court unless and until he thinks that he has got a very good case, because going to the High Court means a lot of expense, an expense of several thousands of rupees. Why do Government fight shy to face the High Court? If the interpretation which their Department has taken of this section is justified, then they should entertain no fear that the High Court will not decide the issue justly and squarely. In such important matters there should also be an appeal from the Appellate Tribunal. It will be argued that the appeal to the High Court can only lie on points of law and there are several important sections under which appeal to the High Court on points of facts is not allowed. Why should you then make an exception about this section? I think that will be the stand which will be taken by the Government. But this is absolutely a new section and the Government can come to any conclusion they like about it. The High Court is the highest judicial court in this country and the assessee must have the right to get judgment from the highest court in the land, and the Government should not object to it. Sir, I support the amendment.

Dr. P. N. Banerjee: Sir, I rise to give my support to this motion. The High Courts in India are regarded as the guardians of the interests of the people, and whenever people feel aggrieved they look up to the High Courts for the redress of their grievances. It is true that an appeal is provided under this Act to the Appellate Tribunal, but, without saying anything in disparagement of this Tribunal, I should like to observe that this Tribunal does not command the same measure of confidence as a High Court would. Besides, it is quite likely that this Tribunal may

make mistakes. Therefore, it is very desirable, when large powers have been vested in the officers of Government and when large sums of money are involved, that there should be a further appeal to the High Court. A provision of this character will inspire confidence in the actions of the Government, and the Government will lose nothing. On the other hand, they will gain a great deal by accepting an amendment like this.

Mr. Husenbhai Abdullabhai Laljee: Sir, I rise to support the amendment. I would not have pressed for this amendment had my friend, the Honourable the Finance Member, accepted the Explanation which we had suggested in the previous amendment. Many businessmen do not like to go to the High Court. We know very well how costly and ruinous it is to go to the High Courts. In fact, going to the High Court means materially almost losing the whole amount in the case. The cost of Lawyers is so enormous. But when such a tax as the excess profits tax is concerned, when crores of rupees are involved and when people desire that there should be some restriction on the officers who are assessing this tax, it will not only create confidence in the public but it will certainly bring home to the officers that people can go to the High Court and that will have a very salutary effect. The fact that the Honourable the Finance Member was not prepared to accept the suggestion of putting in an Explanation, I repeat, has no doubt created a good deal of suspicion. In the times through which we are passing, it may be that the anxiety to collect huge sums may not be wanting. Again, one has got to see who will be the parties who will pay such large sums in the form of excess profits tax? It will be the public limited companies. It has been invariably suggested that in the public limited companies it is the managing agents who are persons to be taxed. That is quite wrong. There are thousands of shareholders who are really interested parties and it is very difficult for the managing agents or the directors of the company to go to the High Court at their cost unless and until they have got good reasons. Therefore, there is another check not to go to the High Court besides the heavy cost and the lot of trouble that would be involved. Looking at the question, therefore, from all points of view, it is but fair that the Honourable the Finance Member should concede to the request of this House howsoever thin it may be. We are still voicing the real and true feelings of the public and I am sure this he would himself have to admit from the number of representations that he must have received from organised bodies whom he had often had the occasion of acknowledging as the right voice of the people. All these representations have supported an appeal to the High Court. Under these circumstances and looking at the question from all points of view, I do hope that in justice the Honourable the Finance Member will agree to the suggestion mentioned in the amendment, in the interest of large number of shareholders of public companies.

Lieut.-Colonel Sir Henry Gidney (Nominated Non-Official): Sir, it is seldom I rise to speak on matters in connection with finance, more so in my case because I do not come within the ambit of the excess profits tax. But the amendment moved by Sir Cowasji Jehangir seems to me to indicate that there does exist a great fear in the minds of certain assesseees who will be subject to this hardship which should be appeased. It brings to my mind an old French saying :

“Y' excuse Y' accuse.”

(He that excuseth himself accuseth himself.)

[Lieut.-Col. Sir Henry Gidney.]

Sir, no one in this world is infallible. Even the highest Income Tax Tribunal is not infallible. There may be cases in which they are likely to err though in the majority of cases their expert advisers will keep them on the right path. After all, no Income-tax man, not even the Finance Member himself, expert that he is, is infallible and I do submit that this small amendment of Sir Cowasji Jehangir will instal in the minds of the assesseees, whose incomes will be subject to this tax, a sense of satisfaction and justice such as they view and want it, not such as the Income Tax Department view it even with the conceit of infallibility in their views and judgment. Why should an assessee who finds himself in a doubt and in disagreement with the Finance Department be deprived of the right of appealing to the High Court? The worst criminal possesses such a right even to the King. I consider it is a small matter and is one which, I think, the Finance Member should in his liberality, not in finance, but of thought and justice concede to the Mover of the amendment. Sir, I support it.

Raja T. Manavedan (Madras : Landholders) : Sir, I rise to support the amendment because it is very necessary and it will satisfy the people. At least, they will believe that they have got the real justice from the High Court. You may offer any number of Tribunals but if you want to satisfy the public, they must have the right to go to the High Court. If there is no appeal to the High Court, they will not be satisfied. So, I hope the Government will consider the amendment sympathetically and accept it.

The Honourable Sir Jeremy Raisman: Sir, I am indeed sorry to have to be adamant to so moving an appeal as that which was addressed by my Honourable friend, Lieut.-Colonel Sir Henry Gidney, and I must say that I marvel at the eloquence and forcefulness which my Honourable friend, Sir Cowasji Jehangir, could import into an amendment of this kind which runs counter to the whole scheme of the Income-tax Act. There may be hundreds of matters in relation to which it is equally vital from the point of view of the assessee that he should have his assessment made by the highest possible authority and that he should have an appeal on the facts to the highest authority. It would no doubt create a tremendous amount of confidence if all the income-tax work were done by the High Courts but the High Courts would not like to do it. I am merely following the line of argument of my Honourable friend, Mr. Husenbhai Abdullabhai Laljee. He talks about the voice of the masses and the voice of the people in relation to these excess profits tax cases. I am sorry if I find it a little humourous that in a class which altogether probably falls well under 3,000 cases and in a country which numbers 400 millions of people, we should have "the masses" trotted out and "the voice of the people" referred to. However, the position surely is that in relation to this, as in relation to a very large number of matters with which the Income-tax Act and the Excess Profits Tax Act are concerned, you have provided a machinery for the determination of facts, and for appeals and for the final determination of facts and the machinery for access to the High Court. I cannot agree that anything more is necessarily involved in this type of case than in many of the cases which are already covered by the Income-tax Act.

It is my experience, and I was for nearly three years a Commissioner of Income-tax, that if an officer attempts to make an arbitrary decision even

on a question of fact, if in order to make a high assessment, he jumps on a point of fact, the assessee will go to the High Court with the simple question whether there was sufficient evidence on which the officer could come to that conclusion and it is my experience that the High Court will usually accept that as a point of law.

Sir Cowasji Jehangir: Does the Honourable Member know in how many cases the High Court have refused to hear that argument?

The Honourable Sir Jeremy Raisman: I am aware that on the basis of that line of argument assessees have often tried to take cases of pure fact. I am no lawyer myself, but I have seen it frequently happen that High Court said, "there is material on which the officer could come to that decision and, therefore, no point of law arises". In any case, questions of fact and questions of law can arise out of this clause, when it is enacted, as out of other sections of the Act. If they are pure questions of fact, if there is evidence on which the conclusion of fact can be based, and is based, then I quite agree that there will be no point of law and there will probably be no access to the High Court, but there is no question of depriving the assessee, as so many Honourable Members have said, of access to the High Court. It is entirely contrary to the whole scheme of this type of legislation that there should be access to the High Court on questions of fact.

Sir Cowasji Jehangir: Does not the Honourable Member realise that this is an exceptional provision which he is putting into and he is putting a little which in the English Act itself was put at the last moment. This is an exceptional provision.

The Honourable Sir Jeremy Raisman: I do not agree with the Honourable Member. I think there are provisions which are comparable with this in the Income-tax Act. Yes, section 10 itself; for that matter it can be argued that the previous section should also contain an appeal to the High Court. You have set up a machinery for the decision of questions of fact. That machinery, that Appellate Tribunal will have to deal with exceedingly important cases, it may have to come to decisions on questions of fact which may involve lakhs or even crores of rupees. There is, to my mind, no reason why you should depart from your scheme in relation to this section. Sir, I oppose the amendment.

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

"That in clause 6 of the Bill, in sub-section (3) of the proposed section 10A, after the words 'Appellate Tribunal' the following be added :

'and, if aggrieved by a decision of the Appellate Tribunal, may appeal in the prescribed time and manner to the High Court'."

The Assembly divided :

AYES—16.

Abdur Rasheed Chaudhury, Maulvi.
Bajoria, Babu Baijnath.
Banerjee, Dr. P. N.
Bhagchand Soni, Rai Bahadur Seth.
Chandavarkar, Sir Vithal Narayan.
Chattopadhyaya, Mr. Amarendra
Nath.
Gidney, Lient.-Colonel Sir Henry.
Jehangir, Sir Cowasji.

Kamaluddin Ahmed, Shams-ul-Ulema.
Kushalpal Singh, Raja Bahadur.
Lalchand Navalrai, Mr.
Laljee, Mr. Husenbhai Abdullabhai.
Manavedan, Raja T.
Mehta, Mr. Jamnadas M.
Parma Nand, Bhai.
Sant Singh, Sardar.

NOES—34.

Abdul Hamid, Khan Bahadur Sir.
Ahmad Nawaz Khan, Major Nawab Sir.

Aney, The Honourable Mr. M. S.
Ayers, Mr. C. W.
Bewoor, Sir Gurunath.
Boyle, Mr. J. D.
Buss, Mr. L. C.
Caroe, Mr. O. K.
Chapman-Mortimer, Mr. T.
Clow, The Honourable Sir Andrew.
Dalal, Dr. R. D.
Dalpat Singh, Sardar Bahadur Captain.

Dehejia, Mr. V. T.
Gopaldaswami, Mr. R. A.
Gwilt, Mr. E. L. C.
Ikramullah, Mr. Muhammad.
Imam, Mr. Saiyid Haider.
Ismail Ali Khan, Kunwar Hajee.

James, Sir F. E.
Jawahar Singh, Sardar Bahadur Sardar Sir.

Lawson, Mr. C. P.
Maxwell, The Honourable Sir Reginald.
Miller, Mr. C. C.
Mody, The Honourable Sir H. P.
Mudaliar, The Honourable Diwan Bahadur Sir A. Ramaswami.
Pillay, Mr. T. S. S.
Prior, Mr. H. C.
Rahman, Lieut.-Colonel M. A.
Raisman, The Honourable Sir Jeremy.
Scott, Mr. J. Ramsay.
Sheehy, Mr. J. F.
Spence, Sir George.
Sultan Ahmad, The Honourable Sir.
Thakur Singh, Captain.

The motion was negatived.

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

The motion was adopted.

Clause 6 was added to the Bill.

STATEMENT OF BUSINESS.

The Honourable Mr. M. S. Aney (Leader of the House) : Sir, I take the opportunity of informing the House that in the event of the business entered in the current list, including the item added by the supplementary list issued yesterday, not being completed by Friday next, I would then request you to appoint an additional day or days for the transaction of official business. On Friday I will ask you to fix a particular day; I am only making a statement now.

The Assembly then adjourned till Eleven of the Clock on Wednesday, the 12th November, 1941.