

30th September 1936

THE

LEGISLATIVE ASSEMBLY DEBATES

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(29th September to 8th October, 1936)

FOURTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1936



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Legislative Assembly.

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THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I., KT.

Deputy President :

MR. AKHIL CHANDRA DUTTA, M.L.A.

Panel of Chairmen :

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SIR LESLIE HUDSON, KT., M.L.A.

MR. ABDUL MATIN CHAUDHURY, M.L.A.

MR. M. S. ANEY, M.L.A.

Secretary :

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.

Assistant of the Secretary :

RAJ BAHADUR D. DUTT.

Marshal :

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

Committee on Petitions :

MR. AKHIL CHANDRA DUTTA, M.L.A., *Chairman.*

SIR LESLIE HUDSON, KT., M.L.A.

PANDIT NILAKANTHA DAS, M.L.A.

MAULVI SYED MURTUZA SAHIB BAHADUR, M.L.A.

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

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LEGISLATIVE ASSEMBLY.

Wednesday, 30th September, 1936.

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

QUESTIONS AND ANSWERS.

GRIEVANCES OF THE TRAVELLING PUBLIC AGAINST THE BENGAL AND NORTH
WESTERN RAILWAY.

709. *Maulvi Badrul Hasan : (a) Has the attention of Government been drawn to a letter headed "Grievances against Bengal and North Western Railway" published in the *Indian Nation*, Patna, dated the 26th May, 1936 ?

(b) Are Government aware that the citizens of Muzaffarpur (Tirhoot) feel much inconvenience on account of the absence of a sub-way near the railway station ?

(c) Are Government prepared to exert their influence on the Bengal and North Western Railway to erect a sub-way near the station in order to remove the inconvenience felt by the public at the railway crossings ?

(d) Are Government aware that a pointsman was injured on the 1st July, 1936 in the Bhagwanpur station of the Bengal and North Western Railway ?

(e) Are Government aware that the said man died in Muzaffarpur Hospital and his death was due to profuse bleeding and to the absence of any first hand medical aid ?

(f) Are Government prepared to make a rule that no railway employees should be given charge of a railway station as Station Master, unless he obtains a certificate of a first hand medical aid knowledge ?

(g) Are Government aware that the Bengal and North Western Railway Company has reduced the number of *khalasis* in the railway stations with the result that the consignors themselves have to load their consignments in the goods trains ?

(h) Are Government aware that there are yet no electric fans in the waiting rooms at Muzaffarpur, Darbhanga, Samastipur and other important stations, though the said stations have got electric light ?

(i) Are Government prepared to exert their influence on the Bengal and North Western Railway Company to fit electric fans at all the important stations ?

(j) Have Government given notice to the Bengal and North Western Railway, terminating their contract, as resolved by the Assembly during the last Session ?

(k) If the reply to part (j) be in the negative, do Government intend to give such notice ? If so, when ? If not, why not ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Government have seen the article referred to.

(b) and (c). The question of replacing one of the level crossings at Muzaffarpur by an overbridge has been raised through the local advisory committee, and has been referred by the Railway Administration to the local authorities.

(d) Yes.

(e) The man died two days after the accident. There was no medical aid available at Bhagwanpur. The train staff gave him first aid treatment and he was sent on by the same train to Muzaffarpur Civil Hospital, which was the nearest place at which skilled attention was obtainable.

(f) The Honourable Member's attention is invited to the reply given to Mr. Sham Lal's question No. 882 in this House on the 27th February, 1936.

(g) The Agent states that labour is maintained at all stations for loading and unloading goods.

(h) Government have no information.

(i) The matter is within the competence of the Railway Administration, whom Government consider to be in the best position to decide on the relative urgency of this as compared with other works.

(j) and (k). I would refer the Honourable Member to the reply I gave to starred question No. 38 by Mr. S. Satyamurti on the 1st September, 1936.

Mr. Ram Narayan Singh : How is it that there is no much clamour raised against the administration of the B. N. W. Railway, and yet Government have always turned a deaf ear to this ?

The Honourable Sir Muhammad Zafrullah Khan : I am afraid I could not follow the question.

Mr. Ram Narayan Singh : My question is, how is it that when so much clamour is made against the management of the B. N. W. Railway, but the Government has not paid any attention to the complaints, rather they have always turned a deaf ear to them ?

The Honourable Sir Muhammad Zafrullah Khan : It is not correct that Government have turned a deaf ear.

REDUCTION IN THE STAFF OF THE RAILWAYS.

710. ***Maulvi Badrul Hasan :** Are Government aware that there has lately been a reduction in the staff of the State-owned and State-managed Railways ? If so, how many Europeans, Anglo-Indians and Indians holding superior posts have been so reduced ?

The Honourable Sir Muhammad Zafrullah Khan : The adjustment of number of staff to current requirements is in progress. Available information in respect of number of superior officers by communities will be found in Chapter VI of Volume I of the Reports by the Railway Board on Indian Railways, copies of which are in the Library of the House.

PERCENTAGE OF BIHARI HINDUS AND MUSLIMS IN THE EAST INDIAN RAILWAY.

711. ***Maulvi Badrul Hasan :** (a) What is the percentage of Bihari Hindus and Bihari Muhammadans in the East Indian Railway ?

(b) Do Government propose to increase the number of Biharis in the said Railway ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Government have no information.

(b) Government cannot accept a policy of recruitment into railway services on a provincial basis.

ABSENCE OF A WAITING ROOM OR SHED AT THE PHULWARI SHARIF STATION ON THE EAST INDIAN RAILWAY.

712. ***Maulvi Badrul Hasan :** (a) Are Government aware that there is no waiting room or shed at the Phulwari Sharif Station of the East Indian Railway ?

(b) Do Government propose to advise the Railway authorities to provide one such shed at the said station ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Government have no information.

(b) Such matters are within the competence of the Railway Administration, whom Government consider to be in the best position to decide their relative importance.

CONTRACT FOR BUILDING THE POSTAL SUPERINTENDENT'S AND OVERSEER'S QUARTERS AT MUZAFFARPUR.

713. ***Maulvi Badrul Hasan :** (a) Are Government aware that the contracts for building the Postal Superintendent's and the Postal Overseer's quarters at Muzaffarpur have been given to some Delhi contractors ?

(b) If the answer to part (a) be in the affirmative, why were the said contracts not given to any local contractor ?

The Honourable Sir Frank Noyce : (a) The reply is in the affirmative so far as the quarters for the Superintendent of Post Offices is concerned. No quarters have been constructed for the Postal Overseer at Muzaffarpur but quarters have been built there for the Sub-Divisional Officer, Telegraphs, by the Central Public Works Department.

(b) Only one local contractor submitted tenders and they were rejected because they were incomplete and did not contain the actual figures of his tenders in the tender form.

PERCENTAGE OF BIHARI HINDUS AND MUSLIMS IN THE INDIAN MEDICAL SERVICE.

714. ***Maulvi Badrul Hasan** : (a) Will Government be pleased to state the percentage of the Bihari Hindus and Bihari Muhammadans in the Indian Medical Service ?

(b) Are Government aware that some vacancies in the Indian Medical Service are going to be filled in by nominations ?

(c) Are Government prepared to nominate some Biharis in the said Service ?

Mr. G. R. F. Tottenham : (a) Recruitment to the Indian Medical Service is not made on a provincial or communal basis. Government are therefore unable to furnish the information asked for.

(b) Yes, after examination by a Selection Board.

(c) Yes, if they merit selection by reason of their qualifications in comparison with other candidates, but not on the ground that they are Biharis.

POPULATION OF FIJI AND COMMUNAL REPRESENTATION IN THE FIJI LEGISLATIVE COUNCIL.

715. ***Mr. Ram Narayan Singh** : (a) What is the total population of Fiji and what are the respective numbers of Fijians, Indians, Europeans and others therein ?

(b) Will Government be pleased to state the composition of the present Legislative Council of Fiji ?

(c) Is it a fact that the Colonial Secretary has introduced a new scheme of communal representation in the Council, and, if so, what is that scheme ?

(d) Has the scheme mentioned in part (c) satisfied the various communities living in the Fiji Island and, if not, why not ?

(e) Have Government been consulted in the matter, and, if so, what are their recommendations ?

Sir Girja Shankar Bajpai : (a) A statement containing the required information is laid on the table of the House.

(b) The present Legislative Council of Fiji consists of His Excellency the Governor as President, not more than thirteen nominated (official) members, six elected European members, three elected Indian members and three Fijian members selected by the Governor from a panel submitted by the Great Council of Native Chiefs.

(c) The Honourable Member's attention is invited to my reply to **Mr. T. S. Avinashilingam Chettiar's** starred question No. 68 on the 2nd of this month.

(d) Government have no information.

(e) I would invite the Honourable Member's attention to the Honourable **Kunwar Sir Jagdish Prasad's** speech in the Council of State on the 18th March, 1936, on a Resolution moved by the Honourable

Mr. P. N. Saprú, and to my reply to Mr. Satyamurti's starred question No. 100 asked in this House on the 6th February, 1936.

Statement.

The estimated population of Fiji as on the 31st December, 1934, was as follows :

| | | | |
|-----------------------------------|----|--------------|----------------|
| Fijians, Polynesians and Rotumans | .. | .. | 102,843 |
| Indians | .. | .. | 82,389 |
| Europeans | .. | .. | 4,763 |
| Half-castes | .. | .. | 3,717 |
| Others | .. | .. | 2,837 |
| | | Total | 196,549 |

NEGOTIATIONS WITH THE BRITISH GOVERNMENT FOR A NEW TRADE AGREEMENT.

716. *Mr. Ram Narayan Singh : Is it a fact that Government have started new negotiations with the British Government for a new Trade Agreement in place of the Ottawa Agreement of 1932, and if so, will Government consult this Assembly in this matter ?

The Honourable Sir Muhammad Zafrullah Khan : The Honourable Member's attention is invited to the reply given by me to Seth Govind Das's starred question No. 701 yesterday.

Mr. S. Satyamurti : May I know, Sir, whether the whole question of the basis of the new negotiations has been referred to the Advisory Committee which is now sitting in Simla ?

The Honourable Sir Muhammad Zafrullah Khan : There is no Advisory Committee sitting in Simla, non-official Advisers have been asked to advise the Government on the matter.

Mr. S. Satyamurti : May I know what are the exact terms of reference to them, or what are their exact functions in respect of the new negotiations to replace the Ottawa Agreement ?

The Honourable Sir Muhammad Zafrullah Khan : They will advise Government as to the lines along which in their opinion the possibility of concluding a fresh trade agreement ought to be explored.

Mr. S. Satyamurti : May I know if any materials or papers have been placed before them, and if so, what are those ?

The Honourable Sir Muhammad Zafrullah Khan : The opinions received from Local Governments as well as other interests concerned are being supplied to the non-official Advisers, and I have no doubt that any other information which they may call for and which Government are in a position to supply will be supplied to them.

Mr. S. Satyamurti : Have Government supplied the non-official Advisers with any tentative proposals of their own ?

The Honourable Sir Muhammad Zafrullah Khan : No.

Mr. S. Satyamurti : May I know if any counter proposals or suggestions by the British Government have been received by the Government of India, and if they have been placed before these non-official advisers ?

The Honourable Sir Muhammad Zafrullah Khan : Obviously, there could be no counter proposals unless proposals are put forward, and that stage has not yet been reached.

Mr. S. Satyamurti : May I know, therefore, that these non-official Advisers have no materials before them to indicate to them the mind of this Government or of the British Government as to the lines on which the new negotiations are to be conducted ?

The Honourable Sir Muhammad Zafrullah Khan : Inasmuch as those who are invited have to advise Government as to the lines along which negotiations should be conducted, surely there could be no lines settled by the Government.

Mr. S. Satyamurti : I am asking, Sir, only about the tentative suggestions whether there is any official of the Government in touch with them, so that they may have some indication as to the lines on which Government would like the matter to be investigated.

The Honourable Sir Muhammad Zafrullah Khan : Government will consider the matter in consultation with these non-official Advisers and will then settle the lines along which negotiations are to be conducted.

Dr. Ziauddin Ahmad : Is it the intention of the Government to send these non-official Advisers to England also ?

The Honourable Sir Muhammad Zafrullah Khan : I have already answered this question that if the stage of oral negotiations is reached it is possible that these gentlemen may be invited to proceed to London.

Mr. S. Satyamurti : May I know whether the Government have considered or will consider the desirability, from all relevant points of view, of inviting delegates from Great Britain to India ?

The Honourable Sir Muhammad Zafrullah Khan : I have already answered that question also, that Government have had that matter in view.

Mr. S. Satyamurti : May I know whether these non-official Advisers will have all the time, the assistance of the Government, whether there will be a continuous *liaison* kept between the Government and the non-official Advisers, so that they may have the benefit of their advice and the ultimate solution may be the result of the action and reaction of these two sets of authorities, and not one set of authorities acting independently of the other ?

The Honourable Sir Muhammad Zafrullah Khan : All I can say is that there will be the fullest consultation between the Government and the non-official Advisers.

Mr. K. Ahmed : Is it open to any private individual or Members of this Assembly to give advice to the non-official Advisers so that from the point of view of their own views, legal or illegal, they may consider and balance in their mind, in order to impart advice to the Central Body ? (Laughter.)

The Honourable Sir Muhammad Zafrullah Khan : That is a very general question.

Mr. S. Satyamurti : May I know whether these non-official Advisers will be called in after the stage is reached when the Government of India formulate their proposals and hear from the British Government their views on those proposals, or are their functions to be over merely with advising this Government ?

The Honourable Sir Muhammad Zafrullah Khan : That is a hypothetical question, but if at any stage before any final conclusion is reached it becomes desirable that further consultations should take place, they will take place.

Mr. S. Satyamurti : Will the report of the non-official Advisers be published for public information ?

The Honourable Sir Muhammad Zafrullah Khan : I do not think there is any question of any report being made.

Mr. S. Satyamurti : Or will their recommendations or suggestions be published ?

The Honourable Sir Muhammad Zafrullah Khan : I cannot say.

KING GEORGE MEMORIAL FUND.

717. ***Mr. Ram Narayan Singh :** (a) Is it not a fact that Government have inaugurated the King George Memorial Fund and if so, what are the aims and objects of this movement ?

(b) Is there any central authority to supervise and control the collection and if so, what is its constitution ?

(c) Have Government issued any circular or circulars to various Local Governments and if so, will they place them on the table of this House ?

(d) What is the total collection to this Fund all over the country till now and how long will the collection continue and up to what amount ?

(e) Is the collection a voluntary or a compulsory one ?

The Honourable Sir Henry Craik (a) Funds, in Delhi and in the Provinces respectively, have been opened by the Viceroy and the Governors, in order to raise memorials to the late King George.

(b) No. The Funds are separate. Contributions to the Viceroy's Fund are received by his Private Secretary.

(c) No circulars have been issued.

(d) The contributions to the Viceroy's Fund up to September 6th amount to Rs. 1,15,644. No date has been fixed for the Fund to close.

(e) It is scarcely necessary for me to say that the Fund is being raised by voluntary subscription.

Prof. N. G. Ranga : For what purposes will the proceeds of these Funds be utilised ?

The Honourable Sir Henry Craik : That depends on the decision of those managing the various Funds.

Mr. Mohan Lal Saksena : Will Government issue instructions that subscriptions should not be collected through revenue, police and income-tax officials ?

The Honourable Sir Henry Craik : It would be for Local Governments to issue such circulars if they consider them necessary.

Pandit Nilakantha Das : Income-tax does not belong to Local Governments.

Mr. Ram Narayan Singh : Do Government realise that realisation of subscription by official agency cannot remain voluntary ?

The Honourable Sir Henry Craik : No. Government do not realise that.

Prof. N. G. Ranga : Who manages the Viceroy's Fund ?

The Honourable Sir Henry Craik : The Private Secretary.

Mr. Ram Narayan Singh : Are Government aware that in the province of Bihar, especially in my district of Hazaribagh the whole police force was engaged in collecting subscription for the Silver Jubilee Celebration and even the poorest of the people had to pay something towards the same ?

Mr. President (The Honourable Sir Abdur Rahim) : That does not arise.

Mr. Ram Narayan Singh : It arises in this way, that subscriptions are said to be voluntary.

Mr. President (The Honourable Sir Abdur Rahim) : What happened as regards another Fund has nothing to do with this question.

Mr. Ram Narayan Singh : Will Government see the justice and wisdom of stopping this practice of realising any subscription by official agencies ?

The Honourable Sir Henry Craik : I have already answered a general question on that subject earlier in this Session.

CONSTRUCTION OF AN OVERBRIDGE AT THE GUDUR JUNCTION STATION.

718. ***Prof. N. G. Ranga** : Will Government be pleased to state :

- (a) if any representations had been made by the local residents of Gudur in Madras Presidency for the construction of an over-bridge over the railway line at the Gudur junction station ;
- (b) if they are aware of the fact that the local people are frequently fined for trying to cross the railway line, or even for walking along the railway bund ;
- (c) if they are aware of the great inconvenience caused to the local people by the railway cutting the town in twain, while providing no over-bridge for people to pass conveniently from one part of the town to the other ; and
- (d) whether they propose to consider the advisability of making the Madras and Southern Mahratta Railway to construct an over-bridge ?

The Honourable Sir Muhammad Zafrullah Khan : (a) No representation has been received by Government.

(b) to (d). Government have no information regarding the inconvenience referred to. The Honourable Member is no doubt aware that crossing the railway line and lands except at the crossing places provided constitutes trespass, and is fraught with danger to the trespasser. The policy of Government is to leave to the discretion of the Railway Administration such matters as the provision of overbridges where the traffic justifies them. The question, therefore, is one best referred to the Agent of the Railway concerned through the Local Advisory Committee.

CONSTRUCTION OF RAILWAY STATIONS AT MACHAVARAM IN THE GUNTUR DISTRICT AND NIDIGALLU IN THE NELLORE DISTRICT.

719. *Prof. N. G. Ranga : Will Government be pleased to state .

(a) if the local residents of Machavaram and its neighbourhood in Guntur District and Nidigallu in Nellore District have asked for the construction of railway stations and have shown how the railway traffic will increase thereby ; and

(b) if so, whether they propose to consider the advisability of establishing those stations on the Madras and Southern Mahratta Railway ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Government have no information.

(b) Does not arise:

ALLOWANCES GIVEN TO THE MEMBERS OF THE RAILWAY ADVISORY COMMITTEES.

720. *Prof. N. G. Ranga : Will Government be pleased to state :

(a) the allowances and the travelling allowances given to the members of the Railway Advisory Committees ;

(b) whether they propose to consider the advisability of reducing the allowances to the level of allowances granted to the Members of the Legislative Council ; and

(c) whether they are prepared to spend the money thus saved upon increasing the representation upon the Advisory Committees for the peasants and third-class passengers ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Members other than railway or Government servants are allowed Rs. 32 for each meeting attended and an extra allowance of Rs. 10 per day for any day or days spent in travelling between their town of residence and the place of meeting, for which the fee of Rs. 32 is not admissible. They are also allowed free travel between their town of residence and the place at which the meeting is held.

(b) The question of a reduction was considered a few years back but was negatived.

(c) Does not arise, but the question of adequate representation of various interests on these Committees will be discussed shortly with the Central Advisory Council for Railways.

Prof. N. G. Ranga : Why is it, in view of the fact that members of the Local Legislative Councils are given a daily allowance of only Rs. 10 and nothing more, that Government do not see the necessity of revising the scale of allowances granted to these people which are easily three times as much as those granted to Local Legislative Council members ?

The Honourable Sir Muhammad Zafrullah Khan That is an argument. but, after all, the question has to be discussed with these Committees, and as is perhaps quite natural, they are most reluctant that a reduction should be made in their allowances.

Prof. N. G. Ranga : Is not the question of the scale of allowances to be granted to these people to be decided by the railway authorities and not by the members of the Local Advisory Committees ?

The Honourable Sir Muhammad Zafrullah Khan : I should be very glad to make a reduction, but I am afraid there would be a good deal of objection to it.

RECRUITMENT TO THE INCOME-TAX DEPARTMENT.

721. ***Prof. N. G. Ranga** : Will Government be pleased to state :

- (a) if the recruitment to the Income-tax Department is made through the Public Service Commission ;
- (b) if not, how it is made ;
- (c) why it is not made through the Public Service Commission ;
and
- (d) whether even promotions are not being made at present in accordance with seniority and efficiency ?

The Honourable Sir James Grigg : (a) No.

(b) Appointments to all non-gazetted posts are made by Commissioners or Assistant Commissioners of Income-tax either by direct recruitment or by promotion from lower grades. The posts of Income-tax Officers are generally filled by departmental promotion from the subordinate executive service and those of Assistant Commissioners ordinarily by promotion from Income-tax Officers, but occasionally by appointment from the Indian Civil Service. Commissioners are appointed by the Government of India either from the Indian Civil Service or by promotion from Assistant Commissioners. The Public Service Commission is consulted when the appointments of Assistant Commissioners are made by promotion.

(c) As appointments to all superior posts in the Income-tax Department are made generally by promotion, it is not considered necessary to make their recruitment through the Public Service Commission.

(d) No.

Prof. N. G. Ranga : Why is it there are no committees appointed to advise the Income-tax Commissioners in making their appointments ?

The Honourable Sir James Grigg : Committees of whom ?

Prof. N. G. Ranga : Committees of non-official advisers.

The Honourable Sir James Grigg : Why should there be ? It strikes me as an extraordinary suggestion that you should attach to every Government Department a soviet, shall I say,—I do not mean to be offensive—a soviet of politicians in order to ensure that appointments in Departments shall not be made on political grounds.

Mr. S. Satyamurti : Keep them for the Reserve Bank !

The Honourable Sir James Grigg : Incidentally I may say, by way of consolation to the Honourable Member, that the question of the administrative arrangements in the Income-tax Department is one of the most important matters under the consideration of the expert advisers.

RATIFICATION OF THE INTERNATIONAL LABOUR CONVENTION REGARDING FORCED LABOUR.

722. ***Prof. N. G. Ranga :** Will Government be pleased to state :

- (a) if they have not ratified the International Labour Convention regarding Forced Labour ;
- (b) if they have ratified it, whether they have taken any effective steps to put a stop to the practice of " Forced Labour " resorted to by their own Departments and officers ;
- (c) what action has been taken to compel Local Governments to stop the " Forced Labour " ; and
- (d) what they propose to do to stop the " Forced Labour " practice in the excluded and partially excluded areas ?

The Honourable Sir Henry Craik : (a) The Resolution which was adopted by the Legislative Assembly and the Council of State in 1931 runs as follows :—

" While considering that the Draft Convention on forced labour could not be ratified until Article 2 thereof is modified so as to exclude labour exacted under the Criminal Tribes Act, the Good Conduct Prisoners' Probational Release Act and other similar legislation in force, this Council/Assembly recommends to the Government of India that they proceed to take action on all other provisions contained in the Draft Convention and the Recommendations as soon as may be practicable."

(b), (c) and (d). Acting on that recommendation the Government of India obtained from Local Governments information of the forms of forced or compulsory labour occurring in the various provinces. Wherever these appeared to fall within the definition of forced or compulsory labour prohibited by the Convention, the Government of India have requested the Local Governments to put a stop to them.

The Convention does not require that forced or compulsory labour *for public purposes* should be suppressed immediately : but Local Governments have been asked to see that, where it cannot be immediately abolished, it is restricted to the narrowest possible limits, abolished as soon as possible, and in the meanwhile regulated as required by the Convention.

Mr. Lalchand Navalrai : May I know from the Honourable Member what is the definition of forced labour ?

The Honourable Sir Henry Craik : I would refer the Honourable Member to Article 2 of the Convention.

Mr. N. M. Joshi : May I ask whether the Government of India have received any reports from the Local Governments regarding the action taken by them ?

The Honourable Sir Henry Craik : Yes.

Mr. N. M. Joshi : May I ask whether the Government of India would publish the information on this subject sent by Local Governments as well as the action taken by the latter ?

The Honourable Sir Henry Craik : I will consider that. I cannot give a definite undertaking.

Prof. N. G. Ranga : Have Government any idea of the approximate number of people who are subjected to this forced labour ?

The Honourable Sir Henry Craik : That is a very wide question. I could not say off-hand.

Prof. N. G. Ranga : What steps are being taken by the Local Governments as well as by the Central Government to implement this particular convention and see that forced labour is not resorted to by local boards as well as by the various officials of the Local Governments ?

The Honourable Sir Henry Craik : I have already answered that. We have asked Local Governments to put a stop to all forms of forced labour that fall within the definition given in the convention, as soon as possible.

Prof. N. G. Ranga : Are the Government aware of the fact that district boards in Agency parts and also in excluded areas even today resort to forced labour and force the ordinary peasants and workers there to work freely and forcibly ?

The Honourable Sir Henry Craik : The Convention does not require the immediate abolition of forced labour for public purposes. During the transitional period, forced labour is under the Convention allowed for public purposes.

Mr. V. V. Giri : What is meant by public purposes ?

The Honourable Sir Henry Craik : There again, I would ask the Honourable Member to read the Convention.

Mr. Mohan Lal Saksena : How long is the transitional period to last ?

The Honourable Sir Henry Craik : Till some date in 1937.

Prof. N. G. Ranga : Is the Honourable Member aware that the Convention laid stress upon the necessity for paying some wages to these people who are forcibly made to work on public works and that no attempt has till now been made by the various local authorities to make any payment ?

The Honourable Sir Henry Craik : I am not aware of that.

Mr. K. Ahmed : Will any medical man or lawyer be subject to forced labour if they are paid according to the rules of certain institutions and Government as well ?

Mr. Lalechand Navalrai : May I know from the Honourable Member if officials go on tour and use labour for the pitching of tents, is that forced labour or not ?

The Honourable Sir Henry Craik : They are required to pay for that.

HELP TO THE HANDLOOM WEAVERS.

723. ***Prof. N. G. Ranga :** Will Government be pleased to state :

- (a) if they have received the resolutions passed at the Andhra Provincial Handloom Weavers' Conference held in July ;
- (b) if they are aware of a number of conferences of handloom weavers held in Salem, Chingleput, Tinnevely and other Districts of Tamilnaad ;
- (c) if they are aware of the general demand of the handloom weavers expressed at all those conferences that :
 - (i) since the handloom weavers are suffering from the competition of foreign mill-cloth and Indian mill-cloth, the production of cloth upto 20s. and certain kinds of cloth above 40s. ought to be reserved for the handlooms ;
 - (ii) that suitable steps, including the lowering of the import duty on yarn ought to be taken to bring down the cost of yarn supplied to the handlooms ;
 - (iii) and that the present subvention to the handlooms ought to be increased considerably ; and
- (d) if so, what steps they propose to take to help the handloom weavers ?

The Honourable Sir Muhammad Zafrullah Khan : (a), (b) and (c). Yes, Sir.

(d) The attention of the Honourable Member is invited to the answers given by me to the questions on the subject on the 12th, 13th and 27th February, 1936, and the 6th March, 1936, and to question No. 496 by Mr. Satyamurti in the current Session.

Prof. N. G. Ranga : In view of the fact that the answers refer only to steps that Government have taken in the past, will Government be pleased to state what definite and specific steps they propose to take in the near future to help the handloom weaving industry in regard to their demands contained in (c) ?

The Honourable Sir Muhammad Zafrullah Khan : Detailed statements have already been made on that subject. With regard to (c) (i) there is strong repugnance towards the suggestion on the part of the mill-owners.

Mr. K. Ahmed : Is it not a fact that the product of the handloom work costs much more than the product of the mills and it is no use going in for Khaddar or hand spun cloths for the purpose of consumption because it costs much more ?

The Honourable Sir Muhammad Zafrullah Khan : That may be the experience of the Honourable Member.

Mr. S. Satyamurti : May I know whether Government are considering these two questions, lowering of the import duty on yarn, and the increase of the subvention to handlooms ?

The Honourable Sir Muhammad Zafrullah Khan : No, with regard to (c) (ii). With regard to (iii) my Honourable colleague in charge of the Industries and Labour Department has already explained the position.

Mr. S. Satyamurti : May I know why not with regard to (c) (ii) ?

The Honourable Sir Muhammad Zafrullah Khan : Because Government consider that no case for reduction has yet been made out.

Prof. N. G. Ranga : Will Government try to investigate the extent to which the Indian mill made cloth is competing with the handloom woven cloth, to the disadvantage of the latter ?

The Honourable Sir Muhammad Zafrullah Khan : No, Sir.

Prof. N. G. Ranga : Why not, Sir ?

The Honourable Sir Muhammad Zafrullah Khan : I have already replied to all these questions. There is a certain scheme of protection granted to the mills and during the currency of that scheme it is not much use entering upon this investigation ?

Prof. N. G. Ranga : How long is this scheme to continue ?

The Honourable Sir Muhammad Zafrullah Khan : The Honourable Member is aware of it as well as myself.

Dr. Ziauddin Ahmad : Government are not contemplating the reduction of duty of yarn. May I ask whether Government is not considering it on account of revenue or whether they think that this thing is not required for the protection of the handloom weavers ?

The Honourable Sir Muhammad Zafrullah Khan : My reply referred to the fact that nothing immediate had been decided upon. As to what final decision will be arrived at on this matter later on on general grounds, I am unable to say.

Pandit Nilakantha Das : Are the Government thinking of any rebate or drawback to the handloom industry ?

The Honourable Sir Muhammad Zafrullah Khan : I submit, Sir, it is not fair to ask me as to what we are thinking of.

Pandit Nilakantha Das : Are they considering this aspect of the question—rebate or drawback.

The Honourable Sir Muhammad Zafrullah Khan : I have already said that no decision has been arrived at. As to what might or might not happen in the future I am unable to say.

EFFECTS OF THE RECOMMENDATIONS OF THE TARIFF BOARD ON THE COTTON TEXTILE INDUSTRY UPON THE HANDLOOM WEAVERS.

724. ***Prof. N. G. Ranga :** Will Government be pleased to state :

- (a) if they have examined the direct or indirect effects of the recommendations of the Special Textiles Tariff Board, upon the handloom weavers ;

(b) if they are aware of the protests made against those recommendations by the Andhra Provincial Handloom Weavers' Conference ; and

(c) if so, what they propose to do to protect the handloom weavers from the adverse effects of lowering the protective duties, which is recommended by the Special Tariff Board ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (b). Yes, Sir.

(c). I would refer the Honourable Member to paragraphs 105, 106 and 109 of the Report of the Special Tariff Board, copies of which are in the Library.

Prof. N. G. Ranga : In view of the fact that the Tariff Board of 1931 has recommended against the import duty on yarn, why is it that Government have failed to lower the import duty on yarn at least to help the handloom weavers, especially when they were prepared to lower the import duty in giving effect to the recommendations of the Special Tariff Board ?

The Honourable Sir Muhammad Zafrullah Khan : That is an argument, not a question.

RECOGNITION OF THE ANDHRA PASSENGERS' ASSOCIATION, BEZWADA, BY THE MADRAS AND SOUTHERN MAHRATTA RAILWAY.

725. ***Prof. N. G. Ranga :** Will Government be pleased to state :

(a) if the Andhra Passengers' Association (Bezwada) has applied to the Madras and Southern Mahratta Railway for recognition ;

(b) whether it is a fact that it has not yet been recognised by the Railway Agent ; and

(c) if so, whether they are prepared to see that the said Association which has been functioning for the last eight years is recognised soon ?

The Honourable Sir Muhammad Zafrullah Khan : (a), (b) and (c). I am not aware of what the Honourable Member means by the term "recognition". It is obviously open to the Association referred to, as to any other organised body, to make such representations to the Railway Administration as may be considered necessary or desirable.

Prof. N. G. Ranga : Is it not a fact that the various communications of the Andhra Passengers' Association to the Agent of the M. and S. M. Railway were not answered by the Agent and the Agent replied to say that he was not prepared to recognise any communications emanating from that association ?

The Honourable Sir Muhammad Zafrullah Khan : I have no information.

Prof. N. G. Ranga : Is it not a fact that various questions were put in this House during the first Session of this Assembly and Government said that they were trying to get into touch with the Agent of the M. and S. M. Railway and see that necessary steps are taken to recognise this association ?

The Honourable Sir Muhammad Zafrullah Khan : I do not know what the Honourable Member means by recognition of such an association.

Prof. N. G. Ranga : I may inform the Honourable Member that what I mean is that when such an association writes about the complaints of the passengers, the Agent is expected to reply to them, answering the various points raised.

The Honourable Sir Muhammad Zafrullah Khan : That would apply to any representation made by any individual or association. It really depends upon the substance of the representation and not upon the person who makes that representation.

Prof. N. G. Ranga : Is it open to the Agent of the M. and S. M. Railway not to take any notice of any complaints of such a legitimate organisation as the Andhra Passengers' Association ?

The Honourable Sir Muhammad Zafrullah Khan : There is no question of legitimate or illegitimate. It is for the Agent to consider representations that are addressed to him and it is for him to take such action as he may think desirable or feasible.

Mr. Mohan Lal Saksena : Is it the policy of Government not to encourage the formation of such associations ?

The Honourable Sir Muhammad Zafrullah Khan : There is no question of encouragement or discouragement. It is open to all who are interested in these matters to form themselves into associations.

Qazi Muhammad Ahmad Kazmi : Will the Honourable Member enquire from the Agent as to why he does not take any notice of the complaints that are sent to him by this association ?

The Honourable Sir Muhammad Zafrullah Khan : No, Sir.

Prof. N. G. Ranga : Will Government inquire whether it is not a fact that the Agent has refused to take any notice of the various complaints made by this organisation during the last six years ?

The Honourable Sir Muhammad Zafrullah Khan : No, Sir.

Prof. N. G. Ranga : Why not, Sir ?

The Honourable Sir Muhammad Zafrullah Khan : For the reason that it is for the Agent to decide whether he will or will not take notice of such complaints.

Prof. N. G. Ranga : May I know why the Agent refuses to consider any complaints that may be brought to his notice, with a view to pointing out defects in the railway administration and thus helping them to improve their own efficiency ?

The Honourable Sir Muhammad Zafrullah Khan : When a communication is received, I have no doubt it receives due consideration at the hands of the Agent. It is not incumbent on him to send a detailed reply to every representation that may be made to him.

ADDITIONAL POSTAL FACILITIES PROVIDED FOR RURAL AREAS.

726. *Prof. N. G. Ranga : Will Government be pleased to state :

- (a) what kind of additional postal facilities have been provided for rural areas since January, 1935 and to what extent ;
- (b) how many rural post offices, and post-boxes have been opened in different provinces ; and
- (c) what further facilities are proposed to be offered to rural areas ?

The Honourable Sir Frank Noyce : Information has been called for and a reply will be placed on the table of the House in due course.

Mr. K. Ahmed : Are Government aware, that there are certain post offices in the rural areas where, if a Member of the Legislative Assembly even buys postcards and envelopes and posts his letters, they are not delivered to the addressees ?

The Honourable Sir Frank Noyce : Sir, I am very much obliged to the Honourable Member for his efforts to drive his point home to my simple intelligence, but I am not aware of what he has stated and I hope it is not correct.

Mr. K. Ahmed : Are the Government aware that in these post offices and sub-post offices in the rural areas there is not a single postman appointed ?

The Honourable Sir Frank Noyce : No, Sir, I am not aware of that.

Mr. N. M. Joshi : May I ask whether Government propose to set apart a portion of their rural uplift grant for the purpose of providing additional rural facilities in postal matters ?

The Honourable Sir Frank Noyce : No, Sir. The provision of such facilities is a matter for the Posts and Telegraphs Department.

Prof. N. G. Ranga : What is the answer to part (c) of this question ?

The Honourable Sir Frank Noyce : The answer to part (c) of the question is the same as the answer to parts (a) and (b). The information has been called for and a reply will be placed on the table of the House in due course.

Mr. N. M. Joshi : May I ask why the provision of postal facilities to rural areas is not a part of the rural uplift work ?

The Honourable Sir Frank Noyce : It is a departmental matter. If you once start debiting the cost of additional post offices to the rural uplift grant, there will be hopeless confusion.

Mr. N. M. Joshi : May I ask whether a part of the rural uplift grant is not spent for the provision of radio facilities to villages ?

The Honourable Sir Frank Noyce : That is an entirely different matter. The Posts and Telegraphs Department is a commercial department ; the Broadcasting Department is not.

Mr. Lalchand Navalrai : May I ask the Honourable Member if the Government are aware that in the rural areas in Sind where post offices

are needed and the public want them and yet they are not being opened? If the Honourable Member does not know this, will he kindly make inquiries in the matter?

The Honourable Sir Frank Noyce : I am quite aware of that fact and, as the Honourable Member should be aware, I have devoted rather special attention to the question of Sind from time to time.

Prof. N. G. Ranga : Part (c) of the question relates to what additional facilities do Government propose to offer to rural areas. I want to know whether Government propose to supply more post boxes and arrange for more frequent deliveries of letters in these villages?

The Honourable Sir Frank Noyce : I would suggest to the Honourable Member that he should wait for the comprehensive reply which I propose to give him.

Mr. N. M. Joshi : May I ask whether postal service is not a monopoly of the State, and if it is a monopoly, whether inconvenience is not caused to the public if the monopoly service is not universalised?

Mr. President (The Honourable Sir Abdur Rahim) : That is a matter of opinion.

PROPOSED RETRENCHMENT OF RAILWAY STAFF AND THE LOWERING OF WAGES AND SALARIES.

727. ***Prof. N. G. Ranga :** Will Government be pleased to state :

- (a) whether they have asked the representatives of railwaymen to agree to the proposed retrenchment of staff and to the lowering of wages and salaries ;
- (b) if so, what the attitude of the railwaymen's representatives was ;
- (c) whether it is not a fact, (i) that since 1929 more than a lakh of railway workers drawing less than Rs. 100 per mensem had been retrenched, and (ii) that the higher paid people had been retrenched to a very much smaller extent ; and
- (d) how they propose to seek to justify their proposals to further retrench the lower ranks of the railwaymen and reduce their wages and salaries ?

The Honourable Sir Muhammad Zafrullah Khan : (a) and (b). The following subjects in certain of their aspects were discussed between the Railway Board and the All-India Railwaymen's Federation at two meetings held on the 9th April, and 10th July, 1936 :

- (i) Retrenchment of staff on State-managed Railways ;
- (ii) New scales of pay so far as they relate to State-managed Railways.

The results of discussions at these two meetings were summarised and published in Railway Board's communiqués, dated the 9th April, 1936, and 10th July, 1936, respectively, copies of which are in the Library of the House.

(c) (i) and (ii). The total number of staff employed on the principal railways in 1929-30 and 1934-35 respectively was as follows :

| | | |
|---------|---------|---------|
| 1929-30 | | 759,966 |
| 1934-35 | | 646,218 |

Government have no separate information in respect of staff drawing less than Rs. 100 per mensem and those drawing more than Rs. 100.

(d) I would refer the Honourable Member to the reply given to part (a) of starred question No. 644, asked by Dr. Ziauddin Ahmad on the 28th September, 1936. Government have no proposal for any general lowering of the wages and salaries of staff already in service.

Mr. N. M. Joshi : May I ask whether the Railwaymen's Federation have not asked for an inquiry into the dispute regarding the retrenchment on Indian Railways ?

The Honourable Sir Muhammad Zafrullah Khan : The information is contained in the two communiqués to which I have referred.

Mr. Lalchand Navalrai : May I know if the statement made in clause (c) that the higher paid people have been retrenched to a very much smaller extent is correct or not ?

The Honourable Sir Muhammad Zafrullah Khan : I have said that information is not readily available separately with regard to staff drawing above Rs. 100 and below Rs. 100.

Mr. N. M. Joshi : May I ask whether the Government propose to agree to the request of the All-India Railwaymen's Federation for an inquiry into the dispute regarding retrenchment ?

The Honourable Sir Muhammad Zafrullah Khan : No, Sir.

Mr. N. M. Joshi : Why not, Sir ?

The Honourable Sir Muhammad Zafrullah Khan : For the reasons which were given by the Chief Commissioner.

Mr. Lalchand Navalrai : Will the Honourable Member then find out whether it is a fact that the higher paid people have not been retrenched to the proper extent ?

The Honourable Sir Muhammad Zafrullah Khan : I have not the slightest doubt that they have been retrenched to the proper extent.

Mr. K. Ahmed : Is it not a fact that the principle observed in the matter of retrenchment was in accordance with the procedure laid down ? So the number being less amongst people drawing higher salaries were in smaller extent retrenched ? At the same time, following the rules of the Government and the procedure laid down in the matter of retrenchment by which they were perfectly justified in retrenching the officers drawing salaries of less than Rs. 100 and more ?

The Honourable Sir Muhammad Zafrullah Khan : Obviously, Government think that they were justified in laying down the procedure.

Dr. Ziauddin Ahmad : It is not a fact that not a single man drawing a salary of Rs. 500 and more was ever retrenched and the retrenchment in the case of the higher officers always meant shifting from one department to another ?

The Honourable Sir Muhammad Zafrullah Khan : I would require notice of that question.

RULES FRAMED BY THE GOVERNOR GENERAL IN COUNCIL AND THE LOCAL GOVERNMENTS UNDER SECTION 401 (6) OF THE CODE OF CRIMINAL PROCEDURE.

728. ***Mr. S. Satyamurti :** Will Government be pleased to state whether any rules have been framed by the Governor General in Council under section 401 (6), Criminal Procedure Code, and if so, to lay a copy of the rules on the table ?

The Honourable Sir Henry Craik : The Governor General in Council has not by general rules given directions as to the suspension of sentences. But the Home Department Notification, dated the 19th June, 1933, (a copy of which is in the Library) contains instructions for the submission of petitions (including petitions for suspension of sentences other than death sentences) : and the provincial Jail Manuals contain instructions for the submission of petitions from persons under sentence of death.

Mr. S. Satyamurti : I believe these rules lay down only the procedure with regard to petitions. I want to know whether these rules contemplate any test being laid down for the Governor General in Council in the exercise of his discretion under this question ?

The Honourable Sir Henry Craik : I have said that the Governor General in Council has not by general rules given directions as to the suspension of sentences. The rules which I referred to relate to the submission of petitions for the suspension of sentences.

Mr. S. Satyamurti : Are there any special rules ?

The Honourable Sir Henry Craik : No.

Mr. K. Ahmed : Is the Honourable Member aware that there are rules at the back of the Indian Criminal Procedure Code and any lawyer who happens to have read and passed an examination in the Criminal Procedure Code is familiar with them ?

The Honourable Sir Henry Craik : That question is addressed to my Honourable friend opposite, I think.

Mr. K. Ahmed : Is it not a fact that judicial discretion is exercised in the matter of suspension or remission of sentences under section 401, Criminal Procedure Code ?

Mr. S. Satyamurti : If necessary, I shall answer that question. I am not talking of judicial discretion but of executive discretion. My Honourable friend knows nothing of what he is talking about.

DEMOLITION OF THE SUPERIOR STAFF QUARTERS IN THE DICKY BAZAR IN SAHARANPUR REMOUNT DEPOT.

729. ***Qazi Muhammad Ahmad Kazmi :** Will Government be pleased to state :

(a) whether it is a fact that the Army Department have decided to demolish the superior staff quarters in the Dicky Bazar, in

Saharanpur Remount Depot ; if so, what the reasons are for this decision ;

- (b) whether it is a fact that the present quarters are held only at a nominal rent by the superior staff ;
- (c) whether it is a fact that new quarters that are proposed to be built for the superior staff will be situated at a distance of about two miles further away from the city and the present quarters ;
- (d) whether it is a fact that the proposed quarters will be rented out to the staff at a high rate of rent ;
- (e) whether it is a fact that the members of the staff have protested against this proposed change as being highly inconvenient to them in all respects ;
- (f) whether it is a fact that no complaints were ever made by members of the staff about these quarters ; if not, what the number of complaints and their nature is ;
- (g) whether it is a fact that the members of the staff have offered to carry out the repairs of the present quarters at their own expense, if they are allowed to retain them ;
- (h) whether they have considered the advisability of allowing the members of the superior staff to retain these present quarters ; if not, why not ; and
- (i) if the answer to part (h) be in the negative, whether they have considered the advisability of making the new quarters for the staff in the Dicky Bazar itself ; if so, with what result ; if not, why not ?

Mr. G. R. F. Tottenham : (a) Yes, they are unhealthy and insanitary and it is no longer economically possible to maintain them in a satisfactory state of repairs.

(b) No.

(c) No.

(d) No.

(e) No.

(f) No. Several complaints have been made regarding the unsatisfactory nature of the buildings.

(g) No.

(h) No, for the reasons given in reply to parts (a) and (f) and as the proposed site is nearer the city than the existing quarters.

(i) For administrative and hygienic reasons. Government have decided that it is not desirable to build the new quarters on the old site.

Qazi Muhammad Ahmad Kazmi : Is it a fact that the European quarters are close to the bazar and are they quite sanitary ?

Mr. G. R. F. Tottenham : The Honourable Member has got another question later on when I shall give him an answer to that question.

Qazi Muhammad Ahmad Kazmi : So far as sanitation is concerned, what is the distance of these quarters from the European quarters which are considered to be satisfactory ?

Mr. G. R. F. Tottenham : I do not know.

Qazi Muhammad Ahmad Kazmi : Are they not close to them ?

Mr. G. R. F. Tottenham : I do not know.

Qazi Muhammad Ahmad Kazmi : Is there no possibility of selecting any other place nearer to the present site than to take away these quarters to a distance of two miles further away from the city and the present quarters ?

Mr. G. R. F. Tottenham : I am afraid I do not know.

Qazi Muhammad Ahmad Kazmi : Has the Honourable Member enquired as to what is the special point about the sanitary condition of the present place ? Is it lower than the adjoining place ?

Mr. G. R. F. Tottenham : I have not enquired. I was not asked to do so.

Qazi Muhammad Ahmad Kazmi : Did the Honourable Member act upon the recommendation communicated to him by the staff about the sanitary condition of the place ?

Mr. G. R. F. Tottenham : I have given an answer to the question put by the Honourable Member and I have no further information beyond what I have already given.

Qazi Muhammad Ahmad Kazmi : Has the Honourable Member enquired about the rent that is now being paid by the superior staff for their quarters.

Mr. G. R. F. Tottenham : I was not asked to.

Qazi Muhammad Ahmad Kazmi : That question was specifically put in part (b) : whether it is a fact that the present quarters are held only at a nominal rent by the superior staff ?

Mr. G. R. F. Tottenham : I have answered, no.

Qazi Muhammad Ahmad Kazmi : What is the rent, I want to know.

Mr. G. R. F. Tottenham : The Honourable Member only asked if the rent is nominal and I have answered, no. If the Honourable Member wanted to know the actual rent, he should have put down a question to that effect.

Qazi Muhammad Ahmad Kazmi : What is the rent which the Honourable Member calls nominal which made him answer, no, to this question ?

Mr. President (The Honourable Sir Abdur Rahim) : It is the Honourable Member in his question who referred to nominal rent. If he wanted to know the actual rent, he should have drafted a specific question to that effect.

Qazi Muhammad Ahmad Kazmi : What would be the rent of the new quarters ?

Mr. G. R. F. Tottenham : I have not been asked to find out.

QUARTERS FOR THE STAFF OF THE SAHARANPUR REMOUNT DEPOT.

730. ***Qazi Muhammad Ahmad Kazmi** : (a) Will Government be pleased to state whether it is necessary for them to provide superior staff of a Remount Depot with quarters ? If so, under what rules ?

(b) If the answer to part (a) be in the negative, what is the reason for making new quarters for the superior staff in Saharanpur Remount Depot at a distance of two miles from the present quarters and investing a large sum of money in them ?

(c) What is the sum of money spent in the new quarters of the menial staff and what is the estimate of the projected buildings ?

Mr. G. R. F. Tottenham : (a) and (b). Government are not bound to provide quarters for their staff, but they do so if it is economical and increases their efficiency.

(c) The expenditure on the new quarters for the menial staff amounts to about Rs. 42,000. The estimate for the projected buildings is Rs. 10,000.

Qazi Muhammad Ahmad Kazmi : Does the Honourable Member know that the City is closer than the projected quarters that are being built for the superior staff ?

Mr. G. R. F. Tottenham : That does not arise out of this question.

Qazi Muhammad Ahmad Kazmi : The Honourable Member said that there is no obligation for the Government to build quarters for the superior staff, but for the purpose of convenience and efficiency, they may build quarters. My question is that efficiency and convenience can only mean nearness to the City ?

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member said in his reply, economy and efficiency.

Qazi Muhammad Ahmad Kazmi : Will it be more economical for Government to build these quarters and rent them out for the superior staff ?

Mr. G. R. F. Tottenham : They would not have done it unless they thought it economical and conducive to efficiency.

Qazi Muhammad Ahmad Kazmi : Are they going to save any money or spend more money, or are they going to get any money out of rent ?

Mr. G. R. F. Tottenham : They are going to get rent.

Mr. Mohan Lal Saksena : Have the Government ascertained whether the superior staff is going to occupy these quarters ?

Mr. G. R. F. Tottenham : Yes, Sir, they will occupy them.

Qazi Muhammad Ahmad Kazmi : Will they voluntarily occupy it or will they be forced to occupy it ?

Mr. G. R. F. Tottenham : They will be compelled to live in them.

Qazi Muhammad Ahmad Kazmi : When there is no obligation on the part of the Government to provide quarters, why should they build quarters at a long distance from the City away from all amenities of civilised life and then force the staff to occupy them ?

Mr. President (The Honourable Sir Abdur Rahim) : That is mere argument.

Mr. G. R. F. Tottenham : The Honourable Member seems to think that a certain number of Government officials have a grievance. These officials are perfectly entitled to make representation to the Government through the proper channel. We have received no representations of any kind from official quarters. Our information is that the people there are perfectly contented.

Dr. Ziauddin Ahmad : Is the efficiency of the staff increased by providing quarters at a distance of two miles from the City ?

Mr. G. R. F. Tottenham : Who said they were two miles away ?

Dr. Ziauddin Ahmad : It is in the original question.

Mr. G. R. F. Tottenham : And my answer was—No.

QUARTERS FOR THE STAFF OF THE SAHARANPUR REMOUNT DEPOT.

731. ***Qazi Muhammad Ahmad Kazmi** : (a) Will Government be pleased to state whether it is a fact that the present Dicky Bazar is situated close to the bungalow of the officers of the Remount Depot, Saharanpur, and the European officers have resented the closeness of the Indian habitation to their houses ?

(b) If the answer to part (a) be in the negative, what was the reason for the removal of the quarters of the menial staff from the Dicky Bazar, Remount Depot, Saharanpur to a distance of two miles from the present quarters ?

Mr. G. R. F. Tottenham : (a) No.

(b) I would refer the Honourable Member to the reply I gave to part (a) of his question No. 729.

Qazi Muhammad Ahmad Kazmi : What is the distance, may I know ?

Mr. G. R. F. Tottenham : I do not know.

Qazi Muhammad Ahmad Kazmi : Then how did the Honourable Member answer, no to my part (a) of the question.

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

CLEARING AWAY OF A MANGO GARDEN FOR THE CONSTRUCTION OF QUARTERS FOR THE MENIAL STAFF OF THE SAHARANPUR REMOUNT DEPOT.

732. ***Qazi Muhammad Ahmad Kazmi** : (a) Will Government be pleased to state whether it is a fact that a mango garden existed at the place to which the quarters of the menial staff of Remount Depot, Saharanpur, have been removed, and to which the quarters of the superior staff are proposed to be removed, and part of that garden has been cleared for those quarters ?

(b) If the answer to part (a) be in the affirmative, will Government be pleased to state whether the fruit of the garden used to be sold at about Rs. 10,000 per year ? If not, for what sum were they sold ?

(c) If the answer to part (b) be in the affirmative, what were the reasons for clearing away that garden ?

Mr. G. R. F. Tottenham : (a) and (c). The new quarters for the menial staff were constructed on a portion of the garden in which the trees had grown old and unproductive. It is not proposed to locate the quarters of the superior staff within the area of the mango garden.

(b) During the last 43 years, only on one occasion has the produce of this garden fetched Rs. 10,000. The average sale proceeds rarely exceed Rs. 1,000 per annum.

Qazi Muhammad Ahmad Kazmi : When was the garden last sold ?

Mr. G. R. F. Tottenham : I do not know.

Qazi Muhammad Ahmad Kazmi : Is it not a fact that it was sold even last year ?

Mr. G. R. F. Tottenham : If the Honourable Member wanted information on that point, he should have put down a specific question. I have answered the question he has asked and I have no further information.

Qazi Muhammad Ahmad Kazmi : This arises from the answer which the Honourable Member gave that the garden has become unproductive. How did the Honourable Member satisfy himself that the reply which his staff sent him that the garden was unproductive was correct ?

Mr. G. R. F. Tottenham : I have not inspected the trees myself.

Qazi Muhammad Ahmad Kazmi : Did they report to you since when the garden was not sold ?

(No answer.)

Mr. Mohan Lal Saksena : May I know in which year it fetched Rs. 10,000 ?

Mr. G. R. F. Tottenham : I have given my answer and I have no further information on the subject.

DICKY BAZAR IN THE SAHARANPUR REMOUNT DEPOT.

733. ***Qazi Muhammad Ahmad Kazmi :** Will Government be pleased to state :

(a) whether it is a fact that the Dicky Bazar with its *abadi* in Remount Depot, Saharanpur, has been in existence for about a century ; if not, for what period has it been in existence ;

(b) if it is a fact that a *pucca* temple and *pucca* mosque existed in the Dicky Bazar ;

(c) whether Government have considered that the gradual excavation of the Dicky Bazar would lead to the desertion of the temple and the mosque ; if so, what arrangement have they made to stop such desertion ?

(d) whether Government have considered that the new place to which they are sending the population of the Dicky Bazar shall have to be provided with at least a mosque and a

temple ; if so, what arrangements have Government made for them ; if none, why not ?

Mr. G. R. F. Tottenham : (a) Approximately since 1843.

(b) Yes.

(c) and (d). It will still be possible for persons who wish to do so to use the existing places of worship. No new arrangements are therefore necessary.

WAR BONDS AND CASH CERTIFICATES ISSUED DURING THE GREAT WAR
REMAINING UNPAID.

734. ***Mr. Lalchand Navalrai :** (a) Will Government be pleased to state what is the amount of the war bonds and cash certificates, issued during the time of the Great War, still remaining unpaid by them ?

(b) What is the interest payable thereon up to now ?

(c) How much money of these war bonds and cash certificates have been claimed and paid up, since August 1934 ?

(d) What attempts do Government make to find out the depositors or their heirs ?

(e) With reference to the reply to question No. 402 by Bhai Parma Nand, given on the 6th August, 1934, will Government be pleased to state if it is a fact that they have in their custody copies of war bonds and cash certificates and entries thereof in the postal registers to enable them to answer as to how many war bonds and postal cash certificates have not been cashed, even after the expiry of 12 years, by their purchasers without their renewal ?

(f) Are there any unpaid old war bonds and cash certificates which are not likely to be claimed by the depositors owing to the lapse of long time, or on account of their or their descendants' whereabouts not being known ?

(g) What do Government propose to do with regard to such war bonds and cash certificates ?

(h) Are Government prepared to transfer the amount of these bonds and cash certificates as loans to respective Provincial Governments for nation-building purposes subject to their liability to pay the claimants when called upon ? If not, why not ?

The Honourable Sir James Grigg : (a) and (e). Government have been able to obtain the following figures from their registers :—

War Bonds Rs. 11,73,000,

Cash Certificates Rs. 22,52,000.

(b) The information is not available.

(c) War Bonds Rs. 87,000. Cash Certificates Rs. 40,000.

(d) Payment is only made when a Bond or Certificate is surrendered. As War Bonds are transferable either by endorsement in the case of Promissory Notes or by delivery in the case of Bearer Bonds, Government are unable to find out their present owners. Any action on the part of Government to trace ownership of Cash Certificates would entail considerable

expenditure and would give rise to false claims, litigation and consequent loss to Government.

(f) I am not in a position to say.

(g) The money will be paid to the holders whenever they can establish their claim.

(h) No.

Mr. Lalchand Navalrai : With regard to clause (h), may I know if Government have consulted the Provincial Governments as to the advisability of transferring these loans to them ?

The Honourable Sir James Grigg : No, Sir. I do not think it is a very fruitful object of consultation to ask people if they would like some money if we were prepared to give it to them. The answer to that would be too easy.

Mr. Lalchand Navalrai : Has the Honourable Member even consulted them and got their reasons to come to a mature judgment themselves ?

The Honourable Sir James Grigg : No, Sir, certainly not. There is not the slightest need to consult anybody about their attitude towards a projected transaction of the something for nothing order.

Mr. Mohan Lal Saksena : Will Government publish in the newspapers the numbers of these war bonds and cash certificates for the information of these owners ?

The Honourable Sir James Grigg : I must have notice of that question.

PAYMENT OF FULL VALUE FOR TORN CURRENCY NOTES.

735. ***Qazi Muhammad Ahmad Kazmi :** Will Government be pleased to state :

(a) whether it is a fact that up to the middle of the year 1932, the Currency Department gave full value for all currency notes which were torn into two peices, and about which the Department was satisfied that they formed part of the same note ;

(b) whether it is a fact that since the time mentioned in part (a), or thereabout, the Currency Department, Government Treasuries and other Departments have been instructed not to give full value for such currency notes if they are torn through the number of the note, even though the figures of the number be intact and the Department are satisfied that they form part of one and the same note ;

(c) whether it is a fact that for all such currency notes of the type mentioned in part (b) above, the Department pays only half the value ;

(d) if the answer to parts (a), (b) and (c) be in the affirmative, whether they have considered the great inconvenience and loss caused to the public by this practice ; and

- (e) whether they have considered the advisability of ordering the Department to revert to the old practice of paying full value for all such torn currency notes about which they are satisfied that they are parts of the same note and make any changes in the rules if necessary ? If not, why not ?

The Honourable Sir James Grigg : I would invite the attention of the Honourable Member to the replies to Pandit Satyendra Nath Sen's starred question No. 839 on the 21st March, 1933, and to Mr. Sri Prakasa's starred question No. 238 during the current Session.

IMPOSITION OF IMPORT DUTY ON RAILWAY STORES AND LOCOMOTIVES.

736. ***Mr. S. Satyamurti :** Will Government please state what import duty is imposed on railway stores in general and railway locomotives in particular ?

The Honourable Sir James Grigg : I would refer the Honourable Member to the First Schedule to the Indian Tariff Act, 1934, a copy of which is in the Library.

IMPORT DUTY ON MOTOR VEHICLES.

737. ***Mr. S. Satyamurti :** Will Government please state why the import duty on motor vehicles is heavier than on railway locomotives ?

The Honourable Sir James Grigg : Railway locomotives, like industrial machinery, with which they are classified in the Import Tariff, have always enjoyed a specially low rate of duty in the interests of the industrial development of the country. The rate of duty on motor vehicles has been dictated purely by revenue considerations.

Mr. S. Satyamurti : Since the railway industry is not paying, may I know whether Government will reconsider the question of having lower duties on railway locomotives in order to promote that industry ?

The Honourable Sir James Grigg : I have considered that from time to time but there again revenue considerations have to be borne in mind, though in the case of railway locomotives they are not quite so dominant as in the case of motor vehicles.

Prof. N. G. Ranga : Is this import duty on motor vehicles levied in proportion to the cost of the motor vehicles ?

The Honourable Sir James Grigg : It is on an *ad valorem* basis. There is no specific duty, to the best of my recollection, on motor vehicles.

PAYMENT OF LAND TAX BY RAILWAY COMPANIES.

738. ***Mr. S. Satyamurti :** Will Government please state whether the Railway Companies pay land tax on all land over which their permanent-way runs ?

The Honourable Sir Muhammad Zafrullah Khan : It is presumed that the Honourable Member is referring to the assessment of land revenue. If so, he is referred to the notes below rule 9 in Appendix L to the Revised Rules relating to the Acquisition of Land for Railway Purposes, 1918, a copy of which is in the Library of the House.

Mr. S. Satyamurti : Will the Honourable Member kindly tell me whether they do pay land tax or not ? He can say yes or no.

The Honourable Sir Muhammad Zafrullah Khan : No, Sir, it cannot be answered as yes or no. Different considerations apply to different kinds of land. If land is acquired from private people and is of a category which was already assessed to land revenue, certain considerations apply. If it is acquired from a Local Government or other authority and was not assessed to land revenue when it was acquired, other considerations apply. The Honourable Member will therefore see that the question is not capable of being replied to as yes or no.

PAYMENT OF PROPERTY TAX TO DISTRICT BOARDS AND MUNICIPALITIES BY RAILWAY COMPANIES.

739. ***Mr. S. Satyamurti :** Will Government please state whether the Railway Companies are paying any property tax to the various District Boards and Municipalities on their permanent-way outside the actual railway station limits ?

The Honourable Sir Muhammad Zafrullah Khan : The payment of local taxation by Railways is governed by section 135 of the Indian Railways Act, 1890 (IX of 1890) and each case is considered on its merits.

RESTRICTION OF THE NUMBER OF AIRCRAFTS OPERATING BETWEEN VARIOUS CENTRES IN INDIA.

740. ***Mr. S. Satyamurti :** Will Government please state whether there will be any proposals before the House at present to restrict the number of aircrafts operating between various centres in India in view of the possibility of aircrafts becoming in future a serious competitor to all other forms of transport ? If not, why not ?

The Honourable Sir Frank Noyce : No. In view of the high cost involved, there is very little likelihood of air-transport becoming a serious competitor to other forms of transport. The Government of India see no necessity for restrictions on aircraft operation in India other than those dictated in the interests of safety.

Mr. S. Satyamurti : Why are these serious calamities happening to the Imperial Airways ?

The Honourable Sir Frank Noyce : I expect they would like to know themselves, Sir.

OBsolete RAILWAY STORES, STOCK, PLANT AND MACHINERY, ETC.

741. ***Mr. S. Satyamurti :** (a) Will Government please state whether they have taken the necessary steps to see that all obsolete railway stores, stock, plant and machinery, as certified by an independent authority, are written off before they take over any Railways ?

(b) Will Government please state whether steps have been taken by them to see that all railway buildings have been depreciated by an independent authority to present day values and are in a perfect state of repair before being taken over from any railway ?

(c) Will Government please state whether the items of depreciation and obsolescence mentioned in parts (a) and (b) will be written off from the amount which would be paid by the Government of India to the Railway Companies whose shares they are acquiring ?

The Honourable Sir Muhammad Zafrullah Khan : (a) Yes. In the past when the management of State-owned lines (such as East Indian, Great Indian Peninsula and Burma Railways) was taken over by Government, an investigation by special officers was made in order to see whether any adjustment in accounts was necessary on account of undue accumulation of surplus and obsolete stocks, etc.

(b) As the Honourable Member is aware, a Depreciation Fund is maintained for all State-owned Railways. The relevant contracts do not permit these rules being applied to Company-managed Railways.

(c) The amounts payable on purchase are fixed by the relevant contracts ; but any adjustments permitted by the contracts will be made when a final settlement is arrived at.

Mr. S. Satyamurti : With reference to clause (b), may I take it that there is no depreciation on railway buildings with regard to the Company-managed Railways ?

The Honourable Sir Muhammad Zafrullah Khan : The rules with regard to depreciation fund which apply to State Railways do not apply to Company-managed Railways. As to what the exact rules are, I must ask for notice.

Mr. S. Satyamurti : With reference to clause (c), may I know exactly what will be the difference between actual depreciation and the depreciation which Government can take account of under the rules ?

The Honourable Sir Muhammad Zafrullah Khan : I did not say the rules. I said the terms of the contracts.

Mr. S. Satyamurti : I am sorry. May I know whether Government have any information as to the difference between actual depreciation in the case of these railways and the depreciation which they are entitled to take account of according to the terms of the contracts ?

The Honourable Sir Muhammad Zafrullah Khan : I am afraid I could not say without notice.

IMPORT AND EXCISE DUTIES ON COAL USED BY RAILWAYS.

742. ***Mr. S. Satyamurti :** (a) Will Government please state what is the import duty on coal used by the railways ?

(b) Will Government please state what is the excise duty on coal mines in this country and used by the railways ?

(c) Will Government please state why they impose such a heavy import duty on petrol in view of the very low import duty and the absence of excise duty on coal ?

The Honourable Sir James Grigg : (a) The rate of duty on coal (for whatever purpose intended) is 10 annas per ton.

(b) Coal is not subject to an excise duty.

(c) Coal is the fuel employed in industries, railways and certain other enterprises. The duty has been kept low in order not to impose too heavy a burden on the industries of the country and public utility concerns. These considerations are not applicable in anything like the same degree to petrol, the duty on which has been fixed with reference to the necessities of the revenue.

Mr. B. Das : Is the Honourable Member aware that the coal industry is suffering very serious handicaps and cannot stand any excise duty ?

The Honourable Sir James Grigg : The Honourable Member has not apparently heard me properly. I said there is no excise duty.

NOTICES SENT OUT BY INCOME-TAX OFFICERS TO INCOME-TAX PAYERS
TO SEND IN THEIR RETURNS.

743. ***Mr. Sri Prakasa :** (a) Is it a fact that on the very first day of a new financial year the Income-tax Officers send out notices to all income-tax payers to send in their returns within the next few weeks ?

(b) Is it not a fact that practically all income-tax payers ask for extension of time in view of their inability to close up their preceding year's accounts within such a short time, and that such extension is invariably given ?

(c) Are Government prepared to ask Income-tax Officers to send notices to different income-tax payers for sending the return of their incomes, about the time particular individuals usually do every year, as inferable from their records of previous years ?

The Honourable Sir James Grigg : (a) The notices are issued as convenient to the department on or after the 1st April each year. Under section 22 (2) of the Indian Income-tax Act, 1922, the notice must allow a period of not less than 30 days for the furnishing of the returns.

(b) No.

(c) The Government see no reason to issue such instructions.

Mr. Sri Prakasa : With reference to part (c), what harm is there if such instructions are issued, in view of the fact that they would save trouble to the income-tax officers as well as harassment to the income-tax payers ?

The Honourable Sir James Grigg : By law the returns have to be issued very shortly after the beginning of the financial year ; and obviously to issue instructions to allow the convenience of income-tax payers to be unlimited is simply to invite delay in the furnishing of the returns, and the revenues of the country cannot stand that.

Mr. Sri Prakasa : In view of the fact that notices are sent out within a week of the beginning of the financial year and in view also of the fact that it is not possible for merchants and others who pay income-tax to prepare their accounts within such a short time, will Government consider the desirability of extending this time ?

The Honourable Sir James Grigg : I assume the Honourable Member has in mind particularly the United Provinces—I gather that the custom

does vary from province to province. Do I understand from the Honourable Member that in the case of companies which have audited accounts it is impossible to produce them within 30 days of the 1st April ?

Mr. Sri Prakasa : I am talking of private individuals like myself.

The Honourable Sir James Grigg : Frankly speaking, I do not think that a private individual who is not dependent on audited accounts can complain if he is given 30 days to make up his accounts ; 30 days is the period allowed by law.

SHORT NOTICE QUESTION AND ANSWER.

DUTY ON THE IMPORTS OF ADEN SALT INTO INDIA AFTER SEPARATION.

Mr. Husenbhai Abdullabhai Laljee : Will Government be pleased to state what will be the duty payable on Aden salt on importation into ports in British India after the separation of Aden ?

The Honourable Sir James Grigg : In the ordinary course, Aden salt would, on separation, cease to be entitled to the benefits enjoyed by Indian salt under the Salt Additional Import Duty Act ; but the Government of India propose, in the special circumstances of the case, to secure that Aden shall retain these benefits during the remaining period of the life of the Act as at present extended, that is, till the end of April, 1935. This will be effected under the powers conferred on the Governor General in Council by section 23 of the Sea Customs Act.

Prof. N. G. Ranga : Are Government aware of the fact that salt licences in various parts of Southern India have demanded that an import duty should be levied upon the salt imports from Aden ?

The Honourable Sir James Grigg : Yes, Sir : I am aware of that and I am aware of every other consideration in connection with salt.

Mr. B. Das : Are Government prepared to allow Indian firms in Aden manufacturing salt to continue to receive the same privileges regarding salt protection as the industry in India ?

The Honourable Sir James Grigg : If the Honourable Member had listened to my answer that is precisely what I said would happen.

Mr. B. Das : May I inquire whether if subsequently the Salt Act is extended, the Indian firms and not the Italian firms in Aden will get the same facilities as Indian manufacturers in India ?

The Honourable Sir James Grigg : The Honourable Member had better wait and see if it is extended.

Prof. N. G. Ranga : Is it not a fact that the production of salt in India is to some extent restricted in order to facilitate the imports of salt from Aden ?

The Honourable Sir James Grigg : I think the Honourable Member had better have his argument with the Honourable Member below him and when they have settled each other's hash, I would like to know what the result is.

MOTION FOR ADJOURNMENT.

GOVERNMENT'S CURRENCY POLICY.

Mr. President (The Honourable Sir Abdur Rahim) : I have received notice of a motion for adjournment of the House from Qazi Muhammad Ahmad Kazmi to the following effect :

“ I want to move the following adjournment motion today :

That the House do adjourn to discuss the following definite matter of urgent public importance, *viz.*, the failure of the Government of India to review their currency policy and keeping an appreciated value of the rupee in spite of the world-wide depreciation of the currencies, chiefly brought about by the decisions of the European States.”

Is there any objection to it ?

The Honourable Sir James Grigg (Finance Member) : Yes, Sir : I object to this motion on the ground that it is barred. The only new factor in the currency situation has been the decision of France and reported decisions on the part of Switzerland and Holland to devalue. The currency policy of the Government of India has been unchanged for years and there has been no new factor about that. The only definite decision in the matter of devaluation is to the best of my knowledge that of France. That was announced in the papers of Sunday. In the case of Switzerland there are certainly reported decisions : in the case of Holland there are rumours of decisions : but, as I said just now, to the best of my belief, there have been no actual definitive decisions of either of those countries, but if they have the news of them appeared in the papers on Monday. This is Wednesday : in the case of France the Honourable Member missed the opportunity of Monday and Tuesday (*Honourable Members* : ‘ Oh ’) and in the case of Switzerland and Holland, if it arises at all, he missed the opportunity of Tuesday. So that, I maintain that the motion is barred. But quite apart from.....

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member means it is not urgent ?

The Honourable Sir James Grigg : It is no longer urgent, Sir. But, in addition, there is a definite misstatement in the notice of motion. It says “ in view of the world-wide depreciation of the currencies chiefly brought about by the decisions of the European States ”. As I said just now, the only definitive new decision is that of France : there are projected or reported decisions on the part of Switzerland and Holland. Now, a decision of the gold bloc does not constitute a world-wide decision, so there is that inaccuracy of fact. There is another inaccuracy of fact too, which I think is more important ; and that is this : the Government of India have reviewed their currency policy and they have decided, in accordance with the spirit of the tripartite declaration by France, Great Britain and the United States, that they will in no way lend themselves to a competitive depreciation of currencies ; and that means quite definitely that we propose to maintain the present sterling parity of the rupee. Any other decision would, in our view.....

Mr. S. Satyamurti (Madras City : Non-Muhammadan Urban) : This is arguing the case, Sir, without giving an answer to the point whether objection is taken.

Mr. President (The Honourable Sir Abdur Rahim) : It is arguing the case.

The Honourable Sir James Grigg : I have got one more sentence to say, because this is a very important matter. Any other decision would be contrary to India's interests.....

Mr. S. Satyamurti : He cannot say that.....

The Honourable Sir James Grigg : And it would be contrary to the interests of international recovery at a time when there is greater hope of international co-operation in currency matters than at any time for the last five years.....

Pandit Govind Ballabh Pant (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : Are these remarks in order ?

Mr. President (The Honourable Sir Abdur Rahim) : I cannot say that the Honourable Member is not in order, but he is really speaking on the merits of the motion.

Pandit Govind Ballabh Pant : I suggest that he could say all that when the motion is discussed.

Mr. President (The Honourable Sir Abdur Rahim) : What I mean is that he is objecting to the motion as Member of the Government in charge : and he has to state as Finance Member whether he decides whether he would agree to the motion or not.

Pandit Govind Ballabh Pant : I would suggest to the Government as this is a very important matter, they should give us a day for the consideration of this motion. In that case this will be withdrawn.

The Honourable Sir James Grigg : That is another matter.

Qazi Muhammad Ahmad Kazmi (Meerut Division : Muhammadan Rural) : Sir, so far as delay is concerned, I may submit that the Honourable the Finance Member himself admits it is a very important matter, but he wants to stick to his policy. Matters relating to currency and exchange are not such that an opinion can be formed in one single day. As the Honourable Member says, we got the news on Monday ; and we have got to see whether the news created any repercussions in the markets of the world or not. If there happened to be no such effect, there is no question of moving an adjournment motion.

Mr. President (The Honourable Sir Abdur Rahim) : I hold that the motion is in order. Those Members who are for leave being granted will rise in their seats.

(More than twenty-five Members having risen.)

Mr. President (The Honourable Sir Abdur Rahim) : As more than 25 Members have risen, the motion will be taken up at 4 o'clock.

Honourable Members ought not to carry on conversation loudly in the House : it is very difficult for the Chair to make itself heard.

THE INDIAN COMPANIES (AMENDMENT) BILL—contd.

Mr. President (The Honourable Sir Abdur Rahim) : The House will now resume consideration of the Bill further to amend the Indian Companies Act, 1913, for certain purposes, as reported by the Select Committee.

Pandit Govind Ballabh Pant (Rohilkund and Kumaon Divisions : Non-Muhammadian Rural) : Sir, I move :

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, after the words ‘ remove a managing agent ’ the words ‘ for fraud or breach of trust or gross negligence or mismanagement, or ’ be inserted.”

I suggest, Sir, that the word ‘ or ’ should be added after the word ‘ mismanagement ’, and then the clause will run as follows :

“ A company by resolution passed at a general meeting, of which notice has been given to the managing agent, in the same manner as to members of the company, remove a managing agent for fraud, or breach of trust, or gross negligence or mismanagement, or if he is convicted of an offence in relation to the affairs of a company ”,

and so on.

Sir, under the clause as it found place in the original Bill, fraud and breach of trust were included, and it was provided in the original Bill, at page 15, clause 87-B (a) as it then stood, that a managing agent may be removed not only in the case of a conviction, but also for fraud or breach of trust. In the original report of Mr. Sen, it was proposed that fraud, gross negligence, breach of trust or breach of duty should also justify the removal of the managing agent. The other day while speaking on the subject, the Honourable the Law Member made the following remarks :

“ Now, Sir, Mr. Avinashilingam Chettiar made a suggestion which, I venture to submit, required serious consideration. The House will remember that he made certain criticisms into which I need not go in great detail. I refer to the section which relates to the removal of a director after conviction in court. . . . I find that under the law the managing agent is liable to be removed for pecuniary misconduct, whether it is a case of embezzlement or theft or cheating or misappropriation or fraud. He is equally removable in case of negligence in business or conduct calculated to injure the employer's business. He is also removable for incompetence or permanent disability.”

This is what the Honourable the Law Member said on the 10th of September last.

The amendment I am proposing now does not cover as wide a ground as the Honourable the Law Member, but I think it is necessary to provide that gross negligence or mismanagement or fraud should be available as adequate grounds to a company if it chooses to remove a managing agent. The removal of a managing agent will be made by the company only when the company is satisfied that the offence or breach is of such a character that the man should be removed, and not otherwise. I think, Sir, the amendment is quite simple and plain, and I need not take more time in placing it before the House for its acceptance.

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

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, after the words ‘ remove a managing agent ’ the words ‘ for fraud or breach of trust or gross negligence or mismanagement, or ’ be inserted.”

The Honourable Sir Nripendra Sircar (Law Member) : Sir, I am opposing this amendment, not in the interests of the managing agents, but in the interests of the shareholders, for this reason. As my friend was good enough to read my speech, I had in mind Smith's Master and Servant, where we have got the different heads for which a servant can

[Sir Nripendra Sircar.]

be dismissed. My friend has picked out four of them, namely fraud, gross negligence, breach of trust and mismanagement. Now, Sir, the result of that will be as if the other grounds are not open to the shareholders for his removal. We are gaining nothing, but we are losing something from the point of view of the shareholders who can dismiss him. For instance, the House will find that for incompetence a servant can be dismissed. That is not one of the grounds mentioned here; but what is gained by putting in four grounds on which under the general law a servant can be dismissed by the master and omitting something? I submit, Sir, if the general law is left untouched, it is much more favourable to the masters, namely the shareholders than this amendment. Sir, I oppose this amendment.

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

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, after the words ‘ remove a managing agent ’ the words ‘ for fraud or breach of trust or gross negligence or mismanagement, or ’ be inserted.”

The motion was negatived.

Mr. Suryya Kumar Som (Dacca Division : Non-Muhammadan Rural) : Sir, I move :

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, for the words ‘ if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable ’ the words ‘ if he is convicted of an offence involving moral turpitude ’ be substituted.”

Sir, there is no sense in saying that if a man is found dishonest in relation to the management of his company or if he is found to be a man of dishonest character in relation to a company, he is not to be trusted. What I submit is, a man cannot be honest and dishonest compartmentally. If a man is dishonest, he will be dishonest in regard to all matters. Simply because he does not deal honestly in regard to a certain affair, he cannot always be called dishonest; it may be an accident that he does not deal honestly in regard to his company. I submit that the Honourable the Law Member would please see his way to accept this amendment, that is, if a man is convicted of an offence involving moral turpitude.....

The Honourable Sir Nripendra Sircar : What is moral turpitude ?

Mr. Suryya Kumar Som : Moral turpitude is a word which has by this time acquired a very common significance; just as if you say an Arya Samajist, he may be Hindu, a Christian or anybody, it is very difficult to define it exactly. But everybody understands it.

The Honourable Sir Nripendra Sircar : What are the sections of the Penal Code you have in mind ?

Mr. Suryya Kumar Som : Cheating, theft, criminal misappropriation, breach of trust and other things.

The Honourable Sir Nripendra Sircar : What about 376 ?

Mr. Suryya Kumar Som : Rape ?

Dr. Ziauddin Ahmad (United Provinces Southern Divisions : Muhammadan Rural) : Is negligence moral turpitude ?

Mr. Suryya Kumar Som : No. Moreover, it is an enabling section ; it is not a mandatory section. It is not a command that a man, if found to be so and so, should be removed. It is only an enabling section and it will be for the company to consider to what extent they will go. My point is that in extreme cases which lie on the border line between dishonesty and irregularity this action may not be taken by the shareholders. In the Bill as introduced by the Leader of the House, there was no such thing as any offence of fraud in relation to the company, nor do we find any reference to it in Mr. Sen's report, and it was only during the discussion in the Select Committee that this change has been introduced. I hope the Leader of the House will accept my amendment.

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

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, for the words ‘ if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable ’ the words ‘ if he is convicted of an offence involving moral turpitude ’ be substituted.”

The Honourable Sir Nripendra Sircar : I oppose this amendment. This will be thoroughly unworkable. Ideas about morals change from man to man and from hour to hour, and I do not know what is meant by moral turpitude. It is quite easy to imagine that a managing agent who runs away with another man's wife is the best business man who is available in the market. (Laughter.)

Pandit Lakshmi Kanta Maitra (Presidency Division : Non-Muhammadan Rural) : Does my Honourable friend, Sir Homi Mody, accept that ? (Laughter.)

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

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, for the words ‘ if he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable ’ the words ‘ if he is convicted of an offence involving moral turpitude ’ be substituted.”

The motion was negatived.

Dr. Ziauddin Ahmad : Sir, I move :

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, the words ‘ and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable ’ be omitted.”

I set an example. I move the amendment without a speech.

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

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, the words ‘ and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable ’ be omitted.”

The Honourable Sir Nripendra Sircar : I oppose it without a speech. (Laughter.)

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

“ That in clause 42 of the Bill, in sub-section (a) of the proposed section 87B, the words ‘ and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable ’ be omitted.”

The motion was negatived.

Mr. L. C. Buss (Nominated Non-Official) : Sir, I move :

“ That in clause 42 of the Bill, to sub-section (a) of the proposed section 87B, the following proviso be added :

‘ Provided that a Managing Agent shall not be liable to be removed under the provisions hereof if the offending partner, director or officer as aforesaid shall be expelled or dismissed by the Managing Agent within 30 days from the date of his conviction or if his conviction shall be set aside on appeal.’

Sub-section (a) of section 97-B provides for the removal of a managing agent on conviction for an offence in relation to the affairs of the company. It goes on to say that an offence committed by any member or director of the managing agent's firm or company or any officer shall be regarded as the offence of the managing agent. The amendment moved is intended to protect the managing agent from such a serious penalty as the loss of the managing agency on account of some act of an individual who is his partner or co-director or employee provided the person actually implicated is removed from his position, or provided he is acquitted of the alleged offence on appeal. That, Sir, I think is an entirely reasonable suggestion. If the managing agent takes immediate steps to get rid of the wrong doer I can see no reason why the managing agency should be forfeited. Equally if an appeal against his conviction resulted in its being set aside, it would, I consider, be most improper for the penalty provided in this section to come into effect. It must be emphasised that section 87-B does not in any sense affect or impair the right of the company to obtain compensation from the managing agent as a result of the commission of an offence under the section. That is an entirely separate matter, and all that the section does is to impose an additional and specific penalty in such cases. The managing agent in any case remains responsible for the actions of his associates, and all that the amendment seeks to do is to prevent the imposition of the specific penalty in a harsh and unconscionable manner. Sir, I move.

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

“ That in clause 42 of the Bill, to sub-section (a) of the proposed section 87B, the following proviso be added :

‘ Provided that a Managing Agent shall not be liable to be removed under the provisions hereof if the offending partner, director or officer as aforesaid shall be expelled or dismissed by the Managing Agent within 30 days from the date of his conviction or if his conviction shall be set aside on appeal.’

The Honourable Sir Nripendra Sircar : Sir, I would like to point out that there are a few drafting inaccuracies in this way. In the third line of the proviso where it is said, “ or officer as aforesaid shall be expelled or dismissed by the ” I suggest that the words “ shall be ” ought to be changed to “ is ”, so that it will read like this: “ or officer

aforesaid is expelled or dismissed by the". Again, in the last line we have the words "or if his conviction shall be set aside on appeal". I suggest that the word "is" be substituted for the words "shall be". I have a further suggestion to make, that, although "partner" and "member" may mean the same thing, throughout the Bill we have used the word "member" and it is much better to use the same word instead of the word "partner". I would suggest therefore that in the second line of the proviso, the word "partner" should be changed into "member". Subject to these changes, I accept the amendment.

Mr. S. Satyamurti (Madras City : Non-Muhammadian Urban) : There is one point. What is to happen in the interval before the conviction is set aside? These appeals may take a long time. It seems to me there is a lacuna in this amendment. I am not against the spirit of the amendment. When the offending member goes out, there is no point in punishing the managing agents. It seems to me, apart from the period of limitation provided in the Code of Criminal Procedure for appeals, there are inevitable delays in the disposal of appeals. It may take six months, or it may take one year. The appeal may even go to the Judicial Committee of the Privy Council.

An Honourable Member : There may be a revision petition to the High Court.

Mr. S. Satyamurti : It seems to me that, unless this amendment is drafted in such a manner as to provide that once the conviction is there the man is removed, although he may have a right to come back if the conviction is set aside on appeal, you will be letting in a number of months which may be anything more than a year or less than a year. A man who is convicted and about whose guilt there is no definite opinion until the appellate court has finally disposed of it—What is to happen to him? This seems to me to be a lacuna which should be looked into. Otherwise, it will mean, that taking advantage of the time which inevitably is involved in the disposal of an appeal, criminals who may be ultimately convicted may continue to be in managing functions, which I think the Law Member does not want.

The Honourable Sir Nripendra Sircar : What strikes me is this. After all he does not automatically go out on his conviction. The shareholders have got to call a meeting and I was presuming that where an appeal has been filed the shareholders will possibly not wish to proceed to pass a resolution until the result of the appeal is known. I am under the impression that not much difficulty will be created but I have not heard any concrete suggestion from my Honourable friend as to how he wants the amendment to be changed. I quite see the force of his point. I would ask him to think over this matter. When an appeal has been filed, is it likely that the shareholders will dismiss him before the appeal has been disposed of?

Mr. M. A. Jinnah (Bombay City : Muhammadian Urban) : Until the appeal is disposed of, the conviction is suspended.

The Honourable Sir Nripendra Sircar : I think there will be no practical difficulty.

Sardar Sant Singh (West Punjab : Sikh) : May I know if by conviction the Law Member means the conviction by the trial court or the

[Sardarⁱ Sant Singh.]

ultimate conviction. Suppose the appeal is dismissed and the man is let off by the High Court. I think conviction means ultimate conviction. I think the wording will have to be changed in view of the fact that conviction means ultimate conviction.

The Honourable Sir Nripendra Sircar : As all parties are agreed about the substance of the amendment, I would suggest that this amendment be held over till Half Past Two.

(The amendment was held over.)

Mr. G. E. J. Robertson (Burma : European) : I would ask for your permission that amendment No. 59 be held over for some time. It has been found out that the wording does not properly give effect to the intention of the amendment. I think it will be possible to re-arrange the wording, so as to make it acceptable to all sections of the House.

Mr. President (The Honourable Sir Abdur Rahim) : What is wrong with it ? If the amendments are purely verbal, the wording could be corrected. If it is a change of substance, it is a different matter.

Mr. G. E. J. Robertson : It is an alteration of substance and it cannot be done on the spot. It will take a little bit of time and I suggest that this amendment be held over in the meantime.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member can re-draft it and circulate it at once. But if it is finished, I may not be able to take it up later.

Pandit Govind Ballabh Pant : There is an amendment in my name, No. 138, which relates to the removal of the managing agent.

Mr. President (The Honourable Sir Abdur Rahim) : Does it relate to the same clause ?

Pandit Govind Ballabh Pant : It relates to the same subject. I want to know whether I can move it now or at a later stage. It relates to the subject matter of 87B.

Mr. President (The Honourable Sir Abdur Rahim) : I do not think I can really give any undertaking. If some amendment relating to a previous clause is carried, this may be barred. It is really for the House to decide.

Pandit Govind Ballabh Pant : My remarks are subject to that. Sir, I move.

“ That in clause 42 of the Bill, in sub-section (d) of the proposed section 87B, the words ‘ Where the Court finds that the winding up is due to the negligence or default of the Managing Agent himself ’ be omitted.”

If these words are omitted, then the clause will run thus :

“ if a company is wound up either by the Court or voluntarily, any contract of management made with a managing agent shall be thereupon determined without prejudice, however, to the right of the managing agent to recover any moneys recoverable by the managing agent from the company ; Provided that the managing agent shall not be entitled to receive any compensation for the premature termination of his contract of management.”

The clause as it stands reserves the right, for the benefit of the managing agent, to claim compensation even where a company goes into liquidation. My submission is that where a company goes into liquidation, the managing agent should not be entitled to any compensation whatsoever. As I stated in the course of my remarks at an earlier stage, a company can go into liquidation only either because of some negligence or default on the part of the managing agent or because of his incompetence or inefficiency or because in very rare cases of some unavoidable misfortune which he could not overcome because of world factors or otherwise. It was suggested that there may be cases where a person corners the shares and thus brings about a sort of artificial liquidation though the company, left to itself, would be able to manage the affairs efficiently and to the advantage of the shareholders. That was the only reason advanced in the course of the debate at an earlier stage as to why my proposal should not be accepted. Now, I may remind the Honourable Members that a company cannot go into liquidation voluntarily except and otherwise than through a special resolution or an extraordinary resolution passed by the company, so there must be almost virtual unanimity among the shareholders before liquidation. In the circumstances, there is not the least chance of a company going into liquidation simply maliciously with a view to injure the interests of the managing agent. I am not aware of any case in which any company has so far gone into liquidation in order to get rid of a managing agent.

The Honourable Sir Nripendra Sircar : They will if your amendment is carried.

Pandit Govind Ballabh Pant : I think the Honourable the Law Member is aware and I may inform him if he is not that in Calcutta most of the companies have not got any clause whatsoever by virtue of which the managing agents possess the right of compensation if the company went into liquidation.

The Honourable Sir Nripendra Sircar : No clause is wanted ; that is under the general law.

Pandit Govind Ballabh Pant : Then, I am not aware of any case in which any compensation has been claimed by any agent and I am not prepared to believe that it was because of the knowledge of the general law that people did not take any such step and did not resort to any such manoeuvres. Such cases will, if at all, be very rare, while the cases in which the shareholders will be called upon to pay out of their pockets in order to enable the company to meet the managing agent's claim for compensation will be many more. What will be the result if this clause is retained in its present shape ? Let us assume that a company has made calls to the extent of 25 per cent. on the shares, so that the shareholders have yet to pay 75 per cent. more on the shares held by them. Now, such a company, because of the incompetence of the management and of the managing agent, which is not covered whether by default or by negligence, goes into liquidation, and the managing agent under the terms of his contract claims commission for 10 years on the ground that under the agreement he is entitled to such compensation in case of liquidation of the company. Now, the shareholders may be required to pay the 75 per cent. balance of their shares and fresh calls may be made upon them so that the managing agent may get com-

[Pandit Govind Ballabh Pant.]

pensation. It is unthinkable that any arrangement like this should be accepted by anybody in this House.

Now, assume for a moment that a person corners the shares, how can he do that? The managing agent can manipulate the value of the shares in a much more effective manner than any other person. If he sees that other people are going to purchase the shares and he himself does not want them to purchase them, he can easily manage to raise the value of the shares. I will not read from Lokanathan's book, the Old Testament, I assume that the Honourable the Law Member has read relevant passages therein relating to the manipulation of the shares by the managing agents. If a person does corner the shares, then what does he do? He has to pay a value much above the average and the normal in order to acquire the shares with the result that the shareholders as well as the managing agent realise more than full value for their holdings in the company. So, even if such an unusual case did actually happen, the managing agent would not suffer. I ask the House to consider whether in most cases the failure of the company is not attributable to the managing agent himself. If the company thrives and prospers, it is the managing agent who has the lion's share of the profit, and if the company goes into liquidation, then it is the managing agent who, again, will have the lion's share of the capital held by the shareholders. It is the same old story of the heads I win and tails you lose. The shareholder must feed the managing agent both ways. If the company runs, he will have his guaranteed profit; if the company comes to a standstill, he must have his compensation! What I want the House to consider is this: whether the shareholder is more to blame in the case of the failure of a company than the managing agent, for, after all, whatever is paid to the managing agent, is taken away from the shareholder. Whether you pay him out of the capital money or the investment or the holdings or the undertakings of the company or whether you make fresh calls on the shareholders, in every case it is paid out of the assets belonging to the shareholders. If you want to pay the managing agent, then you have to take it from the shareholder. The proposition, as it obtains in the Bill, is of a very far-reaching character. It makes the company liable to pay compensation whatever may be the reason for the failure except the default or negligence of the managing agent, and how difficult it is even to establish as to what amounts to negligence or to default. Therefore, I submit that in cases of liquidation of the company the managing agents should not be entitled to any compensation. I will seek the permission of the Honourable the Law Member to place before him another case which may not have struck him but which is worthy of consideration. He has thought of that hard case which is a very rare one—and hard cases never make a good law—where a person in order to spite a managing agent conspires with and misleads the entire company and almost everyone of the shareholders in order to secure the liquidation of the company. That seems to me almost inconceivable. But is it not still more likely that the managing agent, when he finds that it is more to his advantage to have compensation rather than run the business, may manipulate the affairs in such a way that the company is driven to liquidation. And as a result he has his pound of flesh by way of compensation! So these hard cases have to be left out. Normally you must

accept the principle that the managing agent is to blame and even if—as is but rare—it is a case of misfortune, he must share the loss with the shareholders and not add to their misfortune by claiming compensation for himself when the company goes into liquidation. Sir, I move.

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

“ That in clause 42 of the Bill, in sub-section (d) of the proposed section 87B, the words ‘ Where the Court finds that the winding up is due to the negligence or default of the Managing Agent himself ’ be omitted.”

The Honourable Sir Nripendra Sircar : Sir the amendment proposed by my Honourable friend, Pandit Govind Ballabh Pant, is of a sweeping character and extremely unreasonable for these reasons. Apparently judging by his speech, my Honourable friend is under the impression that whenever there is liquidation that means the company has come to grief and is unable to meet its demands and so on. I would ask my Honourable friend to consider other cases which have actually occurred. A company if it wants reconstruction or if wants amalgamation, the first step is voluntary liquidation. Is it suggested that where this liquidation is meant for the benefit of the company, for its expansion, that the managing agent should lose what he is entitled to under the law? Why, for what reason? Then, Sir, under the general law—my Honourable friend was talking about clauses in the managing agency agreement—supposing there is nothing in the managing agency agreement that he will be entitled to compensation. I am reading from *Smith, Master and servant*, page 136, “ in the case of a limited company, the winding up order is a notice of discharge to the servants employed by the company ”. What is the result that follows. As soon as there is winding up order, every servant is wrongfully dismissed, the mistry who has been engaged for one year, is entitled to compensation, the manager, the assistant manager, the secretary, all these have been employed for a number of years or a number of months, they all get compensation because the liquidation or the winding up means the wrongful discharge of the servants. If that is the position, everybody, every servant under the general law will get compensation, but not the managing agent. I say, it is extremely unreasonable. Again when it is a question of amalgamation or reconstruction, surely there is no reason why the managing agent should be deprived of what is his due under the law. If I may remind my Honourable friend of the case of the Tata Industrial Bank in Calcutta, it went into liquidation for the purpose of reconstruction. There was a clause in the lease for forfeiture on liquidation and the result was that my Honourable friend, Mr. Susil Chandra Sen, who is not now here, collared a lakh of rupees, out of it. There was a clause in the lease that in case there was liquidation, there would be forfeiture of the lease and perfectly legally the landlord came down and said “ here is forfeiture. We do not mind why you have gone into liquidation, you have plenty of money, but this is liquidation ”. The result was that the Tata Industrial Bank had to pay a lakh of rupees cash and an increase of Rs. 250 per month in rent and as a consequence the landlord waived the forfeiture. I am referring to that for the purpose of showing that liquidation does not necessarily mean that the company is in difficulties.

Pandit Govind Ballabh Pant : But mostly.

The Honourable Sir Nripendra Sircar : Why should the managing agent be treated differently from other servants of the company ?

Pandit Govind Ballabh Pant : Because he is in charge of the whole management.

The Honourable Sir Nripendra Sircar : That has been provided for. If it is due to his default or negligence, then under the Bill he does not get any compensation, but my Honourable friend is trying to rope him in and deprive him of all his compensation where he is not at fault at all. I submit it is extremely unreasonable. I oppose this amendment.

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

“ That in clause 42 of the Bill, in sub-section (d) of the proposed section 87B, the words ‘ Where the Court finds that the winding up is due to the negligence or default of the Managing Agent himself ’ be omitted.”

The Assembly divided :

AYES—44.

Aney, Mr. M. S.
Asaf Ali, Mr. M.
Ayyangar, Mr. M. Ananthasayanam.
Azhar Ali, Mr. Muhammad.
Bajoria, Babu Baijnath.
Chettiar, Mr. T. S. Avinashilingam.
Chetty, Mr. Sami Vencatachelam.
Das, Mr. B.
Das, Pandit Nilakantha.
Datta, Mr. Akhil Chandra.
Desai, Mr. Bhulabhai J.
Deshmukh, Dr. G. V.
Gadgil, Mr. N. V.
Giri, Mr. V. V.
Govind Das, Seth.
Gupta, Mr. Ghansham Singh.
Hans Raj, Raizada.
Hosmani, Mr. S. K.
Jogendra Singh, Sardar.
Joshi, Mr. N. M.
Kailash Behari Lal, Babu.
Khan Sahib, Dr.

Khare, Dr. N. B.
Lahiri Chaudhury, Mr. D. K.
Lalchand Navalrai, Mr.
Maitra, Pandit Lakshmi Kanta.
Mudaliar, Mr. C. N. Muthuranga.
Muhammad Ahmad Kazmi, Qazi.
Paliwal, Pandit Sri Krishna Dutta.
Pant, Pandit Govind Ballabh.
Parma Nand, Bhai.
Raghubir Narayan Singh, Choudhri.
Raju, Mr. P. S. Kumaraswami.
Ranga, Prof. N. G.
Saksena, Mr. Mohan Lal.
Sant Singh, Sardar.
Satyamurti, Mr. S.
Sheodass Daga, Seth.
Singh, Mr. Ram Narayan.
Sinha, Mr. Satya Narayan.
Sinha, Mr. Shri Krishna.
Som, Mr. Suryya Kumar.
Sri Prakasa, Mr.
Varma, Mr. B. B.

NOES—59.

Abdul Hamid, Khan Bahadur Sir.
Abdul Matin Chaudhury, Mr.
Acott, Mr. A. S. V.
Ahmad Nawaz Khan, Major Nawab Sir.
Ayyar, Diwan Bahadur R. V. Krishna.
Badi-uz-Zaman, Maulvi.
Bartley, Mr. J.
Benjamin, Mr. H. D.
Bhat, Mr. M. D.
Buss, Mr. L. C.
Chapman-Mortimer, Mr. T.
Craik, The Honourable Sir Henry.
Dalal, Dr. R. D.
DeSouza, Dr. F. X.
Dey, Mr. B. N.

Fazl-i-Haq Piracha, Khan Bahadur
Shaikh.
Ghuznavi, Sir Abdul Halim.
Grant, Mr. C. F.
Griffiths, Mr. P. J.
Grigg, The Honourable Sir James.
Hidayatallah, Sir Ghulam Hussain.
Hossack, Mr. W. B.
Hudson, Sir Leslie.
James, Mr. F. E.
Jawahar Singh, Sardar Bahadur Sardar
Sir.
Jehangir, Sir Cowasji.
Jinnah, Mr. M. A.

NOES—contd.

Khurshaid Muhammad, Khan Bahadur Shaikh.
 Lal Chand, Captain Rao Bahadur Chaudhri.
 Laljee, Mr. Husebhai Abdullahhai.
 Metcalfe, Sir Aubrey.
 Milligan, Mr. J. A.
 Mody, Sir H. P.
 Morgan, Mr. G.
 Mukherjee, Rai Bahadur Sir Satya Charan.
 Naydu, Diwan Bahadur B. V. Sri Hari Rao.
 Nind, Mr. W. W.
 Noyce, The Honourable Sir Frank.
 Bajah, Rao Bahadur M. C.
 Rau, Mr. P. B.
 Rau, Mr. P. S.
 Robertson, Mr. G. E. J.

Roy, Mr. S. N.
 Sarma, Sir Srinivasa.
 Scott, Mr. J. Ramsay.
 Sharma, Mr. D.
 Shaukat Ali, Maulana.
 Sher Muhammad Khan, Captain Sardar.
 Siddique Ali Khan, Khan Sahib Nawab.
 Singh, Rai Bahadur Shyam Narayan.
 Sircar, The Honourable Sir Nripendra.
 Spence, Mr. G. H.
 Thorne, Mr. J. A.
 Tottenham, Mr. G. R. F.
 Vissanji, Mr. Mathuradas.
 Witherington, Mr. C. H.
 Yakub, Sir Muhammad.
 Zafrullah Khan, The Honourable Sir Muhammad.
 Ziauddin Ahmad, Dr.

The motion was negatived.

Babu Baijnath Bajoria (Marwari Association : Indian Commerce) : Sir, I beg to move :

“ That in clause 42 of the Bill, for sub-section (e) of the proposed section 87B, the following be substituted :

- ‘ (e) The appointment of a managing agent and the removal of a managing agent shall not be valid unless approved by the company by a resolution at a general meeting of the company ; and any variation of a managing agent’s contract of management made after the commencement of the Indian Companies (Amendment) Act, 1936, shall not be valid unless approved by the company by a special resolution at a general meeting of the company ’.”

The clause as at present in the Bill reads :

- “ (e) the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent’s contract of management made after the commencement of the Indian Companies (Amendment) Act, 1936, shall not be valid unless approved by the company by a resolution at a general meeting of the company :

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

My amendment seeks first to enact that the variation of the managing agent’s contract should be valid only if approved of by a special resolution at a general meeting of the company instead of by an ordinary resolution at a general meeting of the company, and also seeks to delete the proviso which I have read just now.

Mr. S. Satyamurti : Sir, on a point of order, you will kindly notice that amendment No. 65 seeks to omit only the proviso, whereas my Honourable friend’s amendment seeks to do both. I think it will be more to the convenience of the House, if the subject of appointment or removal of managing agent by an ordinary or special resolution be voted on first, and the question of the proviso being there or not voted on separately. You may put it to the vote in two parts.

Mr. President (The Honourable Sir Abdur Rahim) : I think it would be better to put No. 65 first. If that is carried, the other can be taken up.

Mr. S. Satyamurti : I agree, Sir.

Mr. President (The Honourable Sir Abdur Rahim) : Mr. Bajoria can proceed with his amendment.

Babu Baijnath Bajoria : As regards this special resolution which I want for the variation of the contract, I draw the attention of the House and of the Leader of the House to the fact that this is only done with a view to remove an anomaly. If you read section 87-C. (2), you will find :

“ Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company.”

I think that additional remuneration and variation of contract are one and the same thing. There is not much difference, and so if my amendment is accepted this anomaly will be removed. Sir, I have left the appointment and removal to the ordinary voting of the company. As regards variation of contract, it stands on a different footing, firstly, because these variations of contract are invariably for the benefit of the managing agents, and when any variation is required it is but fair that it should be by a substantial majority of the shareholders who will favour these variations. I have in my own practical experience found that this variation of contract has been abused several times by the managing agents. As regards the proviso, this will nullify the main section. It says that if the first managing agent issues any prospectus with the terms and conditions of the managing agents' contract, then it shall not apply in the case of the first managing agent ; that is to say, only if the terms are published in the prospectus, then for twenty years the shareholders cannot change the form of the contract of the managing agent. They will have to accept whatever is written in the prospectus. As is well known, Sir, very few shareholders or intending shareholders care to read the prospectus, and so I think the terms of the first managing agent should also be confirmed at the first general meeting of the company. Sir, I move.

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

“ That in clause 42 of the Bill, for sub-section (e) of the proposed section 87B, the following be substituted :

‘ (e) The appointment of a managing agent and the removal of a managing agent shall not be valid unless approved by the company by a resolution at a general meeting of the company ; and any variation of a managing agent's contract of management made after the commencement of the Indian Companies (Amendment) Act, 1936, shall not be valid unless approved by the company by a special resolution at a general meeting of the company.’ ”

Then, there is an amendment in the name of Mr. Satyamurti.

Mr. S. Satyamurti : Mr. Paliwal will move it, Sir. I don't want to move it.

Mr. President (The Honourable Sir Abdur Rahim) : Then there is another amendment on List No. 4, that also refers to clause (e).

Mr. S. Satyamurti : Sir, my amendment is :

“ That in clause 42 of the Bill, in clause (e) of the proposed section 87B, after the words ‘ at a general meeting of the company ’ the words ‘ notwithstanding anything contained to the contrary in section 86E ’ be inserted.”

Mr. President (The Honourable Sir Abdur Rahim) : This is for substitution. If that is carried, then, of course,.....

Mr. S. Satyamurti : I don't move it now, Sir.

Mr. Sri Krishna Dutta Paliwal (Agra Division : Non-Muhammadan Rural) : Sir, I move :

“ That in clause 42 of the Bill, the proviso to clause (c) of the proposed section 87B be omitted.”

Now, Sir, clause 87B (e) lays down that the appointment of a managing agent, the removal of a managing agent and any variation of a managing agent's contract of management made after the commencement of the Indian Companies (Amendment) Act, 1936, shall not be valid unless approved by the company by a resolution at a general meeting of the company. This is a very salutary provision, but the proviso to the clause nullifies it. It says that “ provided that nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus or statement in lieu of prospectus where the terms of the appointment of such managing agent are there set forth ”.

Now, Sir, it is clear that this proviso, as my friend Mr. Bajoria pointed out, exempts the first managing agent from having their contract approved by the company, for at least 20 years, and we know that the first appointments which have been exempted are generally the promoters' appointment. And the promoters are either the managing agents themselves or at best their nearest and dearest friends or relatives. It will be a case of Sir Homi Mody appointing himself and taking whatever terms he likes in the agreement. I have no doubt that the House will agree with me that this proviso should be deleted. Sir, I move.

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

“ That in clause 42 of the Bill, the proviso to clause (e) of the proposed section 87B be omitted.”

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

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

Mr. F. E. James (Madras : European) : Sir, may I remind you that this morning amendment No. 58 was postponed until after lunch. There were two or three verbal alterations suggested by the Honourable the Leader of the House which we accept. As far as any further amendment of our original proposal is concerned, we have gone into the matter very carefully, and in view of the difficulty of shaping the amendment in such a way as to make its interpretation perfectly clear,

[Mr. F. E. James.]

we prefer to stand on the amendment which was originally proposed this morning, subject to those verbal alterations which the Honourable the Law Member suggested.

The Honourable Sir Nripendra Sircar : Is it No. 58 ?

Mr. F. E. James : Yes, Sir. 59 is not moved. That will be moved subsequently.

Mr. Deputy President (Mr. Akhil Chandra Datta) : Amendments Nos. 64 and 65 are now under discussion. I think it will be better to take up Nos. 58 and 59 after disposing of 64 and 65.

Mr. Bhulabhai J. Desai (Bombay Northern Division : Non-Muhamadan Rural) : Mr. Deputy President, I support the amendment which seeks to delete the proviso to section 87B (e) and I shall give my reasons in a very few words. The proviso says :

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

My objection is this. I think it will be conceded that if this is intended to enact, any pre-formation arrangements contained in a prospectus become on the formation of a company *ipso facto* a binding contract, and it will mean really revolutionising the company law. Every item mentioned in the prospectus has no binding character whatever unless the company after its formation accepts the terms of those particular documents as the terms of a contract entered into between the person with reference to whom those provisions are intended to apply. If therefore the proviso is intended to say that the first managing agents' appointment becomes an appointment as soon as the company is formed, I submit the House ought not to accept it at all, for this reason, that it will be introducing an innovation entirely unknown to company law anywhere in the world. It was said that supposing the appointment of a managing agent is contained in the Articles, it is also good law, that the Articles only constitute a contract between the shareholders *inter se*, and never can constitute a contract between the company on the one hand and strangers on the other, though in some cases I quite agree where the appointment is not in question, the terms of the appointment have been gathered from any one of these documents, and particularly from the Articles, but there the essence of the point has always been not so much whether the man is appointed or not, but having been so appointed like a manager, what are the terms of his appointment. But the first two propositions stand, I submit, unchallenged subject to correction (1) that no arrangement—I use that word because it is less than an agreement,—no arrangement made in what is called the pre-formation period of the company can *ipso facto* become a contract with the company on its formation, and (2) that its incorporation in the Articles will not constitute a contract between the company and other persons. The only other meaning, the narrower meaning of this proviso can be that it is intended in the terms of the prospectus, if they contain the appointment of the managing agent that, the directors should be free, if they have such power under the Articles on the formation of the company, to enter into the

contract in those terms. Objection to that is also very vital. They are not directors appointed by the shareholders, because the first directors are the subscribers to the memorandum under the Companies Act, and therefore they cannot in any sense be said to represent the company in any sense whatever. For this reason, I submit the proviso should be omitted.

Mr. T. Chapman-Mortimer (Bengal : European) : Sir, it is with some diffidence that I rise to oppose the point of view put forward by so distinguished a company lawyer as the Honourable the Leader of the Opposition. I submit, Sir, that the argument put forward in favour of Amendment No. 65 for the deletion of the proviso to 87-B (e) of clause 42 is not a correct one. He suggests, at least I understood him to say so,—that what this proviso does is when a company is formed, it would have to go to its shareholders to ratify the agreement with the managing agents and so on. He quoted various instances and talked about the arrangements and contracts that had to be ratified by the companies. In one sense, it is correct, they are ratified by the companies, that is to say, they are ratified by the first Board of Directors. That is not the same thing, as Honourable Members are aware, as the contracts being ratified by the company in general meeting. He suggested that what is proposed in this proviso will revolutionise company law. For the reason I have just given, Sir, I submit my learned friend is not correct in this particular. And I would like to suggest a case in point, and here the issue is not one between the managing agent and the company, but between Mr. A or B who happens to own, for example, a gravel pit. We will suppose that having worked in their individual capacity as land-owners for some years, they decided to form a company, which would take over the control of the gravel pit. The terms of sale might easily be that A would receive a block of shares and a sum in cash as well in return for transferring to the company the gravel pit I have mentioned. That is a case of contract or arrangement entered into before the company is formed. That is ratified, as I understand the position, by the Board of Directors when they meet to consider the first business before them. It is not at all brought before the company in general meetings. The same thing exactly applies in the case of the first managing agents. If we inquire into the position of a newly formed company it is always something like this. The managing agents have decided to float a company. They believe that a new jute mill or a cotton mill or a colliery would be a good thing. They therefore make up their minds as to how much capital is required, and they conduct all the initial preparations required for the formation of the company. They then get together with some friends to arrange as to who will be the first directors, who will underwrite and so on. All these things are arranged, and in return for that, they obviously ask—“ We are not going to be turned out from our managing agency within the first year of the formation of the company ”. They will naturally say “ We are going to start this new venture and in return we hope that you are giving us the managing agency ”. That is a matter then between the Board of Directors who will represent the shareholders, and the managing agents. The managing agency on these terms will be allowed to manage the company in return for all the initial preparations they have conducted. I submit, Sir, that is the position today, and my friend the Honourable the Leader of the Opposition is under a misappre-

[Mr. T. Chapman-Mortimer.]

hension, and his interpretation of this amendment is therefore wrong. Sir, I oppose this amendment.

The Honourable Sir Nripendra Sircar : Sir, my Honourable friend the Leader of the Opposition laid down three propositions of law and I need hardly say that I agree with every one of them. There is no question of law on which I am at issue with him. The point before the House is very short and it depends on the opinion of the House as to which of the two considerations ought to prevail. The position is this : it is quite true as my Honourable friend has said that you may set out anything in the prospectus ; but that does not amount to a contract. With that I agree if I may say so respectfully. But what generally happens—again my knowledge is limited to Bengal or rather Calcutta—is this : that the first set of directors, who are practically friends or nominees, as my Honourable friend said, of the promoters, appoint the managing agents : then in the articles the managing agency terms are generally set out as to A. B. C. being the managing agents and they will get such and such remuneration. Under powers delegated to the directors by the articles the directors sign that agreement between the managing agency firm and the company, so that in practice the appointment of the first managing agent does not come up before the shareholders. I have also seen articles where the articles provide that this appointment must be put up before a general meeting, but they are more by way of exception than the rule. Therefore, we come back again to that position : there is no question of law outstanding. I buy a share : I see not only the prospectus on which I am not placing so much reliance for purposes of contract—I will not urge that for a minute—I know what the articles are also ; and whatever the old law might have been, in our new provision in clause 48, if I may remind Honourable Members, at page 22 of the Bill, the prospectus has got to set out any provision in the articles or any contract as to the appointments of managers or managing agents, and the remuneration payable to them ; so that I am buying a share knowing of the prospectus, knowing of the articles. My Honourable friend is quite right in saying that the articles do not constitute a contract as between the company and an outsider, namely, the managing agent, but it does constitute a contract between the member and the company. Therefore my position is that I have bought shares knowing of the articles, and I am under contractual obligation to respect the contract which provides that A. B. C. will be the managing agent and the directors will sign that agreement. I will read only two lines from Buckley on Companies—page 35 :

“ The articles do constitute a contract between them and the correct view is that stated by Lord Herschell : the articles constitute a contract between each member and the company.”

Then he proceeds to say that the article does not constitute a contract between an outsider and the company. Therefore what is the position ? I remember the argument about the shareholder being weak and ignorant and living apart from one another and so on. But the position is that I have become a party to a contract as a result of which I have agreed—but of course we can change that agreement by overriding force of statute—that A. B. C. should be appointed as managers by the directors. Is it fair in that case, after the managing agents have taken the trouble to float a company and doing everything possible, that I should go before the shareholders and say “ You have done everything that is possible. I am a

party to an agreement by which you are entitled to get 2½ per cent. but I have my friend in Bankshall Street who will take it for 2¼ per cent. and so you shall go out". Is that fair? After all, these are the two balancing considerations and I do think the proviso ought to stand. My Honourable friend is quite right in saying that the proviso will be useless where either (1) the articles provide that the appointment has got to be made at a general meeting, or (2) where power is not given to the directors by reason of delegation from the company to enter into such a contract. In those two cases it will be useless, but in the majority of cases it has its use, because this first appointment does not as a matter of fact always come up before the shareholders. I submit no sufficient reason has been shown as to why the proviso should be deleted, or why a person who buys shares—and we are making all safeguarding provisions for him—he knows fully the contents of the articles, he knows who is going to be managing agent and what he is going to be paid, and then he buys shares. Having done all that if he turns round and says "I will turn out the original managing agents", I do not think it is reasonable. I oppose the amendment.

Mr. S. Satyamurti : Sir, this is one of those amendments which the Select Committee in an unfortunate moment accepted.....

The Honourable Sir Nripendra Sircar : Fortunate moment!

Mr. S. Satyamurti : My Honourable friend, the Law Member, conceded the point made by the Leader of the Opposition that the prospectus by itself will not constitute a contract. His main argument was based on the articles of the company which may provide and often do provide for the appointment of managing agents, their terms, and so forth, and also give the directors power.....

The Honourable Sir Nripendra Sircar : Contract between the directors and the managing agents (?)

Mr. S. Satyamurti : But my Honourable friend must notice that section 87-B (e) begins with these words :

"Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company....."

Therefore, the whole object of this section—I am not talking of the proviso—is that notwithstanding whatever may be contained in the articles of association, the appointment of managing agent must come before the company for ratification by a resolution. Then the proviso comes in, and says that :

"nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus."

The proviso contemplates the appointment not in the prospectus, but prior to the prospectus. May I know what those words mean? It is not made as part of the prospectus even. The proviso contemplates the appointment made prior to the issue of the prospectus, that is to say, the promoters nominate directors, the promoters nominate themselves as managing agents; and then they put that into the prospectus, after having made the appointment.....

The Honourable Sir Nripendra Sircar : No, no.

Mr. S. Satyamurti : Yes; please read the words "nothing herein contained shall apply to the appointment of a company's first managing agent made prior to the issue of the prospectus". If those words mean anything at all, they mean that the act of appointment must be

[Mr. S. Satyamurti.]

anterior in time to the issue of the prospectus. Therefore, it contemplates an appointment, as apart from the prospectus. No doubt, the words follow "where the terms of the appointment of such managing agent are there set forth". It seems to me that it is not even a case of directors appointing. My Honourable friend said directors are given the power—they can appoint. But where do the directors come in at all? The appointment is made before the issue of the prospectus.....

The Honourable Sir Nripendra Sircar : Yes ; but you cannot sell shares unless the prospectus is out.

Mr. S. Satyamurti : There are these stages, the appointment of managing agents by promoters, then the issue of the prospectus, then the sale of shares. These two acts, the issue of the prospectus and the appointment, are different acts, and I submit that it is but right that, after all these things have been done, the matter ought to come before the shareholders. Of course, the Leader of the House's stock argument, in respect of all these amendments, is that something may happen, the shareholders may do something very wrong, but I do suggest that if the proviso stands as it is, sub-section (e) of section 87-B will be a dead letter. There are going to be no promoters who are not going to appoint themselves as managing agents before the issue of the prospectus. What is the subsection? Notwithstanding anything to the contrary contained in the articles of the company or in any agreement with the company, the appointment of the managing agent must come before the general meeting of the company : Provided that, if the prospectus contains a prior appointment there is no need for this. I submit that the temptation for every promoter will be to take advantage of the proviso making the section practically nugatory. I do hope that the House will accept the amendment deleting the proviso.

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

"That in clause 42 of the Bill, the proviso to clause (e) of the proposed section 87B be omitted."

The motion was negatived.

Babu Baijnath Bajoria : I beg leave to withdraw my amendment No. 64.

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

Mr. Deputy President (Mr. Akhil Chandra Datta) : Amendment No. 58.

Mr. F. E. James : As I explained before on this matter, this amendment was moved by my Honourable friend, Mr. Buss, before the lunch recess, and the Honourable the Law Member suggested certain verbal alterations which we willingly accept. There was a further question raised by my Honourable friend, Mr. Satyamurti, which led to the amendment being withdrawn until this afternoon so that we might give consideration to the possibility of amending it in the direction suggested by my Honourable friend. We have considered the matter very carefully with the best advice possible, and we have come to the conclusion that we have no option but to stand by the amendment as it was originally proposed, in view of the difficulty of suggesting any other amendment

to it which would not leave in some considerable difficulty and doubt its proper interpretation. Therefore, we hope that the House under those circumstances will accept the amendment as we originally proposed it, subject to the verbal alterations suggested by the Honourable the Law Member. I might just mention those to refresh the minds of Honourable Members,—instead of the word “partner” in the second line the word “member”; instead of the words “shall be” in the third line the word “is”; and instead of the words “shall be” in the last line the word “is”.

Mr. Deputy President (Mr. Akhil Chandra Datta) : The amendment moved will then read thus :

“That in clause 42 of the Bill, to sub-section (a) of the proposed section 87B, the following proviso be added :

‘Provided that a Managing Agent shall not be liable to be removed under the provisions hereof if the offending member, director or officer as aforesaid is expelled or dismissed by the Managing Agent within 30 days from the date of his conviction or if his conviction is set aside on appeal.’

The question is that that amendment be made.

The motion was adopted.

Mr. G. E. J. Robertson : Sir, I move :

“That in clause 42 of the Bill, to sub-section (b) of the proposed section 87B, the following proviso be added :

‘Provided that in the case of a Managing Agent’s firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of Managing Agent, so long as one of the original partners shall continue to be a partner of the Managing Agent’s firm. For the purpose of this section ‘original partners’ shall mean, in the case of Managing Agents appointed before the commencement of the Indian Companies (Amendment) Act, 1936, partners who were partners at the date of the commencement of the said Act, and in the case of Managing Agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment.’

Sir, in his remarks last week on clause 42 of this Bill generally the Honourable the Law Member referred to the sub-section dealt with by this amendment and said that Government would oppose attempts to make the transfer of agency permissible without the approval of shareholders. I do not think there can be any disagreement with that point of view. He also went on to say that Government were quite prepared to consider any attempt to define what act will amount to an assignment or transfer of office. Now, Sir, I submit that this clause (b) of section 87-B as it stands would be liable to cause a transfer of office by the managing agent every time a partner retired and a new partner was assumed and I do not think that that proposition could possibly be entertained. I would like to deal with the question in two parts. First I will deal with the question of the managing agents appointed after the commencement of the amending Act. In their case the House has already approved of the principle that their tenure of office should amount in the maximum and the minimum at the same time to 20 years. If they have to refer to the shareholders every time a new partner is assumed, that will eat into this period of life which the Bill in another clause confers upon the managing agents. And I submit that that position will be intolerable. The amount of inducement still remaining to the managing agent to finance industry would be seriously curtailed if the managing agent is aware that every time a new partner is

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assumed he has to refer to the shareholders. I would like to remind the House of the remarks made by the Leader of the Opposition the other day when he referred to a case in the Bombay High Court concerning a managing agency firm by the name of Goculdas and Company. The decision of the Court in that case was that as none of the existing partners of the firm of Goculdas and Company had been contemporaries of the original partners at the time when the managing agency contract was entered into, the firm could no longer be identified as the original managing agency firm with which the company had contracted. The inference from that decision must be that, had any one of the existing partners been a contemporary of the original partners, no transfer of office could be deemed to have taken place. The amendment which I am moving goes further than that. It provides that at least one of the existing partners must not only have been a contemporary of the original partners but that he must have been one of the original partners.

Now, with regard to the appointment of the managing agent before the commencement of this Act, I am aware that on the basis of the decision to which I have just referred, it might be held that many existing managing agency firms have lost their original identity, that is to say, none of the original partners are now partners of the firms, and that to provide that "original partner", for the purposes of this section, shall mean, in the case of managing agents appointed before the commencement of the Companies (Amendment) Act, a partner who was a partner at the time of the Act, would add something which is not already there in law, and would perpetuate a firm which had already lost its original identity. Now, I think I can answer that point. If the remedy exists at present in law, that is to say if the company feel that the managing agency firm has already lost its original identity, they have their remedy, and if they have not exercised that remedy, one may assume that they accept the managing agency firm which exists as constituted at present. Therefore, we are dealing with the position from the present date onwards, or rather from the date of the amending Act onwards. If the company has accepted the personnel of that firm as at present constituted, if it has not challenged its personnel in a Court of law on the ground that the firm has lost its original identity, it is reasonable to lay down in this Act that original partners for the purposes of this section in the case of managing agents appointed before the commencement of the Act shall be determined on the date of the Amending Act and that thereafter the test will be whether or not there remains in the firm one of the original partners who was a member of the firm on the date of the Amending Act. I don't want to say very much on the subject. I think the principle is quite clear. It should not be necessary repeatedly for a managing agent to have to go before the shareholders on the assumption of a new partner, and I hope, Sir, that the House will find themselves able to accept this amendment. Sir, I move.

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

"That in clause 42 of the Bill, to sub-section (b) of the proposed section 87B, the following proviso be added :

'Provided that in the case of a Managing Agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of Managing Agent, so long as one of the original partners shall continue

to be a partner of the Managing Agent's firm. For the purpose of this section 'original partners' shall mean, in the case of Managing Agents appointed before the commencement of the Indian Companies (Amendment) Act, 1936, partners who were partners at the date of the commencement of the said Act, and in the case of Managing Agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment."

Mr. Bhulabhai J. Desai : Sir, I rise to oppose this amendment. I think it must be obvious to those who put forward this amendment that they are really seeking to extend the privileges far beyond those that are allowed to them, and I must say that my Honourable friend, Mr. Robertson, candidly admitted that. Remembering that, I may point out to him that he is entirely wrong in saying that the decision to which I called attention does not carry the matter farther, because there the fact remains that both Mr. Goculdas and Mr. Dipchand died. Their respective sons had been accepted as managing agents under the names of Morarji Goculdas & Sons, and still those people who came after them have not been accepted by the Court as having a title to the managing agency under the name of Morarji Goculdas and Company. The decision was very clear. This is merely intended to give not merely 20 years where more than 20 years existed as they say expropriation, but this is a case of revival, where a contract had otherwise ceased to be operative is made to be operative as a result of this amendment. The least my friend can do is to omit the words "for the purposes of this section original partners shall mean....." and come to the end "partners who were partners at the date of the appointment", otherwise it merely comes to this, that those partnership firms had been carrying on business for the last 50 years, but none of the original partners now exist, and therefore the present successors of that firm have no title at all to continue, and except of course with the consent of the shareholders they can as a matter of law claim the right of that perpetual succession. I do appeal to my friend the Leader of the House not to accept the amendment if it is insisted on in the terms in which it is moved.

Mr. T. Chapman-Mortimer : I regret, Sir, I have again to oppose my friend the eminent company lawyer, the Honourable the Leader of the Opposition. I do submit that what we propose here is not any departure from the existing state of affairs. What we want to do is to make sure about what the House has decided to do. The House has already decided that the managing agency contracts that now exist shall be allowed to go on for 20 years. But if Honourable Members will, look at 87B (b) they will see that it is stated there that the transfer of the office by a managing agent shall be void unless approved by the company in general meeting, in other words irrespective of what is said in 87A (2) about the period being up to 20 years. All that will be washed away, because some one will come along and say—'Look here, none of your original partners are in your firm, this is a new firm, you must come before the shareholders'. That seems to conflict with the intention of the Honourable the Law Member and the intentions of this House as well as expressed in their verdict a couple of days ago. All that we seek to do in this amendment of ours,—and I think the principle is generally conceded as I understood the Honourable the Leader of the Opposition to say,—all we seek to do is this, that where a new partner is admitted to the managing agency of the firm it should not mean that that firm has got

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again to go to the shareholders in respect of every company under its management and say 'Will you please renew our managing agency agreement'. It seems to me that it is not a reasonable request to make, and if some alteration of wording is later on found to be necessary, that could be considered at the Third Reading, but for the moment, it is quite impossible for my friends on this side of the House to accept any alteration in our amendment. Sir, I support the amendment.

The Honourable Sir Nripendra Sircar : Sir, I agree with the observations just made by my friend, Mr. Bhulabhai Desai, in regard to the case he referred to, but what I beg of him to consider is this. Are the managing agents really getting an extension if this amendment is accepted by this House? Supposing they are hit by the reasoning of that decision? Can they remain, because a transfer is defined in this way? I submit not. If they go out, they will go out by reason of that ruling, because A, B and C, the original partners having died or retired, this new firm X, Y and Z has no business to be there. Can they say, well, here is a clause which says that it is not a transfer because at the time of the commencement of this Act, these were the people who had been accepted? I submit not. I submit that will be no defence. By this Bill we are introducing an additional ground for getting rid of managing agents. We are now defining that it will not operate as transfer or assignment if any of the partners who were in existence still continue to be one of the partners of the newly constituted firm. Therefore, with great respect to him, I suggest that if this amendment is carried out and the rule laid down by decision referred to by him is good law—I have no reason to doubt its correctness,—then they cannot save themselves by saying that at the commencement of the Act all the partners were new, I submit that the danger does not exist here. I see no reason for this House really to object to this amendment. If I am wrong my friend will correct me. What I am pointing out to Mr. Desai is that they cannot get out of the ruling in the Gokuldas case by reason of this amendment. They will be hit. They will have to go out. They have no business to be there not being the original firm, and not because they have transgressed the new provision in this Bill which defines original partners.

Mr. Bhulabhai J. Desai : Is it not a necessary implication from the definition of the original partners, not the original partners at the date of the appointment but the original partners today, that is to say at the commencement of this Act. It must involve this, that for the purposes of testing their right to remain managing agents the partnership should be deemed to commence for the purposes of the appointment from the date of the operation of the Act.

The Honourable Sir Nripendra Sircar : I have not lost sight of that and therefore I was going to suggest to the mover that he should make it clear that while he says 'original partners' that must be only for the purposes of this section. The argument is not to be advanced that because I have said...

Mr. Bhulabhai J. Desai : May I suggest the words "for the purposes of validating the transfer" etc. With those words added, I am quite willing to accept it.

The Honourable Sir Nripendra Sircar : I think the Honourable the Mover ought to accept the idea, because it carries out his object.

Mr. Bhulabhai J. Desai : May I say this ? I said " for the purpose of validating the transfer ". Because each time the firm is dissolved, as soon as a new partner is added, it is really a new firm. In the eye of the law, it is a transfer, but none the less it should not be treated as a transfer.

The Honourable Sir Nripendra Sircar : I have no objection whatsoever, but will it not serve our purpose if we say " for the purpose of this proviso ". I think that will meet your point.

Mr. G. E. J. Robertson : I accept that change.

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

" That in clause 42 of the Bill, to sub-section (b) of the proposed section 87B, the following proviso be added :

' Provided that in the case of a Managing Agent's firm a change in the partners thereof shall not be deemed to operate as a transfer of the office of Managing Agent, so long as one of the original partners shall continue to be a partner of the Managing Agent's firm. For the purpose of this proviso ' original partners ' shall mean, in the case of Managing Agents appointed before the commencement of the Indian Companies (Amendment) Act, 1936, partners who were partners at the date of the commencement of the said Act, and in the case of Managing Agents appointed after the commencement of the said Act, partners who were partners at the date of the appointment.'

The motion was adopted.

Mr. S. Satyamurti : Sir, I beg to move :

" That in clause 42 of the Bill, in clause (e) of the proposed section 87B, after the words ' at a general meeting of the company ' the words ' notwithstanding anything to the contrary in section 86E ' be inserted."

You will notice that section 86E provides.

" No Director shall without the consent of the Company in general meeting hold any office of profit under the company except that of a managing director or manager or a legal or technical adviser or a banker."

At that time, there was some ambiguity about it. In order to make it perfectly clear that that power which is sought to be conferred by section 86E will not override the provisions of section 86B, I move this amendment. I hope the Law Member will see his way to accept it. Sir, I move.

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

" That in clause 42 of the Bill, in clause (e) of the proposed section 87B, after the words ' at a general meeting of the company ' the words ' notwithstanding anything to the contrary in section 86E ' be inserted."

The Honourable Sir Nripendra Sircar : I accept that amendment.

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

" That in clause 42 of the Bill, in clause (e) of the proposed section 87B, after the words ' at a general meeting of the company ' the words ' notwithstanding anything to the contrary in section 86E ' be inserted."

The motion was adopted.

Mr. B. Das (Orissa Division : Non-Muhammadan) : Sir, I rise to move :

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, for the words ‘ Where any company incorporated after the commencement of the Indian Companies (Amendment) Act, 1936, appoints a managing agent,’ the words ‘ Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936,’ be substituted.”

Sir, this is a simple amendment and I hope my Honourable friend, the Law Member, will accept it. Sir, I want to remove a certain lacuna which has unconsciously crept into the Select Committee's Report. Sir, there are many companies today in India which have no managing agents : they are run by secretaries or by managing directors. Suppose such companies appoint managing agents after this Act, why should they take advantage, and should it be that companies that have been incorporated after the Indian Companies (Amendment) Act, 1936, should be subjected to the managing agent's remuneration as described in 87C, *i.e.*, as percentage on net profit and that those companies that existed before 1936 can have recourse to other systems, *viz.*, commission on profit and production as well ? Sir, I gave notice of this amendment because I was apprehensive that there are many existing companies which now enjoy Government concessions, such as electric licenses, mining concessions and other things, and at times we have found that these managing agents are changing hands. American firms and British firms are trying to participate and to buy off these managing agents. Now I do not like that such State concessions should be provided for the benefit of foreign firms ; at the same time I do not like that companies, if they appoint or re-appoint managing agents hereafter, should try and take shelter under this section and unnecessarily demand remuneration on a different basis than what is described in 87C (1). I wish to remind my friends from Bombay how this Assembly got alarmed three or four years ago when it was apprehended that certain American firms were getting interested in the managing agents of the Tata concern, with reference to the hydro-electric concessions that the Tata company got. At present the State gives certain concessions and benefits to the Indian managing agents, but subsequently to this Act, any foreigner by buying off the managing agency of a company may think that they will have to subject their remuneration as described in 87 (c), and therefore I have moved this amendment and I do hope the Government will accept it.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, for the words ‘ Where any company incorporated after the commencement of the Indian Companies (Amendment) Act, 1936, appoints a managing agent,’ the words ‘ Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936,’ be substituted.”

Mr. T. Chapman-Mortimer : Sir, I oppose this amendment. The effect of this amendment, if it is passed, will be that all existing companies will immediately be brought within the scope of the new proposed section 87-C (1). (Interruption.) Sir, I repeat that the effect of this will be to bring within the scope of this new section all existing managing agency companies because as and when a company will appoint the managing agent, it will immediately fall within the scope

of this clause if this amendment is carried. I may just read the amendment :

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, for the words ‘ Where any company incorporated after the commencement of the Indian Companies (Amendment) Act, 1936, appoints a managing agent,’ the words ‘ Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936,’ be substituted.”

Now, Sir, it may seem to many in this House that it is unreasonable to take the view that existing companies should be treated differently from companies that will be incorporated after this Act has been passed. But if Honourable Members will look at 87-C (2) which follows, they will see that in future as and when existing companies appoint managing agents, they must go to the company for a special resolution if they want to secure terms other than those provided in 87-C (1). The effect of this amendment, however, will be to go much further than that, because it will bring within the scope of this section 87-C (3) all existing companies as and when they appoint managing agents,—which is not at all what was contemplated when this matter came before the Select Committee. In the Select Committee those who were putting forward what I may call the conservative case agreed to many of the proposals put forward in 87-C (3), the other part of this section, on the assumption that they were only to relate to companies that were incorporated after the Act and to no others. It seems to me that we should stand by the agreement come to in the Select Committee.

Mr. M. Ananthasayanam Ayyangar (Madras Ceded Districts and Chittoor : Non-Muhammadian Rural) : Sir, the objection, which my Honourable friend, who has just concluded, seems to have, was originally based on a misapprehension, but subsequently he wanted to justify the supposition, and, therefore, he thought that he ought to object to this very mild amendment. I think this amendment ought to have been incorporated in the original Bill itself, but by oversight it dropped out. We have made several provisions applying to the existing managing agent. If this amendment is not accepted, all the foreign companies will not be affected. There has been so much difficulty that the existing managing agents have entered into unconscionable bargains, and even my Honourable friend, Sir Cowasji Jehangir, admitted that a provision that the managing agents should be entitled to remuneration on the basis of production and not even on the basis of sale is unconscionable ; but, as it stands, there is absolutely no law which can treat it as unconscionable, and, therefore, in so far as any amendment which will remove such a provision and make it unconscionable and void, he will, I hope, be only too willing if to that extent the amendment is effective. By this amendment, all that is sought to be made vis to see that the provision regarding remuneration contained in 87-C (1) applies not only to future but to the existing companies also, when hereafter, whether in respect of existing companies or companies which will come into existence, in future, if remuneration is to be fixed, it should be fixed at a fixed percentage of the profits. Under those circumstances it will be idle to contend that this in any way makes a departure. I would, therefore, submit that this is most reactionary. We have already agreed to extend the lease of life of existing managing agency to twenty years and I thought these persons who were anxious that the existing managing agencies ought not to be restricted to anything below

[Mr. M. Ananthasayanam Ayyangar.]

twenty years would have accepted this amendment. This is only justice and fairness to the shareholders of many companies. Sir, I support the amendment wholeheartedly.

Sir Cowasji Jehangir (Bombay City : Non-Muhammadan Urban) : Mr. Deputy President, my Honourable friend who opposed this amendment just now spoke of some understanding in the Select Committee. I regret I was not present in the Select Committee when this clause was under discussion but I understood that the lives of all present managing agents were to be extended by 20 years. After these 20 years if any managing agents had to be appointed by companies incorporated before this amending Act comes into force, they would be appointed on the basis of a remuneration on profits and not on production. That was what I understood the Select Committee desired to do. If this amendment is not accepted, the result will be that all companies incorporated before this Act comes into force will have the privilege of appointing managing agents for all times to be remunerated on production. That will drive a coach and four through this very section which intends to prohibit future managing agents being remunerated on the principle of production. There are thousands of companies that have been incorporated before the year of Grace 1936. Are we to allow them to go on appointing in future, that is, 20 years hence, managing agents on a remuneration on production? I thought it was the intention of this Honourable House that that system should be put an end to as soon as possible.

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

We have given them 20 years more. Surely we are not going to give the existing companies a perpetual life. I, therefore, think that there is a good deal in the amendment and it carries out the intentions of the Select Committee. I do not see how my Honourable friends here object to it. If managing agents today are being remunerated on production, they will go on being remunerated on production for 20 years. Do they mean to contend that, if after 20 years they come before their shareholders, they shall have the privilege of being remunerated again for another 20 years on production? Sir, I do not think that was the intention of the Select Committee. I trust that the House will support this amendment because I feel that it carries out the intentions of the Select Committee.

Sir H. P. Mody (Bombay Millowners' Association : Indian Commerce) : Sir, I am afraid I cannot agree with my Honourable friend, Sir Cowasji Jehangir. The intention of the Select Committee was plain enough and it was that the existing managing agencies should not be touched. When the existing managing agents at the end of 20 years or any other period that may be, approach their shareholders, and if the latter so decide, they can continue the managing agents' remuneration on the same basis as before. That intention is clearly brought out by the terms of 87-C (1) and (2) and I do not see where the ambiguity lies. There was no doubt whatsoever in the minds of the Select Committee, and I being a member of it know something about it.

Mr. M. Ananthasayanam Ayyangar : It is an error.

Sir H. P. Mody : It is not an error. If it was an error, surely my Honourable friends should have noticed it when they were considering the draft report which was placed before the Select Committee. (Interruptions.) There are no ambiguities ; the whole thing is crystal clear. I submit that there is nothing wrong in an existing managing agent being able to go before the shareholders at a general meeting and getting that general meeting to endorse the basis of remuneration which he is enjoying today. Sub-section (2) of 87-C, I am afraid, does not bear the interpretation which my friend Mr. Chapman-Mortimer has put on it, what does 87-C (2) say :

“ Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company.”

This can only relate to 87-C (1) which clearly lays down that the company must be a company which is incorporated after the commencement of this amending Act. Sir, I oppose the amendment.

Mr. Bhulabhai J. Desai : Sir, the Bill would have very little value if the present amendment is not accepted. The true criterion is not whether the company is old or new but the true criterion is when the next appointment of the managing agent comes up for consideration because it is for the future appointment of managing agents that a uniform system or method or basis is laid down in sub-section (1). As regards the basis, there can be no distinction between the companies incorporated today and the companies to be incorporated hereafter. I am not, therefore, putting it on the ground of misapprehension. I am putting it on the ground that if this Bill is going to have any value, this provision must be there, otherwise so far as the vice is concerned, the existing companies today which are all too numerous with many managing agents for whom my Honourable friend, Sir Homi Mody, has spoken will continue to be at large for all time. That certainly could not have been the intention of the Act.

Mr. M. S. Aney (Berar Representative) : Sir, whatever may have been the agreement in the Select Committee, in this House we have to see what is equitable and what is just. So, those of us who were not members of the Select Committee are free to look at this question from the point of view of equity and justice. I really do not think how the amendment which my Honourable friend, Mr. B. Das, has just moved is going to affect any vested interests at all. If the period of 20 years expires which has been fixed for them and the question of the appointment of managing agents comes up for consideration, why should it be that the provisions laid down in 87-C not be made applicable to them.

Sir H. P. Mody : Why should they ?

Mr. M. S. Aney : I am trying to convince my friend if he is open to conviction. If he says there is good reason for changing the basis of profits from production to that of net profits, then it is good not only for new companies that may come into existence hereafter but even for old companies. Having given a lease of 20 years for them to live after the commencement of this Act, which is certainly more than what the managing agents of existing companies deserve according to most of us, here, I think it would be more equitable on their part to be bound

[Mr. M. S. Aney.]

by that rule after the expiry of that period. By that law you must be governed and therefore I think that the amendment which is moved by my Honourable friend, Mr. Das, should be supported unanimously.

The Honourable Sir Nripendra Sircar : Sir, I want to say a few words. In a matter of this kind, there is no good repeating the old arguments. The question will arise as to why you are not going a little further than what you have done under your Bill and the other side will ask why do you go so far. So I do not propose to repeat my arguments as to why we came to this conclusion. It is not based on any agreement but the intention is perfectly clear as to what was meant by the Select Committee, and I would remind the Honourable Members that this is not the case of a first appointment. If it is not the case of a first appointment, and supposing his term runs out after 10 years and he is going to be re-appointed, then under 87-B (e) his appointment must be approved of by a resolution at a general meeting. That is to say, on this occasion he cannot simply ask the directors to re-appoint him ; he has got to come before the shareholders. We thought that as that provision has been put in, he must come before the shareholders. There is no reason as to why they should be deprived of their right to come up before the shareholders and to get the terms which they want. If it had been the case like the first appointment that he need not come before the shareholders, then my Honourable friend Mr. Aney's argument would be very forcible. They have got to come before the shareholders. My Honourable friend, Sir H. P. Mody, seems to be thinking of the managing agents alone, but it is not a question of the existing managing agents being exempted. The point from which I look at the matter is this. I look at the companies, not the managing agents of the existing companies. These companies under their articles have certain rights, and we do not propose, beyond the extent to which we have gone, to deprive them of their rights under these articles. But the abuse which is possible by reason of some of these articles giving extraordinary powers is a question which, in this particular case, does not arise. I do not desire to repeat my arguments. I have shown that in the case of these appointments, they must come before the general body of shareholders.

Mr. M. Ananthasayanam Ayyangar : On a point of information, Sir. Does not that apply.....

The Honourable Sir Nripendra Sircar : I would ask my Honourable friend to apply to the Bureau of Information in the Home Department, I do not propose to give any.

Mr. M. Ananthasayanam Ayyangar : You belong to the Law Department. What is the good of going to the Home Department ?

Pandit Govind Ballabh Pant : Sir, I do not exactly follow the position of the Honourable the Law Member. I want to know whether he accepts the amendment or not.

The Honourable Sir Nripendra Sircar : I oppose the amendment.

Pandit Govind Ballabh Pant : I am really surprised and somewhat astonished. I should like to invite the attention of the House to amend-

ment No. 73 on the agenda appearing in the name of my Honourable friend, Mr. Susil Chandra Sen, which runs thus :

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, after the words ‘ appoints a managing agent ’ the words ‘ or where any company incorporated under this Act appoints or reappoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936 ’ be inserted.”

The meaning is clear. Under this amendment, this clause would cover all existing companies, with the result, that whenever an appointment is made of a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936, it should be made only in accordance with the provisions of this Amending Act. I should think that Mr. Sen gave notice of this amendment with the consent of the Honourable the Law Member.

Sir H. P. Mody : He may be acting *ultra vires*

Pandit Govind Ballabh Pant : I am only suggesting that either the Honourable the Law Member himself and his Government were of the opinion that a change of this sort should be made or in case he had not been consulted evidently his expert Adviser was of the opinion that this amendment was so very important and urgent that he considered it necessary to give notice of it even without consulting the Honourable the Law Member. One of the two alternatives must be true, either he had his permission or he thought the matter was very urgent and amendment absolutely necessary. Now, let us see what the amendment actually means. The tenure of a managing agent who is holding office today may come to an end in many ways. He may be turned out and removed because of his non-compliance with some of the provisions of this particular Amending Act. But though he is turned out or removed because of his non-compliance with or contravention of some of the provisions of this particular Act, yet when the question comes of his appointment or of the remuneration that he should get, then the provisions of this very Act are not to be applied to his case. That seems to me to be very illogical. If you will please look at section 87-A, it simply says :

“ Notwithstanding anything to the contrary contained in the Articles of a company or in any agreement with the company, a managing agent of a company shall not continue to hold office after the expiry of 20 years.”

It may automatically in the ordinary course come to an end even after five years. What is to be done thereafter ? Is he to be free to charge his remuneration on the basis of sale and purchase or is he to be controlled by this clause ? Whatever may be the difference of opinion in this House, there was unanimity at least on the point, that the system of appointment on the basis of products or of purchase or sales was and is highly improper. In fact my Honourable friend, Mr. Hussenbhai Abdullabhai Laljee, had given notice of an amendment to the effect that even in the case of the existing managing agents, the contracts which enable them to get remuneration on this basis should be annulled and this provision should be made retrospective. But, I am really surprised that the Honourable the Law Member should now go back even on the amendment of which notice has been given by Mr. Susil Chandra Sen. Without taking up the time of the House, I should say that it has been held by all the Tariff Boards that this system of appointment is vicious and that it should be abandoned as soon as possible. I see no reason why the amendment of which notice has been given by Mr. Susil Chandra Sen should not be adopted by the House. I hope the House will adopt it.

Mr. M. A. Jinnah : Sir, it seems to me that this is rather a serious matter, as far as I understand it. I understand that clause 42 which seeks to put in section 87-A and other sections in the Act lays down a uniform principle that agreement for remuneration should be based on the percentage of profit. Sub-section (2) of section 87-C also says :

“ Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company.”

Therefore, having regard to this provision in sub-section (2), the managing agent can enter into an agreement for remuneration on any other scale or any other form provided only if it is accepted by a special resolution of the company. It seems to me that sub-clause (2) nullifies the principle enunciated in sub-clause (1) because under sub-clause (2) the agent can get any stipulation provided of course a special resolution of the company accepts it. But before we come to sub-clause (2), dealing with sub-clause (1), I should really like to understand why the Law Member wants to oppose this amendment. If this amendment is opposed,—I hope he will correct me if I am wrong,—the net result of it will be that all the existing companies which are already incorporated and whom you have already given a charter for 20 years will not be governed by this provision at all. It seems to me to be really destroying the whole Bill if you allow this state of things to continue, namely, that all the existing companies which are already incorporated will not be governed by this clause.

Sir H. P. Mody : They will have to have a resolution of the shareholders after 20 years.

Mr. M. A. Jinnah : But I may remind Sir Homi Mody that what we want to put an end to is this that even by resolution we do not want to allow this swindle to continue. We have given you a license for 20 years and you want again all sorts of forms of agreements which are nothing but swindles.

The Honourable Sir Nripendra Sircar : Under the Bill you cannot prevent that if the shareholders give it to them.

Mr. M. A. Jinnah : I say that if clause (1) stands with the amendment then the criterion will be remuneration on the basis of percentage of profit, and no other basis.

The Honourable Sir Nripendra Sircar : Except with the sanction of the shareholders.

Mr. M. A. Jinnah : That is clause (2), and I am objecting to clause (2). I am quite consistent in my position. I say I am against clause (2) and I want that the companies which are incorporated already should not be exempted from the operation of clause (1). And when we come to that clause (2) we shall see. But if Government wish to support this principle I submit that really this goes to the very root of it and the very basic principle of this Bill, and I really think.....

Mr. N. M. Joshi (Nominated Non-Official) : Then drop the Bill.

Sir H. P. Mody : We do not mind.

Mr. M. A. Jinnah : I know you do not mind swindling going further (laughter), but I hope Government will not be a party to this, and I hope that the Law Member, who has had so much dinned into his head by

these agents hovering round him, will not be misled and will not destroy the basic principles of this Bill. I appeal to Government not to take up this position but to accept the amendment.

MESSAGE FROM HIS EXCELLENCY THE GOVERNOR GENERAL.

Mr. President (The Honourable Sir Abdur Rahim) : Order, order. I have received a message from His Excellency the Viceroy and Governor General as follows :

“ In exercise of the power vested in me by sub-rule (2) of rule 22 of the Indian Legislative Rules, I, Victor Alexander John, Marquess of Linlithgow, hereby disallow the motion of Mr. Mohammad Ahmad Kazmi to move the adjournment of the House for the purpose of considering the ‘ failure of the Government of India to review their currency policy and keeping an appreciated value of the rupee in spite of the world-wide depreciation of the currencies, chiefly brought about by the decisions of the European States ’ on the ground that the motion cannot be moved without detriment to the public interest.

SIMLA,

(Sd.) LINLITHGOW,

The 30th September, 1936.

Viceroy and Governor General.”

Mr. S. Satyamurti (Madras City : Non-Muhammadan Urban) : Sir, as President who controls the rights of this House, may I ask you a question whether the Governor General takes any note of the other side of the case ? One side goes and tells him that it cannot be moved without detriment to public interest. He has got the statutory right to disallow it, and he has to exercise that right in his discretion. May we request you to address the Governor General and tell him that he must hear the other side also, and not listen to one side only and pass *ex parte* orders ?

Mr. President (The Honourable Sir Abdur Rahim) : It is not my business to do anything of the sort at all.

THE INDIAN COMPANIES (AMENDMENT) BILL—*contd.*

Dr. Ziauddin Ahmad : Sir, the motion which is now before us appears to me to be a simple one. We have agreed, in spite of our wishes to the contrary, that the life of the managing agent should continue for 20 years and we have also agreed that we are not going to touch their contracts. But whenever any new managing agents are to be appointed, our appeal is that they should be governed by the new Act and not by the old Act.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, for the words ‘ Where any company incorporated after the commencement of the Indian Companies (Amendment) Act, 1936, appoints a managing agent,’ the words ‘ Where any company appoints a managing agent after the commencement of the Indian Companies (Amendment) Act, 1936,’ be substituted.”

The motion was adopted.

Pandit Govind Ballabh Pant : Sir, I move :

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, the words ‘ with provision for a minimum payment in the case of absence or inadequacy of profits ’ be omitted.”

This amendment, if accepted, will mean that a managing agent can be appointed by means of a prospectus only when the remuneration is payable to him on a percentage basis : and if he wants anything more than what he can get on the profits on this basis, he must obtain the consent of the company. That is the effect of the amendment that I am making. Sir, I think it is accepted by all that so far as possible the managing agent should receive his remuneration out of profits, and he should be able to so conduct his business that he may earn some profit for himself as well as for the shareholders.

As Honourable Members are aware, according to the original scheme of this Bill, all contracts relating to the appointment of managing agents were to be placed before the company for approval and acceptance, but the Select Committee has made a change in it ; and further according to the original scheme of the Bill the payment could not in any case be made otherwise than on the percentage basis, along with a minimum. But now, by introducing sub-clause (2) of 87C, it has been made possible for a company to grant remuneration even on the basis of sales, purchase and the like. I want the House to consider the whole of this case. Under the original Bill all agreements were to be placed before the company for acceptance. Now, it is not necessary to refer to the company at all where an appointment has been made by means of the articles of association or the prospectus : thus an entry in these documents by itself will in most cases be final on this subject : and whether the company agrees or not the appointment and remuneration entered in the prospectus and the articles of association will be binding on the company. I ask the House to remember whether we gain anything by having a clause of this nature. There is no standard prescribed here ; there is no limit prescribed here, as to what this minimum payment should be. There is no criterion for determining as to how this minimum amount should be fixed. When you have a provision like this it is assumed that the shareholders cannot ordinarily protect themselves fully and effectively : otherwise, there would be no occasion for any safeguard of this type. When you want a safeguard, the safeguard should carry some meaning and some purpose. It is no use providing a safeguard which is nothing if not futile. Let us see what can be done under this clause. Suppose, you start a company tomorrow with a lakh of rupees capital ; and the appointment is made by the prospectus. I may say that in most cases so far the managing agents had been usually appointed initially by means of the prospectus and the articles of association and that is in fact the perennial source of all this mischief and trouble. It remains intact even after this Act. Provided an entry has been made in the prospectus and articles of association you cannot in any way attack it. It is binding on all.

Now, let us look at this clause. It says that not only will payment be made at a fixed percentage of the net annual profits, but provision must also be made for a minimum payment in the case of absence or inadequacy of profits, together with an office allowance. I may give an illustration : suppose a company is formed with a capital of a lakh

of rupees and the managing agent enters in the prospectus that he will get remuneration at the rate of 15 per cent. on the profits, in addition, in case this 15 per cent. is not realised, he will get a minimum amount of Rs. 25,000 per year : thus he would receive this Rs. 25,000 in every case but if the 15 per cent. of profits yielded more than Rs. 25,000, he will get at the rate of 15 per cent. on the profits—there is nothing to prevent him entering even Rs. 50,000 in place of Rs. 25,000. It may be said “You knew it when you purchased the shares”. But if that is the argument, then have no clause at all. Give absolute freedom and leave the managing agent free to enter anything in the prospectus and as the shareholders go in for the shares with their eyes open let them suffer for their mistakes. But that assumption would knock the bottom of this Bill. It is accepted that the shareholder is not qualified to protect himself and that is why it is laid down here that there should be payment in this manner only. Again, if Honourable Members will be pleased to read this clause, they will find that it makes it compulsory for a company not only to grant remuneration on a percentage basis, but also to make a minimum payment. It should be compulsory, whether the managing agent wants it or not. Under the clause it is incumbent on him to provide that in case there is an inadequacy of profits or absence of profits, there must be a provision for a minimum payment. You will further find that there must be a provision for an office allowance. So, instead of improving things, to a certain extent you are further complicating them and making them worse. There are companies today where the remuneration is paid and payable only on a percentage basis on the total amount of net profit realised ; and there is no provision by way of any minimum payment in the case of absence or inadequacy of profits. But such companies are very few. Ordinarily where payment is made on a percentage basis, there is a minimum amount prescribed ; but still I know there are companies which do not make any provision for minimum payment. I know there are many more companies which either make provision for this minimum payment or for office allowance but not for both. Under this clause it is incumbent upon all these companies and all these managing agents to have remuneration firstly on a fixed percentage basis on the net annual profits, secondly, a provision for a minimum payment in the case of absence or inadequacy of profits and thirdly, an office allowance. All these three must be prescribed whether you will it or not. What I am suggesting is this : that while in every case the managing agent should be entitled to remuneration on the basis of profits earned, he should not get anything by way of a fixed sum except with the consent of the company. That will be the only effect of my amendment....

Sir H. P. Mody : Special resolution.

Pandit Govind Ballabh Pant : Special resolution or general resolution or ordinary resolution—that will be considered by the House later : but there is already a provision that it can be added to and remuneration in other forms sanctioned by means of a special resolution. Even a special resolution was considered to be worthless enough when we were considering the question of liquidation some time back on the ground that the shareholders can be hoodwinked even to pass a special resolution : so in this case one should not be afraid of a ‘special resolution’. But my difficulty has mainly arisen out of these two things : firstly, in

[Pandit Govind Ballabh Pant.]

the case of appointments made by means of prospectus, the shareholders and the company will have no say at all : and secondly, this clause makes it compulsory and obligatory on the managing agents and the company to have three forms of payment simultaneously at one and the same time. Sir, I move.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, the words ‘ with provision for a minimum payment in the case of absence or inadequacy of profits ’ be omitted.”

The Honourable Sir Nripendra Sircar : I oppose this amendment. I think it is a most unreasonable one. My Honourable friend in his rather long discourse on protection and so on really wanted to make the point that the managing agents should go and that is at the back of his mind.

Pandit Govind Ballabh Pant : No. That is not at the back of my mind.

The Honourable Sir Nripendra Sircar : But he is forced by circumstances to allow this nuisance to continue, and that being so, my Honourable friend is finding out whether there are not indirect means of attaining that result.

Pandit Govind Ballabh Pant : That is wrong.

The Honourable Sir Nripendra Sircar : One can always make out a case by taking an extreme and absurd example.

Mr. S. Satyamurti : As you often do !

The Honourable Sir Nripendra Sircar : But less than you.

An Honourable Member : It is only a question of degree in that.

Mr. M. A. Jinnah : There is no much difference.

The Honourable Sir Nripendra Sircar : It is a matter of opinion. Where there is a will there is a way, and there is nothing to prevent your saying that the minimum payment will be eight annas per year. But if you take an absurd example, namely, where the capital is one lakh of rupees and the prospectus says that the minimum remuneration will be Rs. 90,000 and if still the shareholders will buy shares, that is a kind of case which I cannot imagine. My Honourable friend thinks that a special resolution is a very small matter.

Pandit Govind Ballabh Pant : I do not think so. I said that it was considered by you to be so. When you talked of winding up you indicated that a special resolution did not matter much.

The Honourable Sir Nripendra Sircar : Special resolution has a definite meaning as defined here, and surely it is not in the scheme that in matters of this kind there should be a special resolution. What is the objection to having a provision for minimum payment made ? It is not the idea that the managing agent should have no minimum payment. Is he to go on for five or ten years until there is profit, and is he to bear all the expenses ? Why should he be compelled to come to

the shareholders with a special resolution ? Sir, it is like the system of Chinese doctors. You won't get anything until you can cure ; no cure no pay. But that won't be applicable to business.

Dr. G. V. Deshmukh (Bombay City : Non-Muhammadan Urban) : They do not pay when they are ill. They pay when they are well. (Laughter.)

Mr. Husenbhai Abdullahhai Laljee (Bombay Central Division : Muhammadan Rural) : They hang the doctor when the patient dies. (Laughter.)

The Honourable Sir Nripendra Sircar : I submit, Sir, that there is nothing inequitable or unreasonable in making the provision which we have done, namely, a provision for a minimum payment in case of absence or inadequacy of profits. Sir, I oppose the amendment.

Mr. Husenbhai Abdullahhai Laljee : I rise to oppose the amendment which has been moved by my Honourable friend, Pandit Govind Ballabh Pant. I have always listened very carefully to what my Honourable friend has to say, and I must say that many a time, even on this Companies Bill, many of his suggestions are really very good, but in the case of this amendment I do feel that perhaps he has been carried away by the feeling that the managing agent should be done away with anyhow. His own view has been, and I quite agree with him, that there should be a managing director if we could afford to have one and if we could find the money for the managing director. But I ask my Honourable friend, in all fairness, whether he could have a managing director without any pay. He wants the managing agents to serve without any pay ; in fact, he said that three kinds of payment are going to be made to them. One is commission on profits. Well, Sir, commission on profits means actual working and showing good results. Then he says, office allowance. A company cannot go on without an office allowance. Should the managing agent maintain the office ? It is a bare necessity and ought to be there. What is the third ? A minimum amount may be given to him. Even a *patawala* cannot work without any remuneration. Surely, a partner of a managing agency firm has got to meet his family expenses.

Sir H. P. Mody : Managing agents have no business to have a family ! (Laughter.)

Mr. Husenbhai Abdullahhai Laljee : I am very sorry that a great deal has been said in this House against the managing agent. As I said the other day, most of our companies, in fact, each and every important industrial company that has been established has been established by the managing agency system. It has also been said often and often again that the managing agency system has to remain so long as the banking system that prevails in our country will exist. It is also a fact that most of the shareholders have come in and become shareholders, because they found solvent managing agents. Therefore, to blame the managing agents in season and out of season and for everything is not at all fair. Take the instance of Bombay. You have got only 80 spinning and weaving mills in Bombay and the managing agents will be about 80 persons. Everybody says that Bombay is rich and Calcutta is rich. Why ? Because of the industries. Is it because 60 firms only are making money and nobody else ? There are 15 lakhs of people in

[Mr. Husenbhai Abdullabhai Laljee.]

Calcutta and another 15 lakhs in Bombay, and it has been said that the Calcutta people are rich and that the Bombay people are rich. It is because the industries prosper, and as a result of it, not only the managing agents, but the doctors, the lawyers, the shareholders and everybody else, and last but not least the labour—all prosper.

Dr. G. V. Deshmukh : Joint families also !

Mr. Husenbhai Abdullabhai Laljee : Certainly. What will be in future in this. The present routine has been that when the managing agents float a company they do not take any lump sum for themselves for placing before the public their schemes. Ordinarily, what will happen ? The big technical experts or some big persons, say managing agents would come forward and say that they want to float a company for such and such an object—a company for 15 lakhs, but for their services to float the company and to bring forward their scheme they would take 3 or 4 lakhs outright, and then they will say they are satisfied with 20 or 30 thousand a year and that will be taken to be quite all right. But if a managing agent—and that has been the fact so far as Bombay is concerned because none of the textile managing agents have taken any profit for floating a textile mill. They have certainly provided a very fine process of getting sufficient profits, but that is divided into 20 or 30 years, and if the company did go for 20 or 30 years, they may get at the end of it about the same. But at the beginning they get nothing. Sir, I oppose the amendment.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, the words ‘ with provision for a minimum payment in the case of absence or inadequacy of profits ’ be omitted.”

The motion was negatived.

Mr. S. Satyamurti : Sir, I move :

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, the words ‘ or inadequacy of ’ be omitted.”

I will not repeat the arguments of my Honourable friend, the Deputy Leader of the Congress Party, but I am sure the Honourable the Law Member will see that the word “ inadequacy ” is incapable of definition. If these words remain here, how are they to be interpreted ? What is to be the test ? It seems to me that it will give rise to grave disputes and possibly inevitable litigation. I can understand the House having rejected amendment No. 77, the word “ absence ” must remain there. There is a case for some payment if there are no profits, but it seems to me to keep the word “ inadequacy ” is doing no service to the companies or the shareholders.

Sir H. P. Mody : What will be the effect if the words are dropped out ?

Mr. S. Satyamurti :

“ The remuneration of the managing agent shall be a sum based on a fixed percentage of the net annual profits of the company, with provision for a minimum payment in the case of absence of profits.”

Mr. M. A. Jinnah : Suppose there is a profit of one rupee.

Mr. S. Satyamurti : Why should a company pay a managing agent, if he cannot earn for the company more than a profit of one rupee? We all seem to think that managing agents are paragons of virtue and efficiency and that whatever they touch becomes gold like Midas' touch. Then I want them to have faith in themselves. Why this perpetual anxiety to vote for payment even when there is inadequacy of profit? Moreover, they can always go and get a special resolution, if they think that their remuneration is not adequate. Why should the company be compelled by statute to make a provision for a minimum payment even in the case of inadequacy of profit? I trust the Law Member will see the reasonableness of the amendment and accept it. Sir, I move.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, the words ‘ or inadequacy of ’ be omitted.”

The Honourable Sir Nripendra Sircar : The question has been raised as to what is meant by “ inadequacy ”. The idea is this. Supposing the prospectus says that the commission will be 3 per cent. on net profits and the minimum amount is Rs. 5,000 a year, then what is meant by inadequacy is that up to Rs. 4,999 it is inadequate. My friend's point is why should a managing agent charge anything if there is no profit. My friend's idea is that the moment a company is started it must make lakhs and lakhs as profits and if it does not make, the managing agent is either incompetent or dishonest. Sir, I oppose the amendment.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87C, the words ‘ or inadequacy of ’ be omitted.”

The motion was negatived.

Pandit Sri Krishna Dutta Paliwal : Sir, I move :

“ That in clause 42 of the Bill, the proviso to sub-section (1) of the proposed section 87C be omitted.”

All the arguments used in favour of my amendment No. 65 are also applicable to this and as I understand that the Honourable the Law Member is prepared to accept this amendment, I shall not make a speech. Sir, I move.

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

“ That in clause 42 of the Bill, the proviso to sub-section (1) of the proposed section 87C be omitted.”

The Honourable Sir Nripendra Sircar : I accept this amendment.

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

“ That in clause 42 of the Bill, the proviso to sub-section (1) of the proposed section 87C be omitted.”

The motion was adopted.

Pandit Govind Ballabh Pant : Sir, I move :

“ That in clause 42 of the Bill, after sub-section (2) of the proposed section 87C, the following new sub-section and the proviso be inserted and the subsequent sub-sections be re-numbered accordingly :

“(3) No managing agent shall receive anything additional to the remuneration fixed under sub-section (1) or sub-section (2), whether by way of commission, allowance or otherwise, for the services rendered by him to the company whether in the form of supply, sale or purchase of machinery stores, raw materials and manufactured goods or otherwise :

Provided that nothing herein contained shall prejudice his right to interest or dividend for loans, shares, debentures and other investments.”

I do not propose to make a speech on this amendment. I should like to disabuse the Honourable Law Member and other Members of the House of the notion that I do not want the managing agents at all. If I didn't, I would frankly say so. They may tell me that the conditions which I am proposing make it impossible for them to entertain the prospect of having managing agents. But I am more hopeful than they are, perhaps less wise. I accept both changes. The definition of a managing agent is a person who is in charge of the management of the whole affairs of a company. Now, you have clauses (1) and (2) which prescribe the remuneration which a managing agent should get. There will be no meaning in having provisions of this type if he is allowed to make profits otherwise. I will not refer to the evil of allowing the managing agents to do the work of purchase or sale of raw materials, machinery and other things. My suggestion is in accordance with the Indian Contract Act, that wherever a manager or other person in charge of a business as an agent earns any profit while transacting that business, the benefit should go to his principal. So when the managing agents, who will always be in charge of the whole of the affairs of the company, have been guaranteed an adequate remuneration by law in these various forms, it is really improper to leave the agents free to derive further profit by other dubious and indirect means.

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

“ That in clause 42 of the Bill, after sub-section (2) of the proposed section 87C, the following new sub-section and the proviso be inserted and the subsequent sub-sections be re-numbered accordingly :

“(3) No managing agent shall receive anything additional to the remuneration fixed under sub-section (1) or sub-section (2), whether by way of commission, allowance or otherwise, for the services rendered by him to the company whether in the form of supply, sale or purchase of machinery stores, raw materials and manufactured goods or otherwise :

Provided that nothing herein contained shall prejudice his right to interest or dividend for loans, shares, debentures and other investments.”

Sir H. P. Mody : What happens to my amendment No. 2 on Supplementary List No. 5 which deals with the contracts of managing agents with their companies ? My submission is this that, if this amendment is decided upon now, the Honourable the Mover will be able to torpedo my amendment.

Mr. President (The Honourable Sir Abdur Rahim) : It is not possible in a Bill like this to move all the amendments.” The Honourable

Member can find out if this is a much more desirable amendment for the House than the others.

Sir H. P. Mody : Then I oppose the amendment. Sir, this is a very ingenious way of short-circuiting my amendment.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : On a point of order, Sir. I want to bring to your notice that I have an amendment similar to No. 86 ; I want your ruling whether I can move it.

Mr. President (The Honourable Sir Abdur Rahim) : I am afraid that is not possible.

Sir H. P. Mody : Sir, I oppose this amendment. As I was saying my Honourable friend in tacking it on to section 87-D is trying to short-circuit my amendment.

Pandit Govind Ballabh Pant : I was mortally afraid of your amendment.

Sir H. P. Mody : There was no valid reason whatsoever advanced by my Honourable friend for putting forward the suggestion that when a managing agent performs certain services to the company, he should not be remunerated.

Mr. S. Satyamurti : What is he paid for, otherwise ?

Sir H. P. Mody : He is paid for a lot of things (Laughter) and the object of my Honourable friends is to relieve him of even the few loose coins that are left in his pocket. They have done away with all other additional forms of remuneration and, flushed with their victory, they are now seeking to deprive the managing agent of every form of legitimate remuneration. A managing agent, Sir, may have a stores agency. He may have a machinery agency. He maintains an office for the purpose of conducting such agencies. He supplies machinery to the company. In many cases it is impossible for the company to obtain the same machinery from any other quarter. There are cases like that. For instance, there is a firm in Bombay. (*An Honourable Member* : "of undertakers ?") The undertaker would presently have to be called in if my Honourable friend had their way here. I say, Sir, that if my Honourable friend concedes that a managing agent has a right to enter into a contract with a company, then it is most unreasonable to contend that when these services have been rendered they should not be remunerated. Somehow or other he sees visions of all manner of unscrupulous people trying to rob the companies. I do not know where my friend derives his experiences from. We know something about managing agents, and while we are not here to stand up for each and every managing agent I say without fear of contradiction that managing agents generally perform their duties honestly and efficiently. (*Voices* : "Question, question.") I strongly oppose any idea of trying to deprive managing agents of the remuneration that is justly due to them for services which they have properly rendered to companies.

Mr. M. S. Aney : I would just like to inquire from my friend, Pandit Govind Ballabh Pant, as to what are the other sources, which he has in contemplation, left out of which the managing agent can take advantage under sub-clause (2) of this clause if his amendment

[Mr. M. S. Aney.]

is accepted. Why should not my friend move a straight amendment, for the deletion of sub-clause (2)? Because what I find is this. Under sub-section (2), "any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company". Now if the sources which the managing agent can tap are taken away, are there any other sources left of which he can take advantage by way of additional remuneration, in sub-section (2)?

Pandit Govind Ballabh Pant : Sir, I think my Honourable friend has not closely examined the wording of my amendment. I have no objection to sub-clause (2) if the managing agent is given, by way of and in the form of his remuneration, something on the articles turned out by the company itself, so long as it is remuneration. Whatever be the basis on which that remuneration is calculated, I have no quarrel with that. If a company decides that the managing agent will get a commission at the rate of three pies per rupee on the output of the factory by way of his remuneration, I have no quarrel with that. It will come in under sub-clause (2). But where, in addition to this remuneration, the managing agent says: "I will sell the goods and for that get an extra commission of one or two pies or I will introduce machinery and get an extra commission on that", then it should be disallowed. The managing agent is appointed to manage the affairs of the company and it is part of his business to look after all these things.

The Honourable Sir Nripendra Sircar : Sir, I do think my Honourable friend, Pandit Govind Ballabh Pant, has not quite answered the question put by my Honourable friend, Mr. Aney. Put shortly, it is this. Under paragraph 2 of 87-C, a managing agent can get anything he likes as remuneration :

"Any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company unless sanctioned by a special resolution of the company."

Therefore, there is nothing left; what source is left which will be tapped? I say nothing can be done under 87-C (2). There is no magic in the word "remuneration"; if he gets 2 per cent. on sales, and 5 or 10 per cent. on production, and so on, theoretically that is permissible in paragraph 2, because "any stipulation for remuneration additional to or in any other form than the remuneration specified in sub-section (1) shall not be binding on the company"—of course a special resolution has got to be passed. That being so, what is the object of this amendment,—that no managing agent should receive anything additional to what is given by sub-section (2). What is that "additional" thing? That was the question of my Honourable friend, Mr. Aney, and I think with great respect to my Honourable friend, Pandit Govind Ballabh Pant, that point has not really been answered by him. The only other point I desire to point out is this. Is it really suggested that under this amendment as regards the managing agent who guarantees loans, as we all know that they do and gets a commission for that guarantee of say one per cent. is that going to be stopped?

Mr. Akhil Chandra Datta : There is the proviso.

The Honourable Sir Nripendra Sircar : No, Sir : " Provided that nothing herein contained shall prejudice his right to interest or dividend for loans, shares, debentures and other investments "—how does that work with " guaranteeing loans ", so that he is expected to guarantee these loans, but he cannot get any remuneration for that.

Pandit Govind Ballabh Pant : Do managing agents get anything for that ?

The Honourable Sir Nripendra Sircar : Very often they do ; they charge a commission for the guarantor's commission.

Mr. Bhulabhai J. Desai : I have not yet known of any such case.

The Honourable Sir Nripendra Sircar : I have known of many.

Mr. Bhulabhai J. Desai : Probably Calcutta is much more advanced.

The Honourable Sir Nripendra Sircar : It may be Bombay is more philanthropic and does not charge anything. It is quite possible. However, I do not want to take the further time of the House.

Pandit Govind Ballabh Pant : In regard to the financing of these concerns by the managing agents, I never thought that they had been charging any commission for that ?

The Honourable Sir Nripendra Sircar : That shows that there is at least something which my friend does not know. Sir, I oppose this amendment.

Mr. M. Ananthasayanam Ayyangar : Sir, I rise to support the amendment moved by Pandit Govind Ballabh Pant and I shall try my best to answer what my friend Panditji has not been able to answer. Under this amendment both the clauses (1) and (2) stand, though it is said that he is trying to take away both these clauses. Additional remuneration is also sought to be given. But what he said was that his amendment covers all the different avenues by which he can get commission. So far as I am able to understand, if a managing agent underwrites a number of shares and gets a commission, this amendment will not stand in his way for it is not the sale of goods.

The Honourable Sir Nripendra Sircar : But look at the word ' otherwise ' : it ropes in everything.

Mr. M. Ananthasayanam Ayyangar : I do not know how far the construction of ' otherwise ' can be applied to things which happened previously. So far as I can understand it, the word ' otherwise ' cannot relate to anything which is not contemplated in the previous portion. In the earlier portion there is a fixed percentage that is sought to be given. If large profits are earned, the company by a special resolution may resolve to give the managing agent bonus for the excellent work that he has done. Therefore, this amendment seeks to restrict his remuneration for what he ought to do in the ordinary course of his duties. I put a question both to the Honourable the Leader of the House and to my Honourable friend, Sir Homi Mody, why is it that this fixed percentage is guaranteed to him under clause (1) ? What is the work he does to earn it ? If he enters into a contract for the purchase of an article which is necessary for the prosperity of the company, why should he be paid ?

The Honourable Sir Nripendra Sircar : He is paid for his additional troubles.

Mr. M. Ananthasayanam Ayyangar : Then it comes to this that for no troubles he gets a fixed percentage and for his troubles he gets something else.

The Honourable Sir Nripendra Sircar : Those are other troubles.

Mr. M. Ananthasayanam Ayyangar : What are the other troubles ?

The Honourable Sir Nripendra Sircar : That you will know when you run a business.

Mr. M. Ananthasayanam Ayyangar : I would therefore say that it is a question of finance. We have repeatedly heard that the managing agent is there either on account of his technical skill, or, more often, for the finances that would flow into the concern because of his presence. If the managing agent has got no financial stability, no bank will ordinarily lend money to that company. If that is the position why has he been given 20 years for the past and 20 years for the future, when the fixed percentage is there ? And if there are profits, he gets something more than his usual commission. Under clause (2) not only does he get the fixed percentage but this percentage can also be increased. What my Honourable friend, Pandit Govind Ballabh Pant, seeks to provide against by his amendment is that these managing agents ought not to get all sorts of commissions on sales and purchases, which are a necessary part of any company. I would, therefore, say, that what is sought to be prevented by an earlier portion of the Bill, that is, restricting the percentage to sales, will be undone, if this amendment is not there. If this amendment is not accepted, it would open the door for many undesirable things which we have been anxious to stop. I would, therefore, request the House to accept this amendment.

Mr. M. A. Jinnah : Sir, I regret very much indeed that my friend, Pandit Govind Ballabh Pant, should have dropped his amendment No. 85. It would have been more logical so far as this particular question is concerned. Anyhow, it is no more in my hands now to speak on that because it has not been moved. The question before the House, as I understand it, is this. We are assuming now that clauses (1) and (2) of 87-C are strictly confined to the remuneration for agents as such, but the agents may supply materials to the company. The agents may purchase goods on behalf of the company : the agents may sell goods on behalf of the company. And what is now sought to be done is that they should not get any extra remuneration for those purposes. That, I understand, is the object of this amendment. Now, on this question it will certainly create a deadlock of a very serious character if you prevent the agents from selling, purchasing or supplying as any other outsider might do. The amendment that is tabled says that he should not be allowed to do it at all and he should not get a remuneration. But who is going to do it for you for nothing ? That is absurd. It really means that he should not be allowed to do it. If he has got to buy anything, if he wants supply of raw materials or sell anything, he must go to an outsider. Therefore, you are stopping him from selling, purchasing and supplying any raw materials except through an outsider.

Mr. M. Ananthasayanam Ayyangar : He will be dismissed if he does not do it.

Mr. M. A. Jinnah : The Honourable Member does not really appreciate how the business is done. You must remember this. Supposing stores are to be purchased and supposing the managing agent is also dealing in stores. If he can supply the stores to the company at reasonable rates, why should he not ?

Mr. M. Ananthasayanam Ayyangar : There is no quarrel about that. But he cannot, in addition, receive an allowance. He gets his price for the articles he sells to the company.

Mr. M. A. Jinnah : May I read the amendment ? What about his profits :

“ No managing agent shall receive anything additional to the remuneration fixed under sub-section (1) or sub-section (2), whether by way of commission, allowance or otherwise.....”

Then, he is not to make any profit when he supplies goods to the company, and if he is making a profit, it will come under the word ‘ otherwise ’. I am entirely in sympathy with the idea that there should be some check because we have known many cases where a great deal of *golmal* has been done. I know it. But the question is how to prevent it. I was trying to put it fairly to the House that this amendment means a complete stoppage on the part of the managing agents to do these things. There is another amendment which says that the managing agent can do it provided he gets the sanction of the shareholders in a meeting. There is a third amendment which says—the one about which my Honourable friend, Sir H. P. Mody, was very anxious—that it can be done provided it is sanctioned by the board of directors. There is a fourth amendment which says it can be done with the sanction of the directors provided they unanimously approve of it. Now, these are the four points which emerge, as far as I can gather from these various amendments. With all the desire, with all the sympathy that I have for the shareholders and the interests of the shareholders, I regret to say that I cannot possibly agree with my Honourable friend, Pandit Govind Ballabh Pant, on this amendment. But when we come to discuss the other amendments, we shall see.

Pandit Govind Ballabh Pant : Then, I will agree with you.

Mr. S. Satyamurti : Sir, the managing agents are the luckiest persons in the world. We began in the discussion on this Bill with the Honourable the Law Member making a very good speech against the managing agents and their abuses, but gradually I have seen him take the position that almost any amendment which will rob the edge of these clauses is acceptable. But the greatest shock of mine during the discussion of this Bill was that the Leader of the Independent Party who, I thought, was the sworn enemy of managing agents take up the position.....

Mr. M. A. Jinnah : I am not. I may tell the Honourable Member what I am. I am the sworn enemy of the managing agents who are dishonest, but I must say this that there are managing agents who are not dishonest.

Mr. S. Satyamurti : Sir, we are legislating for all managing agents, honest and dishonest ; and I have yet to learn that, in any legislation, we can distinguish between one set and another set. Your legislation must be so comprehensive and so complete, as to affect all managing agents, dishonest adversely, and honest not adversely. That is the test. Therefore,

[Mr. S. Satyamurti.]

when you want to provide by this amendment that there shall be no commission or allowance on purchase and sales, we are thinking of the dishonest managing agent. As for the honest managing agent, there is no need for any legislation at all. If everybody is honest, let us wind up our show. The point I want to make is this : why should a managing agent buy his own goods and sell his own goods and thereby make a profit which he may not otherwise have made ? No man ought to combine in himself two functions. By all means, let the managing agent purchase from the outside market, and let him sell to the outside market ; but let him not make a profit. The principle is that no man ought to be in a position where his duty and his interest are likely to come into conflict. The managing agent practically sells to himself or buys for himself, for, for all practical purposes, he is the company. If he charges a commission on purchase and sales, it will give rise to serious and grave abuses. I do hope the House will not spoil the effect of this Bill in trying to cure the abuses, and I hope the House will accept a reasonable amendment, like the present one.

Sir Cowasji Jehangir : Sir, I had no intention of speaking on this amendment because I thought that its impracticability was perfectly clear to my Honourable friends. But my Honourable friend, Mr. Satyamurti, has tempted me to say a few words. Now, Sir, the position is that managing agents do sell certain commodities to the companies of which they are the managing agents. If they take a moderate commission it is all to the advantage of the company. But how are you going to prevent managing agents from buying goods from outsiders, and keeping secretly a large amount of profit ? That is what you have got to stop, if you can. That is what is happening. If a managing agent is also the agent for certain machinery, it is more than likely that he will sell that machinery at a very reasonable commission to the company of which he is the managing agent. But there have been cases where the managing agents have bought machinery from outsiders, keeping very large profit for themselves. There is no use trying to be very particular in trying to obviate dishonesty while leaving such large loopholes for dishonesty all round. By trying to stop dishonesty in the abstract, you are making the whole thing impracticable. This is one instance where the whole business of the managing agents can be made impracticable by comprehensive theoretical prohibitions while large loopholes are left for the managing agents to rob from 50 per cent. to 70 per cent.

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

“ That in clause 42 of the Bill, after sub-section (2) of the proposed section 87C, the following new sub-section and the proviso be inserted and the subsequent sub-sections be re-numbered accordingly :

“(3) No managing agent shall receive anything additional to the remuneration fixed under sub-section (1) or sub-section (2), whether by way of commission, allowance or otherwise, for the services rendered by him to the company whether in the form of supply, sale or purchase of machinery stores, raw materials and manufactured goods or otherwise :

Provided that nothing herein contained shall prejudice his right to interest or dividend for loans, shares, debentures and other investments.”

The motion was negatived.

Babu Baijnath Bajoria : Sir, I beg to move :

“ That in clause 42 of the Bill, in sub-section (3) of the proposed section 87C, before the words ‘ loans and advances ’ the word ‘ debentures ’ be inserted.”

Sir, what my amendment seeks is that in calculating the net profits interest on debentures should also be deducted. I do not understand why a differentiation has been made between interest on loans and advances and interest on debentures. After all debentures are also advances to the company and the interest thereon should also be deducted before calculating the net profits of the company. This change has been made in the Bill by the Select Committee. If my recollection goes right, the word ‘ debentures ’ was there when the Bill was originally introduced. Sir, I do not want to make a long speech. I do hope the Honourable the Law Member will see the equity of my amendment and accept it.

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

“ That in clause 42 of the Bill, in sub-section (3) of the proposed section 87C, before the words ‘ loans and advances ’ the word ‘ debentures ’ be inserted.”

Mr. T. Chapman-Mortimer : Sir, I understand the reason why the Select Committee agreed that the word ‘ debentures ’ should not appear in this clause in the place where my Honourable friend, Babu Baijnath Bajoria, would like to have it was this : that in many companies, particularly for example, railway companies and some of the heavy industries, they have debentures, preferences and share capital in almost equal proportions ; especially for instance in railway companies, the debentures and the preference between them may come to more than or much more perhaps than the ordinary shares and it was to provide for cases like that that it was decided that debenture interest should not be taken into the account when calculating the net profits. I submit, Sir, that it is a perfectly reasonable point of view, which if it is not accepted may greatly inconvenience certain companies and I hope Honourable Members of this House will oppose the amendment.

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

“ That in clause 42 of the Bill, in sub-section (3) of the proposed section 87C, before the words ‘ loans and advances ’ the word ‘ debentures ’ be inserted.”

The motion was negatived.

Mr. Mathuradas Vissanji (Indian Merchants' Chamber and Bureau; Indian Commerce) : Sir, I move :

“ That in clause 42 of the Bill, in sub-section (3) of the proposed section 87C, the word ‘ depreciation ’ be omitted.”

This clause refers to the calculation of profits and the remuneration of the managing agents to be calculated on that. There are several items which have got to be deducted according to this clause, while calculating the remuneration of the managing agent. In that depreciation is also included. What I want to point out is that in the present circumstances, considering the fast advancement of scientific research and the changes that are coming about in rapid succession, it will be necessary for any company to bring about a state of depreciation much more than what is generally provided for in these days. It was ascertained by no less a

[Mr. Mathuradas Vissanji.]

person than the President of the United States of America only about three years back by appointing a committee to ascertain the percentage of depreciation that should be necessarily included for the purpose of the accounts and the replacement of machinery in order to be able to compete in the world. That committee consisted of selected experts who went round the whole country, inquired into every industrial concern, and after due deliberation made a report that in present circumstances machinery becomes obsolete after three years. That means that it has got to be depreciated every year at nothing less than 33.1|3rd per cent. If that analogy is going to be applied for the successful running of a concern in India, you can very well imagine, Sir, what depreciation will have to be provided every year in every concern. And if that is done, what is the position of the managing agent for the remuneration that he has got to take for the conduct of his affairs? If he is only fair to the company he cannot be fair to himself. If it were only provided that for the purpose of calculation of the managing agent's remuneration the amount that is allowed by the law should be allowed, after income-tax of 4 per cent. for machinery and 2½ per cent. for the buildings, then it would be something reasonable as provided by the amendment of the European Group of this Assembly. But to simply do away with any rate of calculation and debar the managing agent from obtaining his dues on the depreciation is rather unjust as I feel it. Suppose a company is started hereafter for the purpose of supplying electricity. As it is generally known, electricity apparatus generally becomes obsolete after every five years, and if provision is not properly made for the depreciation every year, the company is really suffering. It will only lead to a rather dishonest method of calculation by the managing agent, if he is not honest to the company. Of course I remember that this is only applicable to companies to be established hereafter, and if this clause be made operative in this way I am afraid the future companies will be very well providing for remuneration in other ways, fearing what they will have to do for the depreciation. I recommend for that purpose that the word "depreciation" be omitted from the clause.

Sir, I move.

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

"That in clause 42 of the Bill, in sub-section (3) of the proposed section 87C, the word 'depreciation' be omitted."

Sir Leslie Hudson (Bombay : European) : Sir, I wish to support this amendment. Whilst it is a fact that depreciation is looked upon by accountants in some instances as working expenses, there are many other instances where depreciation is not deducted for ascertaining profits. The section prescribes no limit to the depreciation and in our opinion if this amendment and the next but one are carried, it may lead to considerable embarrassment and controversy, and we wish to support this amendment. The section as framed would place it in the hands of the board to place such sums to depreciation as might, as my Honourable friend, Mr. Vissanji, said, whittle down the profits of the managing agents to such a sum as to be absurd. Sir, I support the amendment.

Mr. Husenbhai Abdullabhai Laljee : Sir, I rise to support the amendment and I will say only a few words. In sub-section (3), while defining the net profits, it has been stated that "after allowing for all the working charges, interest on loans and advances, repairs and out-goings". Now, Sir, in providing for all these, it is really in the interest of the shareholders because the managing agents will see that those charges are as much reduced as possible in order to enable the company to make some profit and some commission. With regard to "depreciation, bounties or subsidies", bounties and subsidies are not in the hands of the managing agents, but with regard to depreciation I say that in the interest of the company this item ought not to be left at the mercy of the managing agent at all. The managing agent ought not to decide or have an interested voice in deciding this factor, because it is very essential as my friend, the Honourable Mr. Mathuradas Vissanji, has pointed out, in these days that the machinery should be kept up to date and the latest improvements should be introduced and therefore depreciation plays important part. Many of our mills in Bombay have suffered because latest improvements have not been introduced. If once we allow a managing agent to get remuneration on the basis of allowing more or less depreciation, I think it will not be in the interests of shareholders. Therefore, I think this depreciation may be omitted; further in fixing the remuneration certainly it will be a matter between the shareholders and the managing agents and as suggested if depreciation is omitted they will take into consideration that the depreciation is not there. Sir, under the circumstances I support the amendment.

Dr. Ziauddin Ahmad : Sir, it is an entirely new principle that I have been hearing on the floor of this House. Whenever we discussed any measure—textile or any other protected industry—we were always told that depreciation must be included before the net profit is arrived at....

Mr. Husenbhai Abdullabhai Laljee : It must be : certainly before giving a dividend.

Dr. Ziauddin Ahmad : That is the principle to which we agreed. The only question was what should be the amount of depreciation. There are suggestions later on, but I think in many cases of machinery the depreciation should be from 7½ to 10 per cent, depending on the nature of the machinery. But any suggestion which disregards depreciation in calculating net profits is a very novel principle and entirely opposed to what we have been discussing all along. Tariff Boards have allowed depreciation in their calculations. Therefore any suggestion that depreciation should be disregarded is in violation to all principles. Depreciation was one of the items, along with interest, working expenses, reserve fund, which was always calculated in arriving at the net profits. As I said, this is an entirely new principle, to what we were discussing when protected industries were being discussed on the floor of the House.

Mr. Bhulabhai J. Desai : Sir, in view of amendment No. 88, I oppose this amendment, amendment No. 87.

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

"That in clause 42 of the Bill, in sub-section (3) of the proposed section 870, the word 'depreciation' be omitted."

The motion was negatived.

Mr. Akhil Chandra Datta : Sir, I move :

“ That in clause 42 of the Bill, after the proposed section 87C, the following new section be inserted :

‘ 87CC. No Managing Agent shall receive any profit or remuneration whether by way of commission, allowance, percentage or otherwise for services rendered by him to the Company in the shape of supply, sale or purchase of machinery, stores, raw materials or manufactured goods provided that nothing herein contained shall affect the right of any Managing Agent to receive any profit or remuneration under any contract in force at the time of the commencement of the Indian Companies (Amendment) Act, 1936 ’.....

The Honourable Sir Nripendra Sircar : Sir, I would like to raise a point of order. Is there any difference between amendment No. 86 and the one now being moved ?

Mr. Akhil Chandra Datta : Yes : there is a remarkable difference. That was wider than this : Pandit Govind Ballabh Pant’s amendment made no provision for contracts. But my amendment says :

“ Provided nothing herein contained shall affect the right of any Managing Agent to receive any profit or remuneration under any contract in force at the time of the commencement of this Act.”

The Honourable Sir Nripendra Sircar : But the greater includes the less : does it not ?

Mr. Akhil Chandra Datta : Which is the greater ? My claim is less modest than the claim in the other amendment.

The Honourable Sir Nripendra Sircar : If I may point out, the other amendment also was in relation to new companies, because it was an amendment of 87C. There is no question of old managing agents being included by my Honourable friend, Mr. Pant’s amendment. I am placing it before the President for his ruling. No. 86 which has been disposed of was—

“ in clause 42 of the Bill after sub-section (2) of the proposed section 87C.....”

As you will see from page 19 of the Bill, Sir, section 87C relates to companies incorporated after the commencement of the Indian Companies Act, 1936. I do not see what the difference is between the two. One seems to be substantially the same as the other. That is my submission.

Mr. Akhil Chandra Datta : The greater claim has been disallowed: mine is the lesser : but it goes a little further in favour of the managing agents.

Mr. President (The Honourable Sir Abdur Rahim) : I am afraid, I must rule that this amendment is out of order.

Pandit Govind Ballabh Pant : Sir, I move :

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87D, after the words ‘ managing agent of the company ’ the words ‘ or to any partner of the firm, if the managing agent is a firm, or to any director of the private company, if the managing agent is a private company ’ be inserted.”

This is a repetition of the hackneyed formula, so I need not say more.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87D, after the words ‘ managing agent of the company ’ the words ‘ or to any partner of the firm, if the managing agent is a firm, or to any director of the private company, if the managing agent is a private company ’ be inserted.”

Mr. T. Chapman-Mortimer : My Honourable friend, Pandit Govind Ballabh Pant, said that his amendment No. 95 is in substance really the same as has been adopted in other parts of the Bill. I submit that that is not so, and that if this amendment is put in here to sub-section (1) of section 87D, the effect may be most far-reaching and it may cause complications which can hardly at present be fully understood, and I trust that Honourable Members of this House will oppose it. Sub-section (1) of section 87D is as follows :

“ No company shall make to a managing agent of the company any loan out of moneys of the company.”

In sub-section (1) of section 2 of this Bill, we have already a definition of a managing agent. It is quite clearly laid down there what a managing agent is. In other sections we have provided safeguards to ensure that loans to directors are improper. If this amendment of my Honourable friend is carried, it will have much more far-reaching effect than we know of. How in actual fact it will affect us I cannot say. But I do hope that Honourable Members will believe that we have already got sufficient safeguards on that point. After all, it should be remembered that if there is any doubt on all these things it would always be possible for the company in general meeting to decide that certain individuals should represent the body of shareholders and examine the books of the company, and then they would be able to decide on the facts of the case whether section 87D (1) has been impinged in the spirit, if not in the letter. Sir, I oppose.

Dr. Ziauddin Ahmad : I thought that the amendment now before us is really an explanation of the provision already in the Bill. The Bill says :

“ No company shall make to a managing agent of the company any loan out of moneys of the company.”

That everybody admits, but if the managing agent is not an individual but a company, in that case the natural conclusion is that no person who is a partner of that company,—or as the amendment says, any partner of the firm if the managing agent is a firm, or any director of the private company, if the managing agent is a private company, should not be in a position to borrow money. That is really an explanation of the principle which we have already admitted and which is already in the Bill.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87D, after the words ‘ managing agent of the company ’ the words ‘ or to any partner of the firm, if the managing agent is a firm, or to any director of the private company, if the managing agent is a private company ’ be inserted.”

The motion was adopted.

Pandit Govind Ballabh Pant : I move :

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87D, the words ‘ or guarantee any loan made to a Managing Agent ’ be added at the end.”

It follows the one which has just been accepted.

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

“ That in clause 42 of the Bill, in sub-section (1) of the proposed section 87D, the words ‘ or guarantee any loan made to a Managing Agent ’ be added at the end.”

The motion was adopted.

Dr. N. B. Khare (Nagpur Division : Non-Muhammadan) : I move :

“ That in clause 42 of the Bill, sub-section (2) of the proposed section 87D, be re-numbered as sub-section (2) (a), and, after the sub-section, as so re-numbered, the following be added :

‘ (b) Where any credit is held by a managing agent in a current account maintained in pursuance of this sub-section the balance sheet of the company shall disclose particulars as to the maximum limit of such current account approved by the Board of Directors and the maximum amount of credit utilised by the managing agent during and the amount of credit outstanding at the end of the period to which the balance sheet relates.’

This amendment aims at disclosure of particulars as to (i) the maximum limit of the current account approved by the directors, (ii) the maximum limit of credit utilised by the managing agent during the period to which the balance sheet relates, and (iii) the amount outstanding at the date of the balance sheet.

Sub-section (2) of section 87D authorises a managing agent to hold credit in a current account with the company and the limit of such credit is to be previously approved by the directors. In view of the fact that the limit is to be fixed by the directors it is but legitimate that shareholders should know the maximum limit of such credit in the current account. A credit held by a managing agent in a current account with his company is another form of a loan to the managing agent. It is, therefore, imperative that the amount of credit approved by the directors and the amount of credit utilised by the managing agent should be disclosed in the balance sheet so that the shareholders may be able to study the position with regard to the current account.

It might be argued that under the existing form of the balance sheet the amount due by the managing agent at the end of the year is required to be specifically disclosed. This is no doubt true, but it should be borne in mind that unless the amount of credit utilised by the managing agent is disclosed, transactions of a window-dressing character through the current account will not see the light of day. It may be that throughout the year the managing agent may remain indebted to the company but at the end in order to suppress the fact of his indebtedness in the current account he may square up the account and renew operations on the account next year. Such cases have occurred. The most classical illustration is that of the Indore Malwa United Mills, Ltd. whose managing agents borrowed lakhs of rupees from the company in current account, repaid them at the end of the accounting period and again borrowed in the next year. In this connection attention may be drawn to the following passage

in the report of Messrs. S. B. Billimoria and Co. who examined the accounts of the company :

“ Thus, throughout this long period, although colossal sums of money were withdrawn from the funds of the mills and utilised by the said firm for their private purposes, the shareholders and depositors were hoodwinked by being shown small credit balances at balance sheet periods, and the depositors and the shareholders were lulled into a hope of false security, with regard to the financial position of the mill company, as reflected in the published balance sheets.”

In short, it is with a view to check window-dressing methods that the amendment has become necessary. In this connection reference may also be made to section 128 of the English Companies Act which is as follows :

“ (1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to provisions of this section, contain particulars showing—

- (a) the amount of any loans which during the period to which the accounts relate have been made either by the company to any director or officer of the company, including any such loans which were repaid during the said period ; and
- (b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof ;”

It will be seen from the above that not only the loans made to directors or officers are required to be disclosed but also disclosure is required of loans which were repaid during the account period. The latter requirement is most significant as proving the necessity of bringing to light window-dressing methods adopted in reference to loan transactions between a company and its directors or officers. The amendment proposed gives effect to the principle recognised by the English Act. The fact that our section refers to a current account should not make any difference in that as already stated above the credit held by a managing agent in a current account in essence amounts to a borrowing from the company and therefore a loan from the company to the managing agent.

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

“ That in clause 42 of the Bill, sub-section (2) of the proposed section 87D, be re-numbered as sub-section (2) (a), and, after the sub-section, as so re-numbered, the following be added :

- (b) Where any credit is held by a managing agent in a current account maintained in pursuance of this sub-section the balance sheet of the company shall disclose particulars as to the maximum limit of such current account approved by the Board of Directors and the maximum amount of credit utilised by the managing agent during and the amount of credit outstanding at the end of the period to which the balance sheet relates .”

The Honourable Sir Nripendra Sircar : I oppose this amendment and I shall put it very briefly indeed. From the point of view of outsiders I really object to more information about the financial operations of the company being broadcasted than is necessary. This amendment will mean a considerable addition to the information in the balance sheet but the point of view of the shareholders may be quite different. They are quite entitled to know what is happening between the directors and the company. For that reason we have now made Article 105 of

[(Sir Nripendra Sircar.)]

Table "A" compulsory so that it is quite open to them to pass a resolution to have an inspection of any of these three items. I submit that having regard to the compulsory inclusion of Article 105, it is unnecessary to load the balance sheet with information which may in some cases be useful but in other cases not desirable to disclose to the public.

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

"That in clause 42 of the Bill, sub-section (2) of the proposed section 87D, be re-numbered as sub-section (2) (a), and, after the sub-section, as so re-numbered, the following be added :

(b) Where any credit is held by a managing agent in a current account maintained in pursuance of this sub-section the balance sheet of the company shall disclose particulars as to the maximum limit of such current account approved by the Board of Directors and the maximum amount of credit utilised by the managing agent during and the amount of credit outstanding at the end of the period to which the balance sheet relates."

The motion was negatived.

Mr. T. S. Avinashilingam Chettiar (Salem and Coimbatore *cum* North Arcot : Non-Muhammadian Rural) : Sir, I move :

"That in clause 42 of the Bill, in sub-section (3) of the proposed section 87D, after the words 'making of the loan' the words 'or giving of the guarantee' be inserted."

This is only a consequential amendment. Sir, I move.

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

"That in clause 42 of the Bill, in sub-section (3) of the proposed section 87D, after the words 'making of the loan' the words 'or giving of the guarantee' be inserted."

The Honourable Sir Nripendra Sircar : I accept the amendment.

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

"That in clause 42 of the Bill, in sub-section (3) of the proposed section 87D, after the words 'making of the loan' the words 'or giving of the guarantee' be inserted."

The motion was adopted.

Mr. T. S. Avinashilingam Chettiar : Sir, I move :

"That in clause 42 of the Bill, in sub-section (3) of the proposed section 87D, after the words 'repayment of the loan' the words 'or discharging the guarantee' be inserted."

This is also consequential.

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

"That in clause 42 of the Bill, in sub-section (3) of the proposed section 87D, after the words 'repayment of the loan' the words 'or discharging the guarantee' be inserted."

The Honourable Sir Nripendra Sircar : I accept the amendment.

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

“ That in clause 42 of the Bill, in sub-section (3) of the proposed section 87D, after the words ‘ repayment of the loan ’ the words ‘ or discharging the guarantee ’ be inserted.”

The motion was adopted.

Mr. M. Ananthasayanam Ayyangar : Sir, I move :

“ That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

‘ (5) No managing agent, or where the managing agent is a firm a partner thereof, or where the managing agent is a private company any member or director thereof, or where the managing agent is a public company any director thereof, or the firm or private company of which the managing agent is a partner, member or director shall enter into any contract with the company for sale, purchase or supply of goods or materials except with the consent of the company in general meeting given generally or specifically :

Provided that nothing herein contained shall affect any contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936 ’.”

Sir, the object of my moving this amendment is that in the case of contracts for the sale and purchase of materials by the managing agent of a company greater safeguards should be imposed than those provided in the Bill. The safeguard under this amendment is that at an ordinary general meeting of the company the terms must be given for entering into such contracts either generally or specifically,—generally as regards the class of goods or with regard to any particular value or up to certain pecuniary limits, or specifically with respect to each item as and when articles are purchased or sold. As it stands, directors might not be in a position to check any onerous advantages or improper contracts entered into by the managing agent with the directors. Sir, the composition of directors is well-known ; one-third the managing agents are entitled to appoint. As regards the balance of the two-thirds, some of them may be appointed by a statutory body, some by an Indian State where that State takes shares ; in that case it is open to the latter to insist upon a particular number of directors being on the directorate. Then, debenture-holders appoint some of the directors. In practice, the shareholders’ directors are reduced beyond even one-third. A provision has been made with respect to an earlier clause that one-third at least of the directorate should be persons elected by the shareholders. Now, therefore, if the entering into of a contract with the managing agency is left to the directorate two-thirds of which are practically the nominees of the managing agent, the mere majority of two-thirds might not be enough to check any disadvantages of a contract in the matter of the sale or purchase of goods entered into by the managing agent. There is thus absolutely no guarantee that the managing agent enters into a proper kind of contract. It is necessary with respect to all such sales or purchases that there should be an independent agency to see whether such sales are properly made and whether the commission is proper or not ; and it is only for that, Sir, that I am trying to provide for a particular agency and that agency is the general body. The directorate, which contains the nominees of the managing agents, cannot be trusted

[Mr. M. Ananthasayanam Ayyangar.]

with this business and, therefore, in the best interests of the company itself, I say this amendment ought to be accepted.

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

“ That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

- (5) No managing agent, or where the managing agent is a firm a partner thereof, or where the managing agent is a private company any member or director thereof, or where the managing agent is a public company any director thereof, or the firm or private company of which the managing agent is a partner, member or director shall enter into any contract with the company for sale, purchase or supply of goods or materials except with the consent of the company in general meeting given generally or specifically :

Provided that nothing herein contained shall affect any contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936 .”

Sir H. P. Mody : Sir, my Honourable friend, Mr. Ayyangar, has put forward no justification in support of this very restrictive clause which he seeks to introduce. I say that it is illogical to ask the House to pass this amendment when the House only very recently accepted the position that a director could contract with the company, if he could get a resolution of the board of directors to support that transaction. I do not see why managing agents should be sought to be put upon an entirely different footing. Sir, even though my Honourable friend made as usual a forceful speech in support of his amendment, he does not seem to believe very much in it, as evidenced by the fact that there are various other amendments which he himself has tabled. He is obviously still trying to determine what is the right thing to do in this particular matter ! The Honourable Member has given seven choices. He started off with soup and then went on to fish and then, with the permission of the Chair he withdrew both the soup and the fish, and concentrated upon the joint ! As my Honourable friends will see, however, there is game also, and sweets and other things, and I am not sure what my Honourable friend wants this House to do. (*An Honourable Member* : Take the sausage.) I dislike ready-made things. What I was saying is that a managing agent—and I am sorry if I have to repeat some of the arguments that were advanced on a previous occasion—is from the very nature of things obliged to deal with his company. Supposing he has the agency of an insurance company or a machinery concern. There is no reason why, in such a case, he should go past his own agency. The amendment which I have tabled, and which unfortunately cannot come on just now because I have tacked it on to clause 87-H, provides what I regard is a safeguard which should be considered as sufficient in all cases. That safeguard is that where the managing agent enters into a contract with his company, he cannot do so unless the transaction has been approved of by the board of directors. A similar safeguard was accepted in respect of directors, and I submit that the same safeguard should be regarded as adequate even from the point of view of my Honourable friend, Mr. Ayyangar. Sir, I oppose the amendment.

Mr. F. E. James : Sir, I find myself in the unusual position of agreeing with my Honourable friend, Sir Homi Mody. I oppose this amendment,—in fact all my Honourable friend's amendments with a repugnance which only varies in degree. I do not think the House should have anything to do with any of them. There are many cases where the managing agent is in a position to sell to his company products which the company cannot get elsewhere, either of the same quality or of the same or cheaper price or on as favourable terms ; and there are cases where a particular commodity which is sought to be purchased cannot be obtained from any other company. It has been pointed out on a previous occasion that the cases where managing agents sell to their companies on very favourable terms are not at all exceptional. In fact, quite recently I happened to see the prospectus of the Star Paper Mills Limited in which the promoter, Mr. Baijnath Bajoria, who is also a director and one of the managing agents, offered to supply raw material to the company at the low market rates. If our restriction is put upon that kind of transaction, surely it will be to the detriment of the company concerned. The restrictions that all these amendments seek in varying degrees to place upon freedom of trade in this matter would not only deprive the existing companies of the facilities which they at present have but would, I suggest, in some cases lead to all kinds of devices for getting round these restrictions. I am not at all sure that in the particular amendment which my Honourable friend appears to be concentrating on he is not opening the door to a very great deal of speculation, if not corruption. The managing agent who has to go to his shareholders for permission to enter into certain contracts with the company for sale or purchase or supply of goods may be in a position to influence those shareholders by all sorts of methods ; and, rather than restricting the evil, this particular amendment runs the risk of very largely increasing the field for the operation of the evil he is trying to stop. I would point out to my Honourable friend and to the House that under sections 91-A and 91-B of the Act, the managing agent's director is precluded from voting in connection with a contract in which he is interested. He is also obliged to disclose what particular interest he has. Under clause 45 (a) of the Bill he cannot even be counted for the purpose of forming a quorum at a meeting in which this matter is discussed. Then the company also has the ordinary protection which is afforded by the Indian Contract Act against abuses of the nature which my Honourable friend has in mind. I do suggest that the provisions already in the Act, as amended, so far by the Bill, do safeguard the shareholders against the possibility of any misuse of his powers.

Mr. M. A. Jinnah : What are those safeguards in the Bill ?

Mr. F. E. James : I have already mentioned them but at the risk of repeating myself I will mention them again. In the first place, I will read out from the Bill itself. By section 91-A and section 91-B of the Act, as now amended, the managing agent's director is precluded from voting and is obliged to disclose his interests. These sections correspond to clauses 44 and 45 of the Bill. Under clause 45 (a) of the Bill, which is section 91-B of the old Act, he cannot count for the purpose of forming a quorum at a meeting where this matter is discussed. And then there is, of course, as far as the directors are concerned, a register which is provided for in a new sub-section (3) of

[Mr. F. E. James.]

91-A of the Act. My point is this that there is such a thing as driving a good case too far. We on these benches have never been opposed to the imposition of reasonable safeguards upon the directors and managing agents in regard to these matters. We have never been opposed to the fullest disclosure of all contracts in which either the directors or the managing agents are interested. What we do oppose and shall always oppose throughout this Bill is any provision which would have, as its effect, any restriction or restraint.....

Mr. President (The Honourable Sir Abdur Rahim) : If the Honourable Member cannot finish in one or two minutes, I think he had better continue to-morrow.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 1st October, 1936.