

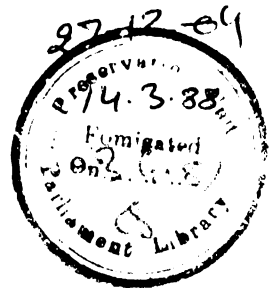
Friday, 4th April, 1941

THE
COUNCIL OF STATE DEBATES

VOLUME I, 1941

(19th February to 4th April, 1941)

NINTH SESSION
OF THE
FOURTH COUNCIL OF STATE, 1941



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Council of State

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THE HONOURABLE SIR MANECKJI DADABHOY, K.C.S.I., K.C.I.E.,
BAR.-AT-LAW.

Panel of Chairmen :

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THE HONOURABLE SIR DAVID DEVADOSS.
THE HONOURABLE MR. R. H. PARKER.
THE HONOURABLE SAIYED MOHAMED PADSHAH SAHIB BAHADUR.

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Committee on Petitions :

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THE HONOURABLE SIR RAMUNNI MENON.

THE HONOURABLE MR. P. N. SAPRU.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU.

THE HONOURABLE MR. ABDOL RAZAK HAJEE ABDOL SATTAR.

} *Members.*

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COUNCIL OF STATE.

Friday, 4th April, 1941.

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

QUESTIONS AND ANSWERS.

CONTRACTS FOR WAR SUPPLIES.

183. THE HONOURABLE MR. N. K. DAS (on behalf of the Honourable Mr. M. N. Dalal) : (A) Will Government state what contracts for—

- (i) military stores,
- (ii) war materials and
- (iii) munitions

have been placed in this country, for the purpose of aiding Britain in the present war, as well as the equipment of the Indian troops sent overseas, distinguishing the categories of firms or concerns with which such contracts have been placed according as they are registered with Head Office—

- (a) in India, or
- (b) in the British Commonwealth, or
- (c) outside the Commonwealth ?

(B) What is the total value in money of the war effort of the Government of India, and that made by the several Indian States ?

(C) In placing such contracts, have Government made any conditions regarding—

- (i) training of Indian personnel, and/or
- (ii) Government's control or supervision over the processes of production guaranteeing quality and quantity, as well as delivery within a stated time, and/or
- (iii) participation in any surplus profits that may result from any such concern also utilizing part of its production for the normal civil requirements of the country ?

THE HONOURABLE MR. A. DEC. WILLIAMS : (A) As the number of contracts for war supplies runs into thousands, I regret it would not be possible to collect the information asked for without spending an undue amount of time and labour, nor would it be in the public interest to disclose this information.

(B) It is not possible for the Department of Supply which is concerned mainly with the procurement of supplies to give an estimate, in terms of money, of India's total war effort. The attention of the Honourable Member is however invited to the Honourable the Finance Member's Budget speech.

(C) (i) No.

(ii) Government do not exercise direct control or supervision over the processes of production so as to guarantee quality, quantity and delivery within the stated time. All this is secured generally by the terms of contracts which firms have to execute. Moreover, Government have their own inspecting organization which ensures that the articles delivered are of the required specification.

(iii) The question of participating in any surplus profits does not arise as the Department of Supply to the best of its ability sees to it that no firm is allowed to make excessive profits through Government orders. The normal civil requirements are always borne in mind and are allowed to be met unless there be other over-riding considerations connected with the war effort.

DEVELOPMENT OF INDUSTRIES.

184. THE HONOURABLE MR. N. K. DAS (on behalf of the Honourable Mr. M. N. Dalal) : (A) Will Government state what, if any, new industries have been started, or old ones expanded, in connection with, or because of, the war, in this country ? What is the estimated output from such industries during the years 1940-41 and 1941-42 ?

(B) What arrangements have been made to provide the initial and working capital for these industries, where needed ? Have Government assumed any liability or responsibility for providing any part of such capital ? If so, on what terms and conditions, and in what form ?

(C) Will Government state whether any monopoly, or other concessions amounting to a partial or full monopoly, of the supply of the articles has been given to any concern coming within the categories comprised in the preceding question, parts (A), (a), (b) and (c)—

(i) for the duration of the war, or

(ii) for any other period subsequent to the ending of the war ?

Will Government lay before the House a statement summarizing the concessions and other terms and conditions of such contracts and agreements ?

(D) How many of the enterprises coming within the categories comprised in the preceding question, parts (A), (a), (b) and (c) are owned or conducted by British Indian citizens, and how many by non-Indian citizens of the United Kingdom, or of any other part of the British Commonwealth ? Have Government reserved any share in the profits of such concerns ? Are they in any way liable for any part of the losses, if any ?

THE HONOURABLE SIR ALAN LLOYD : A reply is being prepared and will be laid on the table of the House in due course.

ATTEMPTED DERAILMENT OF A PASSENGER TRAIN ON THE E. I. R.

185. THE HONOURABLE MR. N. K. DAS (on behalf of the Honourable Mr. M. N. Dalal) : Will Government state whether efforts have been made to trace the culprits concerned in the alleged attempt to derail a passenger train by sabotage on the Banki Railway Bridge on the E. I. R. on the 21st September, 1940 ? If so, with what result ?

THE HONOURABLE MR. L. WILSON : Yes. One arrest was made by the police and the accused was charged with an offence under section 128 of the Railways Act. He was convicted by the magistrate and sentenced to four months' rigorous imprisonment.

STATEMENTS, ETC., LAID ON THE TABLE.

COMMERCIAL TREATIES AND NOTES AFFECTING INDIA.

THE HONOURABLE SIR ALAN LLOYD (Commerce Secretary) : Sir, I lay on the table a further list of Commercial Treaties and Notes affecting India.

Part I.

Agreement under which the products of India receive most-favoured-nation treatment on terms of reciprocity.

Countries which are parties to the Agreement.	Date of Agreement.	Nature of Agreement.	Description.	Remarks.
United Kingdom and Egypt.	15th and 22nd February, 1940.	Exchange of Notes.	C o m - merce.	These notes provided for the prolongation until 16th February, 1941 of the provisional Commercial Agreement concluded between these Governments by the Exchange of Notes dated 5th and 7th June, 1930.

Part II.

Agreements to which India is a party.

Nil.

Part III.

Denunciation of Agreements.

Nil.

DEATH OF SIR SUNDAR SINGH MAJITHIA.

THE HONOURABLE RAI BAHADUR LALA RAM SARAN DAS (Punjab : Non-Muhammadan) : Sir, I wish to deplore the loss of Sir Sundar Singh Majithia, who was a Member of the old Imperial Council. He was a great leader and we all mourn his loss. His services to the Sikh community were very large and the privileges which they now possess were mainly due to his efforts. He was the Revenue Minister in the Punjab Government under the Montagu-Chelmsford Reforms and even at the time of his death he was the Revenue Minister of the Punjab Government. Sir, his private life was characterized by geniality of manner, a generous temperament and simplicity of a high order. I knew him intimately because we were both students together in the Government College, Lahore. He was also an industrialist and possessed one of the biggest sugar factories in India ; and so we came into close contact

[Rai Bahadur Lala Ram Saran Das.]

with each other over a long period. I beg to suggest to this House that a resolution of condolence be conveyed to his son and his family and also an expression of our deep sense of sorrow.

THE HONOURABLE THE PRESIDENT : Honourable Members, I was very sorry to hear of the sad death of Sir Sundar Singh Majithia. He was not a Member of the Council of State but he was a Member of the old Imperial Legislative Council from 1916 to 1919. As such he was a very popular Member and was very much respected. He identified himself with the cause of his province, and he did so rightly, and rendered good services to his province. He was Revenue Minister there and held various other appointments and was highly spoken of by his Honourable colleagues in the Council. Sir Sikandar Hyat Khan, the Punjab Premier, the other day paid him a well deserved tribute in the Punjab Assembly. I shall communicate the wishes of this Council and convey the sense of grief and condolence of this Council to his bereaved family.

DELHI RESTRICTION OF USES OF LAND BILL.

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI (Education, Health and Lands Member) : Mr. President, I move :—

“ That the Bill to regulate in the Province of Delhi the use of land for purposes other than agricultural purposes, as passed by the Legislative Assembly, be taken into consideration ”.

Honourable Members will have observed from the Statement of Objects and Reasons that the Bill aims, first, at the control of building and, secondly, at the control of excavation in extra-municipal areas in the Province of Delhi. Such of my colleagues in this House as may have had the opportunity or the inclination to motor along the Muttra Road or the Kutab Road or the Rohtak Road will have seen that themselves that a certain amount of uncontrolled building that is going up, and what is more, that the landscape has been scarred and disfigured with masses of brick kilns. It is unfortunate that this evil should have been allowed to grow all this time with out any attempt at check or control. The reason is that we thought that New Delhi, within its present municipal limits, would provide ample accommodation for the growing population of Delhi. That however has not proved to be the case, and the pressure of the growing population both on the urban area of New Delhi and the urban area of Old Delhi and the Notified Area Committee is responsible for this drift outwards. Now, there are only two ways of handling this problem. One is to extend municipal jurisdiction. The other is to take *ad hoc* control by some measure designed for that purpose. As Honourable Members are aware, the first course would impose upon the municipality or local body concerned the obligation to provide all municipal services. That, in the rather sporadic state of the building that is going on at the present moment would be quite unprofitable ; indeed it will definitely entail a loss upon the local bodies. Therefore we had to consider this other expedient, namely, that of resorting to *ad hoc* legislation for the purpose of control. Honourable Members will note from the provisions of the Bill that while the State takes to itself power to control building and excavation outside these municipal areas which I have mentioned, it has attempted to provide, as far as possible, safeguards for the individual against the misuse of these powers. First, there is the provision for publicity in advance before an area is declared to be a controlled area. Secondly, there is the provision for

the making available to everybody concerned of the details and specifications of any area that may be brought under control. In the office of the Deputy Commissioner of Delhi and other suitable places this information will be available. Thirdly, there is provision for an appeal from the decision of the Deputy Commissioner to the Chief Commissioner in so far as any conditions limiting building or excavation may be concerned. Not only that ; we have looked at the problem not only from the point of view of the owner of a building or some one interested in constructing a building but we have also looked at the problem from the point of view of the agriculturist ; and Honourable Members will find in the Bill provision that, in so far as the construction of dwelling houses in agricultural sites is concerned, no conditions are to be imposed and that for the erection of buildings connected with agricultural purposes there is no intention to interfere with private initiative either. Fourthly and lastly I come to the question of compensation. There we have had to consider three possibilities. First, permission either for the construction or reconstruction of a building is asked and given ; then no claim for compensation arises. Secondly, in a controlled area permission is asked but given only subject to certain conditions. Well, we have provided in the Bill that the conditions to be prescribed are such as would be reasonable in the circumstances and they would generally follow similar provision in the Building Bye-laws of Municipalities. When we require an individual to conform to these Bye-laws, Honourable Members will agree that there again no claim for compensation arises. A claim for compensation would arise only if permission were refused and there what we have tried to do is to set in motion the machinery of the Land Acquisition Act, subject of course to this important social safeguard, that where any unearned increment as it were has accrued to an individual by reason of the fact that the value of his property has gone up by virtue of improvements effected by the State, he shall not get that unearned increment. That unearned increment really would accrue to the State which is responsible for the increment in the value of the property. Those, broadly speaking, Sir, are the features of this legislation, and I hope Honourable Members will agree that we have tried to strike a just balance between the claims and the interests of the individual on the one hand and the claims and interests of the community on the other. I have had suggestions made to me that certain provisions of this Bill are imperfect. Well, Honourable Members will appreciate that when we are undertaking legislation which is entirely new to the Statute-book of this country—ribbon development came to be controlled even in England only recently—Honourable Members will appreciate that we cannot, in such circumstances, achieve or even aim at perfection without some experience, and experience can only be gained by the method of trial and error. But one or two points of importance I should like to dwell upon. First, it has been suggested that the restrictive provisions that would follow upon a declaration made under the Act may apply to buildings which may be in the course of construction then. I would in that connection like to draw the attention of Honourable Members to the provision of sub-clause (5) of clause 6 of the Bill which definitely says that the Deputy Commissioner shall not refuse permission to the erection or re-erection of a building which was in existence on the date on which the declaration under sub-clause (1) of clause 3 was made, that declaration being in respect of control. I can give the House an assurance that the intention of that particular provision is that where a building is in existence on the date that a declaration for control is made, no permission will be necessary with regard to that. That building must automatically continue. If at some subsequent stage Government should decide to acquire the property, they will proceed in the ordinary way and there will be no grievance on the part of the individual concerned. Then, Sir, it has also been suggested in the

[Sir Girja Shankar Bajpai.]

amendments of which I have received notice that the definition of the word " Muslim " where it occurs for the second time in sub-clause (6) of clause 3 of the Bill is—

THE HONOURABLE THE PRESIDENT : Would you not wait till the amendment is moved ?

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI : What I was hoping was that if I dealt with it now, it might not be necessary for the Honourable Member or Members concerned to move the amendment.

THE HONOURABLE THE PRESIDENT : I have no objection.

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI : It will be observed that the amendment suggests that this definition of the word " Muslim " is too wide and I remember mention being made in the other place that it may include even persons from Bokhara or Samarkhand. Actually we never contemplated anybody in Bokhara or Samarkhand taking an interest in graveyards or buildings in Delhi and I doubt myself whether the so-called wide definition is likely to cause any practical difficulties in the administration of this Bill if it becomes law. But in any case, it is our intention to watch the working of the Act in this as in other respects as well, and should experience disclose any inconvenience, any abuse as it were of this particular provision, then undoubtedly Government will reconsider the matter. I hope, Sir, that with the assurance that I have given on this point it will not be necessary for my Honourable friends who have given notice of the amendment to move the amendment. I do not think that at this stage it is necessary for me to make any further remarks.

Sir, I move.

THE HONOURABLE SARDAR BAHADUR SOBHA SINGH (Nominated Non-Official) : Sir, I rise to support the Bill. The object of the Bill, as stated by the Honourable Member, is really to stop all ill-planned and unauthorized structures in Delhi and particularly in the suburbs of New Delhi. Another object is to stop waste. Government have spent lakhs and lakhs of money on anti-mosquito schemes and next door to New Delhi or Old Delhi burrow pits and excavations are being made. This Bill may be quite new in India, but in other countries it is not new. There is ribbon development legislation in other countries and it is working quite satisfactorily.

There are one or two points which I should like to suggest for the consideration of the Honourable Member in charge of this Bill. One is about the rebuilding or the building of the sites taken over or sites being left to the owners. I have seen in the proceedings of the Select Committee that there was some suspicion that the Chief Commissioner's technical advisers might be people who were interested in the Improvement Trust, and Government has been keeping a watch in this Bill that no prejudice is created against getting justice to the private individual, and on one or two points I have seen that it is left entirely to the Chief Commissioner to decide cases on their merits. But the Chief Commissioner's advisers may be interested in the Improvement Trust. What I would like to suggest is that since Government has created the New Delhi Advisory Committee for the improvement of Delhi and New Delhi, if cases like these of building and rebuilding are referred to that Committee of which the Chief Commissioner himself is the Chairman, it would

probably create more confidence. Another thing that I wanted to suggest, although it is too late now, is that it is not only the ribbon development that Government should keep in view, but in a legislation like this any development that is recognized as estate development should be kept in view also. I have noticed that people may not come in the ribbon development, but they are developing very big estates. Probably they are not well-planned, there are no sanitary arrangements and no water supply. When Government is making this legislation, they should also extend it to any organized development either on a bigger scale or on a smaller scale. Estate developments should be kept also in view. There is another small point, which I think is a printing mistake or a mistake in drafting. It is in section 8; in the concluding portion of clause (2) it is said "at the commencement of this Act a road within the meaning of clause (4)". It should be clause (7) of section 2, not clause (4). I think it is a misprint.

With these few words, Sir, I support the Bill.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, as an old resident of Delhi I welcome this Bill. I think, Sir, that Delhi is an expanding town, and some power is necessary to control buildings in what may be called extra municipal areas. Sir, I have risen to give my support to this Bill. It is a Bill which is in the interests of the people of Delhi, and I think that there are areas near Delhi which can be developed as places of residence for the labouring population of Delhi. I hope that power will be used to improve the sanitary conditions under which the Delhi workers live under this Act.

Sir, I support the Motion.

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA (Bihar : Non-Muhammadan) : Mr. President, Sir, I give the Bill my support, and I will say now that I am not going to move the amendment that stands in my name, but I just want to ask a question because I have not been able to satisfy my curiosity with regard to one thing. In section 2, sub-section (5) there is given the definition of "place of worship". I have no objection to the words "imambara, dargah, karbala or takya" being included and recognized as places of worship : but I wanted to satisfy my curiosity as to why it was necessary to include only those places in that definition and why it was not necessary to include temples, muths and such other places of worship, in the definition contained in the Bill.

***THE HONOURABLE MR. HOSSAIN IMAM** (Bihar and Orissa : Muhammadan) : Mr. President, this Bill has come rather late than early. I think, as the Honourable the Member in charge has stated, this legislation is new legislation, and that is the cause of the delay. I have only one remark to make, Sir. I was not quite happy about the effect of the legislation on the question of restriction in existing buildings. The position is this : There are certain areas where people have started building but those buildings have not yet reached a stage in which they can be called buildings. For instance, excavations may have been made and the building may have been erected with plinth : and the doubt exists that this Act may be used to prevent that kind of half-finished buildings from being proceeded with. There is, Sir, in clause 5 a definite statement that no person shall erect or re-erect any building,

*Not corrected by the Honourable Member.

[Mr. Hossain Imam]

or make or extend any excavation in the area which has been controlled. Now that does not satisfy me, Sir, that this order will not apply to buildings which had started being built before. I for one, Sir, would only like Government to keep this in view. I think the Government has been rather mild in extending the limits only to two furlongs from the road. They could with ease have extended the limits to even further, because this question of the development of residential areas in the suburbs requires careful consideration, and as our colleague has pointed out just now, the development is going ahead at a rapid pace and it should be checked.

Sir, I support the Motion.

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI: Mr. President, I am grateful to all Honourable Members, whether they have spoken or not spoken on the Bill, for the support which they have given to the measure, whether by speech or by silence. As regards certain points which have been made by individual Honourable Members I would like to make a few observations. I first deal with what my friend the Honourable Sardar Bahadur Sobha Singh had to say as regards the exercise of safeguards against possibly interested advice being given by the technical advisers of the Chief Commissioner to the Chief Commissioner. Well, I can assure my Honourable friend that if Government were to interfere in each individual case themselves, or if they were to authorize the New Delhi Development Advisory Committee, to consider each individual case, the task both of the Government and of the Advisory Committee would be considerably increased, and I doubt very much whether they could reasonably be expected to deal with individual claims. What my Honourable friend should, in my judgment, be satisfied with is that Government should exercise a general supervision over the manner in which the discretion of the Chief Commissioner is exercised in dealing with individual cases. As my Honourable friend is aware, the Chief Commissioner is subject to the powers of direction, superintendence and control of the Governor General in Council and I can assure him that we shall watch the working of this Act carefully, not only in regard to matters which are not primarily within the final discretion of the Chief Commissioner but also in regard to matters in which final discretion in the terms of the Statute, vests in the Chief Commissioner. In any case, I am sure that the House will agree that an officer of the standing of the Chief Commissioner may be trusted to dispense even-handed justice in cases in the decision of which final discretion has been vested in him by Statute.

Then, Sir, my Honourable friend Mr. Sapru, who also gave his blessing to the Bill, said that he hoped that provision for suitable housing of the working classes will be made. Actually, that is not, strictly speaking, within the purview of this measure. So far as the urban area of New and Old Delhi is concerned, that problem is being tackled by the Delhi Improvement Trust and if, not now but perhaps when we meet again in Delhi, my Honourable friend would like to be shown round what is being done in regard to improving the conditions of living of the labouring classes here, I should be very happy to arrange for him and other Honourable Members of the House who may be interested to go and inspect for themselves the activities of the Improvement Trust in that direction. "Things seen", as Tennyson said, are "mightier than things heard" and perhaps my suggestion with regard to this particular matter will commend itself to Honourable Members.

Then, my Honourable friend Mr. Mahtha wanted to know how in the definition of a " place of worship " a temple or a *muth* was not specifically mentioned. I can assure him that this was not due to any desire to disparage any religion or the place of worship belonging to a religion, Hindu, Buddhist or any other. But, considering the diversity of faiths in this country and religious ritual, doctrine, practice and the rest, if we had attempted to set out in the definition everything which in common terminology is a place of worship, then this would not have been a definition. It would really have been a thesarus or dictionary of terms applicable to religious buildings and I am quite sure that nobody desires that.

There is another point—

THE HONOURABLE RAI BAHADUR SRI NARAIN MAHTHA : Why did you select only a few ?

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI : I am just coming to that point, if my Honourable friend will have a little patience. The reason why these particular buildings—an *imambara* or a *takya*—were specified is that an *imambara* or a *takya* may not necessarily be a place of worship. On the other hand, it may be a place sacred according to the religious beliefs of a particular community. If my Honourable friend will look at the provision in sub-clause (b) of clause 16 of the Bill, he will find that the term "*samadhi*" occurs there. From that I hope he will gather comfort that what I have said is true, namely, that Government have not tried to discriminate or differentiate between different religions. They have, according to the suggestion made by the representatives of the different communities on the Select Committee, incorporated such specific terms in the definition as were suggested for inclusion in that definition.

I come finally to my Honourable friend Mr. Hossain Imam's point. I did not perhaps make myself sufficiently clear. I would like to draw his attention to clause 6 (5) of the Bill which says :—

" The Deputy Commissioner shall not refuse permission to the erection or re-erection of a building which was in existence on the date on which the declaration under subsection (1) of section 3 was made ".

The expression used is " a building ". It does not say " a completed building ".

THE HONOURABLE MR. HOSSAIN IMAM : I hope it will be kept in view.

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI : I have already said that that is the intention. Obviously it would be unfair for Government, after they have made a declaration, to come along and say that some construction, although it had already been started, is to be demolished without the payment of compensation. We wish, on the one hand, to safeguard the community against controlled development. On the other hand, we do not wish to penalize an individual where an individual is acting in good faith and has acted in conformity with the provisions of the Bill.

My Honourable friend Sardar Bahadur Sobha Singh referred to a slight drafting error which has occurred. I should have been prepared now to rectify that error. But the difficulty, as you will realize, is that the other House is no longer in session. If I were to make a change now, this Bill would not become law until the measure had been referred again to the Legislative Assembly for concurrence in the amendment that we make, and the

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Interval between now and the next session of the Legislative Assembly will be utilized by speculators for staking out all kinds of claims for compensation, which, I am sure everybody would agree, is not in the interests of the community. In any case, Sir, the minor error to which he has referred is not likely to present any practical difficulties in the working of the Act between now and the next session of the Legislature and I can assure my Honourable friend that when the next session of the Legislature commences, we shall endeavour to get this minor error put right.

The Motion was adopted.

Clauses 2 to 17 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR GIRJA SHANKAR BAJPAI : Sir, I move :—

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

INSURANCE (AMENDMENT) BILL.

THE HONOURABLE SIR ALAN LLOYD (Commerce Secretary) : Sir, I move :—

“ That the Bill further to amend the Insurance Act, 1938, as passed by the Legislative Assembly, be taken into consideration ”.

When almost exactly a year ago it fell to my lot to move in this House the acceptance of the Bill which became the Insurance (Amendment) Act of 1940, I explained that the early stages of the working of the very complicated and largely novel Act that was passed in 1938 had revealed a considerable number of difficulties and oversights which called for amendment of the law. I further explained that we had then selected for inclusion in the Bill which had to be passed at short notice only a limited number of these points—matters which were of very urgent practical importance and which were, as I ventured to claim, not very controversial in character. We now deal with the residue of the difficulties to which I then referred. I do not think the House will wish me to refer in any detail to the various and very variegated provisions of the Bill before it. The position is indeed fully explained in the Statement of Objects and Reasons and in the Notes on Clauses. I should merely like to assure the House that the proposals embodied in this Bill have received the fullest consideration, not only in another place, but also by the interests concerned, because all the points upon which we thought legislation necessary were very fully discussed with representatives of insurance interests in a conference which was held in Simla last August. The proposals of Government were drawn up in the light of those discussions, not necessarily in one hundred per cent. agreement with all the interests concerned but after giving the fullest attention to what they had to represent. It had been hoped that a Bill would be introduced in another place and circulated in the last session, but the pressure of legislative business on that occasion was so great that it was crowded out. The Bill was however circulated by publication in the Gazette between the two sessions. When the Bill came before the Legislative Assembly I understand that attention was principally directed to the provisions for the levy of certain additional fees from insurance agents and concerns. The position briefly is that it had

been generally anticipated when the Insurance Act of 1938 was passing through the Legislature that the fees to be recovered under that Act as it stood would largely cover the cost of administration. This anticipation was based upon a mere conjecture in the absence of statistics, which subsequently became available in the actual working of the Act. Nor was it then possible to anticipate with any accuracy the cost of administration. It therefore came about that the situation which we now have was reached, that the income derived from those interests—insurers and, indirectly, policy-holders—for whose benefit the Act was passed only covers something like a quarter of the cost of administration. And at the same time, if we are to make the administration efficient we can foresee that there is a probability of further expenditure having to be incurred. The proposals in the Bill prescribe certain maxima to which it is not intended to work at once, but, subject to these maxima it will now be possible for Government to secure that the margin between what Government pays and the actual cost of administration can be recovered from those for whose benefit the legislation has been made. It is not the intention of Government so far as can be foreseen to reduce the amount which they themselves will pay in this regard, but in the existing financial circumstances it is difficult for them to accept any suggestion that they should agree to bear any large portion of the further expenditure that will be required.

With these remarks, I move that the Bill be taken into consideration.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. President, the Bill before us, according to the Statement of Objects and Reasons, is designed to do two things. It has been brought forward in the first place in order to remove the flaws in the administration of the Insurance Act and the difficulties that have come to light during the 18 months that the Act has been in operation. It has been brought forward in the second place in order to provide for some matters in respect of which further provisions were considered desirable. Many of the provisions of the Bill seem to a layman like me to be of rather an unimportant character. But both by what it does and what it omits to do, it raises certain important questions which I shall venture to consider. I shall first draw the attention of the House to section 27, which is one of the most important sections in the Insurance Act of 1938. There are two questions in connection with this section which I wish to dwell on. The first question relates to the proportion of its assets in respect of life policies which an insurer must invest in a particular way under sub-section (1) of section 27. In order that the House may follow the discussion I would take the liberty of reading out a part of the sub-section.

THE HONOURABLE SIR ALAN LLOYD : May I ask Sir, what clause of this Bill that refers to ? He is speaking to section 27 of the Act which is not mentioned in this Bill.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : It may not be mentioned here but since the Bill is designed to make further provision in respect of many matters I am drawing attention to a matter in respect of which further provision is desirable. Besides this matter was considered in connection with an amendment in the other House but my Honourable friend the Commerce Member never objected to it there. I do not see any reason really why my remarks on this subject should be objected to now.

THE HONOURABLE THE PRESIDENT : There is no question of objection. The question is that you want to introduce a new matter in this Bill in this House. In the Bill as it comes to this House as passed by the other House I do not think you can embody any such new matter.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Sir, may I submit that it can be introduced provided it is within the scope of the Bill. It does not alter the character of the Bill in such a way as to make it a different Bill.

THE HONOURABLE THE PRESIDENT : It may not alter the character of the Bill, but the usual procedure, when a Bill comes before this House from the other House, is only to deal with the Bill as it stands and no new provision can be introduced in this House.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Are we debarred from bringing forward an amendment which does not amount to acceptance of the Assembly's decision ?

THE HONOURABLE THE PRESIDENT : If you assert that you are not debarred from bringing such an amendment, I can rule that you have not given notice of an amendment and you cannot now move it.

THE HONOURABLE SIR ALAN LLOYD : Might I make an explanation, Sir. When I rose to my feet just now I did not mean to make a formal objection to the whole of the Honourable Member's remarks as being out of order, although he was talking about a section of the Act that is not dealt with in the Bill. I felt, Sir, as I understand from a remark that fell from your lips, that there was a distinction to be drawn between referring to such matters and the elaboration of a case that would have been in order if an amendment had been admissible.

THE HONOURABLE THE PRESIDENT : I do not object to his referring to the matter. It may form the subject of an amending Bill later on. It cannot be done in this particular Bill just now at this stage without notice.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : The Honourable the Commerce Secretary, after having done the mischief, tries to explain why he intervened. It is much too late for him to do so.

THE HONOURABLE SIR ALAN LLOYD : May I on a point of personal explanation say that I did not raise an objection. I only asked a question.

THE HONOURABLE THE PRESIDENT : The Honourable Member can refer to it, but I will not allow him to move any amendment.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I am only making my views clear. I will not put forward an amendment. What the Commerce Secretary intervened for I do not at all understand.

THE HONOURABLE THE PRESIDENT : You can refer to the matter in your speech. That is all I can allow you to do and nothing more.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I am only referring to it in my speech. I am not bringing forward an amendment.

THE HONOURABLE THE PRESIDENT : I allow you to do so.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I am obliged to you, Sir, for allowing me to continue my remarks in connection with subsection (1) of section 27 of the Insurance Act, which the Commerce Secretary

seemed to object to. I was saying that that sub-section required insurers to invest a certain percentage of their liabilities in respect of life policies in a certain way—in Government securities and in securities of another character. A difficulty, however, has been felt in regard to this section, which is of a material character and which deserves the sympathetic consideration of Government. It was considered in the other House. I shall read out a part of sub-section (1) of section 27 in order that the House may easily understand what the difficulty that I am dealing with is. The sub-section says :—

“ Every insurer incorporated or domiciled in British India shall, subject to the provisions of sub-section (3), at all times invest and hold invested assets equivalent to not less than fifty-five per cent. of the sum of the amount of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India,”

and these are the words that I would particularly invite the attention of the House to—

“ less the amount of any deposit made under section 7 or section 98 by the insurer in respect of his life insurance business and less any amount due to the insurer for loans granted by him on policies of life insurance, etc.”.

Now, the question that the insurance companies and the public are concerned with is this. Are the deposits to be made under section 7 or section 98 by every insurance company and the amount granted as loans to insured persons on the security of their life policies to be excluded from the percentage of the liabilities which the insurer is required to invest in a particular way or from the total amount of the liabilities of the insurer. The question is one of considerable importance. Suppose a company in accordance with this section has to invest a sum of Rs. 10 lakhs in certain securities. If the loans granted by it and the deposits made by it are to be included in the total sum to be invested by it in securities, its position will be considerably eased. Suppose a company of the kind that I have spoken of has made a deposit of Rs. 2 lakhs and has granted loans on the security of life policies amounting to a lakh. If these two sums are deducted from the total amount that it has to invest it will have to invest only Rs. 7 lakhs in securities. But if these two amounts are to be deducted only from the total of its obligations in respect of policies which will certainly be much more than Rs. 10 lakhs, then it will secure hardly any relief. Indeed in some respects its position will become more difficult because it will have to invest 55 per cent. of a smaller sum in securities. It will consequently be able to invest less in other and more profitable ways. This question, which I hope the House understands now, was dealt with in the Legislative Assembly the other day.

THE HONOURABLE THE PRESIDENT : Can you tell me what is the provision in England relating to this ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I do not know what the provision in England is, but I am going to deal with what the Honourable the Commerce Member said in another place, which is quite enough for me. The Honourable the Commerce Member said that he would welcome the institution of a test case. An authoritative judicial interpretation of sub-section (1) of section 27 of the Insurance Act could then be secured. As regards the cost of the legal proceedings, he was prepared to consider the question provided the amount was not too much. Now, Sir, we are not concerned merely with the interpretation of the Act as it is. If that were the only question, the position taken up by the Commerce Member would be perfectly sound. But the

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question is one of policy. Suppose that the advice given to the Commerce Member by the official legal advisers is perfectly correct and that the deductions that I have dealt with are to be made only from the total of a company's liabilities in respect of insurance policies, even then we shall have to consider whether this is sound as a matter of policy. No court can decide a question of policy. That can be decided by Government only and what I would like the Honourable the Commerce Member to tell us is whether any harm would be done, whether the interests of the policy-holders would suffer in any way if the deductions referred to by me were made from the total amount that a company has to invest in Government and certain other kinds of securities. That question, so far as I know, has not been dealt with. At any rate, if the Honourable the Commerce Member dealt with this point in another place, his speech regarding it has not been reported in the papers.

There is another question also in connection with section 27 of the Insurance Act which I wish to raise. I refer here, Sir, to the
 12 NOON. explanation attached to section 27. The insurers are divided into two categories by this section: those that are incorporated and domiciled in British India or in the United Kingdom, and those incorporated or domiciled elsewhere. The companies that are domiciled in British India or in the United Kingdom have to invest only 55 per cent. of their liabilities in respect of life policies in Government securities and securities of certain other kinds mentioned in sub-section (1). Companies incorporated or domiciled elsewhere have to invest their total liabilities in the ways that I have already mentioned—in Government securities or in securities of the kind referred to in sub-section (1). The Explanation at the end of section 27 to which I have just referred runs as follows: "Sub-sections (2) and (4)" (that is those sub-sections which deal with companies incorporated or domiciled elsewhere than in British India or the United Kingdom), "shall apply to an insurer incorporated in British India whose share capital to the extent of one-third is owned by, or the members of whose Governing Body to the extent of one-third consist of individuals domiciled elsewhere than in British India or the United Kingdom". Without this Explanation, sub-sections (2) and (4) would have applied only to companies that were not incorporated or domiciled in British India or the United Kingdom. But the Explanation makes sub-sections (2) and (4) applicable even to those companies which, though incorporated in British India, do not comply with the conditions laid down in the Explanation. If their share capital to the extent of one-third is owned by, or the members of their Governing Bodies to the extent of one-third consist of individuals domiciled elsewhere than in British India or the United Kingdom, they will have to invest all their assets in Government securities and securities referred to in sub-section (1) even though they may be incorporated in British India. Now there seems to me to be some inconsistency between this Explanation and section 116 of the Insurance Act. This section, as amended by the Bill which we passed the other day, reads as follows:—

"The Central Government may, by notification in the official Gazette, exempt any insurer constituted, incorporated or domiciled in an Indian State from any of the provisions of this Act which may be specified in the notification".

There is a condition attached to this section, the meaning of which is that there must be reciprocity in respect of insurance business between the State

concerned and British India before any company incorporated in that State can be exempted by notification from any of the provisions of the Insurance Act of 1938. Now it is surprising that while a company—I would ask for the attention of the House to this matter—incorporated or domiciled in an Indian State should be exempted by Government from any of the provisions of the Act of 1938, a company one-third of the members of whose Governing Body consists of, or one-third of whose share capital is held by people living in an Indian State, should be subject to the disabilities mentioned in sub-sections (2) and (4), that is that they should have to invest all their assets in Government securities and in securities referred to in section 27. I can understand this requirement being insisted on in the case of companies not incorporated in India or in the United Kingdom: the United Kingdom has to be taken along with India because of certain sections of the Government of India Act. But while section 116 confers certain privileges on companies incorporated in Indian States, section 27 is hard on companies incorporated in British India if they are to a certain extent controlled by interests connected with the Indian States. The position is absolutely illogical. A company may be incorporated in an Indian State, all its share-holders may be residents of that State, and all its Directors may be residents of that State. Yet it can enjoy the privilege referred to in section 116. It can be exempted from all the provisions of this Act. But if it is incorporated in British India and, say, only one-third of its Directors are residents of an Indian State, it will have to invest all its assets in Government securities and certain other kinds of security. If one-third of its share capital is held by people residing in an Indian State, it will again become subject to the disability that I have mentioned. What I have said, Sir, I think is quite sufficient to show that there is a serious discrepancy between the Explanation attached to section 27 and section 116 of the Act. It should be removed at an early date.

There is one other section of the Bill to which I should like to draw the attention of the House. Honourable Members will remember the importance that was attached to section 45 of the Insurance Act of 1938. Briefly speaking, this section limited the right of the insurer to question the statements made by the policy-holder. It stated that the accuracy of any statements made by the policy-holder could be challenged only within a certain period. The period was in the case of existing companies two years from the date of the commencement of the Insurance Act and in the case of new companies two years from the date of the acceptance of a policy. There were, however, exceptions in which the validity of a policy could be questioned even after the prescribed period had expired. The conditions laid down were that the statements made by the policy-holder should be false and fraudulently made and that the policy-holder should have known at the time of making them that the statements were false. The advantages and disadvantages of this section were considered. The provisions of the section did raise certain difficulties. But, after taking all considerations into account, it seemed that it was desirable in the interests of the policy-holders that the right of the insurer to question the accuracy of their statements should be limited in a certain way. It was felt that otherwise the policy-holders might be subjected to vexatious treatment, and that the unlimited right enjoyed by the insurer might be abused. In fact, it was thought that the section was too wide, and that the right in question had not been properly exercised and I believe that the policy-holders had also made complaints about the considerable delays to which the payment of their policies was subjected. This section, however, has been altered in a material respect by an amendment accepted

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in another place. A proviso was added there to this section which runs as follows :—

“ Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, etc.”.

The first question that we have to consider is that so far as the question of age goes, section 45 has been practically repealed. I know that there are these qualifying words “ if he is entitled to do so ”. I do not know what exactly is meant by this. Is it meant that if the insurer is entitled to do so under any other law he might question the proof furnished in regard to age ? The Commerce Secretary shakes his head—

THE HONOURABLE SIR ALAN LLOYD : Perhaps it will shorten matters if the Honourable Member will permit me to say that the words refer to the terms of the policy.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : What the Honourable the Commerce Secretary has said shows that it would be permissible for the contract entered into between the insurer and the insured person to include a provision to the effect that statements made in regard to age might be challenged even after the expiry of the period mentioned in the Act.

THE HONOURABLE SIR ALAN LLOYD : It is the other way round. An insurer might positively contract out of the right of questioning. He might contract to pay the policy without question after two years.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Considering the liberty given to insurers, I do not see that they would be so large-hearted as to agree to pay the life policies without any condition at all. If that is really the position of the insurers, why is this amendment made ? It is wholly superfluous. It has obviously been made in order to confer a right on the insurance companies. Otherwise it has no meaning whatsoever. The effect of this amendment will be, as I said, to nullify section 45 so far as age is concerned. I am not aware, Sir, that we have been told what was the serious difficulty that was caused by section 45 as it stands. I know that it was desired in the other House that this change should be made. But Government have said nothing to justify the change that has been made. If they wanted to protect the insurance companies further, they could have done so without bringing forward so drastic an amendment. They could have increased the period during which the insurer could question the statement made with regard to age by an insured person from two to three or even four years. If they were concerned with the interests of the insured person, they could have laid down that if proof with regard to age was not furnished by him and if the policy might thereby lapse, he should be given a previous warning so that he might furnish the required proof. But they have done nothing of the kind. They have not in any of these simple ways protected the interests both of the insurance companies and of the policy-holders. They have brought forward this drastic amendment which, as I have already said, nullifies section 45 in an important respect and confers a power on insurance companies which may easily be abused and which it was felt when the Insurance Act was passed had been rather abused by them.

These are the important points that I wish to deal with in connection with the Bill. I should like however before I sit down also to say that I am

in accord with those who object on principle to the renewal of licences of insurance companies required by the Bill before us. The Honourable the Commerce Member explained in another place what was the reason for this provision and the Commerce Secretary too has explained it today. I understand the explanations given to us to mean that the insurance companies would not be required to provide more than Rs. 1,50,000 and that should the expenditure on the Act increase it is the State that would make itself responsible for the additional expenditure. I am dealing with the new section 3A which it is sought to introduce. If I have correctly interpreted the assurances given by the Commerce Member and the Commerce Secretary, then I think that the new section, though not acceptable to us, need not be seriously objected to. But if it is intended when expenditure involved in the administration of the Insurance Act rises, to call for what I regard as further contributions from insurance companies, then I say that the provision in question is seriously objectionable. I hope that this matter will be explained either by the Commerce Member or by the Commerce Secretary.

Sir, I have not brought forward any amendments because I knew that the other House having risen Government could not accept any of them, even if they were inclined to do so. Otherwise, I would certainly have placed amendments before the House with a view to giving effect to the purposes that I had in view. I hope however that Government will give their serious consideration to the points that I have urged and will try soon to amend the law in such a way as to safeguard better the interests both of policy-holders and of insurance companies than the present Bill does.

THE HONOURABLE MR. HOSSAIN IMAM (Bihar and Orissa : Muhammadan) : Mr. President, the Bill before the House has been heralded for a long time. We have been waiting for this for some time past and we had thought that it would be a model of perfection. There is no doubt that this represents an agreement to a large extent between the Government and the insurance companies ; and as such the Government deserves to be congratulated on having brought an agreed measure. But our difficulties are not ended by the agreement of the insurance companies alone, because we have also to guard the interests of the unrepresented person, I mean the man who takes out a policy. As far as he and his benefits are concerned, I am afraid the Bill has not paid sufficient attention to his interests. I have not much to say but I do wish to state a few facts before the Government.

Firstly, Sir, the provision which was incorporated in the Bill in the teeth of opposition by all the non-officials in section 2 of the Act about having an actuary at the head of affairs, that remains unaffected. Do the Government seriously believe that after an examination has been made by an auditor it is necessary that his report to be understood can only be read by an actuary ? In the Act it is laid down by you that the reports will be made not only by the auditors but in certain cases the Superintendent of Insurance is allowed to ask for an actuarial report. Now, when you have an actuarial report, is it not having a fifth wheel to the chariot to have an actuary also at the helm of the affair ? I have no complaint against the Superintendent of Insurance. It should not be understood that I am making any remarks against him. What I do say is that our opinion embodied in the debate on the Act in the Assembly and in this House was almost unanimous in regarding it as a useless provision, a provision which would bar the way to the appointment of an Indian to the post. I will make my position quite clear. The intention of this House was that the first Superintendent should be an Indian. Failing that the second Superintendent should be an Indian who has experience of

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insurance business. Placed as we were, Sir, we had very few Indian actuaries available, and those few were either better employed or had better prospects than the Government could offer. It was therefore impossible for the Government to get an experienced Indian actuary. Sir, I refer to it in passing because there has been some complaint of delay in disposing of the cases. This may be due to the fact that very keen inquiries were being made by a man at the head of affairs who did not know India. The Superintendent of Insurance has been taking good care that the interest of the policy-holders is safeguarded, and to that extent I am in perfect agreement with him, but matters are prolonged too far.

The second item to which I wish to refer is the increase in the fee of the insurance agents. The new method adopted by the Government of making the people pay for specific services rendered is in principle quite correct. But it remains to be seen whether this practice is to be extended to all or to only to those few who are unfortunately already paying. Those who pay are asked to pay more and those who escape payment are never detected. The provision of renewal of insurance is also taxation and taxation which I think the Government ought not to have imposed. The work which the Government is doing is not primarily in the interest of the companies; it is really to safeguard the interest of the policy-holders that this Act has been passed, so that under the guise of a registered company people may not be robbed. It is really in the discharge of a fundamental duty of an established Government that the authorities have embarked on this Act. The purpose of this Act is really to safeguard the interests of policy-holders; and therefore to ask the companies to pay for the services of the Department is really passing on the cost to some other people. Ultimately the cost will have to be paid indirectly by these policy-holders themselves, because insurance companies are after all not philanthropic bodies. Insurance people take my money, make provision for expenditure, and then give you 90 or 80 per cent. of the accumulation. In that sense the cost is passed on to the policy-holders. *I would like the Honourable Member to inform us what is the provision in other civilized countries. Is this kind of renewal fee imposed in other countries as well?* If it is the general practice of the world, I think the Government is perfectly justified in adopting that system, but if it is not, I would venture to suggest that the Government should not make this innovation. Sir, some objection was taken by Dr. Kunzru to the provisions of section 27. I would like to remind the House that this matter was discussed at some length in this House on 22nd November, 1937. Today Dr. Kunzru brought our attention to the anomaly between a company incorporated in an Indian State and a company incorporated in British India with share-holders and directors from the Indian State. Our Honourable friend Dewan Bahadur Sir Ramunni Menon had on 22nd November, 1937 drawn attention to anomalous difference between India and British India as incorporated in this section. Government had intimation that there was some inconsistency in the provision. I hope the Government will not be too much wedded to prestige and brush aside the suggestions but look into the thing and if there is an anomalous position it should be cleared. The present provision in section 27 which insists on 55 per cent. being invested in Government securities acts harshly on policy-holders. The present yield on Government securities is very low, but I would not be so unkind as to suggest to the Government that for the benefit of the policy-holder the Finance Department should increase its rate of interest. You as the Government ought to look at things as they are. I wish particularly to draw the attention of the Government to the fact that

there are two kinds of policy-holders. One is called the participating policy-holder and the other is the non-participating. In the case of those who are not participating in the profits, the premium income is fixed on the supposition of a certain yield on the investment. The actuarial premium tables are on the basis of an assumed rate of interest being earned. Now, the company having entered into contract does not invest the whole sum at the date of the contract. The sum is to be received in a period of 20 years, 25 years or 30 years and it assumes that for that duration the company will be earning a certain amount of interest. That interest is not earned now, through no fault of the insurers and no fault of the policy-holders, rather to the advantage of the State. I would venture to suggest that the Government should consider the difficulties of the insurer in a sympathetic manner. This loss to the insuring company is really passed on to the participating policy-holders. As the House knows, the premium of participating policy-holder is a little higher and the contract is a varying contract, in that the amount of bonus is not always fixed. It is found out by means of different valuations. As far as this valuation is concerned, if the assumed earning capacity is reduced, with the reduction of the surplus, the bonus to be awarded is reduced. *So by insisting on this provision of 55 per cent. in the case of local insurers and 100 per cent. in the case of foreign insurers the participating policy-holders suffer.* The Honourable Member knows that the vast majority of policy-holders prefer to get a participating policy to a non-participating policy. This is the particular aspect of the question which I ask Government to keep in view and not be wedded to prestige that because they had brought forward a certain measure it should be regarded as sacrosanct. The realities of the situation should not be brushed aside merely on the ground that we are passing an Act which is a permanent Act and the present position may be temporary. I am rather inclined to believe that the present trend of interest rate on Government securities is not a temporary feature. Unless something very catastrophic happens we have to regard 3 per cent. and 3½ per cent. as the normal rates of interest for Government accommodation, as the trend of world opinion is that money should be available to the Government at a cheap price. In view of this changed circumstance, the insurer and the participating policy-holders deserve sympathy from the Government and that sympathy can be effectively translated by reducing this provision. The smallest thing that the Government ought to do is to include the deposits and loans, as has been urged, in this 55 per cent. If an amendment of procedure like that is adopted—it is not an amendment of the Act—this might materially, if not wholly, ease the situation. We had been wondering when the Act was before us what would be the effect on the expense ratio of the companies. It was thought that the old Act was unable to check the growth of mushroom companies and one of the objects of this Act was that mushroom companies should not rob the people by offering good prospects without any backing. Well, as far as that is concerned, Sir, I do not know how far the Government has succeeded in eliminating the mushroom companies. I have heard of one difficulty which is being experienced by the companies, and on that I should like the Honourable Member to throw some light. I am, Sir, not very sure of my facts and that is why I am making an apologetic reference. I was told that the present procedure is that if two companies wish to amalgamate it is not only the weak company which has to get its assets valued but it is also the bigger company which is going to absorb, which is asked to have actuarial examination, made of its assets as well. That leads, Sir, to very great expenditure and difficulty. The bigger company, on the last valuation basis and other things, may be proved to be an established concern, a concern which can safely absorb. If both the companies are weak companies, of

[Mr. Hossain Imam.]

course you should insist. Then you have no safety. But if you find out from your papers that one of the companies is an established concern of long duration, and with an actuarial report; that ought to be sufficient. That is one of the points on which I want some light to be thrown.

There is another point, Sir, on which I want some light to be thrown by the Government. When this Bill was under consideration, I had brought forward an amendment to clause 102 (c) as it then existed which is now numbered section 118. The intention behind that amendment, Sir, was that railway peoples Provident Societies should be exempted from the conditions which are laid down for ordinary Provident Societies. I would remind the House of this because it was really a burden which was passed on to me by Sir Nripendra Nath Sircar, as is stated on page 911 of the Council of State proceedings of 1937. When I moved that amendment, the Government assured me that they will have the matter examined and an agreed amendment will be placed before us. The agreed amendment, Sir, was moved by Mr. Bartley—

THE HONOURABLE DEWAN BAHADUR SIR A. RAMASWAMI MUDALIAR :
What clause ?

THE HONOURABLE MR. HOSSAIN IMAM : Clause 102 (c) in the Bill, section 118 in the Act, and at the moment section 66 of the new amending Bill. The difficulty which we found, Sir, was that Provident Societies are restricted to work up to Rs. 500 only. But the only relief which you could give to the railway men and the Government employees mutual Provident Societies was to permit them to transact life insurance business of a restricted amount. This was the only help which we wanted, and which was examined and granted to them by the old Act. Under the Provident Societies Act of 1912 the Government of Bengal—the Provident Society was situated there—was given an exemption. Now the present condition of affairs is that the Superintendent of Insurance may or may not relax, and I am afraid that after this Act is passed the chances of their being allowed to transact business of more than Rs. 500 will be almost negligible. At the moment a talk is going on, Sir, that the big insurance companies are also going to embark on opening new provident companies as subsidiaries to their own big companies. If this sort of development takes place, the position will further deteriorate.

In the end, Sir, I should like to say that perfection is difficult to attain. Human efforts are scarcely, if ever, perfect. We have to make the best of a bad bargain, and the Government's function is to strike a balance between the varying claims of the three parties, the State, the insurance companies, and the policy-holders. The Government and the insuring companies are always in conclave, one consults the other. But the policy-holders' interests, Sir, do not find any access to the Government's counsels, and it is for this reason, Sir, that I do wish that if ever this Act is under revision, representation to the policy-holders' interests should also be given as fully as is given to insurance companies.

Sir, I support the Bill.

THE HONOURABLE DEWAN BAHADUR SIR A. RAMASWAMI MUDALIAR (Commerce and Labour Member) : Mr. President, the speeches of my two Honourable friends relate more to what this Amending Bill has omitted to do than to what this Amending Bill has provided for. My Honourable friend

Pandit Kunzru definitely stated that his objection to this measure was that it did not bring within its purview certain other amendments to sections which have not been touched upon in this Bill. Well, that is a legitimate criticism. But obviously it is not possible for me to go into all the details of why we did not amend a particular section. Let me however advert to section 27 which has occupied my thoughts as well as that of the Honourable Member, and the propriety of which has been discussed in Insurance journals and by insurance interests ever since the Bill was passed. At the conference that I had the honour of presiding over of Insurance interests, section 27 was very hotly debated upon. My position then was, Sir, and is today this: The requirement of section 27 that certain insurance companies should provide by way of approved securities a certain percentage of their liabilities was debated upon and discussed in both the Houses on the occasion when my distinguished predecessor in office, Sir Nripendra Nath Sircar, had the opportunity of introducing the Bill. Such a thorough discussion there was on the subject. Honourable Members are aware—it is no secret that there were conferences in the lobbies and behind the scenes—that it was one of the most debated sections of both the Houses, and that this provision was put there after a prolonged discussion more or less as an agreed measure. It is not that I am laying down now the policy which section 27 seems to incorporate that assets equal to 55 per cent. of the liabilities should be invested in a particular manner: but it is that this very point had been thoroughly discussed only two years ago, and I should have thought before my Honourable friend asked me to suggest an amendment to that particular section that he would have shown how conditions today are in any way different from what they were in 1938 and why that particular provision, which has received complete and thorough attention of the Members of both the Houses, and of the public, should now be amended, and the policy incorporated in that section should be revised. That policy, Sir, deals with the interests of the insurance companies and with the interests of policy-holders alike, and I personally feel somewhat timorous of touching a section which, if not sacrosanct, at any rate has received the blessings of both the Legislatures only two year ago. My Honourable friend will find in the discussions particularly in the Council of State and in the speech of my Honourable friend Mr. Hossain Imam that this very question whether the loans on policies and the deposits under section 7 should be included or excluded from that 55 per cent. calculation, a point touched upon by my Honourable friend. The position that I took up in the other House then was—

THE HONOURABLE MR. HOSSAIN IMAM: The Law Member remained silent on that day.

THE HONOURABLE DEWAN BAHADUR SIR A. RAMASWAMI MUDALIAR: And that silence is very eloquent obviously. I am given to understand that the legal Advisers of the Government said, and that is confirmed by the silence of no less a person than the Law Member of the day, that that section provides for the inclusion of these two things also in the 55 per cent. calculation and that the 55 per cent. applies to $[(A + B) - (C + D)]$, if I may say so. That is the reason why I am not prepared to touch that section now. But I did go beyond this. If there was serious doubt—Government itself have no doubt in the matter—but if there was serious doubt in the minds of Insurance companies or, as has been alleged, if they are certain that our interpretation of the section is wrong, and if they go up to a court of law and have their interpretation vindicated, I gave the assurance that Government would not have that section amended so as to restore their original interpretation. One reason

[Sir A. Ramaswami Mudaliar.]

why parties are unwilling to go to a court of law and have their interpretation justified with reference to many of these matters—and I know it from my own experience as a lawyer—is that the moment they have taken all the trouble and put themselves to all the expense of having that particular interpretation vindicated by a court of law, Government comes in the next day with an amending Bill to restore the original interpretation, thereby nullifying even the decision of the Privy Council. Having that in mind, I gave the assurance that if this interpretation was vindicated by a court of law, Government would not go behind that decision of the court of law and would accept it loyally in spite of the fact that they felt that the decision of both the Houses, the intention of the Government as expressed by the eloquent silence of the then Law Member and all other facts meant that they desired that these two items also should be included in that 55 per cent. calculation.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : It is then obviously a question of policy and not one to be decided by a court of law.

THE HONOURABLE DEWAN BAHADUR SIR A. RAMASWAMI MUDALIAR : My Honourable friend knows that in the opening observations I said that it is a question of policy, which has been so thoroughly discussed and accepted by both the Houses. I need not go into the history of this section 27, the various proposals that were made, how the original proposal of the Government was for 33 per cent., how the Select Committee amended it to 66 per cent., and how a conference was then held and a compromise was arrived at. All these things have been thoroughly discussed, including the question of policy, and the decision is as much binding on the Government as on the Legislature, and that is the reason why I feel that I cannot go behind the policy, especially when no new arguments have been advanced and when the position today is exactly what it was in 1938 when that particular decision was made.

THE HONOURABLE MR. HOSSAIN IMAM : The position has changed because of the reduced yield from the Government securities.

THE HONOURABLE DEWAN BAHADUR SIR A. RAMASWAMI MUDALIAR : Sir, I am not quite sure whether on the facts even my Honourable friend is correct. Certainly he also knows that Government securities have appreciated.

THE HONOURABLE MR. HOSSAIN IMAM : That has brought down the yield, Sir.

THE HONOURABLE DEWAN BAHADUR SIR A. RAMASWAMI MUDALIAR : That reduces the amount that has to be deposited. (Laughter.) You cannot have it both ways. I do not venture to enter into the intricacies of high finance, especially with my Honourable friend Mr. Hossain Imam. I am not competent to do so. - But that is the position.

Then, my Honourable friend referred to the Explanation to section 27 and pointed out that a company incorporated in British India, with one-third of the share-holders in an Indian State, is placed in a disadvantageous position. I must frankly confess that this particular point was not brought to my notice by any company or any insurance interest. I understand that there is a single company in that extraordinary position in my Honourable friend's province and therefore he knows much more about it than I do. But I can only say that that is an anomaly which was not provided for and it was not contemplated at the time. As my Honourable friend knows, the Explanation really refers to

foreign companies. I do not know when the next amending Bill will be before the House. But, when the next amending Bill is before the House, I am certain that this question will be given due consideration.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I should have thought that Government would rectify this anomaly, because they never intended that it should be there.

THE HONOURABLE DEWAN BAHADUR SIE A. RAMASWAMI MUDALIAR : That is a point worth considering and I undertake to look into it. But with the obvious impatience of the Legislature over the series of amending Bills to the Insurance Act, I have a little hesitation in introducing any Bill on this point in either of the Houses.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : We have shown exemplary patience.

THE HONOURABLE DEWAN BAHADUR SIR A. RAMASWAMI MUDALIAR : My Honourable friend referred to the question of amalgamation. The Honourable Mr. Hossain Imam said that there was some difficulty about it. Surely, my Honourable friend knows that in the last amending Bill provision was specifically made for it and the Government have taken to themselves the power not to require an actuarial valuation from a company which has a sufficient standing and therefore it is only in regard to such companies that Government feel that an actuarial valuation should be insisted upon that this provision is being enforced.

Then, my Honourable friend Pandit Kunzru referred to clause 31 of this Bill, which amends section 45 of the Act, where it is provided that an insurer can, if he is otherwise entitled to do so, call for proof of age. It was brought to our notice that in some policies it is provided that the assured must prove age, and if so, there is no reason why that proof should not be forthcoming, and if correct proof of age is forthcoming after that date, then it is open to the company to adjust the policy so that the proper premiums are paid according to the age. It seems to me that it is as much in the interests of the other policy-holders as in the interests of the insurance company that this rectification should be made. It is not really fair that other policy-holders should be mulcted because one assured does not declare the correct age or does not prove the correct age. That is the reason why this proviso was included in this clause.

My Honourable friend Mr. Hossain Imam went into a discussion regarding the Actuary which I was not able to follow. He virtually said, "Well, there is the actuarial report; any layman can understand it. Therefore, there is no reason why there should be a qualified Actuary at the top to further scrutinize it." But his logical mind then jumped to a queer conclusion that it should be an Indian Actuary and not a British Actuary who ought to be the Superintendent of Insurance. (Laughter.)

THE HONOURABLE MR. HOSSAIN IMAM : On a personal explanation, Sir. I did not suggest this. I said that the qualification "Actuary" stands in the way of having an Indian Superintendent. So you have either to eliminate the Actuary or not have an Indian.

THE HONOURABLE DEWAN BAHADUR SIR A. RAMASWAMI MUDALIAR :
That is a curious way of bringing about the desired effect to which I cannot possibly subscribe. In the first place, there has never been a want of Indian Actuaries. It may not have been possible for Government to get a qualified Actuary on the terms and conditions on which they were prepared to get them, and when the criticism of the House is about bloated salaries, that sort of difficulty will always continue to exist. My Honourable friends will have to revise their ideas, particularly now that this country is becoming more and more industrialized, and the best brains are being diverted to industry, not only with reference to this particular appointment but also with reference to various other technical appointments. My Honourable friends will be driven to the conclusion that they should revise their ideas on salaries and in any case cannot subscribe to the Rs. 500 limit which has prevailed as a very desirable limit in some quarters till recently. But, Sir, I can say this.

I have tried to look into the Department and its administration and have taken some interest in this matter during the last year, and I can assure my Honourable friend that no layman could possibly deal with the actuarial reports that sometimes come up or cope with the correspondence that insurance companies from time to time put forward. It requires all the ingenuity and all the care of the Superintendent of Insurance and three qualified Actuaries whom we fortunately now have in the Commerce Department, all of them Fellows of the Society of Actuaries, out of only seven or eight Indian Actuaries in the whole country. We have been very fortunate in getting their services. It requires all their ingenuity and care to disentangle some of the reports of the actuaries and auditors and the correspondence which is sometimes addressed to the Department by the Insurance companies. But my Honourable friend at the same time complained of the delay, and that leads me to the proposals which have been called the taxation proposals of the Bill. We do contend it to be one of the justifications and reasons for this Bill, which provides for this renewal of fees, that we want to avoid such delays. There is no use of complaining of delays when there is a skeleton staff to work the Act. Insurance companies are getting more regular. The controls are so many and the correspondence so interminable, with reference to some at least of the insurance companies. It is not the best managed companies that give the greatest trouble to the Insurance Department. It is those badly managed companies which after protracted correspondence have to be hauled up, and threatened with withdrawal of registration. It is to deal with all this work that the increased staff is required.

And that brings me to the provision for renewal of licences, which frankly is a proposal for raising some money. My Honourable friend Pandit Kunzru wanted me to give an assurance, but I think he got a little confused over the statement I made in another place. The present contribution from the general revenues is Rs. 1,50,000 for the expenditure on the Department. On the other hand the present contribution by the insurance interests to the general revenues is about Rs. 50,000, which is being paid by way of fees by the agents. Now I only said that under present circumstances, for the purposes of this growing department and for discharging our obligations to the insurance companies and to the public at large, we want some more money and it is not possible to get that money from the general tax payer. Therefore it is that these proposals for a renewal fee from insurance companies and an enhanced fee from the agents when they receive their annual licences have been put forward in this Bill. It does not mean that all extra expenditure hereafter of the Insurance Department must be found by the insurance interests alone. I do not commit this

House to that prospect. I also said that the indirect costs of the administration, costs on pensions and so on, have not been taken into account in this contribution which the general taxpayer pays to this Department. Those indirect charges are bound to grow from time to time. Therefore, on the one hand I did not set a limit to the amount which the general taxpayer should pay to the cost of the Insurance Department, and I did not suggest that it should be only one lakh. On the other hand I did not commit myself to the principle that all additional expenditure should be met only from a levy either from the insurance companies or the agents concerned.

Sir, I do not think there is any other point which I need deal with at this stage. I can only say that this is one more instance of a Bill which has been carefully considered in the light of the advice received from the parties directly interested, that all the provisions were discussed with the interested parties. On the one hand we placed before the conference the proposals we had in view, and on the other were proposals from the insurance companies as to what amendments they wanted. It was through a discussion on all those proposals that we arrived at certain conclusions. As my Honourable friend the Commerce Secretary stated, this Bill does not represent one hundred per cent. agreement on all these points. Obviously we could not expect the insurance companies or the agents to agree on the one hand to the renewal fee or on the other hand to an increase in agents' commission, even as we would not expect any person who pays an income-tax to agree readily either to the payment of income-tax as it stands or the enhancement of that income-tax. We did not look forward to agreement on that proposal. But they knew very well, and we explained, the justification that we felt for bringing forward these proposals, and in their heart of hearts I say they gave their assent to these proposals. It is in these circumstances that we have come forward with this amending Bill.

THE HONOURABLE THE PRESIDENT : Motion moved :—

“ That the Bill further to amend the Insurance Act, 1938, as passed by the Legislative Assembly, be taken into consideration. ”

Question put and Motion adopted.

Clauses 2 to 50 were added to the Bill.

Clauses 51 to 70 were added to the Bill.

The Schedule was added to the Bill.

Clause 71 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR ALAN LLOYD : Sir, I move :—

“ That the Bill, as passed by the Legislative Assembly be passed. ”

The Motion was adopted.

The Council then adjourned *sine die*.

CORRIGENDA

In the Council of State Debates,
1941, Volume I,—

(1) On page 255, in line 3 from the
bottom,—

for "I" read "It";

(2) On page 256, in line 24 from the
bottom,—

*insert a dash after the word
"India";*

(3) On page 284, in line 9 from the
top,—

*omit the comma after the word
"battles";*

(4) On page 312, in line 12 from the
top,—

for "wear" read "war";

(5) On page 570, in line 13 from the
bottom,—

*for "Indian Army Service Corps"
read "Indian Army Ordnance
Corps";*

(6) On page 582,—

(a) in lines 13-14 from the bot-
tom,—

*for "as already stated" read "I
may say that";*

(b) in lines 10-11 from the
bottom,—

*for "already referred to" read
"issued by the Department of
Commerce on the 16th De-
cember 1940. Copies are in
the Library."*

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