Mr. Speaker: The result of the division is: Ayes 17; Noes 64.

The motion was negatived.

Shri Brij Raj Singh-Kotah (Jhalawar): I voted wrongly.

Mr. Chairman: I will now put the original motion to the vote. The question is:

"That the Bill further to amend the Criminal Law Amendment Act, 1952, be taken into consition."

The motion was adopted.

Shri Hathi: There is amendment.

Mr. Chairman: There are no amendments to the Bill. So, I will put all the clauses together. The question is:

"That clauses 2, 3, 4, 5 and 6 stand part of the Bill."

The motion was adopted.

Clauses 2, 3, 4, 5 and 6 were added to the Bill.

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

Shri Hathi: I beg to move:

"That the Bill be passed."

Mr. Chairman: The question is:

"That the Bill be passed."

The motion was adopted.

Mr. Chairman: I have to make an important announcement. The hon. Speaker is pleased to state that he will give his ruling tomorrow, not now.

15.45 hrs.

JAYANTI SHIPPING COMPANY (TAKING OVER OF MANAGEMENT) BILL

The Minister of State in the Ministry of Transport and Aviation (Shri C. M. Poonacha): I beg to move:†

"That the Bill to provide for the taking over of the management of the undertaking of the Jayanti Shipping Company Limited for a limited period in order to secure the proper management of the same, be taken into consideration."

While moving the Bill for the consideration of the hon. House, I would seek your permission to make the following observations. Hon'ble Members are already aware of the circumstances which led Government to take over the management of the Jayanti Shipping Company on the 10th June, 1966, under an Ordinance promulgated the same day. These circumstances are explained in detail in the statement which I placed on the Table of this House on the opening day of this session and it is hardly necessary for me to go into those details once again. I, therefore, propose to refer to only some salient features of the present Bill which seeks to replace the Ordinance issued on 10th June, 1966.

Clause 3 of the Bill empowers the Government to appoint a Board of Control to take over the management of the company for a limited period of 5 years which may, if necssary, be extended to a maximum of 10 years in all. Such a Board of Control was appointed on the 10th June itself by means of a notified order issued that day. The maximum number of members permissible is 11 including the Chairman but we have so far appointed on'y six. The remaining five vacancies will be filled as and when necessary.

†Moved with the recommendation of the President.

Clause 4 provides for the automatic vacation of their offices by all Directors, Managers and other managerial personnel of the company and termination of their contracts on the appointment of the Board of Control who alone shall exercise all the powers of the Board of Directors and in whom the custody of all properties of the company shall vest.

Clause 5 authorises the Board of Control to appoint a managing agent with the previous approval of the Central Government. In pursuance of a similar provision in the Ordinance, the Shipping Corporation of India were appointed managaing agents of the Company with effect from the 10th June, 1966. It is true that Government have been discouraging managing agency in the private sector but in this case the appointment of the Shipping Corporation of India to manage the business and fleet of the Jayanti Shipping Co., was considered to be the best possible arrangement in the given circumstances. The large fleet of the Jayanti Shipping Company had to be maintained and employed properly and efficiently and the only way for ensuring this was to entrust the management to an organision like the Shipping Corporation of India which had its own technical, commercial and financial personnel with the requisite experience and background and which is itself under Government control. A new organisation could not possibly be created overnight and in any case this would have caused a great deal of avoidable extra financial expenditure. In other words, the Shipping Corporation was used by Government as its technical arm to manage the Jayanti Shipping Co. whose management Government had taken over under the Ordinance. The use of the phrase "Managing Agents" was resorted to since it is well understood in business, commercial and shipping circles throughout the world. I might also say that with the S.C.I. taking over the management of the Jayanti Shipping Co. a great deal of confidence has been created among the creditors throughout the world who have now generally indicted their desire to secure a settlement of their claims through mutual negotiations rather than by court litigation. The appointment of the Shipping Corporation of India for the purpose in view has thus been fully justified already.

Clause 6 relates to cancellation or variation of contracts entered by the company in bad faith, while clause 7 legislates for no right to compensation for termination of office or contract. Clause 8 takes away the rights of the shareholders of the company to appoint Directors or pass any resolution or to wind up the company or appoint any Liquidator or Receiver. Clause 9 gives powers to Central Government to cancel the notified order regarding the appointment of Board of Control whenever it is deemed appropriate.

Chapter III consisting of clauses 10 to 21 contains various provisions which are necessary for the proper functioning of the new Management. Clause 17 provides that all payments of remuneration and expenses would be out of the funds of the Jayanti Shipping Co. Ltd. This is as it should be, because after all Government will be managing the company on behalf of the company. Clause 19 provides for the making of rules by the Central Government to carry out the purposes of the Act. The first set of rules were framed recently and notified on the 19th July, 1966, and have been given effect to from the 10th June, 1966, the date on which the management of the company was taken over by the Government. As required by clause 19(2) copies of this Notification have been laid on the Table of both the Houses of Parliament. Clause 20 gives powers to remove any difficulty and clause 21 repeals the Ordinance but keeps alive and valid all action taken under the Ordinance till the date of its repeal and replacement by this Bill.

The first task of the Managing Agents, namely, the Shipping Cor-

[Shri Poonacha]

poration of India was to keep the 21 vessels of the Jayanti Fleet moving and employed. On a preliminary assessment of the affairs of the Company, the Managing Agents found that there were no liquid moneys available with the Company either in India or abroad to pay the day-to-day running expenses of the vessels. The suppliers of goods and services to the vessels had not been paid and they were refusing to continue to supply the same in future unless payments were made to them. The wages of officers and other crew on the vessels had also run into substantial arrears. The Agents of the Company at various ports all over the world had been made to spend their own moneys for the Company by the old management and they were refusing to handle the vessels unless they were put in funds. At some ports, the port dues and other statutory payments were also outstanding. The ship-repair yards abroad, specially in Japan, had also not been paid for the repairs done by them, and were reluctant to take up further repair jobs for the Company. The Managing Agents further found that the previous management had not effected the requisite repairs and special survey of the vessels, primarily because of financial difficulties. The general condition of the fleet was, therefore, run down. Immediately on assuming charge, the Managing Agents contacted all the Masters of the vessels by cable and issued to them necessary directives for operating the vessels. All the Masters have complied with the Managing Agents' instructions and thus the operation of the fleet has been brought under control. The Managing Agents also contacted the major suppliers of goods to the vessels, such as bunker oil and lubricants, and suggested that they may cooperate with the new management by continuing to supply stores and materials on credit basis, the Managing Agents undertaking to pay for the supplies made after the 10th June, 1966 at suitable rates to be negotiated soon. All major suppliers readily agreed to comply. The Managing Agents' are now taking steps to carry out the urgently immediate repairs to the vessels, and arrangements would be made to catch up with pending special surveys in order to ensure uninterrupted and satisfactory performance by all the vessels. An assessment made by the Managing Agents, on the basis of material available, shows that as on the 10th June, 1966, the total liabilities of the Company including the paid up share capital and all loans and current liabilities, was about Rs. 47.38 crores. As against this, the total assets of the Company were only of the order of Rs. 43 crores which means a deficit of about Rs. 4.38 crores. Thus, not only has the entire paid up capital of Rs. 2.88 crores been wiped off but also there is an uncovered liability of Rs. 1.50 crores.

In order to keep the vessels of the Company moving, the Managing Agents are, as directed by the Board of Control, utilising their own funds for essential payments. All the money advanced by the Managing Agents is being treated as loan and will be recouped from the Jayanti Shipping Company. In this connection I may add that two of the ships of the Company, namely 'Adi Jayanti' and 'Chanakya Jayanti' were recently arrested in European Ports for non-payment of dues. Due to the timely intervention of the Managing Agents and Government, the ships were got released on guarantees and assurances given by our diplomatic representatives in U.K. These episodes clearly bring out the necessity of clearing the current liabilities of Jayanti Shipping Company as expeditiously as possible. Since the Managing Agents are obviously not in a position to meet all these liabilities from their own funds, it will be necessary for Government to devise some ways and means to make funds available to the Managing Agents for discharging the current and immediate liabilities of the Company. Government are already examining this question on the basis of certain proposals submitted by Managing Agents and it is hoped that a decision will be taken shortly.

As a result of the probe and investigations so far carried out by the Managing Agents, a number of irregularities in the past transactions of the erstwhile Chairman of the Jayanti Shipping Company have come to notice. It is, however, not necessary for me to give the details here again because these have already been explained fully in the statement which has been placed on the table of the House on the 25th July, 1966.

Sir, with these observations, I move.

Shri D. C. Sharma (Gurdaspur): The speech of the hon. Minister is very revealing and it should be circulated to all the members. It is a very valuable document.

Shri C. M. Poonacha: The statement has been circulated. It was laid on the Table.

Shri D. C. Sharma: I am referring to his speech, not the statement.

Mr. Deputy-Speaker: Motion moved.

Shri Hari Vishnu Kamath (Hoshangabad): On a point of order, Sir. I am reluctant to delay the passage of this important Bill, which is virtually an epitaph on the lack of judgment of this Government which lent as much as Rs. 20.5 crores of public money to this company.

Mr. Deputy-Speaker: Let me put it to the House first.

Shri Hari Vishnu Kamath: I thought you had already put it to the House.

Mr. Deputy-Speaker: I will place the motion before the House first. Afterwards, you can raise it.

Motion moved:

"That the Bill to provide for the taking over of the management of the undertaking of the Jayanti Shipping Company Limited for a limited period in order to secure the proper management of the same, be taken into consideration."

There is an amendment by Shri Vishwa Nath Pandey:

Shri Vishwa Nath Pandey: I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st October, 1966."

Shri Hari Vishnu Kamath: The amendment can be taken up only after the point of order about the motion itself is heard.

Mr. Deputy-Speaker: Both have to be taken together. The amendment is only for circulation for public opinion. What is his point of order?

Shri Hari Vishnu Kamath: As I said, this Bill is a virtually an epitaph on the Government's misjudgment. If you care to see the Bill itself, in the last pages, you find that the President's recommendation has been made as required under article 117(3) of the Constitution. It has been given under article 117(3) and not under 117(1) because under sub-clause (1) the Bill has to cover any of the subject mentioned from (a) to (f) of article 110. Apparently, this Bill does not cover.

16 hrs.

But, Sir, there is one item in article 110, item (d), which is: "the appropriation of moneys out of the Consolidated Fund of India". You may consider that later on. But even as it is, clause (3) of article 117 reads as follows:

"A Bill which, if enacted and brought into operation, would involved expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill."

[Shri Hari Vishnu Kamath]

Now, Sir, inasmuch as the President has recommended consideration of this Bill, the recommendation of the President means that the Bill, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India.

Now, take the Bill itself. Take the Statement of Objects and Reasons and the Financial Memorandum. The Financial Memorandum is, to say the least, a curious document. Look how it reads. The last sentence of the Financial Memorandum reads like this:

> "Therefore......" I need not burden the House with what goes before the word "Therefore". It reads:
>
> "Therefore, whatever expenses are initially incurred...." (mark the word 'initially') "....from the consolidated Fund of India to meet the salaries, allowances and other remunerations of the Chairman and other members of the Board of Control or of the managing agent shall be ultimately......"

The word "ultimate", Sir, is a philosophical word, or concept. I do not know what "ultimately" means here. Ultimately none of us will be here in this House. The word "ultimate" is a bad word in law-making, in legislation. I do not know who advised them to use the word "ultimately". It reads:

> "......ultimately recouped from the funds of the Jayanti Shipping Company and as such......"

Look at this. Initially some expenditure will be there. That they admit. The Minister himself has admitted in the Financial Memorandum that initially there will be expenditure. Ultimately there will be no expenditure. It is very funny. It says:

> "......ultimately recouped from the funds of the Jayanti Shipping Company and as such......"

"as such" here means "because it will be ultimately recouped". It reads:

> "......as such no net expenditure is likely to be incurred......"

Again there is the word "likely". "Likely", "initially" and "ultimately", these three words have made a mess of the whole affair, and this Financial Memorandum does not make head or tail, it is complete nonsense—I do not like to use the word "nonsense" but I am constrained to use the word "nonsense". The financial Memorandum should be an accurate document, if they have any sense of finance, of public money, if they wish to save Rs. 20 crores. Initially they admit that expenses will be incurred. Then they say ultimately nothing will happen. We are all happy that ultimately no expenses will be incurred from the Consolidated Fund of India, the Consolidated Fund will be safe and secure wherever it may be. It is said:

> "......and as such no net expenditure is likely to be incurred from the Consolidated Fund of India."

I do hope, Sir, knowing you so well as I do, that you will hold that this is a very important, relevant point. The *ex*-Chief Justice of Bombay is here, and I am sure he will support me in this. The point is whether it is legal parlance at all—the three words "initially", "ultimately" and "likely" occurring in one sentence of the Financial Memorandum. Therefore, I appeal to you—this is my first point, and next I will come to my second point—that you should hold this financial document as not worth the paper on which it is written. They must prepare a Financial Memorandum more accurate, more precise, more to the point, and come to the House with such a Financial Memorandum. With this Financial Memorandum the House cannot proceed with the consideration of the Bill.

Secondly, take the Rules of Procedure. Take Rule 69. I do not know who the advisers of this Ministry are. Shri Sanjiva Reddy is busy in Andhra, but Shri Poonacha is not particularly busy anywhere. I do wish the Ministry has some better advisers as far as the Constitution and Rules of Procedure are concerned. I do not want them to make as big a mess of the Bill as Dr. Jayanti Teja made of the shipping company itself. Rule 69 says:

"(1) A Bill involving expenditure shall be accompanied by a financial memorandum......"

This is not worth being called a Financial Memorandum at all. The Rule says:

"......shall be accompanied by a financial memorandum which shall invite particular attention to the clauses involving expenditure and shall also give an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law."

The very fact that the President has recommended its consideration goes to prove, beyond any shadow of doubt, that it is a Bill which, if enacted and passed into law, will involve expenditure from the Consolidated Fund of India. Otherwise the President would not have come into the picture at all—he would have remained peacefully in Rashtrapathi Bhawan, he would have remained in the background and he would not have come into the picture of the Bill. The very fact that he has recommended it shows that if passed it will involve expenditure from the Consolidated Fund of India. Now, if you hold—I hope you will rightly do so—that the Financial Memorandum is a worthless piece of document, they must come forward before the House with another Financial Memorandum more precise. If you do not hold like that, in your wisdom—I do not know if you will do that, I have trust in your wisdom—under Rule 69, because the President has recommended consideration of this Bill, there must be certain clauses of the Bill which shows that expenditure is involved. If you go through the whole Bill, there is not a single clause in the Bill to which attention is invited as required by clause (2) of Rule 69 which lays down:

"Clauses or provisions in Bills involving expenditure from public funds shall be......"

Again, Sir, it is mandatory; we have no discretion here. I hope you will exercise your discretion in the public interest, and not in favour of the Minister. I hope you will exercise it in public interest, in national interest, in Parliament's interest. I am sure you will do that. The clause says:

"......from public funds shall be printed in thick type or in italics:"

Now, Sir, I have, with my not very good eye sight, tried to survey the clauses of the Bill. Neither is there any italics nor is there any thick type. All is in a uniform dull and drab type, throughout the Bill. If you had the occasion to go through the Bill, if you had the time and the patience to go through this Bill, I am sure you will agree with me. I am also sure that my hon. colleagues on both sides of the House will agree with me that, first, the Financial Memorandum is a useless, worthless, memorandum, and they should come before the House with a better Memorandum. Secondly, if you hold this as a passable document, if it is not as bad as I make it out to be—well, I hope you will not hold it so—then there is nothing in the Bill to show which clauses there are, according to Rule 69(2), that show that expenditure is involved. On both counts, therefore, I do submit that the consideration of the Bill cannot be taken up at this stage, unless and until these defects are rectified and the Bill is brought forward before the House again.

Shrimati Renu Chakravartty (Barrackpore): There is one point which I want to make. I am sure Shri Kamath will agree that there is a proviso to the rule read by him which says:

"Provided that where a clause in a Bill involving expenditure is not

[Shrimati Renu Chakravartty]

printed in thick type or in italics, the Speaker may permit the member in charge of the Bill to bring such clauses to the notice of the House."

Can the Minister in charge point out those clauses which specifically give the recurring and non-recurring expenditure involved?

Mr. Deputy-Speaker: Has the Minister anything to say on the point of order?

Shri C. M. Poonacha: I have carefully listened to the points mentioned by my hon. friend, Shri Kamath. The clause to which specific attention has to be drawn, is mentioned in the Financial Memorandum itself, namely, clause 17. Now, clause 17 of the Bill relates to the payment of salaries, allowances and other remuneration. All the sums expended, spent on this affair, in this particular set-up, would be met out of the Jayanti funds. Now I would like to read from the Financial Memorandum because Shri Kamath, in highlighting his own point has referred to a portion without reading the entire paragraph.

Shri U. M. Trivedi (Mandsaur): Are you giving the ruling?

Shri C. M. Poonacha: I am not arrogating to myself the position to give a ruling in this matter. I am explaining the point.

The Financial Memorandum says:

"Clause 17 of the Bill, however, provides that all salaries, allowances and other remunerations paid to the Chairman and other members of the Board of Control, the managing agent or any other person who may be appointed or employed in connection with the affairs of the management of the company and all other expenses duly incurred in connection with such management shall be paid out of the funds of the company."

This is very clear. Then, there is a contingency and for that contingency a provision is made. What is that contingency? The Memorandum says:

"Therefore, whatever expenses are initially incurred from the Consolidated Fund of India to meet the salaries, allowances and other remunerations of the Chairman and other members of the Board of Control or of the managing agent shall be ultimately recouped from the funds of the Jayanti Shipping Company and as such no net expenditure is likely to be incurred from the Consolidated Fund of India."

Therefore, the recurring or non-recurring expenditure of the type as envisaged by my hon. friend, quoting rule 65 does not in precise terms apply to the contingency that is envisaged under this Financial Memorandum.

Dr. M. S. Aney: Where do you get the money initially?

Shri C. M. Poonacha: Then my hon. friend referred to article 110(1) (d) of the Constitution. Article 110(1) (d) refers to appropriation of moneys out of the Consolidated Fund of India. The Company was taken over on the 10th June. We have not appropriated a paisa so far to the Company from the Consolidated Fund of India. There has not been any occasion for that. It is being managed by advances made by the Shipping Corporation of India from time to time. If such a contingency arises at a later stage, an indication has been made here to cover such a possible contingency as would arise, the recommendation from the President has been obtained under article 117(3). That is all that I have to submit.

Shrimati Renu Chakravartty: One point must be clarified. The contingency before them is because of the bad state of affairs that prevails in the Jayanti Shipping Company and the liabilities of the company. Therefore.

that have put in a clause saying that there may be need to draw from the Consolidated Fund of India. Obviously, they must put in the Financial Memorandum that more or less approximately this is what is needed. At least the amount has to be specified. Without making a specific mention of the amount how can they say that an amount is likely to be incurred but ultimately it may not be necessary?

Shri Daji (Indore): I think the hon. Minister is trying to make a distinction between "expenditure" and "net expenditure". The Bill itself says that the expenditure shall be initially met from the Consolidated Fund of India but there will be no net expenditure. I invite your attention to the Financial Memorandum which says:

> "....shall be ultimately recouped from the funds of the Jayanti Shipping Company and as such no net expenditure is likely to be incurred from the Consolidated Fund of India."

But rule 69 does not make any distinction between "expenditure" and "net expenditure". It simply says "A Bill involving expenditure". The Financial Memorandum admits that expenditure shall be incurred but says no net expenditure shall be incurred, because it will be reimbursed. This distinction between "expenditure" and "net expenditure" is not borne out by a simple reading of rule 69.

Mr. Deputy-Speaker: Objection would have been well taken if the Government proposed to spend any amount from the Consolidated Fund of India. But the Memorandum says that all the salaries, allowances and other remunerations paid to the officers shall be met out of the funds of the Company.

Shri Hari Vishnu Kamath: Kindly read the Financial Memorandum.

Mr. Deputy-Speaker: I am reading it. It says:

> "Clause 17 of the Bill, however, provides that all salaries, allowances and other remunerations paid to the Chairman and other members of the Board of Control, the managing agent or any other person who may be appointed or employed in connection with the affairs of the management of the company and all other expenses duly incurred in connection with such management shall be paid out of the funds of the company."

So, it is not from the Consolidated Fund of India. It adds:

> "Therefore, whatever expenses are initially incurred from the Consolidated Fund of India to meet the salaries, allowances and other remunerations of the Chairman and other members of the Board of Control or of the managing agent shall be ultimately recouped from the funds of the Jayanti Shipping Company. . ."

Shri Hari Vishnu Kamath: But initially it will be met from the Consolidated Fund. Only ultimately it is recouped. Under the rules, the initial expenditure must be shown.

Mr. Deputy-Speaker: Well, whatever initial expenses the Government are going to incur from the Consolidated Fund, which may be recouped from the funds of the Company later that may be circulated to hon. Members by tomorrow.

Shri Daji: The initial expenses must be shown. The point is this. It is already a debtor company. Suppose it fails and goes into bankruptcy; they will not be able to recoup the initial money. So, the House must know what the initial expenditure will be.

Mr. Deputy-Speaker: It is only hypothetical.. (*Interruptions*). If the Government is not able to recoup the money, they will come before the House again.

Shri Daji: If the Government have to spend one single paisa out of the Consolidated Fund, it should be shown to Parliament under the rules. Let the Government make a statement. Then, we will take up consideration of the Bill tomorrow.

Mr. Deputy-Speaker: All right, let the Government make a statement of the expenditure. It may be circulated to the Members tonight. We will take up consideration of this Bill tomorrow.

Shri D. C. Sharma: What is the good of taking over the company when it can pay all the salaries and allowances etc.?

Mr. Deputy-Speaker: I may tell Shri Kamath that it is not possible to give at this stage in bold type the clauses involving expenditure but he will get the statement of expenditure.

Shri Hari Vishnu Kamath: You be bold, Sir.