Reddy, Shrimati Yashoda
Roy Shri Bishwanath
Sadhu Ram, Shri
Saha, Dr. S.K.
Sahu, Shri Rameshwar
Saigal, Shri A.S.
Samanta, Shri S.C.
Saraf, Shri Sham Lal
Sarma, Shri A.T.
Satyabhama Devi, Shrimati
Satyanaryana, Shri
Sen, Shri P.G.
Shah, Shri Manabendra
Shah, Sh · Manubhai
Shah, Shrimati Jayaben
Shakuntala Devi, Shrimati
Sham Nath, Shri
Shankaraiya, Shri
Sharma, Shri A.P.
Sharma Shri D.C.
Sharma, Shri K.C.
Shastri, Shri Lal Bahadur
Shastri, Shri Ramanand
Sheo Narian, Shri
Shivananjappa, Shri
Shree Narayan Das, Shri
Shyam Kumari Devi, Shrimati
Siddanjappa, Shri
Siddiah, Shri
Sidheshwar Prasad, Shri
Singh, Shri D.N.
Singh, Shri K.K.
Singh, Shri S.T.
Singha, Shri G.K.
Sinha, Shri Satya Narayan
Sinha, Shrimati Tarkeshwari
Sinhasan Singh, Shri
Sivappraghassan, Shri Ku.
Snatak, Shri Nardeo
Sonavane, Shri
Soy, Shri H.C.
Srinivasan, Dr P.
Subharaman, Shri
Subramaniam, Shri C.
Subramanyam, Shri T.
Sumat Prasad, Shri
Surendra Pal Singh, Shri
Surya Prasad, Shri
Swamy Shri M.P.
Swaran Singh, Shri
Tahir, Shri Mohammad
Tantia, Shri Rameshwar
Thengal, Shri Nallakoya
Thimmaiah, Shri
Thomas, Shri A.M.
Tiwary, Shri D.N.
Tiwary, Shri K.N.
Tiwary, Shri R.S.
Tripathi, Shri Krishna Deo
Tula Ram, Shri
Tyagi, Shri
Uikey, Shri
Upadhyaya, Shri Shiva Dutt
Vaishya, Shri M.B.
Valvi, Shri
Varma, Shri M.L.
Varma, Shri Ravindra
Veerabasappa, Shri
Veeramma, Shri
Venkatasubbiah, Shri P.
Verma, Shri Balgovind
Verma, Shri K.K.
Vidyalankar, Shri A.N.
Vijay Anand, Maharajkumar
Virbhadra Singh, Shri
Vyas, Shri Radhey Lal
Wadiwa, Shri
Wasnik, Shri Balkrishna
Yadav, Shri N.P.
Yadav, Shri Ram Harkh
Yadava, Shri B.P.

Mr. Speaker: The result of the Division is: Ayes 66, Noes, 318.

The motion was negatived.

Shri Ranga: This is the biggest censure on you.

13.37 hrs.

COMPANIES (SECOND AMENDMENT BILL—*contd.*

Mr. Speaker: Further consideration of the following motion moved by Shri T. T. Krishnamachari on the 18th August 1965, namely:—

> "That the Bill further to amend the Companies Act, 1956, as reported by the Joint Committee, be taken into consideration."

Shri Vidyalankar may continue his speech.

The Minister of Finance (Shri T. T. Krishnamachari): May I ask your guidance in regard to the timing? We have got 2¼ hours left.

Mr. Speaker: Five hours had been allotted. Now we have 2¼ hours left. We will have one hour for general discussion and the rest for clause-by-clause consideration.

Shri S. M. Banerjee (Kanpur): You Sir, were not in the Chair when this Bill was being discussed. Many members had expressed a desire that the time should be extended. It was left to you to decide. The Chairman was there at that time. So many amendments have been tabled.

Mr. Speaker: I will see.

श्री यशपाल सिंह (कैराना) : समय बढ़ाया जाय ।

अध्यक्ष महोदय : देखेंगे ।

Shri A. N. Vidyalankar (Hoshiarpur): Mr. Speaker, the other day I started by congratulating the Finance Minister on bringing forward this Bill. I know that the Finance Minister has a very soft corner for the corporate sector and, rightly, he desired that such amendments should be made to the company law so that the corporate sector should be able to play its progressive role and approach

the socialistic ideals in a democracy. But I am afraid that even after scrutiny by the Joint Committee, the Bill has not emerged in a form in which it should inspire hope and confidence. In certain respects I find that the Joint Committee has given it a slight push rather in the opposite direction.

The Finance Minister may claim credit for introducing the legislation in favour of the corporate sector. The company law and his Bill deal with the corporate sector, and before we properly understand how to deal with this sector, we should understand the nature and character of the corporate sector as it exists.

The Vivian Bose Commission report exposed certain defects in the company law. I think the Finance Minister was anxious to rectify those defects that permitted the misuse of powers and various other actions of which many company directors were guilty.

I have said that the corporate sector is not today playing its proper role, specially in the context of a socialistic democratic order. I have also said that if we want to deal properly with this sector, we should understand its present character. At present, out of the total share capital of all non-government companies, 25 per cent is owned by the four topmost business houses of Birlas, Tatas, Martin Burns and Dalmia-Jain. Only 20 industrial houses are today controlling 1073 companies with a share capital of Rs. 352 crores. Of the 619 directorships in ten topmost insurance companies, 107 are held by Singhanias, 103 by Dalmia-Jain, 80 by Ruias, 60 by Birlas, 35 by Goenkas and 55 by Podars. Of the big five banks, two are controlled by Tatas, two by Birlas and one by Dalmia-Jain. This is the actual position of the corporate sector today. The poor, small shareholder has no voice in the company as against these giants and colossi. I am stating these startling facts so that the House may keep in mind the character of the corporate sector. The purpose was to do away with the monopolistic tendencies in this sector, but I am afraid that the amendments suggested have not been able to achieve that end. In certain respects, they have, in fact, gone in the opposite direction.

Now I take up some of the clauses to which I have objections. First of all, no amendment has been made to modify the managing agency system. I think that we should do away with this system; if we cannnot do away with it, at least this ought to have been materially and radically modified.

Clause 35 raises the age limit for directors from 65 to 75. I think this is absolutely against the spirit of the times. This is a retrograde step. We want industry and business to progress through this corporate sector, we want virile young men with vigorous minds to work, but here we are imposing the rule of senile people who have been allowed to be directors in companies up to 75 years.

The Joint Committee has practically ignored the views expressed by the representatives of the shareholders and the Chartered Accountants and Auditors. For instance, the shareholders desired that the blank transfer system should be completely done away with, but this has not been done. On the other hand, this system has not only been recognised, but is being encouraged. I am not totally against certain amendments that some of my friends here have suggested in this connection.

Transfer or sale of managements has also been allowed. Management of a company is a function, an obligation, a duty, it is not a commodity that should be freely sold or transferred for the sake of certain benefits, advantages or profit. This should not be allowed. It should be taken seriously.

Under Clause 44, companies have been allowed to advance 20 per cent in

[Shri A. N. Vidyalankar]

certain cases to other companies. I think that this should not be allowed, because companies collect money for their own business. These advances of loans by one company to another can be misused in many ways, and instances have also come before us. Certain chains have been established that are harmful and that practically spoil the whole spirit of the corporate sector.

There has been a lot of discussion about donations to political parties. I also belong to a political party, but I personally feel that this should not be allowed, as this is a source of corruption. Naturally, the big business have the money, the power, in their hands, and they try to influence and bring pressure on the political parties and the legislators. I, therefore, think that this should be done away with. Though this may not be palatable to many friends who belong to different parties, I think the various parties should come to some common understanding and decide in the interests of purification of public life that companies should not be allowed to give political donations.

I welcome the amendment in Clause 23. In the report of the Joint Committee it has been stated that because sufficient number of Cost Accountants are not available in the country, Chartered Accountants and other persons are allowed to do their job. I agree with this. I know that many Cost Accountants are available, though they are not practising because there is not sufficient scope. Given the scope, I think many of them who are employed will come into the field. I think that a condition should be imposed on the Chartered Accountants and others who are allowed to do the job that they should properly qualify themselves by passing the examination in cost accounting, as otherwise the main purpose of the provision would be defeated. If you create the demand, naturally people will come forward and pass the examination. There would be no difficulty. This condition should be laid down.

The new section 149 (2B) in Clause 15 states that companies can alter their business, go to other business, with the permission of the Company Law Board. I am doubtful whether this will lead to happy results. I personally feel that this permission should not be easily granted. When a company is started it is for some particular business or industry; it should not be allowed to easily change to another business or industry. That is not a very happy proposition. I think this clause should not have been added.

I feel that there is evidence that the affairs of many of the medium-sized and small companies are not properly looked after. The Company Law Administration generally ignores them. Much misuse of powers, much fraud and misuse of funds go on in such companies. In order to fill up their reports, the inspectors catch hold of some small and middle-size companies and find out one or two instances of misuse of power or fraudulent action. They proceed against them. This kind of administration in this manner is not good. The administration should exercise fully those powers that it takes under the law or under the rules. I feel that the powers that the Government takes at present are not properly and fully exercised. They are exercised to pounce upon somebody with whom they are not happy or whom they do not like. They do not regularly and properly discharge their functions. The company law administration needs to be pulled up and they should properly exercise the powers that they take under this legislation. Thank you.

Shri P. C. Borooah (Sibasagar): After a good deal of labour and time the law relating to companies in India was recast and codified in voluminous enactment in 1956. It was further amended very extensively in 1960; then in 1962, then again in 1963 and further

in 1964. The present is the fifth amendment since the principal Act was enacted in 1956. Changes in the Act has thus become almost an annual feature since 1960.

Too much of everything is bad; and too much of changes in the law goes contrary to the sanctity of law and reputation of good government. I consider there had been a bit too frequent changes in our company laws. The report on the working and administration of the Companies Act stated that there had not been any serious infringement of the law since the new Act came into existence in 1956. In spite of this vital changes are brought in the Act every year to the great discomfiture of the public concerned. This has also made the corporate sector feel rather insecure and uncertain, with the growing feeling that Government are out to cut down their activity and assume more powers for themselves which to a considerable extent has resulted in jeoparadising our had-pressed economy. It works as a disincentive to enterprise and corporate investment both internal and foreign. I would, therefore, suggest that government should cry a halt to the frequent changes in the law and give some respite to the corporate sector so that it can grow and develop and contribute its mite for augmenting production. In regard to clause 20, there was originally a proviso saying that no inspection of the books and accounts shall be made by the registrar or any other officer authorised by the company law board unless he is of the opinion that sufficient cause exists for such inspection. That has been deleted. I feel that this change is not reasonable and that inspection should be made by the registrar or any other officer deputed by him only when he feels that such an inspection is necessary. I therefore suggest that the original provision should be allowed to go into the Act.

It is also provided that books of accounts and records are to be preserved for eight years. It is too long a period. Many companies are in the records who had died long before the completion of the 8th year. A voucher however insignificant in amount may have to be preserved with care for eight years. It may not be possible for all companies to do that. I suggest that either eight years' time may be reduced or vouchers for amounts less than Rs. 1,000 be excluded from the purview of this provision.

13.52 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

Clause 23 deals with compulsory cost accounting and just now my hon. friend dealt with this. It is necessary in the case of very large and advanced companies. It requires no statutory provision for them. But most of our companies are engaged in small and medium scale industries which have not so much developed that cost accounting may be necessary. It is a completely novel provision, unknown in any country in the world. This provision, if retained will impose an unwarranted burden upon most of the companies which are yet too small to undertake the whole process of cost accounting. Most of them simply cannot afford it. Besides there are not enough cost accountaonts in our country Shri Vidyalankar said that it could be given to auditors also and I have my support to the same. It will otherwise open a new avenue of exploitation of the weaker sections of the private sector.

The age of the directors is sought to be restricted to 75 years by clause 35. Shri Vidyalankar said that age should not be raised. But all those who spoke before him spoke against fixation of any age limit. How many directors are there in the boards of directors of 4,000 and odd companies in the country, who will be above 75 years of age? It may not be more than a cople of dozens. Why be hard on these few septuagenarians? What benefit would the Government derive by depriving those few wise men from conducting the affairs, of their own companies? Secondly, choosing of directors is a right by itself of the

[Shri P. C. Borooah]

shareholders of the company. What is the necessity of taking away this right of the shareholders? It should be left to the shareholders themselves. I, therefore, request that this age provision be dropped altogether and for good.

Clause 51 abolishes the present advisory commission. The setting up of the Advisory Commission was acknowledged from all quarters as an improvement on the Act of 1953. The then Finance Minister Shri C. D. Deshmukh and the House was all in praise for it. The various reports of the company law administration have borne this out. It has in fact infused a sense of confidence in the business community who have a feeling that their problems are also looked into by an impartial authority and are not dealt with arbitrarily by the Government. It is therefore very necessary that the provision of this advisory commission be retained and the proposal for the advisory committee instead deleted.

Clause 56 introduces a new section by which Government or any body is not compelled to disclose the source of information received by the Government or by him to any court of law, tribunal or authority. This section if accepted will open up opportunities for supplying false information by interested parties in order to blackmail a company for their ulterior motive. Both morally and judicially every person against whom any information is given is entitled to know the identity of the informant and has also a right to check the integrity of the person and the authenticity of information. If this is denied dangerous consequences will follow. We had bitter taste of the days a year or so ago when almost all the Chief Ministers were subjected to vilification and baseless and false charges of corruption were levelled against them.

Even now, the Chief Minister of Uttar Pradesh has expressed her difficulty to function on account of character assassination and vilifications launched against her colleagues. Do the Government want to give shelter to such persons who indulge in such nefarious activities from behind? I am sure it could not be the intention.

14.00 hrs.

I, therefore, urge that this right to challenge the integrity of the informant and the authenticity of the charges is not denied to the aggrieved parties and continues to be available to them. This clause may, therefore, be amended accordingly.

With these few words, I request the hon. Finance Minister to take into account the various suggestions made and the considerations placed before the House in regard to the various provisions of the Bill, and I support the Bill.

Shri Alvares (Panjim): Mr. Deputy-Speaker, Sir, it was in 1956 that the Government instituted a commission of inquiry under the chairmanship of Justice Vivian Bose in order to make enquiries into certain practices of certain groups of companies.

Shri Hari Vishnu Kamath (Hoshangabad): Sir, on a point of order. I think there should be quorum in the House.

Mr. Deputy-Speaker: The bell is ringing—Yes; now there is quorum. The hon. Member may continue his speech.

Shri Alvares: That enquiry was of a specific nature and it revealed a large scope of abuses that the corporate body was indulging in at that time. As I said, that enquiry was confined to one group of companies and was limited to a certain issue, but eight years later, in 1964, the Government appointed a committee on distribution of incomes and levels of living,

under the chairmanship of an eminent economist, Professor Mahalanobis. That committee reported identically on this issue and on pages 32 and 43 one comes across their analysis which reads almost as if it was lifted from the report of the Vivian Bose Committee. This goes to prove that during an interval of eight years, from 1956 to 1964, the corporate sector, instead of being warned by the recommendations and investigations of the Vivian Bose Committee, continued to indulge in the same practices as were indulged in by them, and with a certain amount of impunity. The result was that as the Mahalanobis Committee reported, there was a concentration of economic wealth by various means which were available to the corporate sector to indulge in without being called to book by any rule that was existing. Therefore, if any hon. Member of this House were to allege, as some have alleged, in the course of their speeches, that this new Companies (Amendment) Bill is not necessary, because those abuses are not generally current. Though in fact those abuses are current and are always endemic, it would not be correct, because the Mahalanobis Committee, as I said, has reported in identical terms all the practices that are still continuing and which have resulted in an enormous concentration of wealth and in the control of companies. Therefore, this Companies (Amendment) Bill must be viewed in the context, not merely of the Vivian Bose Committee's report but also of the Mahalanobis Committee. There was an interim report, in respect of recommendations, to amend the company law by the then Solicitor-General, Shri Daphtary, and Shri Sastri. I find that in this amending Bill, the clauses that have been drafted are mainly based on the recommendations they have made. I do not see any serious objection to this Bill except in its overall compass to which I shall come later.

But I must say this: that this Bill, without being prohibitory in its provisions, speaks only to be regulatory and restrictive, and therefore, I hope that as a preliminary attempt to regulate the operation of the joint stock companies in the corporate sector, this Bill, in the first instance, will serve as a warning that if the operational performance of the corporate sector is not improved and does not move with the times as, shall I say, delineated in our economy, perhaps more prohibitory measures may be brought in, in order to make it fall in line with the plans that we are now engaged in implementing.

There are various provisions, some of which need special attention. There is the question of cost accounting. In this House we have often asked the Finance Minister as to what attitude he is going to adopt on the issue of cost accounting. The reply has always been evasive. Two days ago, a question was tabled in this House; unfortunately it was not reached. When the question of cost accounting of sugar companies was under discussion, the Government reply was that there was no proposal yet to undertake cost accounting of sugar production in this country for various reasons that I do not know. But the reasons were not divulged to us. We know that cost accounting would naturally bring to notice the various abuses that take place in the sale of the product. Not only would cost accounting be able to unearth or stop the malpractice of underinvoicing by a large number of foreign firms and companies but at the same time, I am sure it would reveal the great gap between the cost of raw materials and the final product as turned out by the factories of this country. We have always asked in this House that the rural sector should be paid a fair price. What that fair price is, has always been difficult to determine. I do not know if the Agricultural Prices Commission will be able to tell us what is proposes to do so that the agriculturist and the primary operator will get a fair price or fair share of the ultimate prices that the

[Shri Alvares]

products are able to fetch in the seller's market. But surely, if cost accounting of these various products is undertaken, it will be possible for the Government to find out the margin between the cost of raw materials and the final product, and they will be able to determine what amount of this should be passed on to the producers of these primary commodities.

The second point that needs consideration is that the cost accountants should be a separate entity. I do not favour the proposal where chartered accountants may also be asked to undertake the task of cost accounting. Everybody knows the role that a chartered accountant has to play in this country. The chartered accountant is an eminent, very technical and a prestigious person. Often he has to advise his own clients in regard to their interests. The work of a cost accountant and the work of a chartered accountant are conflicting in interests and therefore it will serve no purpose where cost accounting has to be undertaken that the chartered accountants will be given the same responsibility. I would, therefore, urge that the work of cost accounting should be undertaken by a separate cost accountant and the responsibility should not be given to a chartered accountant.

There are various provisions in the Bill to which I need not refer at this stage. There are malpractices referred to in the Daphtary-Sastri report in regard to the grant of shares, blank transfers or benami shares, underwriting commission and dumy directors. All these malpractices have found reference in some clause or the other in this Bill and I do hope at some stage, these practices will disappear.

As I have said earlier, this Bill does not go far enough. We are living in an acquisitive society and I do not suppose that the business community are so mentally conditioned as to be able to draw the line between acquisitiveness and avarice. We are today mainly a society where profitability is the main motive force. Our whole economy moves in that direction. It is an anachronism to talk of profitability entirely as the sole motive force when we have reached the stage of planned economy. I would really wish that the Finance Minister would bring about certain more measures, which I shall indicate in a moment, so that the regulatory processes of the Companies Bill are complete in themselves.

I am referring to the stock exchanges and to the managing agency system. None of these practices that have been described in the Vivian Bose Report and Mahalanobis Report also would have been possible if the stock exchanges would not have manipulated the cost and price of shares and the managing agents would not have been able to take advantage of them. The managing agency system, I agree, has done its bit under certain circumstances. Today it is not at all necessary. Today it lends itself more to abuses than service. Managing agents in today's circumstances have hardly any responsibility to the shareholders. They are appointed for various periods and are irremovable for 5 to 20 years; the shareholders cannot call them to account. There is no relationship and by this process, the shareholder is denied any personal contact with those who manage the business and enterprise in which they have a share.

Similarly with the stock exchanges. Who does not know that the stock exchanges are made to fluctuate according to the will of big business? So many companies have been liquidated, the shares of so many companies have been brought down to cheaper prices, without any relationship whether those companies are viable or not and whether they are perfoming a public service or private service. Therefore, the Companies (Amending) Bill needs reference to these things and I do hope that at some stage very soon, the Finance Minister will introduce legislation to

do away with the stock exchanges and the managing agency system.

Shri V. B. Gandhi (Bombay Central South): Sir, I shall say a few words about certain provisions of this Bill. Firstly, I would suggest that the period of currency of a blank transfer of shares should be extended to one year, instead of 6 months, as provided in the Bill. Secondly, the Registrar of Companies should not have the right of inspection of books of accounts without giving previous notice to the company. Thirdly, the government should prescribe qualifications for practising cost accountants and in doing so, should remove the restrictions under which the cost and Works Accountants Act has at present placed them. For instance, a whole-time employee of a firm of cost accountants should not be prohibited from being permitted to practice as a cost accountant.

Regarding the retiring age of directors, the existing section as it is is really more flexible and any change is unnecessary.

Lastly, I consider the abolition of the advisory commission as nothing short of a tragedy. The commission deserves to be continued with its full power. In my way of thinking, the new advisory committee would be a poor substitute for the commission.

It is apparent that our government does not look with favour on the system of blank transfers, even though the system has worked not badly in most of the leading countries of the world. The system of blank transfers has served some useful object. It has served in promotion of investment and also it has served to increase the liquidity of the share market. But if we must have restrictions, let us see to it that these restrictions are not too severe to allow the stock exchanges to operate in their normal way. Also, these restrictions should be such as will not do much inconvenience to the operations. I would suggest that the period within which the delivery of instruments of transfer should be made to the companies should be extended to one year. The extended period of one year would lead to greater convenience of the operators and also would be, perhaps, a lot more logical. What I would suggest is that the Government could at least give this suggestion a trial. Let us have it for a trial period. The Government can always change it if Government's experience is not such that would be encouraging. There is an amendment standing in my name to this effect, and I hope that that amendment will be considered worthy of Government's attention.

Now, there are two notable changes that the Joint Committee has made in this Bill. One is the provision that no one shall be prevented from depositing any shares with the State Bank of India or in a Scheduled Bank or any other bank approved by the Government in that behalf by way of security for the repayment of any loans advanced to such a person. This is a very valuable provision, but by itself this is not enough. It would be more meaningful if it is supplemented by another provision to the effect that this facility is also extended to the holding of shares in a fiduciary capacity. This is really worth considering There is an amendment to this effect already in my name, and I do hope that this provision should be extended to the fiduciary holding of shares. It will be in keeping with the general spirit of this important measure.

Another notable improvement to which I just referred is that the Joint Committee has given powers to the Company Law Board to extend the period of delivering the shares to the companies by such periods as the Board may deem fit. This is a very valuable improvement made by the Joint Committee.

Mr. Deputy-Speaker: The hon. Member should try to conclude now.

Shri V. B. Gandhi: Sir, may I have five more minutes?

Mr. Deputy-Speaker: No, no. I have to give chance to two more Members.

Shri V. B. Gandhi: I will just finish in two minutes.

Sir, about clause 20 which deals with the inspection of books by Registrar I have already said something. I would only add one word saying that, let us not forget that Government functions through all sorts of officers having various backgrounds and ethical standards. Such an invitation to unhindered inspection should not be made. It might give ideas to some officers and we should not be surprised if it did.

Shri G. N. Dixit (Etawah): Mr. Deputy-Speaker, Sir, this Bill comes well processed by the Joint Committee. Sir, under your stewardship the Committee put in sufficiently hard work. Almost all organisations of industry in this country came through their representatives as witnesses before the Committee. They were thoroughly examined and cross-examined, and on all points—of which I bear witness—there was a consensus and that consensus was, I was really amazed to find, almost in every case, accepted by the Finance Minister. I used to hear that he was a man who was unbending. But in this Committee I found that he was extremely accommodative and every member was of the same view. I had my differences on other accounts, but so far as the Bill is concerned, technically, it is perfectly as was the consensus of this Committee. Even those members who opposed it here in the House felt, in the Committee, that this was the best possible final picture that could emerge out of the Committee.

There were two points on which the Finance Minister could not accommodate. One was about the age of 75 years. My hon. friend, Shri Raghunath Singh has given his arguments. When I was hearing his arguments, I was thinking not of the Ministers, not of the advocates, not of the doctors, who could function after 75 years, but I was thinking of my hon. friend, Shri Himatsingka. He is a Member of Parliament. He makes valuable contributions in the Parliament. The Constitution permits him. The law permits him. We all also like him. But the result of this Bill when enacted is going to be that he will remain a Member of Parliament but will cease to be a director of his companies. I tried to find some argument in support of the Finance Minister, but except one I could not find any other. That is, if you treat this directorship as a business and after a certain age a man must take *sanyas*, and if membership of the Parliament is *sanyas* then it is perfectly all right, this would be a good argument, because we start doing public duty and cease functioning in business and, therefore, cease to be a director. But what I find is this. When Gandhiji was there certainly there were great precepts, great ideals and, probably, public life was the beginning of *sanyas*. But that is not so now, during these 17 years as the politics has developed. Therefore, if it is possible for the Finance Minister to reconsider this question I will appeal to him to do so. He might reconsider it, because the more the age advances, according to me, the more a man becomes less selfish. That is because he is going to face God. Generally businessmen are pro-God and they are not non-believers. Therefore, a man of more than 75 years is expected to do less bad things than a businessman who is younger. On that argument also, therefore, a man who is more than 75 years of age, if he is fit to work, may be allowed to remain as a director.

My grievance was, as I had pressed it in the Committee and as the records of the witnesses whom I had cross-examined will show—I was happy to know that the best talent in the country appeared as witnesses including Shri Palkiwala and one of the members of the Vivian Bose Commission—

and when I made that complaint the Finance Minister was responsive and all the officers were responsive even though nothing come out of that, that while this Vivian Bose Commission was appointed with 11 items to be enquired into, 9 of them related to the happenings, *vis-a-vis* the Dalmia Jain Airways, and two of them only related to this fact as to what steps are to be taken so that such occurrences may not take place in future. Out of those 9 enquiries it was found that public money to the tune of Rs. 2,60,00,000 and odd had been defalcated by these people of the shareholders. The report as it came from the Vivian Bose Commission—I am happy that the Deputy Law Minister is here—was sent to the then Solicitor-General—he is the present Attorney-General—Shri Daphtary to advice along with Shri Viswanatha Shastri. They processed it and submitted a report. And in that report they said that there were certain hatches of limitation. The word "fraud" has been used in the popular sense--that is what the then Solicitor-General and the present Attorney-General said—and therefore there were certain difficulties in realising back the money or in taking civil proceedings or criminal proceedings against those persons.

Even then I did not agree with the two counsels; not only I, there were counsels who belong to the Congress Party, in this House or the Rajya Sabha, who are as big counsels as those two lawyers, and they also did not agree with this view.

After that report, even if there was a bar of limitation, this House which is enacting the law today could very well have amended the law of limitation and cleared the way for Government to realise that money and pay it back to those poor shareholders whose money was defalcated. But I am really sorry to find that nothing has been done so far in that direction.

But I am happy on this score and I must congratulate the Home Ministry that in spite of all that report of the two great lawyers, the Home Ministry has prosecuted the wrong-doers and those wrong-doers are facing prosecution today. My friend Mr. Banerjee was wrong in the statement he made; probably he was under the impression that it was in this enquiry or muddle that Shri Ramkrishna Dalmia has been sentenced to imprisonment. That was a different case. That has nothing to do with the case with which the Vivian Bose Commission was concerned. That was not covered by that report. This concerned the Dalmia Jain Airways and the allied Companies.

My submission, my request, my appeal—and I am repeating it today—to the Finance Minister was that it is his public duty to get this money out of the swindlers, whoever might have eaten the money, when there was the Vivian Bose report, and take it back and pay it to the shareholders whose pockets have been defalcated. The only opposition to this plea of mine was—and I was happy to find that most of the Members of the Committee supported me, and the Finance Minister also did not differ from me—the only objection raised by the office was that this was something other than what the Bill was concerned with and therefore technically it could not become part of the Bill. I agreed with that. But then, I was told that a separate Bill could be brought in this House if necessary, or action could be taken. This matter can be examined if no further amendment of the law is necessary and civil action lies. And if such an opinion or advice is received by the Government, action must follow. In criminal cases the burden of proof is heavier than in civil cases. And Government has the data to prove it in a criminal case. After all, whether it is the Home Ministry or the Finance Ministry, the Government is one, and therefore if it can face a criminal court it can also be pushed through in a civil court.

[Shri G. N. Dixit]

Sir, one thing more and I have finished. So far as this Bill is concerned, so far as the general policy is concerned, I have said that technically it is perfectly all right; I have gone through it. I was hearing with great satisfaction what the Prime Minister said today, while replying to the debate on the no-confidence motion, about the success of the public sector. But I may say this from the little experience I had of one concern. I had the occasion to visit the Heavy Electricals, Bhopal. For three hours I roamed about the factory, and the gross indiscipline I found in the factory was that the labour was-not-working and was not caring for the bosses. Even when the bosses were going round they were not working. And with an investment of Rs. 55 crores, the total production there is coming only to Rs. 3 crores, and out of that a good part consists of imported things assembled there. And everyone of these officials agreed that the workers were not working and that it had become almost impossible to take work from them. One of the big officials said that the only way appears to be that a train-load of girls might be brought to Bhopal and they might be got married, then they might become responsible and then they might start working!

But the fact remains that the public sector is working in this way. If the experience of Heavy Electricals gives some inkling, there appears to be great difficulty in making the labour work. I was feeling the other way, that if the Heavy Electricals is entrusted to some man who has got experience of business, if our Finance Minister himself goes and sits there and functions, I am sure he will make it work extremely successfully. We need some men who have got experience of working industry. If they are put in charge of these factories there is some hope for these factories; otherwise, our public sector is doomed And if our private sector is also impeded in its working by placing checks and balances, as Shri Palkiwala said before the Joint Committee, and I entirely agree with him, if instead of punishing the wrong-doer you are placing checks and balances on the person who is honest and who is trying to work the industry, it is a wrong way of getting things done.

That is all that I wish to say on this.

Shri C. K. Bhattacharyya (Raiganj): Mr. Deputy-Speaker, my interest in speaking on this Bill is the interest of an ordinary individual belonging to the public or, I might say, the interest of an ordinary shareholder.

Going through the clauses of the original Bill and the clauses in this Joint Committee report, I support all those measures which have been proposed and adopted for making the position of the shareholders secure, for giving them a hold over the companies and consolidating their authority over the management of the company. What we find after a company is floated is that the shareholders become nobodies. Those who somehow get into authority can do almost whatever they like, ignoring the shareholders altogether. That is the reason which led to the circumstances ending in the appointment of the Vivian Bose Commission. In fact, the whole Bill proceeds from the Vivian Bose Commission report. So, all those measures which have been adopted in the interest of the shareholders, I do support.

And one of these, I believe, is the clause putting restrictions on the change of objects of the company. Shri Dixit was just now referring to the defalcation of Rs. 2.60 crores by the Dalmia Jain concern. But that could be done only because there was no check on the objects. In fact, this is what I find from a question put by Shri Dixit himself to one of the businessmen who appeared before the Joint Committee. He asked: "Take the Dalmia Jain case. Rs. 22 lakhs were spent on the main business, but

Rs. 2.6 crores were spent on certain other not much published business". That was at the root of the whole trouble. The company or rather the management could do whatever they liked with the money, spend only a small portion of it over their publicised objects and spend a major portion of it over objects not publicised and which at best might be characterised as ancillary.

Therefore, I was happy to find that in this Bill there is a clause in which it is stated that the main objects and the ancillary objects should be separated and stated separately, and the main objects cannot be changed without the support of the shareholders.

Then, a restriction has been put on blank transfers. I am not an expert on such transfers. After going through the evidence of the Joint Committee I have got some idea about it. I find that it had led to large amount of corruption. If shares could be transferred without mentioning the names of the owners, anything could be done with those shares. Shri Dixit referred to it. I find that Shri Palkiwala, while giving evidence before the Joint Committee, agreed that restrictions are required to be put on blank transfers. He says:

> "I respectfully agree with what you have said. Just as you have prohibited fictious names being used as shareholders, you may equally prevent the system of blank transfers, generally for no commercial reasons."

So, he has supported this restriction on blank transfers. This is a welcome provision in the Bill.

The use of one company's money for getting hold of another has been one of the root causes of the present situation in which many companies have been seized by particular groups or persons. I find from one of these reports that this particular technique was devised by a very well-known businessman and perfected by another equally well-known business man. Both of them found themselves in trouble and are now in jail. The using of the assets of one company in order to get hold of another, thus forming a ring or group and all the companies one fine morning finding themselves in trouble or on the verge of liquidation because of the policies of a group of people should be stopped. So, this is a very good provision which should be supported.

Of late, we have come across another particular type of technique and I do not know whether the Finance Minister has been careful about it and has thought of some provision to check it. The company law says that a person cannot be the director of more than 20 companies at a time. In order to get over this provision, in order to evade this provision a number of concerns or sub-companies are formed under one company, all of them being managed by the same group of people. I would request the Finance Minister to devise some method to put a check on this.

There is another provision restricting the age of the directors to 75. I do not think it is a good provision. Shri Dixit has referred to our friend, Shri Himatsingka, I know him for the last forty years. To me he appears to be the same person whom I saw forty years ago. There is Sir A. Ramaswami Mudaliar. A person like him should not be ousted merely because he has passed the age of 75. Shri Palkiwala gave the instance of a person who was appointed by the Government of India to manage a public company. He was aged 76 and he brought the company to a profitable position. Age is not always a disqualification. Allow me to quote a Sanskrit saying:

अलंकरोति वार्धक्यं नटनर्तक-नापितान्
अलंकरोति वार्धक्यं बुधवैद्य-विचारकान् ।

[Shri C. K. Bhattacharyya]

In the case of an actor, dancer and barber age is a disqualification. But, in the case of a wise man, in the case of a doctor, in the case of a judge, age is an accomplishment. In the present case also age should be regarded as an accomplishment. With their vast experience they might be more helpful to the company than they might otherwise have been.

Then I come to clause 23 of the Bill as reported by the Joint Committee, clause 24 of the original Bill. This is a provision for the appointment of cost accountants to look into the costing. I would have preferred the clause as it stood before it was modified by the Joint Committee. Originally the provision said that he should be a cost accountant or such other person possessing the prescribed qualifications. The Joint Committee has interposed chartered accountants. I believe that the inclusion of chartered accountants in this clause was not necessary. The work of the chartered accountants will come much later. They could not be substituted for cost accountants.

Shri S. M. Banerjee: So, you support my amendment?

Shri C. K. Bhattacharyya: There are so many amendments on that subject. If Shri Banerjee will feel flattered that I give support to his amendment, I would not deny him that pleasure.

Shri T. T. Krishnamachari: Mr. Deputy-Speaker, I am grateful to the hon. Members who spoke on this motion for the very valuable remarks which fell from them. I have to point out only one fact. What they have said, or much of what they have said, is quite relevant to the administration of companies. But, at the present moment, we are only considering the report of the Joint Committee. We have either to accept those changes or reject them. While it is perfectly the right of any hon. Member to deal with other aspects of the company law, I would confine myself only to those remarks which are relevant to the particular discussion before the House.

I am very grateful to my hon. friend, Shri Dixit, for what he said. In fact, in this matter Government has a reasonably open mind. If the Joint Committee felt in any case that a particular change should be adopted, the Government had no objection to it. May be, certain refinements are possible to what the Joint Committee had done. But I do not think there is any need for going back on what the Joint Committee had done. Therefore, when I heard the remarks of my hon. friend opposite, Shri Dandeker, I felt that much of what he said should have been said in the beginning, before the Bill was referred to the Joint Committee. His disagreement with some of the provisions of the Bill, even before it went to the Joint Committee, and as it came out therefrom, is fundamental and it is perfectly right for him to reiterate his objections. But I do not see how we can at this stage, except by abolishing the company law altogether, incorporate any of his suggestions.

In regard to his remarks about cost accountants and chartered accountants here is a Member—I am referring to the last speaker—who feels that the Joint Committee had enlarged the scope of the provisions so as to include chartered accountants also to do the work, which is not correct. On the other hand, the Joint Committee felt that the number of cost accountants available today is so small that if we want to use the provisions we should perhaps rope in other people who are qualified to do the work but who may not be exactly cost accountants or

members of the particular body representing cost accountants. The Government recognises the fact that there should come a time when all industries should have cost accountants and that we should know the cost of the product, the selling price of the product and so on and the profits which they make or the profits which they do not show merely because of selling at a lower figure than they ought to sell. We have to make a beginning somewhere and do it cautiously because if we compel all industrial firms to have cost accountants, there are not enough people to go round. The Select Committee's decision was a compromise. Let us work this compromise for some time and see what would be done. In fact, some action has been contemplated in that regard and one has to curtail the orbit of it so as to see how it works initially.

Then, some hon. Members, Mr. Vidyalankar and Mr. Alvares, spoke about the fundamentals of the economic structure of property and ownership in this country. There is only one defect in regard to company law. It is this that the company law is for the purpose of regulating the working of joint stock companies which means that we accept a certain form of investment, a certain form of utilising that investment, that is, the company procedure which we have also adopted in regard to public undertakings. What has been suggested can only be done either by limiting these company procedures to small capital concerns and taking the rest away by Government or by not having companies at all but to make the individuals to do the business. I do not think that is contemplated at the present moment or at the present juncture of our evolution. Besides that, that is not really germane to this particular discussion.

One provision that seems to have caused considerable amount of interest to the House is the question of age. The Government's position was that having enacted a law—normally it means that persons who are above 65 years must get some kind of a special approval from shareholders—and finding there is no case in which anybody has been rejected, Government felt that we will not give any option in this matter but will fix a particular age because the law, as it is now, is ridiculed. There is no use having a provision saying that anybody above 65 must get a special resolution passed because special resolutions are always in the pockets of people who control companies. In the same way, there is another provision also about relations. In fact, those provisions can only be used by somebody to get rid of directors rather than to get rid of relations. If the point is that you should get the approval of the company or the share-holders by a special resolution, it is always done. In most companies, they have the proxies, they have a number of shares with them and they can get a special resolution passed. So, my feeling is that we should not have any provision in law which is just being ridiculed. We are not dealing with the question of relations excepting that the present Bill tones down the number who come within the mischief of the Act. If the House feels, if a large number of hon. Members feel, that there should be no age limit, I have no objection to [illegible]

Shri Sham Lal Saraf (Jammu and Kashmir): If a company is not able to pass a special resolution?

Shri T. T. Krishnamachari: I can tell the hon. Member that there is no case where the appointment of anybody above 65 has been rejected. No company has rejected it. So, the thing is that either you put the age at a particular limit beyond which nobody should act or you just take it away altogether because at the moment it is a dead letter. I think nothing wrong will happen. Of course, somebody suggested that you may have 75 but in particular cases Government might give approval. I do not want that. As a matter of fact, it is throwing the onus on Government, the element of choice, and whichever

[Shri T. T. Krishnamachary]

way Government might exercise its choice, it may be impunged for it. The question of weighing as to who is the better man, one in one company who is 78, another man in another company who is 76 and the third man in other company who is 82, should not be left to Government. I do not think that the Company Law Administration should be asked to undertake such a responsibility. I am quite prepared to leave it to the House. If the House feels that this absolute limitation of 75 should not be there, let us take away the age-limit altogether because in operation over these 9 years, I do not think there has been a single instance in which a person about whom a special resolution was asked was denied it. So, let the good people serve even though they do not take *sanyas* as a politician has to do. I have no objection at all and I leave it to the House to decide. If the House feels strongly about it, they can take the decision.

Of course, a mention was also made by my friend, Mr. Gandhi, about the Company Law Advisory Commission and the Company Law Advisory Committee. The matter was very carefully considered. We did find that the balance of advantage would be in a Committee because there are a large number of cases where we found out that we could not explain why the Company Law Advisory Commission decided in a particular way. The Company Law Advisory Commission, in the manner in which it is constituted, is not a judicial body excepting having its Chairman who can be overruled in most cases by other people. I think it is much better to have a Committee because ultimately we have to overrule them though I am disinclined to overrule them. Somebody mentioned to me about the case law. I am afraid, if you compile the case law with the recommendations of the Commission, you will find a number of contradictions coming up—maybe, they are forgotten; I do not say it is wilful. They may have done something in one case and they might have taken a different decision in another case a year hence. I am one of those who certainly believe that consistency is the hobgoblin of a small mind and from that point of view—perhaps, the Company Law Advisory Commission has no small mind—I do feel that more justice would be done by the proposed Committee where practically all the people will be there and, therefore, I am unable to accept the suggestion that we should go back to it or there is any particular sanctity in the composition of the Commission as it is today.

As I said, many other things have been said which have nothing to do with the particular motion before the House. My hon. friend, Mr. Dixit, mentioned about a particular matter. We did discuss it. I am glad he reminded of it again. Though, I think, we did start some kind of enquiry into it, the matter will be pursued. To what extent it will be pursued gainfully, I cannot say. That is all I have to say at this stage.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Companies Act, 1956, as reported by the Joint Committee, be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: We shall now take up clause-by-clause consideration of the Bill.

Clause 2—there are no amendments.

The question is:

"That clause 2 stand part of the Bill".

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Mr. Deputy-Speaker: Clause 3A(New)—Amendment No. 55 stands in the name of Shri Morarka—he is

not here. So, that goes. Now, we take up clause 4—there are no amendments. The question is:

"That clause 4 stand part of the Bill".

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 was added to the Bill.

15 hrs.

Mr. Deputy-Speaker: The question is:

"That Clauses 6 and 7 stand part of the Bill".

The motion was adopted.

Clauses 6 and 7 were added to the Bill.

Clause 8— (*Insertion of new section 68A*)

Shri Himatsingka (Godda): I shall just request the Finance Minister to consider whether we should retain clause (2) about fictitious name not being used. Will the provisions of sub-section (1) be prominently reproduced in every prospectus issued by the company and in every form of application? Will it not look ridiculous if these are publicised prominently as though it is a very common thing. Therefore, let the provisions be there, but I feel that sub-clause (2) should be dropped.

Shri T. T. Krishnamachari: It can stand. I do not think it will do any harm; I do not think it will detract from the reputation of any particular company.

Mr. Deputy-Speaker: The question is:

"Clause 8 stand part of the Bill".

Clause 8 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"Clauses 9 and 10 stand part of the Bill".

Clauses 9 and 10 were added to the Bill.

Clause 11— (*Amendment of section 75*)

Shri N. Dandeker (Gonda): I beg to move:

Page 4—

for lines 28 to 34, *substitute*—

'(c) in sub-section (4),—

(i) before the existing proviso, the following proviso shall be inserted, namely:—

"Provided that in case of contravention of the proviso to clause (a) of sub-section (1), every such officer, and every promoter of the company who is guilty of the contravention shall be punishable with fine which may extend to five thousand rupees:"

(ii) in the existing proviso, *after* the word "Provided", the word "further" shall be *inserted*.' (2).

The reason for, or rather the nature, of the amendment is quite simple, namely, to retain the existing proviso. In other words, Clause 11, sub-clause (c), introduces a proviso and I accept that proviso altogether.

In the first part of my amendment I am suggesting that, before the existing proviso, the proposed proviso should be inserted. The second part of my amendment is to retain the existing proviso as it is in the Act. Now the existing proviso enables a company or any officer to whom extension of time is not allowed to go to the Court. That is in no way affected by the amendments which have been made by Clause 11, Section 75 of the Principal Act. Those amendments, namely, sub-clauses (a) and (b) of Clause 11 are excellent, particularly sub-clause (b), which enables the Registrar to give extension of time, if the time allowed is inadequate. He may, on application made in that

[Shri N. Dandeker.]

behalf by the company, whether before or after the expiry of the said period, extend that period as he thinks fit. Simultaneously it is proposed to delete the existing proviso to the effect that, in proper cases, if the company thought fit, it may go to a court against a decision of the Registrar and the reason given is that it is designed to save companies from the expenses involved in applying to a court. I do not understand why this should be deleted. There is no compulsion to go to the court. It is a valuable right that already exists. I virtually accept all that has been proposed in Clause 11 except this. I suggest that the existing proviso may remain. This is the object of my amendment.

Shri T. T. Krishnamachari. The purpose of omitting this particular sub-clause is nullified by the proposed amendment. It will mean that there will be a concurrent jurisdiction of Court along with Registrar.

Shri N. Dandeker: It is there already.

Shri T. T. Krishnamachari: The change has been made advisedly. Perhaps the hon. Member feels that, if the power is given only to the Registrar, it is likely to be abused. But he has not said it. We have seen from our experience in the past that, on many occasions, apart from the delay and the legal expenses involved in going to the court, the court has often imposed heavy penalties on the companies for the delay in filing documents.

Shri N. Dandeker: The company may go to the court. I am asking only for that to be retained.

Shri T. T. Krishnamachari: The position as has been envisaged now is more suitable for the purpose. I do not want to labour on this point because I have a brief. Apparently there is no meeting-ground on this matter.

Mr. Deputy-Speaker: I now put Amendment 2 to the House.

The amendment was negatived.

Mr. Deputy-Speaker: The question is:

"That Clause 11 stand part of the Bill".

The motion was adopted.

Clause 11 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That Clause 12 stand part of the Bill".

The motion was adopted.

Clause 12 was added to the Bill.

Clause 13—*(Amendment of section 108).*

Mr. Deputy-Speaker: Clause 13. Do hon. Members wish to move any amendments?

Shri N. Dandeker: I beg to move:

(i) Page 5, line 31,—

for "six" *substitute* "twelve". (3)

(ii) Page 5, line 33,—

for "two" *substitute* "four" (4).

(iii) Page 5, line 40,—

after "any person" *insert*—

"holding shares in a fiduciary capacity or". (5)

Shri K. C. Pant (Naini Tal): I beg to move:

Page 5,—

(i) line 26,—

for "obtainable from" *substitute*—"and presented to";

(ii) line 27,—

for "who", *substitute*—

"before it is signed by or on behalf of the transferor and the prescribed authority";

(iii) line 28,—

for "issued", *substitute*—

"so presented";

(iv) lines 31 and 32,—

for "within six months from such date", *substitute*—

"at any time before the date on which the register of members is closed in accordance with law for the first time after the date of such presentation"; and

(v) lines 33 and 34,—

for "that date" *substitute*—

"the date of such presentation". (74).

Pages 5 and 6,—

for lines 35 to 41, and 1 to 3 respectively, *substitute*—

"(1B) Any instrument of transfer which is not in conformity with the provisions of sub-section (1A) shall not be accepted by a company—

(a) in the case of shares dealt in or quoted on a recognised stock exchange, after the expiry of six months of the commencement of the Companies (Amendment) Act, 1965, or after the date on which the register of members is closed in accordance with law for the first time after such commencement, whichever is later;

(b) in any other case after the expiry of six months of such commencement.

(1C) The provisions of sub-section (1A) shall not apply to any shares deposited by any person with—

(a) the State Bank of India;

(b) any scheduled bank; or

(c) such banking company (other than a scheduled bank) or financial institution as may be approved by the Central Government by notification in the Official Gazette,

by way of security for the repayment of any loan advanced to, or for the performance of any obligation undertaken by such person." (75).

Page 6, line 5,—

for "Company Law Board". *substitute*—

"Central Government". (77).

Page 6, line 6,—

for "the Board", *substitute*,—

"that Government". (78).

Page 6,—

for lines 9 to 12, *substitute*,—

"it may deem fit; and the number of extensions granted hereunder and the period of each such extension shall be shown in the annual report laid before the Houses of Parliament under section 638". (79).

Shri Himatsingka: I beg to move:

Page 5,—

for lines 26 to 34, *substitute*—

"(a) shall be in the prescribed form and shall, at any time prior to its execution by the transferor, be presented to the prescribed authority which shall stamp or otherwise endorse thereon the date on which it is presented; and

(b) shall be delivered to the company,—

(i) in the case of shares dealt in or quoted on a recog-

[Shri Himatsingka]

nised stock exchange, before the register of members is closed or a record of members is taken for the first-time after such date for determining the names of members to whom dividend is to be paid or new shares are to be offered or allotted:

Provided that when the register of members is not closed or a record of members is not taken as aforesaid during any financial year, the instrument of transfer shall be delivered to the company within forty-two days from the day on which the annual general meeting in respect of such financial year is held:

Provided further that the period available for delivering the instrument of transfer to the company shall not in any event be less than two months;

(ii) in any other case, within two months from that date.". (73).

Shri Himatsingka: I beg to move: Page 5,—

for lines 35 to 38, *substitute*—

"(IB) Any instrument of transfer which is not in conformity with the provisions of sub-section (1A) shall not be accepted by a company after the expiry of the period prescribed in the said sub-section or the expiry of six months of the coming into force of the companies (Amendment) Act, 1965 whichever is later." (76).

Mr. Deputy-Speaker: The amendments and the Clause are now before the House.

Shri T. T. Krishnamachari: I am willing to accept 74, 75, 77, 78 and 79.

Shri N. Dandeker: The amendments that I have, Nos. 3 and 4, go together. No. 5 is a separate one. The purpose of 3 and 4 is quite simple. I accept entirely the object of this Clause, namely, that wide scale use of blank transfers as instruments of transfer of shares ought not to be allowed. It leads to abuse of all kinds, not the least of which is in the field of taxation.

Amendments Nos. 3 and 4 that I have moved are very simple. While accepting the principle of the proposed clause 13, all that I am suggesting is that—and that is entirely for practical reasons which I shall presently mention—the share transfers on the prescribed form shall be delivered to the company in the case of shares dealt in or quoted on a recognised stock exchange within a period of 12 months instead of six months as in the proposed provision, and similarly that in any other case, namely shares not dealt in or quoted on the stock exchange, the time-limit should be four months instead of two months.

The reason for the first extension period that I have suggested is this. While I agree that blank transfers ought to be frowned upon and brought down as rapidly as possible, one must not ignore the fact that the position as it prevails in the stock markets today, if loaded with a short time-limit for the registration of transfers, would reduce greatly the liquidity of stock exchange transactions and share markets and so on, and consequently, the period ought to be, at any rate while we are taking this as a new thing, twelve months. In regard to the other case where shares are not quoted on the stock exchange, I suggest that the period of two months is exceedingly small. The people are scattered all over the country and it does take a good deal of time to buy shares and to get them from a stock-broker and to send them back again with signatures or with one thing or

another and to get them registered with companies. I have known, in administering the estate of a minor which I am doing, that with the greatest attempt at promptitude, it takes something like three months between the time that I can acquire the shares and get them transferred; particularly, if I happen to buy shares in Poona on the stock exchange at Calcutta, it takes a good deal of time. Therefore, I suggest that the period of two months is far too inadequate and it should be made four months.

Amendment No. 5 is of a different character altogether. It is concerned with the exemptions from this provision, if the share transfers are deposited with certain institutions as provided in this clause. The clause at present reads:

> "The provisions of sub-section (1A) shall not apply to any person depositing any shares with the State Bank of India or any scheduled bank or financial institution approved by the Company Law Board by notification in the Official Gazette, by way of security for the repayment of any loan advanced to, or the performance of any obligation undertaken by, such person.".

That is the present exemption, and that is a perfectly good clause. I am suggesting the addition in the second line at that page, that is, in line 40, of the words that these provisions shall not apply to any person holding the shares in a fiduciary capacity. I personally hold a large number of shares in a fiduciary capacity for a particular family, the head of which family is a minor. The company law does not recognise trustee holdings. The company law only recognises a particular person as the owner of the particular family, the head of which names the shares are registered. Consequently, in the management of trust estates—I am also the managing trustee of a small charitable trust—one is compelled to hold these shares in one's own name. I do not hold them with blank transfers, but one is compelled to hold these shares in one's own name. But as a fiduciary matter *vis-a-vis* the trust or *vis-a-vis* the minor,—whoever is the beneficiary of the trust,—one has to put on record there a blank transfer signed by me in favour of the successor trustee, whoever he may be, so that in the event of my death, the thing does not get cluttered up, or in the event of something else happening to me, the thing does not get cluttered up, and my successor trustee or the manager of the estate, as the case may be, can get those shares transferred back to his name. It is also one of the ways in which honest fiduciary management of estates can be secured, and I have, therefore, suggested that holding shares in a fiduciary capacity in blank transfers ought to be one of the exempted cases, for the simple reason that—not that I want it, but for the simple reason that—the companies would not recognise trusts. Under the company law, you cannot register shares in the name of so-and-so trustee; you can only register shares in the name of so-and-so, and if that so-and-so is managing the affairs in a fiduciary capacity, it is right and proper that he should execute a blank transfer and leave it there along with the shares so that his successor, in the event of anything happening to him, is in a position to take over those shares. That is all that I have to say.

Shri Himatsingka: My purpose has been served by the acceptance by the Finance Minister of the other amendments which he has mentioned.

Shri Prabhat Kar (Hooghly): So far as the amendments moved by Shri N. Dandeker are concerned, firstly with regard to the question of extending the time-limit in regard to blank transfers, I would submit that extending it to 12 months is not necessary. The period provided in the Bill is six months, but that has now been changed by the acceptance of amendment No. 74, and the provision will now read:

> "at any time before the date on which the register of members is closed in accordance with law for

[Shri Prabhat Kar]

the first time after the date of such presentation.".

To that extent, the period is extended. that is, till the register of members of the company is closed. My hon. friend Shri N. Dandekar wanted that the period should be twelve months. By the amendment now accepted by the Finance Minister, the period has been extended till the books of the company are closed, and so, his suggestion is covered to a certain extent, though not completely. I do not know, however, why the Finance Minister is accepting this position.

Shri N. Dandeker has pointed out that there are difficulties in getting the shares registered with the company concerned and so on. I do not think that that position is correct. Once the shares are purchased, they are purchased with the transfer deeds; otherwise, the stock cannot be delivered; along with the transfer deeds, the shares have to be be sent the next day for registration and then they are lodged with the company. Once they are lodged with the company, I think they would be covered, including shares that have been sent for registration.

My hon. friend has raised the question of delay in regard to a Poona share being purchased on the Calcutta stock exchange, that is to say, the shares of a Poona company being purchased on the Calcutta stock exchange. I personally feel that there would not be much difficulty in regard to that.

Then, under proposed sub-section (1D) of section 108, I find that the Central Government or the Company Law Board will have power to grant extensions. So, that power is already there. So, if there are any genuine cases where such extension is required, the Central Government have the power to extend the period.

So far as blank transfers are concerned, with my little experience, I might point out that this is one of the ways of perpetuating the malpractices of the companies which are continuing to hold shares by blank transfers. We have often referred here to the malpractices indulged in by companies and we have been wanting to put a stop to such malpractices. Therefore, I feel that a time-limit is necessary. From this point of view, I do not understand why even six months should be given. Even that period, according to me, is a long period. A genuine purchaser, unless it be that he wants to speculate and secure some advantage with a view to boost up the shares of a particular company or a railway, would immediately after the purchase of the shares send the instruments of transfer and have the shares registered in his name. So, I should like to submit that there is no reason for any delay in this regard, unless it be that the investor has got something else in his mind. Therefore, I would suggest that the provision should be retained as it stands in the Bill. In view of the special power by which the Central Government can extend the time-limit, I feel that there is no cause for anxiety on the ground that there would be any kind of difficulties to anybody.

Shri T. T. Krishnamachari: The amendments Nos. 3 and 4 moved by my hon. friend Shri N. Dandekar are for extension of time, with which I am not in agreement. But we have made a substantial change, to which my hon. friend who has spoken before me has objected. by accepting amendment No. 74, which has been moved by my hon. friend Shri K. C. Pant. Instead of the phrase 'within six months from such date', this amendment will substitute the words:

> "at any time before the date on which the register of members is closed in accordance with law for the first time after the date of such presentation.".

That certainly gives a longer time in special cases. This is the view, I think,

of some of the people who have an objective view of the working of the stock exchange. That is why Government are prepared to accept this amendment No. 74.

The other amendment, namely amendment No. 75 which I am accepting is really clarificatory in nature. It re-states the position in a clearer form.

In regard to amendment No. 5, I really cannot quite comprehend what purpose is going to be served by that. For, if it is a question of a trustee, as the hon. Member himself has recognised, a trust is not recognised in the company law, and the thing has got to be registered in the name of the trustee in his personal name. If there should be any difficulty, it could be got over by the person holding the shares in a fiduciary capacity getting the shares registered within the stipulated period. If he has any difficulty, it is open to him to approach the Central Government for extension of time for the purpose of registration. So I do not see the need for this particular amendment.

I am sorry I am unable to accept amendments Nos. 3 to 5. As I said before, I will accept amendments Nos. 74, 75, 77, 78 and 79.

Shri N. Dandeker: I seek leave of the House to withdraw my amendments Nos. 3 to 5.

Amendments Nos. 3 to 5 were, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

(1) Page 5,—

(i) line 26,—

for "obtainable from", *substitute*—

"and presented to";

(ii) line 27,—

for "who", *substitute*—

"before it is signed by or on behalf of the transferor and the the prescribed authority";

(iii) line 28,—

for "issued", *substitute*—

"so presented";

(iv) lines 31 and 32,—

for "within six months from such date", *substitute*—

"at any time before the date on which the register of members is closed in accordance with law for the first time after the date of such presentation"; and

(v) lines 33 and 34,—

for "that date" *substitute*—

"the date of such presentation". (74).

(2) Pages 5 and 6,—

for lines 35 to 41, and 1 to 3 respectively, *substitute*—

"(IB) Any instrument of transfer which is not in conformity with the provisions of sub-section (IA) shall not be accepted by a company—

(a) in the case of shares dealt in or quoted on a recongnised stock exchange, after the expiry of six months of the commencement of the Companies (Amendment) Act, 1965, or after the date on which the register of members is closed in accordance with law for the first time after such commencement, whichever is later;

(b) in any other case after the expiry of six months of such commencement.

(IC) The provisions of sub-section (IA) shall not apply to any shares deposited by any person with—

(a) the State Bank of India;

(b) any scheduled bank; or

(c) such banking company (other than a scheduled bank) or financial institution as may be approved by the Central Government by notification in the Official Gazette, by way of security for the repayment of any loan advanced to, or for the performance of

[Mr. Deputy-Speaker]

any obligation undertaken by, such person." (75)

(3) Page 6, line 5,—

for "Company Law Board", *substitute*—

"Central Government." (77).

(4) Page 6, line 6,—

for "the Board", *substitute*—

"that Government". (78)

(5) Page 6,—

for lines 9 to 12, *substitute*—

"it may deem fit; and the number of extensions granted hereunder and the period of each such extension shall be shown in the annual report laid before the Houses of Parliament under section 638". (79).

The motion was adopted.

Shri Himatsingka: I seek leave of the House to withdraw my amendments Nos. 73 and 76.

Amendments No. 73 and 76 were, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

"That clause 13, as amended,

stand part of he Bill."

The motion was adopted.

Clause 13, *as amened, was added to the Bill.*

Clause 14 *was added to the Bill.*

Clause 15—(*Amendment of section* 149).

Shri K. C. Pant: I beg to move:

(i) Page 6, line 40,—*after* "clause (1)", *insert*—"or, as the case may be, sub-section (2B)". (81).

(ii) Page 7, line 20, *for* "Company Law Board", *substitute*—"Central Government." (82).

Shri T. T. Krishnamachari: I accept both these amendments..

Shrimati Renu Chakravartty: Barrackpore): What is happening to TTK? He is accepting all of Shri Pant's amendments. It has been arranged or what?

Shri T. T. Krishnamachari: They are clarificatory—most of them.

Mr. Deputy-Speaker: The question is:

(i) Page 6, line 40,—*after* "clause (i)", *insert*—"or, as the case may be, sub-section (2B)". (81).

(ii) Page 7, line 20,—*for* "Company Law Board", *substitute*—"Central Government". (82).

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That Clause 15, as amended.

stand part of the Bill."

The motion was adopted.

Clause 15, *as amended, was added to Bill.*

Clauses 16 to 19 *were added to the Bill.*

Clause 20— (*Amendment of sec.* 209)

Shri N. Dandeker: I beg to move:

Page 8,—*omit* lines 36 and 37. (6).

Page 8,—*after* line 37, *insert*—"Provided that no inspection shall be made by the Registrar unless he is of opinion recorded by him in writing that sufficient cause exists for such inspection". (7).

Page 9, line 1,—*after* "Provided". *insert* "further". (9).

Page 9, line 23,—*after* "entry" *insert*—"*for* an amount exceeding one thousand rupees". (10).

Page 9, line 30,—*after* "bankers" *insert* "auditors". (11).

Shri K. C. Pant: I beg to move:

Page 8,—*for* lines 23 and 24, *substitute*— manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be". (83).

Shri V. B. Gandhi: I beg to move: Page 9,—*omit* lines 1 to 3. (8).

Mr. Deputy-Speaker: These amendments and the clause are before the House.

Shri N. Dandeker: The first amendment I have moved concerns the deletion of lines 36 and 37 in cl. 20(b). This clause says that the books of accounts and other books and papers shall be open to inspection during business hours by the Registrar and by any officer of government authorised by the Central Government in this behalf. I am suggesting that inspections ought to be by the Registrar as this business of letting loose all kinds of people who may be authorised to look into these things would not, I think, be proper. The proper ground level officer for the administration of the company law here is the Registrar. I am quite clear in my mind that the Registrar ought to have the power to inspect, but that nobody else should be running round and making inspections.

The next amendment, No. 7, is for the restoration of a proviso which was in the Bill before it was amended by the Joint Committee. I would take leave of the House to draw attention to that proviso which was a reasonable and necessary one:

> "Provided that no such inspection shall be made by the Registrar or such officer unless he is of opinion that sufficient cause exists for such inspection".

What I have suggested is the restoration of that proviso—Provided that no inspection shall be made by the Registar unless he is of opinion recorded by him in writing that sufficient cause exists for such inspection.

I agree the books of accounts of companies ought to be open for inspection by an appropriate officer named of the Central Government, in this case the Registrar. But I do suggest that it ought not to be a matter of whim and fancy, for no reason at all, and—if the previous amendment is not accepted—any officer authorised by Government should not be running all over the premises of a company looking into its papers. He ought at least in his own office record some reasons why he wants to make such inspection. That is why I have suggested in my amendment for good reason and for clear, and if I may say so, above-board working of the department in the matter of inspection, that there ought to be this proviso that no inspection shall be made by the Registrar unless he is of opinion recorded by him in writing that sufficient cause exists for such inspection. This proviso was there in the original Bill. I am perfectly certain that the company law people had put it in for good reason and I think it is bad reason which deletes it.

Amendment No. 9 is merely consequential. The proviso at page 9 would, if my amendment were accepted, become a further proviso. Hence this small verbal change "provided further that any such inspection may be made without giving any previous notice to the company or any officer thereof".

I want to pause on that to reiterate that I agree that inspection should be possible by an officer of the company law administration. I agree that in regard to such inspection they need not given notice; otherwise it becomes pointless inspection; if anything is wrong, people get them right and hoodwink the officer. Conceding these two things, I have suggested reinsertion of the proviso, which is a perfectly reasonable one and which would

[Shri N. Dandeker]

prevent the officer from acting arbitrarily on his whims and fancies. He ought at any rate, within the precincts of his office, record some good reasons why he wants to inspect the records of a company.

I go on to amendments Nos. 10 and 11. Amendment No. 10 is concerned with a small but important amendment, that is to say, at page 9, line 23, *after*, "entry" *insert* "for an amount exceeding one thousand rupees.". All these amendments concern Sec. 209 of the principal Act, the section dealing with accounts and books and vouchers and so on of a company, how they are to be kept, how long they are to be kept and so forth. Those are very proper provisions and among these provisions is a provision that these books of accounts and vouchers and papers should be kept for a period of 8 years preceding any particular current year in question, that is to say, altogether a period of 8 to 9 years. I am suggesting that a small amendment is necessary, that is, that the vouchers relating to any entry should relate to an amount exceeding Rs. 1000 in such books of accounts. In other words, what I am submitting is that no company could reasonably be expected or required to keep for a period of 8-9 years all petty little vouchers of 10P or 15P—there could be such vouchers, of petty amounts like Rs. 2.13 and so on. In the case of large companies—and one hopes that our companies will grow larger and larger; we are not going to remain in a state where our little-scale industries and middle-scale industries are going to continue to remain petty little industries; I have every hope that our industrial growth will be such that companies will grow larger and larger. In the case of these large companies is it reasonable to expect, is it proper to expect that all vouchers ought properly to be kept for a period of 8 years irrespective of the amount of the entry in the books to which such vouchers relate? My amendment requires only this, that the obligation to keep vouchers should be limited to some reasonable amount for which the voucher is made, and I therefore suggested that vouchers relevant to any entry for an amount exceeding Rs. 1000 in such books of accounting may be required to keep That explains the rationale of the amendment that I have moved.

Amendment No. 11 is an altogether different thing. The section in the Act sought to be amended is section 209(6). Sub-section (5) of this section casts a certain duty upon people which I think is important, and therefore I read it. It says:

> "If any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act ..... he shall.... be punishable with fine . . ."

Then follows the definition of the persons so responsible. The definition in sub-section (6) is:

> "The persons referred to in sub-section (5)....i.e., persons responsible who can be penalised and sent to jail—
>
> "....are the following, namely:—
>
> (a) where the company has a managing agent or secretaries and treasurers, such managing agent or secretaries and treasurers;"

—a perfectly sound one,to which now this sub-clause (d) of Clause 20 of this Bill seeks to add the following additional officers:

> "and all officers and other employees and agents as defined in sub-section (6) of section 240 but excluding bankers and legal advisers . . ."

My amendment seeks also to exclude auditors. Auditors are not servants of the company. They are statutory

officers of the company who function under statute, whose powers and obligations are there under statute, and they can by no stretch of imagination be regarded as agents of anybody, much less of the company or employees of the company in the sense in which it is here intended to fix upon them the responsibility for the proper keeping of accounts, custody of account books ond so on. The Joint Committee quite rightly added "but excluding bankers and legal advisers". I am suggesting that the exclusion should also extend to the auditors, because neither bankers nor legal advisers nor auditors can be properly called officers or employees of the company in the sense in which it is intended in this particular section.

Shri K. C. Pant *rose—*

Shri T. T. Krishnamachari: I am accepting his amendment.

Mr. Deputy-Speaker: No speech is necessary then.

Shri V. B. Gandhi: Nobody can object to inspection of books of accounts by the Registrar, but it becomes a rather unfair proposition when it is provided that the inspection can be made without giving previous notice to the company, and also that inspection can be made without requiring that in the Registrar's opinion there is sufficient cause for such inspection. In the original Bill as drafted by the Government, both these provisos were there. If both these provisos could be included, we need have no objection. Since the first proviso has already been deleted by the Joint Committee, I would like to see the second proviso, would like to see the second proviso, that is to say the right given to the Registrar to inspect books without giving previous notice to the company, also omitted.

Shri T. T. Krishnamachari: I am prepared to accept Amendment No. 11 also of Shri Dandeker.

As I already said, I am accepting Amendment No. 83.

In regard to the other amendments of Shri Dandekar, of course Amendment No. 9 is only consequential; Amendments 6 and 7 I am unable to accept.

He has himself provided the answer to the amendment of Shri V B. Gandhi. What is sought to be done is that the inspection should be something which is a routine one. Therefore, it need not be reported that the Registrar inspected the company and therefore the company is in a bad way. The Registrar can normally go and inspect. As Shri Dandeker himself has mentioned, if the Registrar inspects for any particular purpose, then, if he gives notice, all the relevant records would have evaporated. Two things are sought to be provided. It is like what we do in the Reserve Bank. Inspection of scheduled banks is a normal process. There is nothing which is objectionable so far as that is concerned, and if they go and inspect a bank, there need not be a run. It may very well be that they go and inspect because they have got some information. Both things are possible here. Therefore, I am unable to accept the other amendments of Shri Dandeker.

Shri Himatsingka: What about vouchers?

Shri T. T. Krishnamachari: If we put a limit, how to tally the books if the vouchers have all gone? The hon. Member is a person who knows business and I suppose he has not had to undertake what I had to do as stock book-keeping. When you keep books, you have to total up the amounts of vouchers. If you take a few stray ones, they can also say that they do not know, they do not preserve, they are not above Rs. 1,000. Or, a man can make ten vouchers of Rs. 100 each, it is not very difficult. Oftentimes in Government we see it. I have said that licences issued above Rs. 75,000 should be sent to the Minister for him to see, and some clerk asks people to apply for four licences of Rs. 74,000 so that the Minister will not see them.

[Shri T. T. Krishnamachari]

That has happened, I know it. Sometimes you find out that it is all Rs. 74,000, strictly according to law. May be, it may not be necessary in normal cases, but once you make a provision like that, you cannot really tally the books.

Shri N. Dandeker: I am pressing Amendment No. 10. The others I withdraw.

Mr. Deputy-Speaker: Has the hon. Member leave of the House to withdraw his amendments Nos. 6, 7 and 9?

Hon. Members: Yes.

Amendments Nos. 6, 7 and 9 were by leave withdrawn.

Shri V. B. Gandhi: I do not press my amendment.

Mr. Deputy-Speaker: Has he the leave of the House to withdraw his Amendment No. 8?

Hon. Members: Yes.

Amendment No. 8 was by leave withdrawn.

Mr. Deputy-Speaker: I put Amendment No. 10 to the House.

The amendment was put and negatived.

Mr. Deputy-Speaker: The question is:

Page 9, line 30,—

after "bankers" *insert* "auditors". (11).

The amendment was adopted.

Mr. Deputy-Speaker: The question is:

Page 8,—

for lines 23 and 24, *substitute*—

"manufacturing or mining activities, such particulars relating to utilisation of material or labour or to other items of cost as may be" (83)

The amendment was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 20, as amended, part of the Bill."

The motion was adopted

Clause 20, as amended, was added to the Bill.

Clause 21— (*Amendment of section 227*).

Mr. Deputy-Speaker: We take up clause 21. Are there any amendments?

Shri N. Dandeker: Sir, I have an amendment No. 21. I beg to move:

Pages 10 and 11,—

omit lines 31 to 40, and 1 to 4 respectively. (12).

Clause 21 seeks to amend section 227 of the principal Act which is among the more important sections of the Act which prescribes the powers and duties of auditors. The auditor is a statutory officer and the earlier section says that the auditor shall be one who has been a qualified member of the Institute of Chartered Accountants and so on. The present section 227(1) gives the powers of the auditor and the subsection proposed to be inserted, namely, clause 21 (a) (IA) goes on to prescribe a number of duties and obligations for specific matters which the auditor has to look into. This matter was subjected to a good deal of discusseion in the Joint Committee and that is a clause to which I have myself assented. But when we come to sub-clause (b), there is another kind of requirement and it is to the effect that the Central Government may, by general or special order, direct that in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein. In the first place, although I am sure you will rule me out as irrelevant, I feel that this particular clause is *ultra vires*. It confers upon the Central Government the power to legislate. The rights and duties of an auditor, who is a statutory officer, are statutorily specified in the earlier provision and in this sub-clause Government assumes

power to ask the auditor to say that the auditor must also do this. Therefore, sub-section (b) of clause 21 is one that confers upon the Central Government power to legislate about the duties and obligations of a statutory officer which I suggest ought to be laid down in the statute and so I think it is *ultra vires*. But the Speaker has held that this is a contention that has to be taken up, after the law is passed, in a court of law by somebody who is concerned with it and get the thing struck down. I am now talking of the merits. In principle it is wrong to give virtually legislative powers to the Government, to the administration to go on and on, in this particular case, prescribing duties and obligations of auditors by a general or special order and go on directing whatever they wish to direct.

The proviso to it is even more curious. It is designed to throw dust into the eyes of everbody. It says that 'provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case.' The Central Government may consult. It is bad enough; it need not consult. But it goes further and says 'unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case. I say that the whole thing is totally wrong. Apart from being *ultra vires*, I submit it is wrong in principle. My amendment is therefore designed to delete the whole of that from line 31 on page 10, to line 4 on page 11.

Shri Yashpal Singh (Kairana): Sir, on a point of order, there is no quorum.

Mr. Deputy-Speaker: Let the Bell be rung—there is no quorum.

Shri T. T. Krishnamachari: This particular provision has a history behind it. In the evidence, the auditors' representatives made this point and I had consultations with them and it is after consultation with them that this proviso was devised and put in. So much so Government does not do anything without giving these people notice. Naturally, there are certain saving clauses because, maybe, in a very small matter where you do not think it necessary, Government might have done something without consulting them and therefore, Government order should not be vitiated. That is why, the word 'may' is there and the saving clause is put in. Maybe, the hon. Member who knows the members of the profession, I think he is an auditor, might feel differently but this is something which we have devised after discussion with the concerned people. Therefore, I am not prepared to accept the elimination of this particular provision.

Mr. Deputy Speaker: I shall put amendment No. 12 to the vote of the House.

The Amendment No. 12 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 21 stand part of the Bill."

The motion was adopted.

Clause 21 was added to the Bill.

Clause 22 was added to the Bill.

Clause 23.—(*Insertion of new section 233B*).

Mr. Deputy-Speaker: We shall now take up clause 23. Are any amendments moved?

Shri Sham Lal Saraf: I am moving my amendments Nos. 47 and 49, I beg to move:

(i) Page 11, lines 15 and 16,—

for "by an auditor who shall be either", *substitute*—"normally by". (47)

(ii) Page 11, line 17,—

after "or", *insert*—

"with the special permission of Central Government by". (49)

Shri K. C. Pant: I beg to move:

Page 11,—*for* lines 10 to 14, *substitute*—

"233B. (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conduct—". (84)

Shri V. B. Gandhi: I beg to move:

(i) Page 11, lines 17 to 20,—

for "or any such chartered accountant within the meaning of the Chartered Accountants Act, 1949, or other person, as possesses the prescribed qualifications", *substitute*—

"or any other person who possesses such qualifications as may be prescribed from time to time". (41)

(ii) Page 11, line 31,—

for "his", *substitute* "a confidential". (42)

(iii) Page 11, line 34,—

after "the", *insert* "directors of the". (43)

Shrimati Renu Chakravartty: Is amendment No. 48 not moved?

Mr. Deputy-Speaker: 41 is the same as 48.

Shri T. T. Krishnamachari: I am accepting 84.

Mr. Deputy-Speaker: These amendments to clause 23 are before the House.

Shri Sham Lal Saraf: Sir, I have moved two amendments. Mine are simple amendments which convey the same meaning. It is to my mind very important. According to the construction of this section, I feel that the cost accountants and chartered accounts have been equated in a way. It is not correct. That is why I have tabled these amendments.

My amendment reads as follows:

Page 11, lines 15 and 16, *for* "by an auditor who shall be either, *substitute* "normally by,"

In actual practice, the work done by these cost accountants is different from that done by the financial auditors. The cost accountants at the moment have to see, in this present developmental stage or developing stage of our economy, particularly our industry, that whatever is invested in whatever form—plant, machinery, raw material, power or anything else in a manufacturing unit or a factory—gets an optimum return. I think it is a work of a specialised nature. As far as financial auditing is concerned, that should be a different job, and that is in regard to accounting. Keeping that in view and also conscious of the fact, as I am, that cost accountants may not be available to the extent needed, the clause may be amended in the light of the suggestions made by me. Of course, the need for more cost accountants will arise after this measure is passed into law. But for that matter, as is mentioned in the clause, the qualifications are prescribed for the Chartered Accountants, or "any other person as possesses the prescribed qualifications." Those persons who possess the prescribed qualifications should know something about cost ac-

counting. Therefore, this work should be entrusted to the cost accountants. If that is done, that will serve my purpose.

The clause, as it is worded, reads, towards the end, "within the meaning of the Chartered Accountants Act, 1949, or other person, as possesses the prescribed qualifications." About that also, I may say that the qualifications may be prescribed from time to time, and it is for the Government to prescribe those qualifications. Keeping these points in view, I hope the hon. Finance Minister will accept these amendments of mine which are minor amendments and are quite simple but which have a very deep meaning.

Shri V. B. Gandhi: My amendment No. 41 makes only some changes in phraseology. It means that the wording of the clause will be less involved and more direct. I hope it will be acceptable to the hon. Finance Minister.

In my amendment Nos. 42 and 43, I have suggested that the report of the cost accountants shall be a kind of confidential report. I suppose normally these reports are confidential reports. But I would, for the sake of a good measure, put it in so many words that they should be a confidential record. Also, this report should be made not to the company but should be made to the Board of Directors. I have a feeling,—I do not know,—that there is something implicit in the relationship between the shareholders and the company that any report made to the company probably is a report of which the shareholders would be entitled to have a copy. I do not know, but there are fears at present entertained by companies that there would be a divulgence of certain vital matters of the company when the cost audit is introduced; these fears are both genuine and legitimate. In order to avoid any risk on that score, I would suggest that my amendments may be accepted.

15·55 hrs.

[DR. SAROJINI MAHISHI *in the Chair*]

Shrimati Renu Chakravartty: I want to support Shri Sham Lal Saraf in what he said about permitting financial auditors to audit where the cost accountants are not available. I also agree with Shri Dandeker in his plea that in a situation where we have very few cost accountants it is rather necessary for us to have something for the interim period. Shri Saraf has very clearly pointed out that cost accountants are very, very necessary, not only from the point of view of increasing the efficiency of an organisation, but also, I think, from our point of view, to really find out what is the cost structure, and what exactly is the pricing policy. In a situation where many of our organisations are going in for modernisation and rationalisation it is necessary to find out whether it is really necessary and whether it will be really paying. From these points of view, it is quite obvious that cost accountants are very necessary.

I remember also the occasion when we were debating about one of the public sector organisations. At that time, one of the Ministers was very insistent and said that he found constantly that the difference between the project cost in plan as it was originally envisaged and the actual financial position which was later on revealed, had increased to such an extent was so big that it has become very necessary for us to have a proper cost accountancy. The hon. Finance Minister has also pointed out this feature. But when we come to the new amendment introduced here, we find that we are giving powers to the Government to permit, by executive order, the chartered accountants to come in to do the work of cost accounting. It is true that there is a shortage. I think we have just about a thousand or 1,500 cost accountants in this country. When we started we had very few auditors. Now, if we allow sufficient scope and create opportunities for cost accountants, they will also after a short period of time, increase in numbers and we will have a number of practising cost

[Shrimati Renu Chakravartty]

accountants and their volume of work and their numbers will grow appreciably in no time. Actually, in the interim period, what should we do? That is the point.

One proposal has been made by Shri Sham Lal Saraf, that normally we should not allow creditors to do work of cost accountants. But I would like to say that when we put this clause in, we should also say something that if such a notification is made, we should have also a proviso laying down a time-limit specifying clearly the period when the chartered accountants are allowed to be called to do the work of cost accountants. It should not be a blanket period of time. We should not leave it open for all time. It should be a very specific period; the period should be specified. (*Interruption*). That is a period till we get enough cost accountants. The hon. Member Shri Saraf has introduced the word "normally". I support it. But I do feel that it is very necessary that we should specify and be very clear in our minds that what we legislate now is for the interim period. Maybe we could find out whether it is possible to make a suggestion to the Chairman of the Company Law Board to amend the Cost and Works Accountants Act, 1959, to permit the cost accountants who are wholetime salaried employees to practise as part-time cost auditors in a period of time when we are short of cost accountants. We could do some such thing, but it would be wrong, according to me, if we should leave the door wide open where auditors would really be doing the work of cost accountants. Neither shall we be giving sufficient scope to the growth of cost accountants nor shall we be actually having a proper measure of the managerial skill in respect of the actual pricing policy or efficiency of an organisation.

There is no reason to believe that there will be a long delay between cost audit and financial audit. They can go on simultaneously. But as Shri Dandeker said, it would be difficult for the smaller companies to fulfil the provisions of cost accounting. It is true that smaller companies do not keep all the records in the way which cost auditing would want us to maintain them. They may not come up to the required standard, at first but once we start this auditing of cost accounts, it becomes obligatory these records will surely get more and more perfected, as also auditing records were in course of time. So, I urge upon the Minister to see that this clause should only be specified as an interim measure and that we should so modify it in the way suggested by Shri Saraf, or, when we issue a notification, it should have a very specific time-limit during which time we should permit auditors to work as accountants, and we should do everything to encourage the cost accountants to come up in large numbers, to increase their efficiency and thus the efficiency of our industries

16 hrs.

Shri N. Dandeker: Mr. Chairman, I am opposing the clause as a whole. The object of the clause as to who will do the audit, how it will be conducted and so on, is clearly stated in the first few sentences:

> "Where in the opinion of the Central Government it is necessary to do so in relation to any company engaged in production, processing, manufacturing or mining activities—that would probably include 80 to 90 per cent of the companies in this country—the Central Government may, by general or special order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order ....." etc.

I want to submit that I have written a brief note on this in the Joint Committee Report already. Nevertheless, for the benefit of those who may not have had the time to go through it and give some thought to this very

important and difficult problem, I would like to reiterate my objections to this clause.

In the first place, I do submit that this is putting the cart before the horse. Cost accounting in any sophisticated sense —and it is only if there is a sophisticated system of cost accounting that one can talk about its audit— presupposes an industrial development at a considerably advanced stage. I remember myself when some 38 years ago, I was an article clerk in England in a firm of chartered accountants and qualified as a chartered accountant, cost accountancy even in England was in its infancy. There was only one company whose audit we did as financial auditors, who had in fact any system of cost accounting worth calling by that name. They, of course, had some kind of cost records, because no one can go on in a manufacturing business without something of that kind.

Today in this country I suppose it would be reasonable to assume that we are somewhere near the stage of industrial development that was then in England some 35 years ago. It is a characteristic of a really advanced stage of industrial development that you have a system of cost accounting that can be properly so called. Indeed, all these sophisticated developments of cost accounting and cost audit—the various ways of ascertaining costs depending upon the purpose for which you are ascertaining it— are a matter of the post-war era. I would like to explain that, because it is not as if there is any such absolute thing as the cost of a product. Supposing I am concerned with the production costs or works costs or sales costs or overall costs; there will be a different basis which is relevant for that particular cost. Suppose I am concerned with a competitive situation where my competitors appear to be undercutting me, though my product appears to be as good as theirs, there is another basis of costing with reference to which you can judge whether I can or cannot reduce my price structure, so that what I lose by the swing, I get by the round-about by increased turnover. There are a whole system of allocations of departmental overheads. There are various types of overheads—overall overheads and so on. The cost accountants themselves differ as to the basis of allocation of overheads, whatever be the type. I do not know of two cost accountants who will agree on the basis of allocation of a departmental overhead. For instance, I do not know of two cost accountants who will admit whether sales overhead is an overhead cost at all in the matter of determination of the selling price or whether advertisement is an overhead cost directly chargeable to sales or it is an administrative overhead and so on. There are hundreds of questions like that. If we are going to let loose cost accounting audit with all these tremendous differences of opinion in a situation where we are just trying to get ahead with industrial development, I submit we shall be doing neither any service to the accountancy professions—whether it is cost accountancy or chartered accountancy profession does not for a moment concern me—nor any service to the companies themselves, which is the main object of this clause.

I would like to go further and suggest that this is just the way by which precisely those companies that are well managed will be penalised. When you have a statutory audit of this kind, it is impossible to keep the results of that audit confidential, notwithstanding to whom the report is submitted. Somebody suggested it should be made to the directors or to the company law administration. It does not matter to whom it is submitted. I have been an examiner in cost accountancy for M. Com. and one of the ways to judge a man's capacity as cost accountant is to see whether he is aware that there are 10 different ways of allocating overheads. There is no absolute way whatsoever that is

[Shri N. Dandeker]

necessarily correct for any particular reason.

So, this clause is going to penalise precisely those companies who have a good system of cost accounting, because it does not matter to whom the audit report is submitted. So long as it is a statutory report required by law to be made by an officer appointed by the company and whom the company is paying, any shareholder of the company is entitled to have a copy of that report and nothing can stop him. He can go to the court and compel a report of that kind to be given to him. I know what the consequences are going to be, that in this country when we are just getting a better development of technical and managerial personnel, better development of accountancy and cost accounting, a better development of management accounting in particular, you are going to have a state of affairs in which you will be penalising the best of companies by disclosures of the facts and circumstances relating to their costs. I very strongly feel that this is a retrograde measure. I know of no country in which the audit of cost accounting is compulsory. Obviously, the cost accountants have done a fairly effective bit of lobbying. I am a chartered accountant and therefore, I have dellberately refrained from speaking about the validity of confining this cost accounting audit to the cost accountants or spreading it to chartered accountants or anybody who in the opinion of the Central Government possesses the necessary qualifications, as the clause puts it. I will not go into that deliberately, but I would submit that the whole clause for the reasons I have stated is really detrimental to the best interests of the companies and ought not to be passed.

Some hon. Members *rose—*

Mr. Chairman: Shri Prabhat Kar—I would request hon. Members to take only two or three minutes.

श्री यशपाल सिंह : चूंकि स्पीकर साहब ने इस बिल के लिये टाइम बढ़ाने का वादा किया था, मेरा प्रस्ताव है कि इस बिल पर डिस्कशन के लिये एक घंटे का समय बढ़ा दिया जाय, क्योंकि यह बहुत इम्पार्टेंट बिल है ।

सभापति महोदय : हम देखेंगे ।

Shri Prabhat Kar: Madam, the way this particular clause has been resisted by the representatives of big business....

Shri N. Dandeker: I would object to that. I am not here as a representative of big business, I am here as the representative of Gonda.

Shri Ranga (Chittoor): He can refer to my party by name, there is no objection.

Shri Prabhat Kar: It seems to me that this particular clause, which was supposed to be innocuous at the beginning, is one of the sole points which the Company Law Administration and the Finance Minstry have touched. I would say that the original clause which was presented by the Finance Minister was better than what it is now in the Bill as it has emerged from the Joint Committee.

So far as costing is concerned, it is one of the most important needs in the developing industries of our country. And, particularly, so far as the price structure of industrial goods and other raw materials is concerned, which is creating a lot of difficulties, costing or an enquiry into the cost is an important factor. We would have been happy if there had been a statutory provision for appointment of a cost accountant for every industry and submission of a report. Here it is not so. It is not said here that

every industry must appoint a Cost Accountant. It is said here:

> "Where in the opinion of the Central Government it is necessary so to do in relation to any company engaged in production...."

So it is very, very, very restricted. Unless and until the Central Government thinks that there is such a necessity, necessity to go into the cost of a particular industry, the question of having cost audit will not be considered at all. We would have understood the resistance that is being shown to this clause if along with the Chartered Accountant, if along with financial audit, cost audit was also made statutory. We have been asking for this all the time. Then the question would have been different. Here it is completely a different thing. So there should not be any reason why it should be resisted.

The only point that I would like to mention here is that so far as cost audit is concerned, it should be done by a Cost Accountant. Shri Dandeker says that there are ten different ways of costing and no two Cost Accountants will agree. Now doctors differ. Does that mean, therefore, that Shri Dandeker should not consult a doctor when he has some ailment? For a particular ailment there will be different types of treatment. Does that mean that Shri Dandeker should not consult any doctor for his ailment? Therefore, this cannot be a reason, that because there are various systems of costing it should not be there. What system is to be adopted is a matter which will be decided by the Cost Accountant.

Shri V. B. Gandhi has suggested the deletion of the words "Chartered Accountant". If that is accepted then it is all right. If that cannot be accepted, then I want it to be like this, as suggested in amendment No. 47, with the words "normally by" and, as suggested in amendment No. 49, with the words "with the special permission of the Central Government"—then it will read "normally by a Cost Accountant" and "with the special permission of the Central Government by a Chartered Accountant". I would prefer Shri Gandhi's amendment to be accepted by the Finance Minister because that was what was contained in the Bill as it was presented. The Company Law Administration must have given much thought to it before presenting it to the House. Therefore, there is no reason why it should be changed. I have seen that there are a number of Cost Accountants. The only question is of practising Cost Accountants whose number is less because of the fact that there is no provision. Under any circumstances Cost Accountants can practise and give the certificate. Even if that is taken away, I would suggest that if Shri Gandhi's amendment is not acceptable then Shri Saraf's amendments Nos. 47 and 49 can be combined and it should be accepted.

Shri T. T. Krishnamachari: Madam Chairman, I am between what might be called two opposite poles. Shri Dandeker wants the clause to be eliminated. It was discussed at great length in the Joint Committee and the present clause as it is, represents the consensus of views there. It is no doubt a fact that Government cannot compel at this stage, assuming that they have the power to do it, every company to engage a cost accountant for the reason that the profession itself is not very big at the moment. We have to see that this profession grows and this profession will grow if there are more opportunities for employment. This will give encouragement to more people to become cost accountants. Maybe chartered accountants who have got the training will go into the cost accounting field. At the same time, it is no use going the whole hog. The amendment of Shri Saraf has certain loopholes. It says that "normally" we may do this and abnormally do something else. I think even without the word "normally" the position is clear. If a cost accountant is available, he can be asked to do it; if not.

[Shri T. T. Krishnamachari]

a suitably qulified substitute would be there. Therefore, I do not see any particular logic at the moment in accepting the amendment of Shri Saraf. Nor am I agreeable to this clause being deleted, because we feel that we are taking a step in the right direction when we say that every company, including a Government company, should have a cost accountant.

The cost accountant is a useful person. The Tariff Commission, which decides on prices, has a set of cost accountants there. In my own Ministry we have cost accountants for various purposes, for purposes of examination. But the profession at the moment is not encouraged. Once we use them, once we order a cost accountant's report in the case of particular industries, naturally people will know that there is an opportunity of being employed and more people will get into that line.

I, therefore, suggest that excepting for the amendment of Shri K. C. Pant, amendment No. 84, which is in one sense only recasting the first four lines of the clause, the House may agree to leave the clause as it is. In other words, I am accepting only amendment No. 84.

Mr. Chairman: Are the other hon. Members pressing their amendments?

Shri V. B. Gandhi: I want to withdraw my amendment.

Shri Sham Lal Saraf: I do not want to press my amendments.

Mr. Chairman: Have the hon. Members the leave of the House to withdraw their amendments?

Some hon. Members: Yes.

Amendments Nos. 41 to 43, 47 and 49 were, by leave, withdrawn.

Mr. Chairman: The question is:

Page 11,—*for* lines 10 to 14, *substitute*—

"233B. (1) Where in the opinion of the Central Government it is necessary so to do in relation to any company required under clause (d) of sub-section (1) of section 209 to include in its books of account the particulars referred to therein, the Central Government may, by order, direct that an audit of cost accounts of the company shall be conduct.." (84).

The motion was adopted.

Mr. Chairman: The question is:

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

The motion was adopted

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

Clause 24 was added to the Bill.

Clause 25.—(*Amendment of section 240*)

Shri N. Dandeker: I beg to move:

(i) Page 12, line 13,—

omit "or any person authorised by him in this behalf". (13)

(ii) Page 12, lines 20 to 22,—

for "or produce such books and papers before him or any person authorised by him in this behalf".

substitute "him". (14)

(iii) Page 12, lines 23 and 24,—

omit "or the production of such books and papers". (15)

(iv) Page 12, lines 27 and 28,—

omit "or sub-section (1A)". (16)

(v) Page 12,—

omit lines 33 to 36 (17)

(vi) Page 13, lines 10 and 11,—

omit "or any person authorised by him in this behalf". (18)

(vii) Page 13, lines 12 and 13,—

omit "or sub-section (1A)". (19)

Really, my amendments can be grouped in their purposes into two heads. The first is, in so far as the whole of the section is concerned, about the introduction of books, making information available and so on and so forth, it is perfectly all right except that it must be, I suggest, only to the inspector and not going again to any persons authorised by him. There are a series of amendments which are really concerned with just deleting that kind of delegation. For instance, my amendment No. 13 seeks to omit the words "or any person authorised by him in this behalf" and many of the changes that I have suggested are to the effect that whatever it is that we wish to confer by way of power upon the Inspector should be upon the Inspector and not on any other person authorised by him. He may ask a chaprasi to go and obtain these people's books and bring them along. Any person authorised by him can include anybody.

The second objection that I have got is more important than this question of whether the Inspector himself or any other person authorised by him should have these powers. In this connection, I must refer to Section 240 in the Act. That is a very necessary Section. It is concerned with putting obligations upon officers and other employees and agents of the company to produce documents, evidence, etc., in connection with the companies whose affairs are under investigation. That, in my judgment, is quite right that when the affairs of the company are, for good reasons, under investigation and when the Inspector is empowered to go ahead and investigate the affairs of associated companies, it is quite proper that, that investigation should be facilitated and not obstructed by appropriate powers conferred upon the Inspector to produce or cause to be produced information, account books, this and that and the other. This Section goes very much further and in order to indicate how much further it goes, I would like to indicate what are, under the existing Sections, the companies who may be pushed around in the course of such investigation.

It says:

> "It shall be the duty of all officers and other employees and agents of the company, and where the company is or was managed by a managing agent or secretaries and treasurers, of all officers and other employees and agents of the managing agent or secretaries and treasurers, and where the affairs of any other body corporate, or of a managing agent or secretaries and treasurers, or of an associate of a managing agent or secretaries and treasurers, are investigated.....".

In other words, one investigation giving rise to another investigation, giving rise to a third investigation, the Section already provides that in regard to investigatee companies—if I might use such wording—the Inspector could have all the powers that are already contained in it. This particular provision that is now sought to be introduced by a new sub-section goes very much further and it concerns with giving the Inspector the whole range of powers in connection with any other company on the earth in the country. If, for instance, companies 'A' to 'Z' are under investigation in Bombay and a company 'B' is not under investigation in Calcutta, nevertheless, the Inspector may, with the previous approval of the Central Government,

[Shri N. Dandeker]

require anybody other than a body corporate referred to in the sub-section which I have just read, any respectable, decnt, company whose affairs are not under investigation to furnish such information—that is all right; certainly, companies not under investigation cannot be excused from furnishing information to the investigating officer in relation to the affairs of the companies that are under investigation but it goes further—or to produce such books and papers before him or any person authorised by him. The company with highest reputation whose affairs are not under investigation may be called upon to produce its books to the Inspector or any officer authorised by him. I cannot imagine a greater disgrace to a company which should be required to produce its books to an Inspector who is investigating somebody else's affairs. The public do not know that this particular company's affairs are not under investigation; the public do not know that this innocent company's books are being seized and called upon to be produced before the Inspector by the Inspector or any person authorised by him. If that were so, I would have no objection, not because any associated company's affairs are under investigation. If that were so, then too I would have no objection. But because some companies' affairs are under investigation, innocent companies' books may be called for and then the rest of the consequences if the books are not produced—penalties and all sorts of things would follow. I submit that this is most obnoxious. I do not think that we have reached a stage in the country when there should be the *Gestapo* treatment of testing the honesty of decent people. As I said, I have no ease whatsoever in relation to the group of companies that are covered by sub-section 1; they are quite rightly to be investigated; they are quite rightly to be called upon to furnish information; they are quite rightly expected to have their account books, papers and vouchers and to produce them for investigation and rightly to be punished if they do not produce.

I agree further that an unconnected company which may have some information of value to the Inspector must also, if called upon to do so, furnish the information. That again is quite right and proper. But I do suggest that it is beyond all reason, beyond all decency, that credits of good companies should be destroyed by some Inspector by sending notice to produce the account books. The amendments that I have suggested are really meant to serve two purposes; in the first place, the Inspector must himself act even in relation to companies whose affairs are under investigation; secondly, that in relation to companies whose affairs are not under investigation, the Inspector should have power to call for information but not the power to require production of books. He can go and have a look at it; that is a different matter. But to call upon them from Calcutta to produce books in Amritsar, for instance, would be a monstrous kind of business, with which I personally think that this House ought not to be associated.

These cover the general purposes of the amendment that I move.

Shri T. T. Krishnamachari: This again is a matter which has been discussed and the Hon. Member had indicated his serious objection to it. I feel that this is necessary, but I am not sure if I can make any amendment now. But if somebody would move an amendment to say that wherever it appears "any person authorised by him in this behalf", it should really mean "authorised by the Central Government", it would be all right. I think it occurs in two places, Clauses 25(a) and 25(b). If we can add the words "with the previous approval of the Central Government"

at these places, I am prepared to accept it if the Chair permits it and if the House approves of it.

Shri N. Dandeker: This previous consent of the Central Government relates to authorisation of the person or to the production of books?

Shri T. T. Krishnamachari: I am not yielding to the question of production of books.

I shall certainly accept if the Hon. Member feels that the clause is omnibus; if it only means an Inspector, who has the previous approval of the Central Government. The approval of the Central Government should be to the authorisation by him in this behalf. I am prepared to accept it, provided the Chair permits it.

Shri N. Dandeker: May I move an amendment to my amendment No. 13. I add the words "with the previous approval of the Central Government" after the words "or any person authorised by him in this behalf".

Shri T. T. Krishnamachari: It may be to the effect that in Amendment No. 13 after the words "or any person authorised by him in this behalf", add the words "with the previous approval of the Central Government"; again the same thing in Amendment No. 18.

If the Chair permits it and if the House approves of it, I shaall accept the amendment.

Mr. Chairman: There are two amendments, Nos. 13 and 18. The hon. Finance Minister is willing to accept them. I would like to know from Shri N. Dandeker whether he is pressing his other amendments, namely amendments Nos. 14, 15, 16 and 19.

Shri N. Dandeker: I am keeping amendments Nos. 14, 15, 16 and 19 as they are. I am accepting the suggestion put forward by the Finance Minister by way of amendment to my amendments Nos. 13 and 18. The rest of the amendments remain as they are and as I have got them.

Mr. Chairman: There is an amendment to amendment No. 13 to clause 25 and also an amendment to amendment No. 18 to clause 25.

Now, I shall put the question that these amendments to amendments 13 and 18 be accepted by the House.

The question is:

"That in Amendments Nos. 13 and 18 moved by Shri N. Dandeker,—

after the words 'or any person authorised by him in this behalf',—*insert* "with the previous' approval of the Central Government."

The motion was adopted.

Mr. Chairman: So these amendments to amendments Nos. 13 and 18 to clause 25 are accepted by the House.

Now, I shall put amendments Nos. 13 and 18 as amended to the vote of the House.

The question is:

(i) Page 12, line 13, *after* 'or any person authorised by him in this behalf, *insert* 'with the previous approval of the Central Government,'. (13 as amended.)

(ii) Page 13, lines 10 and 11, *after* "or any person authorised by him in this behalf", *insert* "with the previous approval of the Central Government". (18 as amended).

The motion was adopted.

Mr. Chairman: Then I come to amendments Nos. 14, 15, 16, 17 and 19. Is the hon. Member pressing them?

Shri N. Dandeker: I would beg leave of the House to withdraw amendment No. 17, because if the other amendments are negatived, that does not really arise, but I am pressing the others.

Mr. Chairman: Has the hon. Member leave of the House to withdraw amendment No. 17?

Several hon. Members: Yes.

Amendment No. 17 was, by leave withdrawn.

Mr. Chairman: I shall now put amendments Nos. 14, 15, 16 and 19 to vote.

Amendments Nos. 14, 15, 16 and 19 were put and negatived.

Mr. Chairman: I shall now put clause 25, as amended, to the vote of the House.

The question is:

"That clause 25, as amended, stand part of the Bill".

The motion was adopted.

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

Clause 26 was added to the Bill.

Clause 27—(*Amendment of section 241*)

Shri N. Dandeker: I am opposing this whole clause. I would not take more than five minutes in explaining my objection to the clause. The clause appears very innocuous. It seeks to insert the words '(other than an interim report)' after the words 'any report' occurring in section 241 of the principal Act. The point here is really this. When the affairs of a company are under investigation, the inspectors make reports from time to time. The section, as it at present stands, is a sound provision of law:

> "The Central Government shall forward a copy of any report made by the inspectors to the company at its registered office, and also to any body corporate, managing agent, secretaries and treasurers or associate dealt with in the report by virtue of section 239".

This is a perfectly sound section. It is equally sound that where the report is more than one, that is to say, an inspector makes one report, then he looks into another matter and makes another report; he goes through a third matter and makes a third report and so on, the company should be entitled to all these so-called interim reports as they arise from time to time. Now, clause 27 takes away from the company the right to receive all such interim reports. The company may only receive the final report. This is secured by this amendment:

> "any report (other than an interim report)".

I think this is utterly objectionable. For one thing, a good deal of these investigations goes on behind the back of the company; you cannot do otherwise. Suddenly, these reports are then submitted to the authority concerned and it is on the basis of these reports that eventually whatever action is taken is taken, whether it is prosecution, fine, penalty or anything else. Since the whole procedure is really *ex parte*, the law quite properly requires that any reports so submitted should be made available to the company, so that it may know what it is all about, instead of being suddenly, so to speak, assaulted from the blue. Now this amendment would only entitle a company to receive a copy of 'any report other than an interim report'. Frankly, I do not know what 'any report other than an interim report', is; I suppose it is the final report, but it could mean any one of these series of reports which somebody may choose to call not an interim report. Frankly, I think it is all wrong. I think these reports on investigations upon which action will be taken must be available to the company, and where more than one report has been submitted, all these reports must be made available to the Company.

Shri T. T. Krishnamachari: I am afraid I am unable to accept the position, because an interim report may be just a two-line report, and it is not right to make it obligatory on Government to supply it to the company. Naturally, the substance of the section 241 says that any report which is substantial on which any action would be taken should be in the hands of the company, and the company has got a right to ask for a report on which Government has to take some action. But if it is some interim report on which no action is taken, it does not stand to reason that it should be made available to the company. The inspector might say 'I have gone there; I have not been permitted to see the books'. It does not mean that that report should go to the company. I think the position of the party is sufficiently covered by the wording of section 241 and the addition of the words interim report' for the purpose of obviating an obvious lacuna in law which was pointed out is necessary in this case.

Mr. Chairman: The question is:

"That clause 27 stand part of the Bill".

The Motion was adopted.

Clause 27 was added to the Bill.

Clauses 28 and 29 were added to the Bill.

New clause 29A

Shri T. T. Krishnamachari: This is an amendment which is consequential to the House disposing of amendments to clauses 35 and 37. If those amendments are rejected by the House, this will not come in at all. So I would request you to hold over 29A. After amendments to clauses 35 and 37 are disposed of, this can be taken up because it is consequential to amendments to clauses 35 and 37.

Mr. Chairman: We shall take up new clause 29A afterwards.

The question is:

"That clauses 30 to 34 stand part of the Bill".

The Motion was adopted.

Clauses 30 to 34 were added to the Bill.

Clause 35— (*Amendment of section 280*)

Shri Himatsingka: I beg to move:

Pages 15 and 16,—

for clause 35, *substitute*—

"35. Omission of section 280.— Section 280 of the principal Act shall be omitted." (56)

Section 280 provides that when a person has attained the age of 65, he shall not be capable of being appointed director of a public company, but section 281 provides:

> "(1) Nothing in section 280 shall prevent the appointment of a director who has attained the age of sixty-five years or require a director to retire who has attained that age, if his appointment is or was made or approved by a resolution passed by the company in general meeting and specifically declaring that the age limit shall not apply to him."

Clause 35 proposes that the age limit be raised to 75, but the provision under section 281 is being taken away by Clause 36. Therefore, if we accept the two sections as now proposed, the position will be that if a person has attained the age of 75, he cannot be appointed a director of any public company or any private company which is a subsidiary of a public company. I feel that this provision should not find a place in the Companies Act at all. There is no such provision anywhere in the world. There is no bar to any person of 75 or above being appointed to responsible positions of Chief Ministers, Prime Minister, President of the Republic and

[Shri Himatsingka]

so on. Therefore, I feel that this provision is wholly unnecessary, that section 280 should be deleted. If that is deleted, of course, the other amendments will also follow.

16:42 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

I do not want to take much time because a number of hon. Members have spoken in this strain that this provision should go. I am glad the hon. Minister has also left it to the House and is not particular about it. I feel that this provision should go.

Shri T. T. Krishnamachari: I do not propose either to accept or reject it. I leave it to the House.

Shri Raghunath Singh (Varanasi): The old section should remain.

Shri T. T. Krishnamachari: I do not want that the old section 281 should remain because I can tell you it is a farce, because I have not known of a single instance in which anybody of 65 years has been rejected by the shareholders. It is just a rubber stamp, like going and buying a platform ticket. You have a special resolution, everybody has approved We have had some census taken. I have found that the old section is a fraud on ourselves, to say that we impose a limit of 65, but we can have a special resolution of the shareholders. In most companies, at any rate worthwhile companies, this has had no effect at all, and there are people already there who are 78 or 80, somebody who cannot even get up. So, I object to it. So, either the House should accept that there should be a limit of 75, or, if they do not want it, I am prepared to completely abrogate it. Let us not have any limit at all. That is why if the House feels that this limit should not be there, I leave it free to the House. The only thing is that if the House accepts it, then the consequential limit will have to be accepted.

Mr. Deputy-Speaker: I shall now put amendment 56 to the vote of the House. That is the omission of section 280.

Shri T. T. Krishnamachari: Instead of 65 years of age and a special resolution, the present clause says that nobody shall be a director, if he is above 75 years of age. Now, if section 280 itself is omitted, we cannot really impose any amendment to it.

Shri Raghunath Singh: There should be no age limit. That is our view.

Mr. Deputy-Speaker. The question is:

Pages 15 and 16,—

for clause 35, *substitute*—

"35. *Omission of section* 280.—Section 280 of the principal Act shall be omitted." (56)

The motion was adopted.

Clause 35, *as amended, was added to the Bill.*

Mr. Deputy-Speaker: So, the old clause 35 automatically goes. So, I shall put clause 36 to the vote of the House. The question is:

"That clause 36 stand part of the Bill."

The motion was adopted.

Clause 36 *was added to the Bill.*

Clause 37.— (*Amendment of section* 282)

Mr. Deputy-Speaker: We take up clause 37.

Shri T. T. Krishnamachari: Now that they have accepted amendment 56, the amendment of this clause is automatic . . . .

Amendment made:

Page 16,
for clause 37, *substitute*—

"37. *Omission of section 282.*— Section 282 of the principal Act shall be omitted." (57)

(*Shri Himatsingka*)

Shri T. T. Krishnamachari: I suggest therefore, that amendments Nos. 85 and 87 also may be put to the vote of the House.

Shri K. C. Pant: 55 and 56 also.

Mr. Deputy-Speaker: I shall put clause 37, as amended by amendment No. 57, to the vote of the House.

Shri T. T. Krishnamachari: I am sorry. Clause 37 is all right. As a consequence, amendments Nos. 85 and 87 have to be put to vote.

Mr. Deputy-Speaker: Amendment 85 is for a new clause 29(A). I shall come later to amendment No. 87. I will first put amendment No. 85 to the vote of the House.

New clause 29A— *contd.*

Amendment made:

Page 14,—

after line 30, *insert*—

"29A. *Amendment of section 246.*—In section 256 of the principal Act,—

(i) in sub-section (4) in sub-clause (v) of clause (b) the words, brackets and figures "or sub-section (3) of section 280" shall be omitted;

(ii) sub-section (5) shall be omitted.'." (85).

(*Shri K. C. Pant*)

Mr. Deputy-Speaker: The question is:

"That New clause 29A be added to the Bill".

The motion was adopted.

New clause 29A was added to the Bill.

Mr. Deputy-Speaker: I will come to 87 later on

An hon. Member: What happens to clause 37?

Mr. Deputy-Speaker: 37 has been amended by 57. I shall put clause 37 as amended by amendment No. 57 to the vote of the House. The question is:

"That clause 37, as amended, stand part of the Bill."

The motion was adopted.

Clause 37, as amended, was added to the Bill.

Clauses 38 to 40 were added to the Bill.

Clause 41— (*Amendment of section 309*).

Mr. Deputy-Speaker: We take up clause 41 now. Is there any amendment?

Shri N. Dandeker: I move:

Page 18, line 7, *for* "monthly payment," *substitute*—

"monthly, quarterly or, annual payment". (23)

My amendment is quite simple. I hope the Finance Minister will accept it. It is with regard to the mode of payment for a director who is neither whole-time in the employment of the company nor a managing director who may be paid remuneration. I have suggested that instead of merely monthly payment, it would be monthly, quarterly or annual payment. Most people are not whole-time working directors or managing directors. They have remuneration in quarterly payments or annual payments and not necessarily in monthly payments. This clause as it is would seem to require unnecessarily monthly payments. I do not think there should be any objection to the acceptance of this amendment.

Shri T. T. Krishnamachari: I have no objection. I accept it.

Mr. Deputy-Speaker: The question is:

Page 18, line 7, for "monthly payment" *substitute*—

"monthly, quarterly or, annual payment". (23)

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 41, as amended, stand part of the Bill."

The motion was adopted.

Clause 41, as amended, was added to the Bill.

Clause 42—(*Amendment of section 310*)

Shri N. Dandeker: I have amendment No. 24. I shall be brief and I shall explain it in five minutes. I move:

Page 18,—

for lines 31 to 34, *substitute*—

"amount of such remuneration—

(a) by way of commission, not exceeding, after such increase, the limits laid down in the proviso to sub-section (4) of section 309 of the principal Act; or

(b) by way of a fee for each meeting of the Board or a Committee thereof attended by any such director not exceeding, after such increase two hundred and fifty rupees.". (24)

This clause says that the approval of the Central Government shall not be required; this is a good relaxation of the provisions of section 310 of the principal Act, that the approval of the Central Government shall not be required where any such provision or any amendment thereof purports to increase or has the effect of increasing the amount of remuneration, etc. The present position is if the amount of remuneration is to be increased, the permission of the Central Government is necessary and it is sought to provide that in certain cases it should not be necessary. I am only expanding the scope of the clause in which amendments having the effect of increasing the remuneration need not require the permission of the Central Government, namely, where the "amount of such remuneration (a) by way of commission, not exceeding, after such increase, the limits laid down in the proviso to sub-section (4) of section 309 of the principal Act." . . . Section 309 of the Act places a limit on remuneration and the circumstances in which these remunerations may be paid in respect of directors who are not whole-time directors and directors who are not managing directors, and as in the previous clause, they may either be paid by monthly remuneration or by way of commission, subject to certain limits.

All I am suggesting is that provided those limits are not exceeded, any changes having the effect of increase in remuneration need not require the permission of the Central Government, in the same way as any increase in the fee for each meeting of the company, provided the amount alongwith the increase, does not exceed Rs. 250, need not require the permission of the Central Government. In other words, so long as they are within limits and also so long as those limits are of a type which do not require initially the permission of the Central Government, any such increase within the limits ought not also to require the permission of the Central Government.

Shri T. T. Krishnamachari: I am afraid it expands the scope of the provision. While I agree that it is not necessary to come to the Central Government for most of these things, I think probably later on we may have an examination of this question, and see how much we could relax.

But at the present moment, I do not know to what abuses it will lead to. Not being quite aware of the full implications, I am unable to accept it.

Shri N. Dandeker: May I just give a very simple explanation so that you could understand? It is open to a Company without approaching the Central Government to sanction by a special resolution remuneration to the directors aggregating not more than a certain percentage. The effect that I am giving is, if they had in fact sanctioned something less three years ago, they might bring it back to the level which they ought to have given, without the approval of the Central Government.

Shri T. T. Krishnamachari: I quite agree. The general principle seems to be sound, but I have to examine it carefully to see how it affects; I would beg of the hon. Member not to press it. I will have the matter examined later on.

Shri N. Dandeker: I beg to withdraw the amendment.

Amendment No. 24 was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

"That clause 42 stand part of the Bill."

The motion was adopted.

Clause 42 was added to the Bill.

Clause 43 was added to the Bill.

New Clause 43A

Amendment made:

Page 19, *after* line 29, *insert*—

'43A. *Amendment of section 318.*— In section 318 of the principal Act, in sub-section (3), in clause (c), the word and figures "Section 280," shall be omitted.' (87)

(*Shri K. C. Pant*)

Mr. Deputy-Speaker: The question is:

"That new clause 43A be added to the Bill."

The motion was adopted.

New Clause 43A was added to the Bill.

Clause 44 (*Amendment of section 370*)

Shri T. T. Krishnamachari: There is a simple amendment No. 88 by Shri Pant, which I accept.

Mr. Deputy-Speaker: Amendment No. 89 is out of scope and is ruled out.

Amendment made:

Page 21, line 14, *for* "Company Law Board", *substitute*—

"Central Government". (88)

(*Shri K. C. Pant*)

Mr. Deputy-Speaker: The question is:

"That clause 44, as amended, stand part of the Bill."

The motion was adopted.

Clause 44, as amended, was added to the Bill.

Clauses 45 to 49 were added to the Bill.

Clause 50— (*Insertion of new section 396A*)

Shri N. Dandeker: I beg to move:

(i) Page 23, line 27, *after* "disposed of", *insert*—

"before the expiry of the period specified in sub-section (4A) of Section 209." (25)

(ii) Page 23, *after* line 35, *insert*—

"Provided that the person so appointed shall submit his report within six months from the date of his appointment and the expenses of such examination shall be borne wholly by the Central Government.". (26)

[Shri N. Dandeker]

This clause is concerned with the circumstances in which the books of accounts of a company that is being amalgamated with another company cannot be disposed of without the prior permission of the Central Government. I think that is quite right and proper. What I am stating, however, is that this prohibition against the disposal of the books of accounts of a company that has been amalgamated with another company should be limited in the matter of time to the same period of time for which that other company would have had to keep its books. In other words, the amalgamated company that has disappeared as a result of amalgamation should not be required to keep those books longer than it would otherwise have to keep under the law. That is the purpose of amendment 25.

Mr. Deputy-Speaker: The House will have to sit for another 10 minutes and finish this Bill. Even the extended time is over.

Shri N. Dandeker: The second purpose of this clause is to empower the government to make an inspection of the books of the company that has been amalgated with another company. Again, I regard it as quite proper, subject to the amendment No. 26 I have moved, namely,

> "Provided that the person so appointed shall submit his report within six months from the date of his appointment and the expenses of such examination shall be borne wholly by the Central Government."

I hope the Finance Minister will have no objection to accepting these amendments.

Shri T. T. Krishnamachari: I have been advised not to accept them.

Mr. Deputy-Speaker: Is he pressing them?

Shri N. Dandeker: No, Sir; we will save time and carry on.

Mr. Deputy-Speaker: Has he the leave of the House to withdraw his amendments 25 and 26?

Some hon. Members: Yes.

Amendments Nos. 25 and 26 were, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

> "That clause 50 stand part of the Bill.".

The motion was adopted.

Clause 50 was added to the Bill.

Clause 51— *(Amendment of Chapter VII of Part VI)*

Shri N. Dandeker: I am opposing this clause. I would merely remind the House of what I said during the course of the general discussion.

17 hrs.

Sir, I have objected to this clause for the simple reason that sections 410, 411, 412, 413 ,414 and 415 of the principal Act which are concerned with the Company Law Advisory Commission, its powers and the matters in respect of which it shall be consulted, are sought to be deleted by this clause and it is proposed to be substituted by a stooge of the Central Government, called the Advisory Committee. What happens as a result of the abolition of the Advisory Commission is this. It is said here:

> "For the purpose of advising the Central Government and the Company Law Board on such matters arising out of the administration of this Act as may be referred to it by that Government or Board, the Central Government may constitute an Advisory Committee consisting of not more than five persons with suitable qualifications."

The whole thing is objectionable. There is a very important institution today in the administration of the Companies Act, namely, the Company Law Advisory Commission. No good

reasons have been given in the objects clause nor were they given before the Joint Committee why the Advisory Commission should be abolished. I, therefore, oppose it.

Shri T. T. Krishnamachari: It was thrashed out, Sir, in the Joint Committee and it was represented there that the change would be for the better. In fact, so far as the powers of appointment by the Government are concerned, they remain in both the cases and, therefore, if one is a stooge the other is a stooge as well.

Mr. Deputy-Speaker: I shall put clauses 51 to 55. The question is:

"That clauses 51 to 55 stand part of the Bill."

The motion was adopted.

Clauses 51 to 55 were added to the Bill.

Clause 56— (*Substitution of new sections for section 635A*)

Mr. Deputy-Speaker: We now take up clause 56.

Shri N. Dandeker: Sir, I beg to move:

(i) Page 26, lines 17 and 18,—

omit "or any other person". (27)

(ii) Page 26,—

omit lines 23 to 32. (28)

Sir, my objection is to giving immunity to persons other than officers. I am agreeable fully to the immunities intended for officers for acts done in good faith. But I have been thinking over and over again and I could see no good reason for giving immunity to blackmailers and informers even to the extent of refusing to disclosing their names to a tribunal or court. Therefore, I press my amendments 27 and 28.

Shri T. T. Krishnamachari: I do not accept them.

Mr. Deputy-Speaker: I shall put amendments Nos. 27 and 28 to the House.

Amendments Nos. 27 and 28 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 56 stand part of the Bill."

The motion was adopted.

Clause 56 was added to the Bill.

Clauses 57 to 60 were added to the Bill.

The Schedule, Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri T. T. Krishnamachari: Sir, I beg to move:

"That the Bill, as amended, be passed."

Shri Onkar Lal Berwa (Kotah): साहब, में हाऊस कोरम नहीं है । —not even 40.

Mr. Deputy-Speaker: The Bell is being rung. There is quorum now. I shall put the motion to the vote of the House.

The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

17.06 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, August 27, 1965/Bhadra 5, 1887 (Saka).

GMGIPND—LS II—980—(ai) LSD—15-9-65—970.