CORRECTION OF ANSWER TO STARRED QUESTION

The Deputy Minister of External Affairs (Shri Anil K. Chanda): In connection with Question No. 1326 answered on 1st September, 1955, Shrimati Renu Chakravartty asked me a supplementary question whether there would be a fresh election in Pondicherry after the *de jure* transfer, and I replied "Yes Sir. I should think that after the *de jure* transfer takes place, we shall have fresh elections." I should like to correct the impression that my answer might have given to the effect that fresh elections had been decided upon after the *de jure* transfer. This whole question will have to be considered at that stage and no commitment can be made at present. I, therefore, seek your permission to correct that answer and replace it by the following:

> "I should think that after the *de jure* transfer takes place, the whole question will have to be considered in all its bearings."

BUSINESS ADVISORY COMMITTEE

TWENTY-FOURTH REPORT

Pandit Thakur Das Bhargava (Gurgaon): I beg to present the Twenty-fourth Report of the Business Advisory Committee.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

THIRTY-SIXTH REPORT

Shri Raghunath Singh (Banaras Distt.—Central): I beg to present the Thirty-sixth Report of the Committee on Private Members' Bills and Resolutions.

PERSONAL EXPLANATION BY A MEMBER

Shri Kamath (Hoshangabad): By your leave, Sir, I should like to make a brief statement by way of personal explanation with reference to the discussion in this House on Acharya Kripalani's motion on the 30th August, 1955. It would appear from the records that "an expression of regret has been made on Shri Kamaths behalf". This is not a correct description of my stand. Considering that I made it clear, not once but twice, before leaving the House after being named by the Deputy-Speaker on that date, that I had used the words "fantastic nonsense" not against the Chair but against some Members who were calling me to order and trying to shout me down—and the official record bears me out here—there was no occasion or need for me to add anything further.

COMPANIES BILL—*contd.*

Clauses 389 to 423

Mr. Speaker: The House will now proceed with the further clause-by-clause consideration of the Companies Bill. The clauses to be taken up are 389 to 395, 396 to 408 and 409 to 414 for which 1/2 hour, 2 hours and 1 hour have been respectively allocated. This would mean that the first group will be disposed of by about 12-30 P.M., the second at 2-30 P.M. and the third at about 3-30 P.M. Thereafter the House will take up the next groups.

Shri C. C. Shah (Gohilwad-Sorath): I suggest that the next group of clauses 415 to 423 may also be taken up for which 1/2 hour has been allocated and all the four groups may be taken together. Voting may be done at the end of the discussion on these four groups of clauses. For all these four groups 4 hours have been allocated. Then the next group of winding-up clauses begins. These 4 groups will finish Part VI as well, and then the winding-up chapters begin.

Mr. Speaker: Is it his present request that the fourth and the fifth group of clauses also be taken up now?

Shri C. C. Shah: I only suggest that clauses 389 to 423 be taken up together.

Mr. Speaker: That is what I have mentioned. I have said that these groups are being taken up. He wants that they should be taken up collectively.

Shri N. C. Chatterjee (Hooghly): It is better that we do so because prior to winding-up we can finish all of them. They are more or less connected together.

Mr. Speaker: So, I take it that, that is the consensus of opinion in the House that all these four groups of clauses from 389 to 423 be taken together. Voting will take place at the end of the discussion.

So, now, clauses 389 to 423 are being taken up. The total time allocated comes to 4 hours. Hon. Members who wish to move their amendments to these clauses will kindly hand over the numbers of their amendments, specifying the clauses to which they relate, to the Secretary at the Table within 15 minutes.

We will now proceed with the discussion on these clauses.

The Minister of Revenue and Civil Expenditure (Shri M. C. Shah): Sir, on behalf of Government I have to move some amendments. I will just move those amendments and I will try to explain them.

Mr. Speaker: Are they circulated to Members?

Shri M. C. Shah: Yes, Sir.

Mr. Speaker: Then he may just mention their numbers only.

Shri M. C. Shah: First I will take the group of clauses 389 to 395. The amendments are: No. 682 to clause 391, No 1030 to clause 391, and No. 1031 to new clause 391A. Then to clauses 396 to 408 the amendments are: No. 683 to clause 400, and No. 1133—which has been circulated today morning—to clause 407. In the group of clauses 409 to 414 the amendments are: No. 1134 to 409, No. 686, and No. 1135 to clause 410 and No. 1136 to clause 411. We have no amendments to the group of clauses from 415 to 423.

[SHRI BARMAN *in the Chair*]

Mr. Chairman: Are you moving amendment No. 1133?

Shri M. C. Shah: Yes, Sir.

Mr. Chairman: I am told that there is some mistake in this amendment and that for the word "more" it will be "less". Do you confirm it?

Shri M. C. Shah: Yes, but we will come to that when we take up the clause.

Mr. Chairman: But we must make it clear now. What is the correction in amendment No. 1133?

Shri M. C. Shah: There is some verbal change which we will indicate.

Mr. Chairman: What is that? Is it 'less' or is it 'more'?

Shri C. C. Shah: Then it ought to be "hundred" instead of "two hundred".

Shri M. C. Shah: When we come to clause 407 we will see to it. If there is any verbal change, we shall look to it then.

Shri Jhunjhunwala (Bhagalpur Central): Is it "less than one hundred members" or "more than two hundred members"?

Shri M. C. Shah: It is an amendment to clause 407. The next amendment to the same clause is this.....

Mr. Chairman: Again, there is confusion. What about that word? Is it 'less' or is it 'more'?

Shri M. C. Shah: We will think over that.

Mr. Chairman: Let that point be made clear now. There is much confusion about it. Is it 'more' or is it 'less'? Let it be confirmed in the beginning itself. Otherwise, there is no use going on to the other amendments.

Shri M. C. Shah: I am sorry; I see that it has now been corrected. It is 'not less than two hundred members of the company or'. Not 'more'.

Shri Jhunjhunwala: It ought to be 'not less than one hundred'.

Shri M. C. Shah: That is some other hon. Member's amendment. The Government amendment is, 'not less than two hundred'.

Mr. Chairman: Let me then announce it. It is a vital mistake. In amendment No. 1133 to clause 407, tabled by Government, item No. (ii) (b) should read as follows:

> (b) line 29, *after* 'on the application' *insert* 'of not less than two hundred members of the company or';

Shri M. C. Shah: The next amendment of Government is No. 682 to clause 391. It is only an inadvertent error which has to be corrected. Then amendment No. 1030 to clause 391 which reads thus:

> Page 196, *after* line 20 *add*:
>
> "The provisions of sub-sections (3) to (6) shall apply, in relation to the appellate order and the appeal, as they apply in relation to the original order and the application".

This amendment supplies a lacuna. The sub-sections (3) to (6) are applicable to an order passed on appeal as they apply to an order passed in the first instance. This lacuna was pointed out by the Law Ministry a couple of days ago. Therefore we have moved that amendment.

Then comes amendment No. 1031 to new clause 391A. It gives power to the High Court to enforce schemes of arrangements, etc. The amendment reads as follows:

> "391A. *Power of High Court to enforce schemes of arrangements, etc.*—(1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company it—
>
> (a) shall have power to supervise the carrying out of the compromise or arrangement; and
>
> (b) may, at the time of making such order or at any time, thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.
>
> (2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 431 of this Act.
>
> (3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (VII of 1913) sanctioning a compromise or an arrangement."

This is a new clause 391A. It practically reproduces section 45A of the Banking Companies Act. It provides an easy mode of altering and enforcing any arrangement or compromise effected by the court in pursuance of clause 391. Sub-clause (3) of the new clause makes provision for the application of the new provisions to arrangements and compromises sanctioned under section 153 of the existing Act and it reproduces section 45A. This amendment has been suggested by the Ministry of Law. Incidentally I may mention that it gives effect to a recommendation made by Shri S. R. Das, Chief Justice

of the Punjab High Court in 1950, mentioned in *All-India Reporter*, East Punjab, page 111. I have got the extracts here but they are a long and I would not like to take the time of the House by reading them.

Now, amendment No. 683 is to clause 400. It seeks to substitute clause 400 as follows:

> "400. *Right of Central Government to apply under sections 396 and 397.*—The Central Government may itself apply to the Court for an order under section 396 or 397, or cause an application to be made to the Court for such an order by any person authorised by it in this behalf."

Section 153C (2) of the existing Act provides for an application under that section being made by the Central Government itself. It will be useful, therefore, to preserve this power in addition to giving the Central Government the power to authorise a member or members of a company to make application under clause 391A. Now, the power to cause an application to be made to the court under clause 242, which is in conformity with the existing Act, has been generalised so as to make it apply to all cases, whether falling under clause 242 or not.

We are not moving amendment Nos. 684 and 685 to clause 407, but, as was promised by the Finance Minister to Shri Morarka when the matter was raised, regarding a provision under clause 407 where the Central Government will have power to appoint two directors whenever they receive an application from not less than 200 shareholders or from members having not less than one-tenth of the total voting power,—at that discussion,—it was suggested that an alternative provision may be made that instead of just appointing two directors, the Central Government may suggest that the provision may be made for proportional representation in the articles of the company. Therefore, in order to give effect to this, we have moved amendment No. 1133 to clause 407.

There is one more amendment. It is amendment No. 1134 to clause 409.

The amendment reads thus:

> In page 206, lines 14 and 15,
>
> *for* "on any matter arising out of the provisions of this Act referred to in clause (a) of section 410".
>
> *substitute* "on the matter referred to in clause (a) of section 410 and the applications referred to in clause (b) of that section."

Amendment No. 1135 seeks to re-letter sub-clauses (a) and (b) in page 206 as (b) and (c) and to insert a new sub-clause (a) reading as follows:

> "(a) before a notification is issued under section 323 in respect of any description of industry or business, on the necessity for, and advisability of, issuing the notification;"

By this amendment we have accepted the suggestion made by my friend Shri T. S. A. Chettiar.

Amendment No. 1136 to clause 411 says:

> In page 206, line 33, *for* "clause (a)" *substitute* "clause (b)".

The above amendments give effect to the principle involving Mr. Chettiar's amendment No. 111 to clause 323 which says that the Advisory Commission should be consulted before Government prohibit the appointment of managing agents in any business or industry under clause 323. The main amendment is to clause 410 and the other amendments to clauses 409 and 411 are consequential ones.

Shri N. C. Chatterjee: I have an amendment which is a vital one—one that does not merely tinker with some of the clauses in the Bill. Please look at amendment No. 1116 to clause 409. Clause 409 provides for the appointment of an Advisory Commission; clause 410 deals with the duties of Advisory Commission; clause 411 deals with forms and procedure in cases referred to Advisory Com-

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mission; clause 412 deals with the powers of Advisory Commission; clause 413 deals with penalties and clause 414 deals with immunity for action taken *bona fide*.

I am submitting for the consideration of this Parliament that they should not accept these recommendations of the Select Committee but they should accept the main and basic recommendation of the Bhabha Committee. That Committee have unanimously recommended that there should be a statutory central authority. You may remember that the Bhabha Committee have pointed out that the corner-stone of their recommendation making drastic changes in the company law is based on one thing, namely, that there is a justification for a central organisation. If you look at the last paragraph at page 190 of the Bhabha Committee Report, you will find:

> "....even the most well-conceived and well-designed of laws is liable to become ineffective and to fall into disrepute, if there is no regular machinery for making any use of it."

It is also pointed out that:

> ".....the defects of the present administration of Indian Companies Act arise largely from this fact. The provisions of the Indian Companies Act relating to prospectuses illustrates the point."

We have sections 92 and 93 in the existing Act. Section 92 of the existing Act says:

> "Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus."

Section 93 mentions the specific requirements as to particulars of prospectus. Elaborate regulations have been prescribed there giving all possible safeguards against fraud, misrepresentation and also deception of the public. But the Bhabha Committee points out that although we have got elaborate provisions, they are all dead letters and they are not practised in operation. If you turn to page 191 of that book you will find that the Bhabha Committee says:

> "There is no obligation on the Registrar or any other authority, including the Capital Issue Controller, to scrutinise it with the result that the specific requirements of section 93 are often more honoured in the breach than in their observance. It is true that it is open to the directors and the shareholders to go through a prospectus and if they find that it does not comply with the provisions of section 93 to invoke the aid of the law and to bring the promoters to book."

But the point is that it is against human nature that the directors who are the promoters will take action against themselves. Because of the state of public opinion in our country and because of the fact that the unfortunate shareholders are not vigilant and alert and they are under a serious handicap and hence they do not take any interest in the affairs of the company, therefore all these provisions have become dead letters. A large number of cogent arguments have been put forward by the eminent members of the Bhabha Committee and they wind up by saying:

> "We fully endorse these observations and consider the absence of a competent and independent financial press is an important additional reason for the establishment of an appropriate Central Authority to keep under review the developments in company formation and management that take place from time to time."

The question is, what is to be done? It is absolutely clear that a central organisation ably equipped and composed of very eminent persons who can command confidence should be

set up. That is the question that this House has got to answer. In England they have got a Board of Trade. You are conferring very wide powers of investigation, inspection and all that. In England all that is done under the orders of the Board of Trade. The Board of Trade considers the matter; it is absolutely independent and free from political influence and political control and there is no charge of corruption, favouritism, jobbery or nepotism. If you simply make it over to the Minister and the bureaucracy, can you ever say that it will be immune from all these influences and malpractices? The Board of Trade functions in England as a Central Authority and they point out that it is a very desirable thing. Look at America. In the United States of America, they have got that Security and Exchange Commission. They are constituted under the Securities Exchange Act and they really do many things in connection with the administration of company law.

Shri M. C. Shah: Do you mean to suggest that it is a statutory authority?

Shri N. C. Chatterjee: I take it that the hon. Minister has read the Bhabha Committee's Report. The Bhabha Committee put before themselves two points of view. One is covered by having a central department dealing with joint-stock companies or by having a central statutory authority.

Shri M. C. Shah: I am not referring to that. You were referring to the Board of Trade in England. I wanted to know whether you suggest that that Board of Trade is a statutory authority independent of the Government.

Shri N. C. Chatterjee: I am only suggesting that the Bhabha Committee's main recommendation should be implemented. In para 257 at page 193, the Bhabha Committee have said:

> "We have considered both these types of organisation and we are definitely of the opinion that a statutory authority will create more confidence and possess more elasticity and initiative."

The first thing is this. We are taking so many powers. Look at the gamut of powers; they are so extensive and so wide. Naturally you cannot formulate all the definitions and take care to enact the restrictions and conditions. You have got to leave its administration to somebody. There are so many companies and so many managing agents; and there are so many restrictions you are putting in. Naturally there will be many applications for sanction and approval. Step by step, if you look at them, you will find that you have put in any number of restrictions. Rightly or wrongly, we have incorporated them. The question is, how is it going to be really operated. Who is going to operate this Act? Who is going to decide these things? Is it possible for any Minister to do it? Or for any Deputy Minister or Minister of State, however capable he is? Therefore, you will have to give it to somebody. Who is that somebody who has got to do it?

An Hon. Member: Shah.

Shri N. C. Chatterjee: No Shah can do it—either M. C. or C. C.

Shri M. C. Shah: M. C.

Shri N. C. Chatterjee: The only thing is, the major issues of economic policy relating to the private sector in India's economy must be decided by the Government.

Shri M. C. Shah: C. C. cannot do it; M. C. can do it.

Shri N. C. Chatterjee: We accept that position. The Bhabha Committee says:

> "But, once these issues of economic policy have been settled,..... the application of the accepted principles to individual companies, whether in respect of their formation or working should, in our view, be the responsibility of a quasi-independent authority which

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> will examine the technical problems involved, in as detached a manner as possible and be guided solely in this regard by the general directions given to it in an Act or in a recorded executive decision of Government as a whole."

I submit that that is the correct approach. That is the only thing which will make this Act an operative instrument, which will bring about the desired reform. It is no use simply squashing the managing agency, saying that some of them have misbehaved, or are guilty of malpractices. You must put your own house in order. You must provide a machinery whereby this Act can be put into operation. In the Bhabha Committee, we had a gentleman who was very critical of the managing agency, the directors and the malpractices, whose experience and knowledge was almost unique. That Committee says:

> "It is only in this way it can maintain its independent character, avoid suspicion of bias or partisanship in the discharge of its functions."

Otherwise, you can have any amendment of the company law, you can put in any number of restrictions, you can put in any number of qualifications, you can tighten the loopholes as much as possible; it will be all futile unless and until this cardinal principle is accepted. I doubt whether the Bhabha Committee would have recommended these drastic amendments, restrictions and qualifications, penalties and the one hundred and one things. All of them have been put in. They would have never recommended them unless Parliament would accept, or those responsible for the reformation of the company administration accept, this cardinal, basic, pivotal recommendation. What is the pivotal recommendation? The basic, cardinal recommendation is an independent statutory Commission, consisting of people of some standing and integrity, who can inspire confidence, to whom these applications can be made. We have declared today that the managing agency cannot be heritable. No testamentary instrument can be made. At the same time, naturally, a managing agent will not be immortal. If he dies, it has to go to somebody. The son may be good. The next heir may be good or may be bad. Who is to decide it? You have to give it to some independent authority who can bring his detached mind, his unbiassed mind to bear on the matter. Therefore, it is a judicial approach which is necessary. He can go into all these facts. Therefore, this Committee has recommended: let us have a Commission, an independent statutory Commission and give them responsible functions.

What are the functions? The Commission should carry on such functions as may be entrusted to it under the future Companies Act. That is the recommendation. They are pointing out the main functions of this Commission:

> "(a) the powers of inspection and investigation which we have recommended on the lines of sections 164 to 175 of the English Companies Act."

We have got them; we have incorporated them. We have gone farther than the English Act. I am glad that Parliament has done it. But, who is going to enforce it? Would you leave it to a Minister, to an Under Secretary or any other departmental head or some kind of Advisory Committee, which nobody knows how it will be constituted, who will advise and how long he will advise?

Shri M. C. Shah: Unfortunately, you were not here when the whole thing was explained in reply to the general discussion.

Shri N. C. Chatterjee: I am not satisfied with that explanation. I am asking this Parliament. This kind of thing will lead to making this Act a money-making machine for some people. This will lead to jobbery; this will lead to favouritism; this will lead to blackmailing; this will lead to undesirable practices, much more un-

desirable than what prevails in the private sector. Suppose there are two rivals in a particular field. When a managing director's remuneration is increased, you have got to apply. Suppose there is a board of directors and it is being enlarged; you have got to have approval. Even if you pay an additional allowance of Rs. 100 you have to come to the Government. You have enlarged the scope of executive discretion in this respect. It is absolutely clear that that cannot be left to one man; that cannot be left to the tender mercy of bureaucracy. Therefore, the Bhabha Committee says that this inspection and investigation must be the main function of the Commission. I think there is an amendment tabled by somebody which says, don't exercise this power of investigation unless and until a commission goes into the matter. In England, only the Board of Trade has got this power. Under the relevant section of the English Act, only the Board of Trade can appoint one or more competent Inspectors to investigate the affairs, and they go into the matter and then they decide. There is the control of the Board of Trade over liquidation in England. The Board of Trade has supervision over the winding up proceedings. This is a very extensive, extraordinary, uncanalised power. You can ruin a company by ordering investigation. Its commercial credit is gone. You can finish a big commercial house if you appoint an investigator to investigate into the affair's of that company. Can you give it to somebody? I submit that that should be the main function of the Commission. Do not arrogate this power. Do not give it to a Minister or his understudy or any departmental head.

Then:

"(b) the powers and duties arising from the accounts provisions of the Indian Companies Act, including in particular such matters as the appointment of auditors,.....etc.

(c) the supervision of winding up proceedings, ..."

This should be given, according to the Bhabha Committee, to this Commission:

"(d) the study of balance sheets and profit and loss accounts of companies with a view to determining to what extent they conform to the requirements of the Indian Companies Act in this behalf;".

They have themselves recorded a finding that most of these salutary provisions have not at all been effective because there was no real machinery. If you have got a real machinery, that would do it. Put up a real machinery and ask them to study the balance sheets and find out whether this Act will be implemented or not.

Then—and this is very important:

"(2) The Commission should also keep the investment markets in the private sector of the economy under continuous obser vation...."

If you will kindly look at my amendments, 1116, 1118, 1122 and 1123, I start by saying in amendment No. 1116:

"For the purposes of this Act, the Central Government shall establish a Central Authority called 'The Corporate Investment and Administration Commission' which shall consist of not less than five whole-time members appointed by the Central Government and one of them shall be nominated by the Central Government to be the Chairman thereof."

This name I have taken from the Bhabha Committee's recommendation itself. The Bhabha Committee says that such an authority should be set up. I am simply giving the power to the Government to appoint it. Make it a term appointment. They should have these functions. Then, please look at amendment No. 1118:

"Conditions of service of members of the Commission etc."

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I have said that they must have adequate staff, that each Member shall be for a period of five years and that he shall be eligible for re-appointment for a second period of 5 years. Give them security of tenure; give them a position equivalent to that of a High Court Judge or Supreme Court Judge so that they will not be amenable to executive influence or political control or some kind of undesirable influence.

Then, look at amendment No. 1122. It is about appointment of officers and other employees and sittings of the commission. There should be no objection to that. They have got to get a proper staff. Then, 1123. I draw your attention to that, and I draw the attention of the hon. Members. It reads:

> "(1) The Central Government shall refer to the commission for enquiry and report all matters for which the approval, consent or sanction of the Central Government is required to be taken under this Act."

That is the basic, cardinal recommendation of the Bhabha Committee. They say: we are going to confer, we are going to recommend the conferment of such wide powers, uncanalised powers, extraordinary powers on the Government on one condition that you shall have an independent commission, a statutory commission to whom these matters shall be referred. Do not make your consent, the consent of one man or one officer, the consent which the Parliament should sanction.

Then, secondly, I have pointed out:

> "The Central Government may refer to the Commission any other matter arising out of the administration and working of this Act for enquiry and report."

Then, if you kindly look at sub-clause (3) of the amendment, I have taken up practically the main recommendations of the Bhabha Committee:

> "(3) It shall be the duty of the Commission—
>
> (a) to determine in which case the powers of inspection and investigation should be exercised under sections 234 to 250 of the Act."

That is also the English Act. That is their clear recommendation:

> "(b) to supervise the winding up proceedings of companies".

They say sometimes liquidators do not do their duty. You know, Sir, as a lawyer, how liquidation proceedings are not properly conducted, and therefore there should be some independent commission to supervise that:

> "(c) to study the balance sheets and profit and loss accounts of companies with a view to determining to what extent they conform to the requirements of the Indian Companies Act, keep under observation the investment markets in the private sector, undertake a systematic study of prospectuses, of the terms and conditions of new issues of capital, and make reports thereon to the Central Government."

These are very vital matters. It is no use simply setting up a commission but give them these specific functions. Make it a statutory obligation. They should report to the Government, and they should report also to Parliament.

Then, amendment No. 1125—Powers of the Commission. I have conferred upon them very wide powers, and Government is giving almost the same powers, under clause 411 to the advisory commission.

Then look at 1126, that is penalties, and lastly 1127 that is the immunity section. At page 198 of their report, the Bhabha Committee point out that matters relating to the stock exchanges

in England are dealt with in the Board of Trade. Then they say:

> "One important task of the Commission should be in course of time, to build up a cadre of trained technical and administrative staff competent to analyse and study prospectuses, company accounts—and problems of investment, finance. It should also be the duty of the Commission to provide the technical personnel needed for the regional offices and arrange for the post-entry training of all such technical and administrative staff."

I am respectfully submitting that Government owes it to Parliament, owes it to the country to clearly state why they are accepting all the recommendations except this. There are a thousand recommendations. You are accepting all of them. Why don't you accept this basic recommendation? Why don't you accept the cardinal recommendation? They say that all their recommendations are based on this basic recommendation that there shall be an independent commission, a statutory commission, so that there will be immunity from malpractices, immunity from dishonesty in the private sector and also immunity from possible dishonesty in the administration of the Act, from graft, from corruption, from favouritism, from jobbery. Why do you accept all the recommendations but do not accept this basic recommendation? They have been continually pressing that it will be absolutely futile to have a big company law or a big company code and to have all this attempt to plug the loopholes, to make the private sector shorn of all its abuses unless and until you accept this recommendation that there should be a statutory commission. Nobody is going to take away the powers of the Government to determine economic policy. They themselves say that and we admit it. There is no question of trespassing on that power. You have got this kind of wide array of powers. The periphery of powers has been extended, you know, Sir, very widely. You have got even in section 409 today. You may remember what are the powers and how many times we have to go to Government for all these things. Clause 258 is regarding increase in the number of directors. If you increase your directorate from six to seven, you have got to go to Government for sanction. Then 267 and 268. Any amendment of provision relating to managing directors must require Government approval. Appointment of a director after the commencement of the Act will require Government approval. Then 309, 310. Increase in remuneration must require Government's sanction and so on. Therefore, what I am submitting is this, that there must be some cogent explanation. What is the difficulty in accepting this recommendation which is obviously for the purpose of really working the Act in a satisfactory manner, ensuring an independent judgment to be brought upon it consistent with the main formulation of governmental policy—there is no doubt about it—and thereby to secure all the advantages and eliminate all possible chances of abuse and other things?

One thing I ought to point out. Today some amendment is suggested or moved by Shri Shah with regard to clause 407. I think it is No. 1133. Would it be really necessary to maintain the first clause? Cannot the Government take the power in case of any possible oppression or mismanagement, if a minority comes up before the Government? I am supporting the proviso, but what I am saying is that the proviso should be really made the operative part of the section. Under clause 407, Government can appoint two directors whenever it is necessary to make such appointment in order to prevent the affairs of the company being conducted in a manner which is oppressive or which is prejudicial. Obviously that will be done at the instance of the minority, one-tenth of the total voting power. If you are giving this power to Government, whenever a minority comes to them, Government will enquire: "We have given the right, we have provided for

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optional, proportional representation. Have you got proportional representation?" The answer is "No". Then the Government can order for proportional representation, and say: "Amend your articles, and have it within three months", that is, really compel them to adopt proportional representation. When you are taking that power, do you really want the other power, that is appointing directors yourself?

Shri M. C. Shah: As long as those articles are not amended and the directors are not appointed.

Shri N. C. Chatterjee: If you look at amendment No. 1133 I do not think that is the meaning of the amendment.

It simply says:

> "Provided that in lieu of passing an order as aforesaid, the Central Government may, if the company has not availed itself of the option given to it under section 264...",

—that option is the option of proportional representation—

> "...direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Central Government."

That is, if any representation is made by a minority that they are not being fairly treated or they are being oppressed, Government will ask: "Have you got proportional representation?" The answer is "No". Government orders: "We give you three months' time within which you must have proportional representation and then elect your two directors." If that power is given, I would ask the hon. the Finance Minister to consider whether there is any necessity for taking the other power of nominating the directors themselves. It is a very, very...

The Minister of Finance (Shri C. D. Deshmukh): The very simple answer is, there are two conditions there, the safeguarding of the interests of the minorities and the carrying on of the business of the company so as to safeguard the public interest. Now, so far as the representation of minorities is concerned, the system of proportional representation may serve the purpose. But where that is not the main end, but the main end is to secure public interest, it may be that the appointment of government directors may be a more direct way of dealing with the situation than asking them to elect representatives on the basis of proportional representation.

Shri N. C. Chatterjee: That is not the clause. If you look at the clause it is "in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company" (that is the minorities' representation) "or in a manner which is prejudicial to the interests of the company"—not public interest.

Shri Jhunjhunwala: Company means public.

Shri C. D. Deshmukh: What I meant was you might say the shareholders generally, not minority interests.

Shri N. C. Chatterjee: May I take it that even when there is proportional representation, Government may be faced with.....

Shri C. D. Deshmukh: It is conceivable that the affairs of the company may not be well looked after irrespective of majority or minority.

Shri N. C. Chatterjee: That is, even when the minority has got proportional representation, even then there may be cases....

Shri C. D. Deshmukh: That is right.

Shri N. C. Chatterjee: And Government will have to nominate shareholders only as directors?

Shri C. D. Deshmukh: That is right.

Pandit Thakur Das Bhargava (Gurgaon): The present amendment of

Government is that in lieu of exercise of this power of appointing two directors...

Shri N. C. Chatterjee: I thought it was a substitute.

Pandit Thakur Das Bhargava: According to the present amendment of Government, both the powers cannot be exercised together simultaneously.

Shri C. D. Deshmukh: That is right.

Shri N. C. Chatterjee: "In lieu of passing an order...."

Mr. Chairman: "Until new directors are appointed in pursuance of the order....."

Shri C. C. Shah: Even though the option about proportional representation may have been already exercised by the company, when an application is made under clause 407, it does not take away the power of Government to appoint two directors—though Government will not exercise both the powers simultaneously.

Shri M. C. Shah: That is right.

Shri Kamath (Hoshangabad): M. C. after C.C.!

Shri N. C. Chatterjee: The Government amendment reads:

> "In case the Central Government passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, not more than two members of the company specified by the Central Government shall hold office as additional directors of the company".

Mr. Chairman: That is for the interim period.

Shri N. C. Chatterjee: I think it is most undesirable. You have got the power to fix the time-limit, and you fix the time-limit. Is it necessary that during the interregnum of two or three months you should impose two more directors? We are trying to vitalise the shareholders, we want to have a vigilant democracy. It will not therefore be fair or proper to do this.

One thing more. This matter was discussed, and I would ask the Finance Minister to give some assurance to the House and the country as to what would be the real set-up. There must be a proper staff. Whether you call it a statutory Commission, or advisory Commission, or independent Commission, or the truncated Commission which they are thinking of, there must be proper staff. And you must have all the financial institutions interested or relevant in this matter under one administration. Otherwise there will be difficulty. So far as I understand, banking and insurance are now being kept separate out of this Company Law administration. But the other day a point was made by Shri Asoka Mehta that there are great abuses because of possible interlocking, the directors running one company and also guiding the affairs of a banking or an insurance company, which is undesirable. Cannot something be done to ensure that all these things be brought under the same Department, so that that Department functioning as an auxiliary to the Company Law administration, can bring up all these cases and all these malpractices can be properly looked into and weeded out? I think it will not be right to keep banking and insurance separate from Company Law and thereby give a chance for all these kinds of undesirable practices to continue.

Shri Ramachandra Reddi (Nellore): Within the four hours' time allotted for this group of clauses I thought there would be very little time left to others between C.C., M.C. and N.C.

Shri M. S. Gurupadaswamy (Mysore): M.C., N.C. and C.C.

Mr. Chairman: If only Members speak on their own amendments and not repeat what others have already said, I think the time will be quite sufficient.

Shri Ramachandra Reddi: While we were discussing the general clauses the other day I pointed out that clause 409 was not specific and that the Government would have been well advised if they had made provision for the constitution of the Commission in greater detail. The hon. the Finance Minister asked me then and there whether I had any proposal to make. I promised to make the proposal when the clause by clause discussion was taken up. And here I have got my amendment No. 383 for clause 409 suggesting the following constitution:

(i) One retired High Court Judge or Supreme Court Judge with special knowledge of Company Law who will be Chairman of the Commission.

(ii) One selected by the Government from a panel of five names suggested by the Federation of Indian Chambers of Commerce and Industry.

(iii) One industrial economist not in government service.

(iv) One representing shareholders.

(v) One representing labour.

This amendment does not encroach upon the powers of the Government to nominate several people on this Commission. This Commission is going to be given enormous powers, and as such the several sectors of industry would like to have the necessary representation on a Commission like this. As it is, the Commission is completely nominated by the Government, and as to who the members will be is not easily known and as to the sectors from which they will be chosen is not quite clear.

I have taken care to see that all the sectors of industrial development, namely capitalists, economists, shareholders and labour are represented on this Commission. I am not against any statutory Commission as suggested by Shri N. C. Chatterjee, but for the time being I should be satisfied with a Commission nominated by the Government in the way suggested by me.

In the present circumstances delays should be avoided in coming to conclusions by a Commission like that. And it is possible that a statutory Commission may take a longer time to dispose of things than a Commission like the one suggested in my amendment. As a matter of fact, in business time is money, and if the usual delays are caused there will be so much inconvenience in all sectors and also in the development of industry.

In the matter of procedural delays there may not be the same amount of delay in a Commission as suggested by me as there would be in a statutory Commission. The disposal might be more direct and more speedy, and therefore a Commission as described in my amendment might be quite sufficient for the time being.

As a matter of fact, when several changes in the Company Law are made, it is possible that matters have to be shaped very carefully and decisions given very carefully and also speedily. In that view I have given notice of this amendment and I commend it to the Government.

1 P.M.

Shri K. P. Tripathi: (Darrang): I have given two amendments in my name. The first is amendment No. 439 seeking to introduce a new clause 407A. The other is amendment No. 546 seeking to introduce a new clause 408A. My first amendment seeks to provide that Government be given the power to nominate representatives of trade unions as directors. My second amendment seeks to give power to appropriate Government to prevent change in employment conditions of workers when company changes hands. From the point of view of the working classes, I consider that these two amendments are of the utmost importance.

With regard to the participation of workers in management, there has a great deal of discussion in this House before. This participation has been suggested in three ways. The first was the workers becoming shareholders and electing directors out of themselves. The second was the directors being elected. And the third one is what I have placed before this House. I consider my amendment in this regard to be the most modest of these three ideas.

Shri K. K. Basu (Diamond Harbour): Government have no love for modesty.

Shri K. P. Tripathi: I agree. But they may have love for justice.

Shri K. K. Basu: That is an illusion.

Shri K. P. Tripathi: Now, the first suggestion was the election of directors by the shareholders to be constituted of the workers themselves. I could not accept this suggestion, because I felt that in the present conditions of trade union movement in India, where a large number of workers in every unit are not yet members of the unions, it is possible that making the workers shareholders and giving them the right to elect would make them liable to intrigues by the management itself, with the result that the unions would split thereby; and instead of this being a right, it might become a liability. It is not that I am opposed to workers being shareholders, but in the present state of things, I feel that the Indian trade unions are not in a position to withstand this danger. This would be a benefit, but this can also be a danger. So, I could not support that idea.

The same difficulty is there with regard to election of directors as well. If it is possible for the management to interfere directly or indirectly in the election of shareholders composed of the workers, the same thing would be true even when the workers' directors are elected in the manner suggested. The employers would be in a position to affect the elections, and it would be to their interest also to affect the elections. Therefore, here also, there is a great danger. That is why I have resorted to the third method.

In this method, I have kept the matter outside the purview of the employers. I have merely said that if in any industry, 50 per cent or more of the workers are organised in a trade union, then the workers should be entitled to have directors. The workers should suggest the names, and it should then be open to Government to nominate two directors from out of them. In this method, the power lies with Government. In every company, the workers do not automatically become entitled to elect directors. Only if 50 per cent or more of the workers are properly unionised, are they entitled to have directors? Even then, it is the Government that will have to appoint the directors. If Government find that fifty per cent or more of the workers are unionised, and they have properly elected the persons, then Government nominates the persons. In this case, the danger of interference by the management would not be there.

Shri N. Sreekantan Nair (Quilon *cum* Mavelikkara): What about the danger of Government interference?

Shri K. P. Tripathi: The names will not be suggested by Government. The names will be suggested by the workers, only the nomination will be by Government.

Shri K. K. Basu: There should not be pre-Ministerial appointments.

Shri K. P. Tripathi: I agree. But then here the right of the unions is safeguarded, because it is the union which selects the nominees. Further, it is safeguarded from interference by the management, because it is the Government that nominate the directors, and there is no election taking place in which the company may interfere.

Therefore, I think that within the present bounds of possibility, the amendment which I have suggested to the one which is the best possible.

[Shri K. P. Tripathi]

If Government would see their way to accept it, I think it would be a nice thing. But Government have taken the position that such an idea is now before the Planning Commission, and therefore they are not in a position to take any steps right now. But I humbly submit that we have to go ahead. We cannot be waiting for what may or may not be decided by the Planning Commission. It is for Government to make up their minds. If Government really mean that workers are shareholders in industry, then they should take this first step and put this into action. And where are we to begin it? It is in this Bill that it can be begun first. And it would be a right step if Government begin it here and now.

Government have also stated that they will come forward with further amending Bills if necessary. I would like to say that if Government accept this right, right now, then it will become a part of the Act. Later on, if Government consider that some changes might be necessary, then it would be possible for them to bring small amendments.

Now, why are we so much bent upon saying that the workers should have participation in management? I personally think that the type of participation of workers in management, which obtains in Yugoslavia, is the right one. It is not exactly participation, but it is direct management by the workers themselves. I think that is the healthiest way in which workers can become owners or managers of industries. But what I have suggested in my amendment is only a shorter step. It is merely participation in management with only two directors out of many; these two directors will not be able to control policy, but they will merely be able to represent their points of view. A question might be asked, why bother about this. But the reason is obvious.

In India, it will be realised, the wage structure is different from what obtains in other countries of the world. In India, we have not yet gone out of the minimum wage structure, and a part of the profits are annually adjusted towards bonus. Now, this bonus is regarded as deferred wages. It is a part of the wages that might have been paid as wages earlier, but which were not paid because the industry did not feel that it could pay it earlier, but it felt that if it paid then the cost structure might become too heavy. At the end of the year only, the industry pays out of profits what it should have actually paid out of the cost structure. Therefore, instead of the theory that workers are shareholders in industry in actual practice, in India, as a result of the prevalent system of wage payment, the system has grown that workers are being regarded by the tribunals as shareholders in the profits by way of bonus. Whenever the question of bonus arises, a great deal of comment is made with regard to the balance-sheets. A tribunal for the sugar industry was forced to comment that the accounts were not kept in proper order. It was unfortunately discovered that the accounts were not properly maintained.

With regard to buying and selling commissions and agencies also, it has been found that often things are purchased and shown as purchased at a higher price than what is actually prevalent in the retail market.

Therefore, from all these points of view, it is very necessary that if workers' interest is to be safeguarded, they have to be represested in the management, so that they may know from time to time how the affairs of the company are being managed. Then only they will be in a position to prevent—not merely check, but also prevent—abuses which reduce their total annual earnings, which are the result of bonus. It seems it has been the policy of Government themselves to say that bonus is a deferred wage. Since Government themselves have set up tribunals in order that bonus may be given, since it is Government's

policy that accounts should be kept properly and checked, I think it is very necessary that Government's policy should lead to the conclusion that workers may be participants in management so that they may safeguard their interest. I therefore humbly submit that the House and the Government should consider and accept such amendment.

With regard to amendment No. 546, it says that the appropriate Government should have power to prevent change in employment conditions of workers when a company changes hands. It has been discovered in the last few years, particularly after independence, that a large number of companies have been changing hands. As soon as a company changes hands, the new employer comes and says, 'I do not know these employees. I do not know these workers, because the contract for employment was between the old workers and the old employer'. Therefore, when the new management comes, there is no more contract and every employee must re-contract himself so far as employment is concerned. In this process, a large number of people are retrenched, the existing conditions of service are changed and there has been a great deal of unrest in the industrial world with regard to this. As a matter of fact, on this question the INTUC submitted a memorandum to the Joint Committee, but unfortunately, this point has not been included in any provision of this Bill. It is very necessary that when companies change hands, the working conditions and wages of employees should continue. The company should change hands as a running concern, and if it changes as running what is the concern? The concern, of course is the worker. Workers are included in the concern. It is not the policy, so far as I understand, of Government to create any industrial unrest, to create any unemployment. It is for this reason that Government have had the Industrial Disputes (Amendment) Bill passed, which has provided for lay-off compensation to retrenched workers. Therefore, Government policy in the last few years has been to provide continued employment and suitable conditions of employment to workers. I beg to submit that when a company changes hands the new entrant, the purchaser, steps into the shoes of the seller. Therefore, all the liabilities which the seller had should be shouldered by the purchaser; otherwise, this unrest and this uncertainty will persist over a large section of our industrial world. In particular, foreign concerns are selling out in many uneconomic sectors, and Indians are coming in there. This uncertainty has to be set at rest. Therefore, I have suggested in my amendment that when there is a substantial change in employment conditions by reason of the changeover—I have not said that if one or two persons are discharged, this clause should apply—Government should have the power to prevent it. My amendment says:

> "Where a complaint is made to the appropriate Government by any organisation of workers or a trade union that a company, or a business or industrial unit of the same, has been sold or is about to be sold or transferred involving wholesale or substantial change in employment conditions including discharge or retrenchment of workers..."

So I have not made out a case for retaining every individual worker, but only that when a person purchases a concern, he should also take over the liabilities.

Shri C. D. Deshmukh: May I ask if this is excluded from the purview of the Industrial Disputes Act or anything like that?

Shri K. P. Tripathi: Yes, it is excluded from the purview of the Industrial Disputes Act, because the Act refers to relation between the employer and the worker. When a new person comes in, there is no relation between the employer and the worker, because it is governed by a contract.

Mr. Chairman: When he steps into the shoes of his predecessor as regards rights etc., is he not also responsible for this?:

Shri K. P. Tripathi: So far as ownership is concerned, he steps into the shoes of his predecessor. But so far as liability arising out of the contractual relationship between workers and the employer is concerned, it is said that no such liability arises.

Shri Tulsidas (Mehsana West): How can it be? The company is the same.

Shri G. D. Somani (Nagaur-Pali): The company continues. How can it be avoided? This question does not arise.

Shri K. P. Tripathi: My friend says the question does not arise. As a matter of fact, this question has arisen as a result....

Shri K. K. Basu: In a large number of undertakings, there is no definite contractual liability between the appointing authority and the employees. It is more or less just a letter issued or something like that. It is not a regular contract. When the next man steps into the shoes of the employer, he knows that there is no regular contract. If there is a definite contract, the new man who steps into the shoes of the employer is certainly bound by that contract.

Shri Tulsidas: Exactly.

Shri K. K. Basu: But, usually in most of the undertakings, there is no such contract.

Shri Tulsidas: The person who buys the shares of that company automatically steps into the shoes of the seller for all these purposes.

Shri K. K. Basu: That is true, but in most of the cases there is no definite contract, so far as the employees are concerned, except that the appointing authority may be going by the rules or laws. Therefore, when a new man comes, he says, 'I do not know what was the undertaking my predecessor had given. You must accept my terms'. That is the difficulty.

Shri K. P. Tripathi: I am speaking from experience. This question has arisen as a result of the sale of a large number of tea gardens. When we approached the Government or the tribunals, they said they had no jurisdiction in the matter. Therefore there is a great lacuna; legally, there is no protection for workers when such changes occur. I do not know how Shri Tulsidas or Shri G. D. Somani says that this case is protected and, therefore, the question does not arise. So far as I understand, when a company changes hands, the purchaser becomes entitled to all the rights under the company. So far as relations between the workers and the old employer are concerned, that liability is not shouldered, and if the employer does not want to shoulder that liability, there is no law by which he can be made to shoulder it.

Shri C. C. Shah: There is a little confusion of thought. Transfer of one company from one person to another takes place in two ways. One is where the purchaser takes over the shares; then the company continues as a legal entity and all the obligations of the company devolve on the new owner. But where the new purchaser purchases only the assets of the company without its liabilities, during winding up, for example, if the liquidator sells only the assets of the company, machinery and so on.....

Shri Tulsidas: That is a different thing.

Shri C. C. Shah:....In such a case, a question like the one the hon. Member has referred to will arise.

Shri G. D. Somani: Exactly.

Shri K. P. Tripathi: I am also saying 'assets of the company'. These assets can be purchased not merely in the process of liquidation but also in the market. Now, tea gardens have been sold by auction in Calcutta because it has been found that by auction the price fetched is many times more than by negotiation. It is for this reason that in this case also there is no protection. If a person goes on

purchasing shares bit by bit what happens? First, he becomes a director of the company along with the existing directors, then he has two directors, then three, then four; in this way, he comes into contact with the workers before the company is sold out. Therefore, the relationship is already established. What is happening today is sell-outs. When they occur on auction or in the open market, in that case the new purchaser suddenly comes on the scene and he says that there is no pending contract between himself and the old workers. So far as I know, under the existing laws there is no protection. Therefore, I have suggested in this amendment that the Government should have the power in such cases, where wholesale or substantial change in employment conditions including discharge and retrenchment of workers occurs, to step in and say that the old conditions should be maintained.

Shri C. D. Deshmukh: You say that transfer of assets should not take place?

Shri K. P. Tripathi: Not at all. The transfer of assets takes place and the purchaser has come into ownership. But what about the condition of the workers? Take, for instance, the case of a man purchasing tea gardens. He says the old employees should go and he will bring his own employees. The old employees have no remedy. I do not think the workers are regarded as assets. Only property is considered as assets. The workers are regarded as liabilities. If my friends had considered the workers as assets the whole history of India would have changed.

Shri K. K. Basu: And then you would not be here to argue their case.

Shri K. P. Tripathi: I therefore ask the Finance Minister to consider this question. Supposing a tea garden is sold and the new owner says that he will bring in his own employees and 5000 workers are retrenched. It is not done generally with regard to ordinary workers. But, it is done with regard to salaried workers. The number of the salaried class is less and they want to bring in their own friends and relations. I say that wherever a substantial change occurs the Government should have power to step in and prevent it.

Shri C. D. Deshmukh: You mean higher salaried employees?

Shri K. P. Tripathi: No.

Shri C. D. Deshmukh: Those who are classed workers under the Industrial Disputes Act?

Shri K. P. Tripathi: Exactly.

Shri C. D. Deshmukh: It is usual to bring in as workers people drawing less than—I do not think any change has been made—may be Rs. 300 a month. Do they bring their relatives to these jobs?

Shri K. P. Tripathi: Relatives or people in whom they are interested. There was a case in which all the clerical employees were discharged.

Shri Punnoose (Alleppey): Manual workers are also discharged.

Shri K. P. Tripathi: In tea gardens this has not been done. But, in the town areas this may happen. It may be to the interests of the new owners to discharge the old workers and to bring in new workers.

Shri Punnoose: In Travancore-Cochin State actually this happened.

Shri K. P. Tripathi: I am not talking about the management, the manager or the Assistant Manager because they are confidential services. They have to be in close confidence with the management. The new management has every right to change them. But, I am talking about workers who are within the purview of the Industrial Disputes Act and who find no remedy in these circumstances. For them it is very necessary that such a provision should be there.

You will see that in sub-clause (2) I have provided that the appropriate Government shall have power to make any interim order pending any enquiry. Supposing you make an application to Government and it takes

[Shri K. P. Tripathi]

time; then an interim injunction should be possible to be issued.

The third sub-clause I have provided is that the aforesaid provision is without prejudice to the power of the transferee as an employer to take any disciplinary action under standing orders of the company against individuals as employees. If the old employer had a right to take disciplinary action, the new employer should have also the right to take disciplinary action against the culprits—whoever they may be. I have merely given the power to Government to intervene in appropriate cases so that large-scale retrenchment or unemployment which is undesirable is prevented.

I have said in the Explanation that—

> "'Appropriate Government' means the government which exercises jurisdiction over the company or the unit in matters arising out of industrial disputes."

It is for the Government to decide whether this 'Explanation' is acceptable.

Shri C. C. Shah: It is not inappropriate to point out that these are matters relevant to the Industrial Disputes Act and not to the Companies Act.

Shri K. P. Tripathi: The Industrial Disputes Act has nothing to do with it.

Shri K. K. Basu: My hon. friend wants that there should be a provision that in the case of transfer of assets it should be deemed that the workers also are transferred along with the assets. The Industrial Disputes Act will not come because there is no industry running. Normally speaking, when a person takes over the assets of a tea garden it does not mean that the tea garden is running. My hon. friend's point is that whatever it may be whenever the tea gardens begin to be run—under the old name or under a new name—by the purchaser, the employment of the workers should be guaranteed. That is the point he urges. And for that, he wants the company law to be so amended.

Pandit Thakur Das Bhargava: May I ask a question of my hon. friend Shri Tripathi? If there is a contract between the employer and the employee, then evidently the successor is bound by the terms of the contract. If there is no contract between the employer and the employee how can the discharged employee insist that the same conditions, the same relations should continue so far as the purchaser of the concern is concerned? If he has got certain rights against the present employer he can certainly insist on them as against the new employer, only if they are based on contract. Otherwise he cannot insist.

Shri C. C. Shah: That can be provided in the appropriate law but not in the Company law.

Shri K. P. Tripathi: I do not understand why my hon. friend Shri C. C. Shah should intervene and say that it cannot be provided here. The effect of my amendment would be that the workers would become part of the assets, instead of their being liabilities. In a company which is a running concern the workers are really the vital things; they are the real assets. Unfortunately in the social concept which has prevailed so long they have not been regarded as such.

Shri S. N. Das (Darbhanga Central): What is the value of such assets?

Shri K. P. Tripathi: A running company when it sells, sells for its goodwill. If there are no workers then there will be really no goodwill.

Mr. Chairman: I think the hon. Member should conclude now.

Shri K. P. Tripathi: I would conclude just now. This is not a question which can be raised under the Industrial Disputes Act because this is a question which relates to the existence of a relationship between the employer and the worker. Here is a case

where that relationship snaps. In view of the social policy of our Government and our country it is necessary that we do not permit this snapping. We should see that this relationship exists so that if there be any dispute between the two it may be referred to the tribunal. This is a gap in the legal structure and if it can be provided anywhere it can be provided only here and nowhere else. By an amendment of the Industrial Disputes Act you cannot create this right.

Shri C. D. Deshmukh: I want to understand whether it is not possible to amend the Industrial Disputes Act that way.

Shri K. P. Tripathi: How can it be done? It is a question of contract. The Industrial Disputes Act is concerned with the relationship of employer and worker.

Shri C. D. Deshmukh: Can't you think of a notional or constructional contract between the purchaser and the old employees? All that is needed is that the law shall say so.

Shri K. P. Tripathi: My friend is asking here but when a case is brought before a court he will say, no.

I humbly submit that so far as the change-over of assets and liabilities is concerned, it is this law which determines that. Therefore, it is this law which should determine the workers' rights. If the workers are to be considered as assets in the changed conditions of our social concepts, then it is under this law that this should be done and anything which is a resultant of that change should be in the Industrial Disputes Act.

Shri M. S. Gurupadaswamy: I wish to make a few observations on my amendments, which are also supported by my hon. friend, Shri Kamath.

Shri K. K. Basu: How does he know it? Shri Kamath has not spoken yet.

Shri M. S. Gurupadaswamy: Because the amendments are in our names.

Shri K. K. Basu: Oh! joint auspices.

Mr. Chairman: If the same amendments are tabled by both of them, one of them will have really precedence over other Members, so either Shri Gurupadaswamy or Shri Kamath may speak.

Shri M. S. Gurupadaswamy: I will speak only on two or three amendments and Shri Kamath will speak on the rest.

Shri Kamath: It is just a division of labour.

Shri M. S. Gurupadaswamy: I am reading out the numbers of all our amendments, but I will speak only on a few of them. They are Nos. 1108, 1109, 1110, 1111, 1114, 1115, 1121 and 1124.

I wish to say a few words about amendment No. 1109 before I go to the other amendments. It reads as follows:

> Page 198, line 6, *add* at the end:
>
> "and that it will not prejudicially affect the employees of the transferor company as regards tenure, terms of employment, conditions of service or in any other manner."

My hon. friend, Shri Tripathi, was saying just now that in the case of transfer, re-arrangement or reconstruction of companies made on the basis of compromise, the labour interests may be prejudicially affected. I feel that my amendment seems to be better because it says in a general way that in case such changes occur in the structure of companies or in the ownership of companies, they should not militate against the interests of the employees. It is a very general proposition. Though I agree with my friend, Shri Tulsidas, that such things should have been taken under the labour law, this amendment here is an incidental one and as a measure of abundant caution I have suggested that such a provision should be made here. There is no harm in making such a provision and I do

[Shri M. S. Gurupadaswamy]

not want to go and say the same old things as my friend, Shri Tripathi, said, but I only wish to point out that in practice, when changes are made, when transfers are made in companies, when ownership is changed and when there has been a reconstruction of companies, it is always seen that it is followed by either retrenchment of previous labour or changes in labour conditions or changes in the terms of employment. Anyway, in all such instances we have seen that labour interests are affected, and with a view to provide a safeguard I have moved this amendment. I would request the Finance Minister to accept it.

About the Advisory Commission, I have moved amendment No. 1121, which says:

Page 206, *after* line 30, *add*:

"(c) the advice tendered by the Advisory Commission to the Central Government shall be binding on the Central Government."

Mr. Chairman: How can an advice be binding?

Shri M. S. Gurupadaswamy: Advice may be binding.

Shri K. K. Basu: It is like the Minister's advice.

Shri M. S. Gurupadaswamy: My fear is that the Government may refuse to take the advice of the Advisory Commission. What is the purpose of having the Advisory Commission?

Shri K. K. Basu: To solve the unemployment problem, quite obviously.

Shri M. S. Gurupadaswamy: Is it, as my friend says, just for the purpose of providing employment to some retired judges or a few friends, or is it for the purpose of effectively advising the Government in the matter of company affairs? I may draw your attention and that of the Members of this House to the fact that the Council of Ministers is also an advisory body according to the Constitution, and whatever advice is tendered by the Council of Ministers may not be binding, according to the Constitution, on the President or the Governor or Rajpramukh. Though it is an advisory body, it is well known that its advice is binding, and the President at the Centre or the Governor or Rajpramukh in the States cannot go against the advice of the Council of Ministers.

Shri C. D. Deshmukh: May I know if there is a clause in the Constitution which secures this?

Shri M. S. Gurupadaswamy: There is no clause which secures this, but I only say that the advise of the Council of Ministers....

Shri C. D. Deshmukh: This is an argument against him.

Shri M. S. Gurupadaswamy: It is not an argument against me. The advice of the Council of Ministers is binding and it is not at all taken as a mere advice. Though there is no clause in the Constitution that the advice of the Council of Ministers is to be followed or is binding. But I am afraid in company affairs, we are not dealing with the constitutional relationship between the head of the State and the Government; here we are dealing with a corporate sector which relates to private enterprise; we are dealing with very fluid conditions and changing conditions in the corporate field. When that is so, there is a danger or possibility that the advice of the Commission may not be taken by the Government. The Finance Minister may assure us on the floor of the House that we intend to take any competent advice or expert advice tendered by the Commission, but it would be better if the Advisory Commission's advice is made binding on the concerned Ministry or Minister. In cases where that advice is not taken into consideration at all, what will happen? Is there any guarantee under the present Bill that the advice tendered by this expert body will be implemented? Nothing. The Finance Minister said that there is no provision in the Con-

stitution to say that the advice of the Council of Ministers is binding. But is there any provision in the Bill to say that the advice tendered by this Commission would be considered or properly implemented or followed by Government? There is no obligation cast on Government. So it looks to me to be merely an advisory body.

Pandit Thakur Das Bhargava: It is a gentlemen's agreement just like the one in 1937 between the Congress Ministries and the Governors.

Shri M. S. Gurupadaswamy: I can understand a gentlemen's agreement But here.....

Shri K. K. Basu: It is doubted.

Shri M. S. Gurupadaswamy: Here, what have we provided? If you want to make it merely an advisory body and to make it nominal, it is not necessary to have this at all. I do not know why the Finance Minister is anxious to have this if it is a mere appendage. The best course would be this. As Shri Chatterjee has pointed out, if they want to have an effective administration of company affairs, they should set up a Central authority. I prefer Shri Chatterjee's amendment to my own if that is acceptable but unfortunately.....

An Hon. Member: He is reactionary and dangerous.

Shri M. S. Gurupadaswamy: But the Finance Minister's attitude seems to be so unchangeable and beyond modification that I have no hope of improving his attitude in this matter. He seems to have rigidly committed himself to this particular proposition.

Shri C. D. Deshmukh: I am listening to all the arguments carefully.

Shri M. S. Gurupadaswamy: Mere listening does not improve matters.

Shri C. C. Shah: It is only acceptance that matters.

Shri M. S. Gurupadaswamy: It does not help anybody. What is necessary is this. Apart from listening, it must be followed up in action.

Shri C. D. Deshmukh: There is no statutory provision that the Opposition's views should be accepted.

Pandit Thakur Das Bhargava: There is no provision that the Opposition should only place before you reasonable proposals.

Shri Kamath: It is a gentlemen's agreement binding on both sides.

Shri M. S. Gurupadaswamy: I appeal to the hon. Finance Minister—even though it is a little late—to consider whether it would not be feasible to have a Central statutory authority for the purpose of administering this Act.

The Bhabha Committee has gone into this question thoroughly and they have considered both the aspects: whether departmental control is better or control by a statutory authority is better. They have said that it would be better in the existing circumstances to have a Central statutory authority for the purpose of controlling and supervising the company affairs. Till now no cogent arguments have been advanced by the Finance Minister for not accepting the recommendation of the Bhabha Committee. The improvement of company affairs depends upon the effective implementation of their recommendations and this cannot be done unless there is a statutory authority. This Advisory Commission will mean only a small appendage, an ornamental appendage to the Ministry and would in no way improve matters. It may satisfy the feelings of a few, a handful of people, but it will not satisfy the real critics unless steps are taken effectively to supervise, control and administer the Company affairs. Otherwise, there is no purpose in passing such a huge and bulky Bill. I feel that it would be better to consider the setting up of some Central authority for this purpose.

Lastly, I may say that in case he does not agree with the idea of setting up a Central authority, my amendment may be accepted and that may improve matters to a little extent. I leave my other amendments to Shri Kamath to speak on and I would

[Shri M. S. Gurupadaswamy]

only say that these two amendments may be accepted. They are harmless and they would in a way remove certain fears that we have entertained in this matter.

Shri Kamath: Let me very briefly complete the picture which has been half-drawn by my hon. friend, Shri Gurupadaswamy. Before I do that I will just point out—so as not to miss any amendment—the numbers of the amendments. They are nine: 1108, 1109, 1110, 1111, 1114, 1115, 1121, 1124 and 1128.

Shri Gurupadaswamy spoke and disposed of a few. So, I will not refer to them. I shall refer to the remaining amendments only. These clauses deal with arbitration, compromise, amalgamation, re-constitution, prevention of mismanagement, and lastly winding up, the fate of all creatures in this universe, the last bow. Everybody has got to wind up—everything created by God, or made by man on this terrestrial plane.

Shri M. S. Gurupadaswamy: Funeral is not discussed.

Shri Kamath: I thought it was up to 430. I am sorry.

Shri C. D. Deshmukh: You have to wind down a bit.

Shri Kamath: We will wind up in the afternoon, then. May I speak firstly on my amendment No. 1111? That is with regard to oppression and mismanagement. That is in consonance and in tune with our conceptions of democracy. The minority should not be oppressed by a majority or those in power. What is applicable to the people at large should be made applicable, and rightly so, to the minority in a company. I have accordingly sought to make a distinction here by providing for an explanation after line 29. It goes on to say that the conduct which is oppressive to any member in his capacity as director and not in his capacity as member does not entitle the member to apply to the Court for an order under this sub-section, and that in this sub-section 'member' includes debenture-holders also.

If you will permit me, may I draw an analogy with this House itself? We are all here hon. colleagues as Members of Parliament. Some Members are however Ministers. But so far as this House is concerned, we are all equal, equally honourable. We have got equal rights and privileges. I believe that so far as the protection, safeguarding and the upholding of the rights of minorities are concerned, the Speaker or the Chairman for the time being does not take notice of a complaint by a Minister *qua* Minister but only as a Member of the House.

Shri M. S. Gurupadaswamy: Quasi-Minister?

Shri Kamath: *Qua* Minister—as Minister.

A Member can make any complaint to the Chair against oppression by the majority party or other Members of this House, as has happened in this House sometimes, and the Chair does go to rescue him and uphold his rights and privileges. But a Member here, just because he is a Minister is not entitled to make in that capacity any complaint of oppression. He is only entitled to make such a complaint as Member of this House and not as a Minister. It may not be a perfect analogy on all fours, but I just wanted to illustrate what I meant in this connection. In the case of a company, a member, in his capacity as member, if he feels oppressed and if he feels that a company is being mismanaged, can move the Court for an order, but not in his capacity as director just as a Member here who is a Minister has no right necessarily to move the Chair in his capacity as Minister. Therefore, I commend my amendment seeking to insert an explanation that a director in his capacity as member only shall move the court for an order under this sub-section.

Then as regards the Central authority much has been said by my friends—Shri N. C. Chatterjee has spoken about it and Shri M. S. Gurupadaswamy also has referred to it,—and the Bhabha Committee has dealt elaborately with this provision for Central authority. The Bhabha Committee has been cited here so often that I almost feel that the two "h's" in the "Bhabha Committee" ought to be omitted. In our country *babas* are very much respected. If the two 'h's" are removed, then it would be much better, as it will then become "Baba Committee". *Babas* are held in great esteem in our country and it has almost become a "Baba Committee" so far as this Bill is concerned and not merely "Bhabha Committee". I do not wish to dilate on that Committee's recommendation, because it has already been stressed.

Shri M. S. Gurupadaswamy: What is the meaning of "baba"?

Pandit Thakur Das Bhargava: "Baba" means grandfather and "Baba log" means children.

Shri Kamath: I do not want to include "log" unless he takes into account "Lok Sabha" and he wants to include "Baba log". I do not want to join the two—"baba" and "log". "Baba" is "baba", may be, "Babaji"!

Now I come to the other two amendments 1110 and 1114 which we have to consider together; not that they pertain to the same section but they deal with the power given to any aggrieved party to move the High Court against an order made by the Central Government. Amendment No. 1110 pertains to clause 395—Power of Central Government to provide for amalgamation of companies in national interest. The phrase "national interest" or "public interest" has been so much bandied about, mis-used and abused in this House by the Government—when reports of enquiry committees were demanded by the House they were suppressed and not laid on the Table in the public interest—that I have not much confidence in the Government's interpretation of "national interest" or "public interest". Therefore, I have sought to insert a safeguard, by my amendment, to the aggrieved party against injustice by the Government. My amendment No. 1114 relates to clause 408—Power of Central Government to prevent change in Board of directors likely to affect company prejudicially. In both these amendments I have given the right to the aggrieved party to move the High Court against some order of the Central Government, and the High Court shall pass such orders thereon as the justice of the case may require.

Next we come to Advisory Commission which has already been referred to and I do not want to refer to that and take the time of the House.

Lastly, I come to the powers of the Advisory Commission. My amendment No. 1124 seeks to amend clause 412. I have sought to confer additional power on the Advisory Commission by this amendment which is to be added at the end of line 22 on page 207:

> "and require any of the aforesaid persons to produce before it any books or documents in their possession, custody or control relating to any matter under enquiry".

I now wind up my amendments for this occasion with my last amendment No. 1128 to clause 423, the last clause in this group of clauses. Clause 423 says:

> "The provisions of sections 420, 421 and 422 shall apply to the receiver of, or any person appointed to manage, the property of a company, appointed by a Court...."

After that I seek to insert these words:

> "whether on an application made to it or of its own motion".

or *suo motu*. I suppose this ought to commend itself. It is most reasonable. I do not know whether the Finance Minister has got a closed mind, but this amendment ought to

[Shri Kamath]

commend itself to him. I would request him to accept it and if he does not accept it the House can at least vote for it and pass it in spite of the Finance Minister's resistance or allergy to this most modest and reasonable amendment. I can quite appreciate that there is no statutory obligation cast on him to accept the amendment moved by the Opposition.

Mr. Chairman: Only yesterday he accepted one.

Shri K. K. Basu: He may guard against his own mistake.

Shri Kamath: That was a very reasonable amendment of mine though a minor one. He was good enough to accept it. This is equally reasonable, if not more reasonable, and slightly major, and not quite so minor, as the amendment accepted yesterday; and I think, though there is no statutory obligation cast upon him, yet I may say, on account of parliamentary obligation or gentleman's agreement, which was referred to some time earlier, he will accept such amendments as are reasonable. Of course, he may again say: who is to define and who is to interpret the word "reasonable"? We do not want the Supreme Court to come here to interpret what are reasonable and what are unreasonable.

I would, therefore, commend all these nine amendments of mine for the acceptance of the House.

Shri Tulsidas: I have got my amendments Nos. 1021 and 1022 to clause 396 and No. 1024 to clause 407. They are practically the same.

The provisions regarding "oppression of members" were not contained in the 1913 Act, and were introduced in the Indian Company Law by the 1951 Amendment Act. The wording in the 1951 Amendment Act (Clause 153 C of the present Act) is similar to the wording of Section 210 of the U.K. Act. In all these cases, the right to complain is provided specifically where "the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself)." This wording is also to be found in the redraft of clause 153 C, suggested by the Bhabha Committee on page 426 of their report.

This wording is general and is more definite in the sense that no application can be made unless some part of the members are being oppressed. However, in the original Bill, the words "part of" were not contained, and this version has been continued in the Bill, now before the House.

This change will give a free scope to mischief-mongers to harass even honest managements. If a slight to any member is sufficient case to launch proceedings against the company, there will be no end to vexatious and mischievous appeals. The benefit of this clause must be available only when a definite part of members is oppressed by the conduct of the company's affairs—the fact that an individual member decides to feel oppressed should not give rise to a cause of action under this clause. I do not think my amendment will in any way detract from the remedy now provided. In fact, by reducing scope for action....

Shri C. C. Shah: May I point out that under clause 398 the application can be made only by 100 members or members having not less than one-tenth of the total voting power and it is not that any member can make an application?

Shri Tulsidas: Why have you changed the wording?

Shri C. C. Shah: That is a misconception; that is all I can say.

2 P.M.

Shri Tulsidas: "Part of the" was in the original Act. Now, you have changed it to "member or"; that means, any member. I am just trying to understand what the difference is.

Shri C. C. Shah: The application cannot be made by any member. That is what I was pointing out.

Shri Tulsidas: My own interpretation is that this change has been effected now, though in the original Act, it was mentioned as "part of the", and it was also the Bhabha Committee's recommendation.

I would now like to come to my amendment No. 1024, but before I come to that, I should like to refer to Government amendment No. 1133 also. Now, the Government amendment suggests that if proportional representation is not followed, that is to say, if the option is not exercised, the Government has a right to appoint two directors in case of any oppression or mismanagement or if such circumstances arise. First of all, this clause was not contained in the original Act, in the existing Act or in the Bhabha Committee's recommendations. It is not found in the United Kingdom Act either. The Joint Committee has put in this clause. Over and above this, we have provided for "any part of the members" to go to the court and get judicial decisions on any question of mismanagement and so on. This particular provision gives power to the Government over and above the law, or outside the law. I think oppression and mismanagement have definite connotations in law but outside the law, the terms are vague. It gives certain powers to the minorities to go to the court and even if we fight it out, further powers are given by which the Government can act on the matter.

Shri C. D. Deshmukh: How is it outside the law?

Shri Tulsidas: Oppression and mismanagement have a definite connotation in law, and this particular clause, clause 407, is outside the law. Even if the aggrieved persons have got the right to go to the court, they can still approach the Government.

Shri C. D. Deshmukh: That will be in the law.

Shri Tulsidas: No, it will not be in the law.

Shri C. D. Deshmukh: It will be in the law if we enact this measure.

Shri Tulsidas: Even though a right is given to go to the court, the concerned people do not want to go to the court. They go to the Government and Government has been given the power which would be arbitrary and it has been taken by the Government themselves.

Shri C. C. Shah: Therefore, we cannot provide alternative remedies.

Pandit Thakur Das Bhargava: It is unusual.

Shri Tulsidas: Yes; let me not say arbitrary. It is unusual.

Now, I have already expressed my views regarding proportional representation. Here, under the powers taken by the Government, the Government can appoint the directors who are members of the company for a temporary period of three years. By this latest amendment, the Government will be forcing the company to amend the articles which would be permanent for proportional representation. I can understand that if any oppression or mismanagement occurs, and when the Government has been approached, the Government can insist on having the articles changed for a temporary period and later on, if the company so desires to exercise the option, they can certainly make it a permanent thing. But if you want the company to be forced to change the articles for proportional representation, then it should be done at least within the time prescribed and not after the period which is mentioned even by the Government, that is, three years. The minorities have already got the option.

Mr. Chairman: There is a further amendment to that effect.

Shri N. C. Chatterjee: They are now deleting that provision.

Shri C. C. Shah: That amendment is not moved. It is included in amendment No. 1133.

Shri Tulsidas: I would like the Finance Minister to consider these aspects. You are taking these extra-

[Shri Tulsidas]

ordinary powers which are not usual in any company law. Nor has the Bhabha Committee recommended those powers. Having taken these powers, you are increasing the scope of the phrase "on any one occasion". I was suggesting that as soon as the oppression to the minority or the question of mismanagement is over, and if the Government is satisfied that the company is not functioning in the best interests of the shareholders as well as in the interests of the public, then the company should leave it to the Government to decide what they would like to do for furthering the affairs of the company; but why keep this particular power to have the articles changed and force a change in the article as a permanent thing on the companies? They have the option under clause 264. They can amend the articles if they want to do so. But here you are taking a particular power to force the company to amend the articles to have proportional representation because the members have complained to the Government that there is oppression to the minorities or there is mismanagement. But having taken this power, which I can understand, you are increasing the scope by which you are making this a permanent affair for the company so that they cannot exercise their option, I would like this point to be considered by the Finance Minister.

I have moved amendment No. 1025 to clause 410. In this amendment I am including further clauses which should be referred to the Advisory Commission. Government also have given an amendment to this clause. According to my amendment, the investigation clauses are being added, and that is in accordance with the recommendations of the Bhabha Committee which has pleaded for a statutory authority. It has also been included in the existing Act under clause 269 B. I am only adding a few clauses to be referred to the Advisory Commission.

Now, I should like to refer to Shri N. C. Chatterjee's amendment. I am not very happy about his amendment. The Finance Minister has already stated the reasons why he does not want a statutory commission. The powers which have now been given to the Government are so wide, and on a question of policy, the Finance Minister has said that it is not possible for the Government to leave it to a statutory commission.

Shri N. C. Chatterjee: You can manage the Ministry better.

Shri Tulsidas: It is not a question of managing the Ministry. They have accepted the Bhabha Committee's recommendations, and the existing Act was also based on the Bhabha Committee's recommendations. I would have supported that point but they have gone much further. Large powers have been given to the Government. For example, take notification. How can the statutory commission decide on notification of an industry? I do not understand how they can decide it. It is a question of policy, and we have gone so much farther than the Bhabha Committee's recommendations that it is not possible, under the circumstances, to have a statutory commission. It is better if the matter is left to the Government.

I would now like to say a few words with regard to the amendment No. 546 of Shri K. P. Tripathi. Of course, I know that the hon. Finance Minister would have considered that point, but I would like him to consider one aspect of it. If, as Shri Tripathi has mentioned, the workers' liability should be met by the debenture-holders in the transferee company, it will be very difficult. The debenture-holders cannot take into consideration the workers' liability. If such a thing is to be agreed to, I am afraid it will be difficult for companies to get the required sum in the larger interests of the company. It will work

against the company. because it has been found to involve very heavy liabilities and the assets cannot be workers' assets. They are all tangible assets. The debenture-holder will not pay for what is a workers' liability. I do not think that is a suggestion which can be considered here. Perhaps it may be a proper thing for the Government to consider when labour laws are enacted or in any other laws where it may be suitable. I personally believe that except in very special cases, a company is a separate entity and whoever purchases the shares of that company gets all the assets and liabilities. Therefore, I do not think that there is any reason for considering that suggestion here.

Mr. Chairman: The following are the selected amendments to clauses 389 to 423 of the Companies Bill which the hon. Members have indicated to be moved subject to their being otherwise admissible:

Clause 391 682 (Govt.), 1030 (Govt.).
Clause 391A 1031 (Govt.). (New)
Clause 392 1108.
Clause 393 1109.
Clause 395 1110.
Clause 396 1021, 1111, 1022.
Clause 398 1023.
Clause 400 683 (Govt.).
Clause 407 1112, 1133 (Govt.) 1024, 1113.
Clause 407A 439. (New)
Clause 408 1114.
Clause 408A 546. (New)
Clause 409 1115, 1116, 1134 (Govt.), 383.
Clause 410 1118, 1135 (Govt.), 1119, 1025 686 (Govt.), 1121.
Clause 411 1122, 1136 (Govt.).
Clause 412 1123, 1124.
Clause 413 1125,
Clause 414 1126,
Clause 414A 1127, (New)
Clause 423 1128.

Clause 391: (*Power to compromise etc.*).

Shri C. D. Deshmukh: I beg to move:

(1) Page 196, line 9—

for "sub-section (3)" *substitute* "sub-section (4)".

(2) Page 196—

after line 20 *add*:

"The provisions of sub-sections (3) to (6) shall apply, in relation to the appellate order and the appeal, as they apply in relation to the original order and the aplication".

New Clause 391A

Shri C. D. Deshmukh: I beg to move:

Page 196—

after line 20 *insert*:

"391A. *Power of High Court to enforce Schmes of arrangements*, etc.—(1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company it—

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of

[Shri C. D. Deshmukh]

any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 431 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (VII of 1913) sanctioning a compromise or an arrangement."

Clause 392.—(*Information as to compromise etc.*)

Shri Kamath: I beg to move:

Page 196, line 31—

after "otherwise" *insert*:

"including particulars of shares held by them".

Clause 393.—(*Provisions for facilitating reconstruction etc.*)

Shri Kamath: I beg to move:

Page 198, line 6,—

add at the end:

"and that it will not prejudicially affect the employees of the transferor company as regards tenure, terms of employment, conditions of service or in any other manner".

Clause 395.—(*Power of Central Government to provide for amalgamation etc.*)

Shri Kamath: I beg to move:

Page 201—

after line 19 *add*:

"(6) The companies concerned or creditors, members or debenture holders thereof or any other person interested in the affairs of the company may move the High Court against the order of the Central Government made under sub-section (1), and the High Court shall make such order as it deems fit."

Clause 396.—(*Application to Court etc.*)

Shri Tulsidas: I beg to move:

Page 201, line 26,—

for "member or" *substitute* "part of the".

Shri Kamath: I beg to move:

Page 201—

after line 29 *add*:

"*Explanation I.*—Conduct which is oppressive to any member in his capacity as director and not in his capacity as member does not entitle the member to apply to the Court for an order under this sub-section.

Explanation II.—In this sub-section 'member' includes also debenture holders."

Shri Tulsidas: I beg to move:

Page 201, line 33—

for "member or" *substitute* "part of the".

Clause 398.—(*Right to apply etc.*)

Shri Tulsidas: I beg to move:

Page 202, line 22—

for "less" *substitute* "more".

Clause 400.—(*Right of Central Government to apply etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 203—

for clause 400, *substitute*:

"400. *Right of Central Government to apply under sections* 396 *and* 397.—The Central Government may itself apply to the Court for an order under section 396 or 397, or cause an application to be made to the Court for such an order by any person authorised by it in this behalf."

Clause 407.— (*Powers of Government etc.*)

Shri Bhagwat Jha Azad: I beg to move:

Page 205, line 30—

after "therein" *insert* "or hundred members whichever is less."

Shri C. D. Deshmukh: I beg to move:

Page 205—

(i) *Renumber* clause 407 as sub-clause (1) of that clause;

(ii) In sub-clause (1) as so renumbered—

(a) line 28, *after* "not exceeding three years" *insert* "on any one occasion";

(b) line 29, *after* "on the application" *insert* "of not less than two hundred members of the company or"; and

(c) line 30, *after* "is satisfied" *insert* "after such inquiry as it deems fit to make";

(iii) *after* line 34 *add*:

"Provided that in lieu of passing an order as aforesaid, the Central Government may, if the company has not availed itself of the option given to it under section 264, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Central Government."; and

(iv) *after* sub-clause (1) as so renumbered, *add*:

"(2) In case the Central Government passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, not more than two members of the company specified by the Central Government shall hold office as additional directors of the company.

(3) For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or (2) shall not be taken into account."

Shri Tulsidas: I beg to move:

Page 205, line 33—

after "oppressive to any" *insert* "part of the".

Shri Bhagwat Jha Azad: I beg to move:

Page 205—

(i) Line 25—

after "management" *insert* "(a)"; and

(ii) *after* line 34 *add*:

"(b) The Central Government may on the application as aforesaid instead of appointing two directors on the Board of the company direct the company to amend, within such time as may be mentioned in its order, its articles so as to provide for election of directors of the company according to the principle of proportional representation whether by single transferable vote or by a system of cumulative voting or otherwise."

New Clause 407A

Shri K. P. Tripathi: I beg to move:

Page 205—

after line 34, *insert*:

"407A. *Power of Central Government to nominate representatives of the Trade Unions as Directors.*—Where in a company the majority of the workers are organised in a union, and that union applies to the Government, it may nominate two representatives of the Union to the Board of Directors, whereupon they will

[Shri K. P. Tripathi]

have the same rights and duties as the other Directors of the company. Their term of office will last till the next election of the Directors or three years, whichever happens earlier, and thereafter the Union shall submit names afresh for nomination by Government."

Clause 408.—(*Power of Central Government to prevent change etc.*)

Shri Kamath: I beg to move:

Page 206—

after line 8 *add*:

"The company or any director or member thereof aggrieved by the said order may move the High Court against the same, and the High Court shall pass such orders thereon as the justice of the case may require".

New Clause 408A

Shri K. P. Tripathi: I beg to move:

Page 206—

after line 10 *insert*:

"408A. *Power of Appropriate Government to prevent change in employment conditions of workers when company changes hands.*—(1) Where a complaint is made to the appropriate Government by any organisation of workers or a trade union that a company, or a business or industrial unit of the same, has been sold or is about to be sold or transferred involving wholesale or substantial change in employment conditions including discharge or retrenchment of workers, the appropriate government may direct that no such changes be made whereupon the transferee shall be bound to restore the workers of the company or the unit employment as well as employment conditions as obtained with the transferor, and any such order shall have effect notwithstanding anything to the contrary contained in the provisions of any law or contract.

(2) The appropriate Government shall have power to make any interim order pending any enquiry it may deem fit.

(3) The aforesaid provision is without prejudice to the power of the transferee as an employer to take any disciplinary action under standing orders of the company or the unit (as the case may be) against individuals as employees.

Explanation.—'Appropriate Government' means the government which exercises jurisdiction over the company or the unit in matters arising out of industrial disputes."

Clause 409.— (*Appointment of Advisory Commission*)

Shri Kamath: I beg to move:

Page 206—

for clause 409 *substitute*:

"409.—(1) There shall be an Advisory Commission whose members shall be appointed by the President by warrant under his hand and seal, and shall only be removed from office in like manner and on the same grounds as judges of the Supreme Court.

(2) The members shall elect one of their number to be chairman thereof. The salary and other conditions of service of the members including chairman shall be such as may be determined by the President and shall not be varied to their disadvantage after their appointment. Chairman and the members shall not be eligible for further office either under the Government of India or the Government of any State.

(3) The chairman shall appoint such officers and servants as he thinks fit and make rules prescribing their conditions of service.

(4) The administrate expenses of the Commission including all salaries, allowances and pensions payable to or in respect of such officers and servants shall be charged upon the Consolidated Fund of India."

Shri N. C. Chatterjee: I beg to move:

Page 206—

(i) *for* line 12 *substitute*:

"Constitution and Powers of Central Authority"; and

(ii) *for* clause 409 *substitute*:

"409. *Appointment of Central Authority.*—(1) For the purposes of this Act, the Central Government shall establish a Central Authority called 'The Corporate Investment and Administration Commission' which shall consist of not less than five whole-time members appointed by the Central Government and one of them shall be nominated by the Central Government to be the Chairman thereof.

(2) Members of the Commission shall be persons with suitable qualifications and capacity in dealing with problems relating to commerce and industry, the promotion and management of companies or their administration or who have such special knowledge in any matter as renders them suitable for appointment of the Commission."

Shri C. D. Deshmukh: I beg to move:

Page 206, lines 14 and 15—

for "on any matter arising out of the provisions of this Act referred to in clause (a) of section 410"

substitute "on the matter referred to in clause (a) of section 410 and the applications referred to in clause (b) of that section".

Shri Ramachandra Reddi: I beg to move:

Page 206—

(i) line 18, *omit* "(a)";

(ii) line 20, *for* "and" *substitute* "as follows:"; and

(iii) *for lines* 21 and 22, *substitute*:

"(i) one, retired High Court Judge or Supreme Court Judge with special knowledge of Company Law, who will be Chairman of the Commission.

(ii) one selected by the Government from a panel of five names suggested by the Federation of Indian Chambers of Commerce and Industry.

(iii) one, industrial economist, not in Government service.

(iv) one, representing shareholders.

(v) one, representing labour".

Clause 410.—(*Duties of Advisory Commission*)

Shri N. C. Chatterjee: I beg to move:

Page 206—

for clause 410 *substitute*:

"410. *Conditions of Service of members of the Commission.*—(1) Every member of the Commission shall hold office for a period of five years from the date of his appointment, provided that a member on the expiry of his term of office shall be eligible for reappointment for a second period of five years.

(2) There shall be paid to the members of the Commission such salaries and allowances as may be determined by the Central Government."

Shri C. D. Deshmukh: I beg to move:

Page 206—

(i) *after* line 25 *add*:

"(a) before a notification is issued under section 333 in res-

[Shri C. D. Deshmukh]

pect of any description of industry or business, on the necessity for, and advisability of, issuing the notification;";

(ii) line 26, *for* "(a)" *substitute* "(b)"; and

(iii) line 29, *for* "(b)" *substitute* "(c)".

Shri Sivamurthi Swami (Kushtagi): I beg to move:

Page 206, line 27—

after "310", *insert* "323,".

Shri Tulsidas: I beg to move:

Page 206—

(i) line 27—

after "section" *insert* "234, 236, 238, 247, 248, 249."

(ii) line 27—

after "267," *insert* "268,".

(iii) line 27—

after "331," *insert* "342,".

(iv) line 28—

after "351," *insert* "395,".

Shri C. D. Deshmukh: I beg to move:

Page 206, line 27—

(i) *omit* "259, 266";

(ii) *after* "267" *insert* "268"; and

(iii) *after* "331" *insert* "342".

Shri Kamath: I beg to move:

Page 206—

after line 30 *add*:

"(c) the advice tendered by the Advisory Commission to the Central Government shall be binding on the Central Government".

Clause 411.—(*Forms and Procedure etc.*)

Shri N. C. Chatterjee: I beg to move:

Page 206—

for clause 411 *substitute*:

"411. *Appointment of Officers and other employees and sittings of the Commission.*—(1) Subject to such Rules as may be made by the Central Government in this behalf the Commission for the purpose of enabling it to efficiently discharge its functions under the Act may appoint such number of officers and other employees as it may think fit and determine their conditions of service.

(2) Sittings of the Commission shall be convened by the Chairman and shall not be open to the public unless the Commission in any particular case decides otherwise.

(3) The Chairman shall preside at all sittings of the Commission at which he is present, and in his absence from such sittings, the members present thereat shall elect one of the members to preside as Chairman."

Shri C. D. Deshmukh: I beg to move:

Page 206, line 33—

for "clause (a)" *substitute* "clause (b)".

Clause 412.— (*Powers of Advisory Commission*)

Shri N. C. Chatterjee: I beg to move:

Page 207—

for clause 412 *substitute*:

"412. *Powers and Functions of the Commission.*—(1) The Central Government shall refer to the Commission for enquiry and report all matters for which the approval, consent or sanction of the Central Government is required to be taken under this Act; and

(2) The Central Government may refer to the Commission any other matter arising out of the administration and working of this Act for enquiry and report.

(3) It shall be the duty of the Commission—

(a) to determine in which case the powers of inspection and investigation should be exercised under sections 234 to 250 of the Act;

(b) to supervise the winding up proceedings of companies; and

(c) to study the balance sheets and profit and loss accounts of companies with a view to determining to what extent they conform to the requirements of the Indian Companies Act, keep under observation the investment markets in the private sector, undertake a systematic study of prospectuses, of the terms and conditions of new issues of capital, and make reports thereon to the Central Government."

Shri Kamath: I beg to move:

Page 207, line 22—

add at the end:

"and require any of the aforesaid persons to produce before it any books or documents in their possession, custody or control relating to any matter under enquiry".

Clause 413. —(*Penalties*)

Shri N. C. Chatterjee: I beg to move:

Page 207—

for clause 413 *substitutes*

"413. *Powers of the Commission.*—For the purpose of exercising its powers and functions under section 412, the Commission may:

(a) require the production before it of any books or other documents in the possession, custody or control of the company, relating to any matter under enquiry;

(b) call for any information or explanation, if the Commission is of opinion that such information or explanation is necessary in order that the books or other documents produced before it may afford full particulars of the matter to which they purport to relate;

(c) with such assistance as it thinks necessary, inspect any books or other documents so produced and make copies thereof or take extracts therefrom; and

(d) require any managing director or any other director, managing agents, secretaries and tresurers, manager or other officer of the Company, or any shareholder or any other person who, in the opinion of the Commission, is likely to furnish information with respect to the affairs of the company relating to any matter under inquiry, to appear before it and examine such person on oath or require him to furnish such information as may be required; and administer an oath accordingly to the person for the purpose."

Clause 414.— (*Immunity for action taken in good faith*)

Shri N. C. Chatterjee: I beg to move:

Page 207—

for clause 414 *substitute*:

"414. *Penalties.*—If any person refuses or neglects to produce any book or other document in his possession or custody which he is required to produce under section 413 or to answer any question put to him relating to any matter under enquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine."

New Clause 414A

Shri N. C. Chatterjee: I beg to move:

Page 207—

after line 34 *insert:*

'414A. *Immunity for action taken in good faith.*—No suit or other legal proceeding shall lie against the Commission or the Chairman or any member thereof or against the Central Government, in respect of anything which is in good faith done or intended to be done in pursuance of this Chapter, or of the provisions referred to in section 412 or of any rules or orders made threunder."

Clause 423.—(*Application of sections 420 to 422 etc.*)

Shri Kamath: I beg to move:

Page 210, line 5—

after "Court" *insert:*

"whether on an application made to it or of its own motion".

Mr. Chairman: All these amendments are now before the House.

Shri K. K. Basu: I support the amendment moved by my friend, Shri Kamath—Amendment No. 1109 to clause 393—and amendment No. 439 moved by Shri Tripathi and some others I also support the spirit of the amendment No. 546, because I am not quite sure as to whether it can be put in its present form in this place.

So far as Mr. Kamath's amendment is concerned, it says that in the case of amalgamation of companies, the transfer should be such that it will not prejudicially affect the employees of the transferor company as regards tenure, terms of employment, conditions of service or in any other manner. It may be argued that this power is being given to the court and naturally the court will look to the interests of all types of persons. In the present social set-up, whatever may be the personal likes or dislikes, the courts naturally have to work within a certain frame of the law and to some extent their decisions are determined by the volumes of earlier judicial decisions or whatever it may be. But here it is a question of social objective. Today you find that the worker also is a very important factor of production and he is bound and destined to play a very important role in the economic set-up of our country. Therefore, it is absolutely necessary that certain statutory guarantees regarding the worker's terms of service and other things should be given. Of course, it is true that the courts will give independent judgments entirely on the merits of each case. But we know fully well that judges, whether they belong to the District Courts or the High Courts, may not be experts in economic affairs; they have got to give their judgments on the basis of the affidavits that are produced before them. There the ingenuity of the lawyers cominates and the real economic aspect is forgotten; unless he is an expert in that line, it is very difficult for a man to know the actual state of affairs. Therefore, I would only urge that in all cases of transfer, the transferee company must take into consideration the emoluments, terms and conditions of service of the workers of the transferor company. To us they are assets, but possibly to Shri Tulsidas Kilachand they are liabilities unless they are in a position to derive profit out of their labour. Today the social set-up is such that we are having one Plan after another and we have certain social objectives in our view. Therefore, it is necessary that the conditions of service of the employees—I use the term employees, because the term 'workers' may not include clerks and others—should be taken into consideration when any amalgamation of companies is made. We have seen that they are not always in a position to fight their cause, and during such amalgamation some of the workers are retrenched often. We have seen this phenomenon in many recent cases when two companies are merged or a tranfer takes place. This phenomenon is quite common after the last

war. We have seen persons who have put in 25 years of service being retrenched. There are conditions in some of the mercantile firms that unless one has more than 25 years' service to his credit, he will not be entitled to any gratuity and so on. We have found that in most cases the cases of persons whose services are on the verge of 25 years are left out. This is the manner in which our so-called great champions, so-called pioneers, of the industrial advancement of our country behave. Therefore, I fully support Mr. Kamath's amendment which provides for a statutory obligation that any transfer should be such that it will not prejudicially affect the employees as regards their conditions of service.

The next amendment moved by Shri Tripathi and others for the introduction of a new clause 407A is also a very important one. Under clause 407, the Central Government is given power to appoint two directors, if it is satisfied that it will be in the national interests to do so. I do not want to go into the merits about the outlook of the Government as to what should be the determining factor about national interests; but considering for a moment that the Government acts justly, what I would like to say is that labour is a very important factor. We have known from our experience that on many occasions employers in factories have come forward with facts which are not known to the outside people till then. If the management is allowed to behave in a particular way, we find that the company goes into liquidation or many of the assets are dwindled down. Such cases are well-known to us. Clause 407 categorically says that the Government will have power to appoint two directors to prevent the affairs of a company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of a company. Interests of the company should be considered to be not only the interests of the shareholders or the manager. Suppose a jute mill is closed down. The community is deprived of a certain quantity of jute which would have been produced. Similarly, if two or three cotton mills are closed down or a coal mine is closed down, the community suffers. The question that has to be taken into consideration is the value of the service to the community. So also, the interests of the workers, who by the sweat of their brow produce the goods should be taken into consideration. They have an equal share in the benefits and progress of the company. Therefore, I think Government cannot have any objection to accept the amendment No. 439 of Shri K. P. Tripathi.

Coming to amendment No. 546, I feel that the drafting has not been properly done. It may not fit in in this particular place. But, I fully agree with the principle of it. We can determine in this Company law what should be considered as assets and liabilities of a company. Shri Tulsidas asked, what happens to the debenture holders. We know very well, when a marwari lands money, it is his duty to see what has happened to the Government dues. He cannot say that he does not know whether the Government dues have been paid. So also in the case of taxes, etc. due to the corporation. Similarly also in the case of floating charges. This is not a fixed amount because it varies within a certain compass. Therefore, this thing can be statutorily determined. Workers' wages up to a certain period should also be taken into consideration as a first charge and taken up along with the assets and liabilities of a company. Assets and liabilities should not be restricted only to tangible things. This also should form part of the assets and liabilities. Dues to Government and municipal bodies are there. Similarly, it can be said that 3 months or 6 months or 1 year's wages of workers should be taken as a part of the assets and liabilities.

Mr. Chairman: This was dealt with by the Member when Shri K. P. Tripathi's amendment was moved.

Shri K. K. Basu: Difficulty will mainly arise when the assets are taken over. If a company itself is taken over, the company continues to remain and if there is some sort of a personal agreement, it can be brought under the Industrial Disputes Act to some extent. It may be the next manager who has come in. The company continues to operate. *Vis-a vis* the company, the workers' relationship remains the same whoever be the actual top man. Difficulty arises in those cases which are well known in those parts of North Bengal and Assam where a large number of tea gardens are changing hands and are completely purchased. A British company sells a tea garden and it is purchased by another X who may have a company. He takes over the assets. Whatever conditions of employment the original employer had with the workers are set at naught completely. Therefore, we can provide for this. There is no harm. Shri Tulsidas asked about the debenture holders. The debenture holders know what the assets and liabilities are. Along with the fixed assets, along with the Government dues that have not been paid, guarantees and wages up to a particular period also should be taken into account. Particularly so, when you have provided for floating charges which vary within a certain compass. Of course, the amendment does not provide for the case that my hon. friend was hitting at. But, I can say that within the compass of this Company law, we can bring forward an amendment to achieve this end. We are defining so many things. We can say that in the case of assets and liabilities, workers' wages should be taken into consideration. In winding up of a company, we have provided for so many things. There is no difficulty in putting that provision in this Companies Bill. Here, we are dealing with companies the relations between the shareholders and management, etc. The community is interested in seeing that companies are run properly and companies do not go into liquidation. We have taken powers under so many Acts, the Industries Development and Regulation Act and other Acts to regulate the affairs of companies. Today, Parliament accepts, the entire civilised world and even the so-called capitalistic world accepts the proposition that all these companies have a social utility and a social value and that society has an equal right to see that they are run properly.

Then, I come to another very controversial point raised regarding a statutory Commission. I for one am not very much carried away by a statutory corporation, if we are to have it one which is completely autonomous, outside the purview of Parliament. We have seen in the case of the Industrial Finance Corporation or the D.V.C. and other things that Parliament has practically no control. The annual report is placed on the Table of the House. We have so much of work and I do not know to what extent a motion for discussion of that will be possible. When questions are put, Ministers answer that it is a matter of internal administration and we cannot answer. Therefore, a statutory corporation wherein the Parliament will not have control is not acceptable to us. There are certain provisions, for example, clause 323, which say that by a particular point of time, Government will declare that in certain industries there should be no managing agents.

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

Of course, I have no illusion that so long as the this Finance Minister continues, there is not going to be any notification. It is a question of the economic policy which the Government and Parliament will determine at a particular point of time. There is no question of having the advice of X, Y or Z. I can appreciate that if in the case of certain mismanagement, a certain warning is to be given or some penalty is to be imposed, there may be an independent authority. I agree that it should not

be left to the bureaucracy or the Minister to determine that. To do away with the mismanagement of the managing agents, we should not bring in the mismanagement of the bureaucracy. But, here we have certain provisions in which the statutory commission has nothing to do. It is entirely for the Government and the Parliament to determine at a particular point of time whether we should have managing agents or not in an industry X or Y or Z. The members of the statutory commission may be experts. They may have independent views. They may be industrialists. They will never say that the managing agency system should cease. Therefore, I feel that a statutory commission as has been suggested by some of my friends is not acceptable to us. Because, there are certain clauses in which the question of policy, social value and social objective have to be taken into consideration. In the case of remuneration, today the Government thinks in terms of 8 per cent. or 10 per cent. Three years hence, the Government may come to the conclusion in pursuance of the social objective or Parliament may decide to reduce the remuneration to 5 per cent. Even though the statutory commission says we think that such and such a percentage is necessary, we would like to scale down the remuneration at that time. It is for the Parliament and the Government to decide what should be the remuneration at that particular point of time. Therefore, I feel that a statutory corporation completely independent of the supervision of Parliament should not be established. So far as that particular part of the amendment is concerned, I agree and I am against bureaucratisation. That danger is always there. In the case of some national concerns, we have seen this. Some industrial people dominated over them. Afterwards we found that some people from the civil services or some retired people, I do not know what was their experience in that particular branch of administration, are put in charge and they behave in the same manner as they have during their 30 years of administration. I hope Government will give us a definite assurance that this administrative body would be composed of persons with high integrity and rich experience of this branch of administration. They will also give us an assurance that the administration which they propose to set up will confine itself to the technical operation of certain provisions of the Act and the advisory body does not become just a department of Government.

Shri A. M. Thomas (Ernakulam): In the discussion on these clauses the question of the constitution of a central autonomous authority has been pointedly raised by Mr. Chatterjee. I rise mainly to put forward the point of view, which he has referred to in passing towards the close of his speech, namely, in the constitution of the Central department for the administration of the Company Law, the undesirability of Government excluding banks and insurance companies from the purview of the central authority.

When I spoke on the general discussion of this Bill, I did not have the time to refer to this aspect. But when I interrupted the Finance Minister while he moved for consideration of the Bill as amended by the Joint Committee, he stated one or two reasons why banks and insurance companies have been omitted from the purview of the central authority. I confess that I have not been able to understand the reason why it has been done so, inspite of the explanation given by the Finance Minister.

We find that clause 610 of the Bill reads as follows:

> "The provisions of this Act shall apply—
>
> (a) to insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (IV of 1938);

[Shri A. M. Thomas]

(b) to banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Companies Act, 1949 (X of 1949);

(c) to companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Supply Act, 1948 (LIV of 1948);

(d) to any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act."

So that, clause 610 of the Bill specifically refers to other private enterprises, such as insurance companies and banks.

I admit that there is the Reserve Bank to control the administration of the banking structure and there is a head of the insurance section to control the insurance companies. Nonetheless, I feel when we have got a central authority for the entire corporate sector of the country, there is no logic in omitting from that departments jurisdiction any class of joint stock companies. I think a coordination of all the activities of the corporate and financial institutions is called for.

Shri C. D. Deshmukh: Electricity companies also?

Shri A. M. Thomas: Electricity companies also, if a corporate enterprise is there.

Shri C. D. Deshmukh: They are not under the Finance Minister.

Shri C. C. Shah: They are governed by the Electricity Act.

Shri A. M. Thomas: If they are companies, even if the administration of the electricity department is not within the administrative control of the Finance Ministry, it must necessarily be brought in under the central authority set up for the administration of the Company Law. Thereby the Finance Ministry will indirectly exercise control over them. I do not think that is an argument, but I think from the interruption of the hon. the Finance Minister he feels that there is reason for at least including the banking and insurance sector within this administrative set up.

Shri C. D. Deshmukh: Not a bit. I say it is as unreasonable as bringing in electricity companies.

Shri A. M. Thomas: I would refer the House to page 193—paragraph 257—of the Bhabha Committee Report.

"There are two ways of organising the Central Authority that we propose:—

(i) there may be a Central Department dealing with joint stock companies (and, if necessary, with related institutions, *e.g.*, banks insurance companies, stock exchanges, etc.) analogous to the corresponding organisation under the Board of Trade with local Registrars working in the regions entrusted to them;"

So that, when the Bhabha Committee gives alternative forms of central control, it gives the choice to bring related institutions, such as banks and insurance companies and stock exchanges within the administrative control of this Central Department. I cannot understand why we are going to have such a powerful department, these insurance and banking institutions should be taken out of the purview of that department. I have got reasons why these two sectors also should come within this.

We find, in the administration of the Banking Companies Act, for example, the Reserve Bank, of course with the best of motives and with a view to safeguard the interests of

the public, bringing all sorts of restrictions in the administration of banking institutions so much so they are not in a position to grow at all. So that if there is control exercised by a Central Authority, that Central Authority will necessarily have an eye on the general economic policy of the Government and issue suitable directions which would be carried out by the Reserve Bank as well as by other banking institutions.

Shri C. D. Deshmkh: They will issue instructions to the Minister?

Shri A. M. Thomas: Not to the Minister. I do not understand how with all these doubts the corporate sector itself will be worked by the new department. If you are going to create a Central Authority for the administration of Company Law in general, and so long as banking institutions and insurance companies are also joint stock companies which will come within the purview of this Bill that we are going to enact, and particularly when their functions overlap, I do not understand why banking institutions and insurance companies have been deliberately taken out of the purview of the Company Law.

With regard to the administration of insurance companies, I think the hon. Finance Minister can see that the same efficiency which has been shown in the working of the banking institutions has not been shown in the control exercised on the insurance companies. That is all the more reason why insurance companies also should be brought within the purview of the administrative competence of this Central Authority. I think it is only as a temporary measure that banking and insurance companies have been taken out of this central departments administrative purview and that the Government will be persuaded to find its way to bring these sectors also within the administrative set-up.

My friend Shri Chatterjee ably argued for the setting up of a central autonomous body. I am sorry to say that Shri Chatterjee was not present when this question was discussed threadbare and the pros and cons were all explained. I think by and large the Members were also satisfied with the explanation given by the Finance Minister. He analysed the various clauses under which powers have been given to the Central Government and pointed out that it would not be a workable arrangement at all to have a central autonomous authority for the control of the administration under this Bill. Of course, the Bhabha Committee has entered its preference for the creation of what is called the Corporate Investment and Administrative Commission, but the arguments put forward by the Bhabha Committee, I should think, only establish the need for central control and supervision over the working of joint stock companies which has been felt in almost all advanced countries of the world, and therefore there must be such a department for central control in India also. That is what the arguments advanced by the Bhabha Committee come to. For example, when the Bhabha Committee discusses the question, it says:

> "In the United Kingdom, the Board of Trade functions as such an authority; and one experienced commentator...."

I do not think Shri Chatterjee was arguing for the position that the Board of Trade was in fact an autonomous central authority which he envisages under this Bill.

> "...who has been closely connected with the working of joint stock companies in that country observes as follows:"

And in the quotation you will find towards the close the following:

> "If the Indian Government desire to strengthen the Indian Companies Act, it seems desirable to create a central department..."

—that is all his opinion—

> "...which would be generally responsible for the sort of policy

[Shri A. M. Thomas]

matters referred to above and would be able to give any necessary directions to the Registrars..."

Although the Committee, as I said, has preferred the setting up of an autonomous corporation, it itself says:

"We have carefully considered which of these two types of organization would be suitable to this country. A great majority of witnesses, who appeared before us, favoured a statutory authority created under the Indian Companies Act, in preference to a purely departmental organization. Each of these types has its advantages and drawbacks. While a departmental organization will be simpler to work, a statutory authority will create more confidence and possess more elasticity and initiative."

So that the Committee itself finds that each type has got its own advantages and disadvantages, and having regard to the general pattern of this legislation, I think the suggestion put forward by Shri Chatterjee cannot be accepted by the House. I have dealt in detail with regard to this question while I spoke on the general discussion, and I do not want to take up the time of the House by repeating those arugments again.

One word with regard to clause 407 which has been attacked by Shri Tulsidas. It must be admitted that in the concrete recommendations of the Bhabha Committee such a clause does not find a place, but you will find from certain of the remarks of the Bhabha Committee that they were prepared to go much beyond the recommendations of the Cohen Committee as well as the statutory provisions existing in England. After dealing with the recommendations of the Cohen Committee, they say:

"We have carefully examined the scope of this section and consider that not only can it be suitably adopted to the circumstances of this country, but its scope may be appropriately enlarged to cover not only the cases of oppression to a minority of shareholders, but also of gross mismanagement of the affairs of a company which cannot be otherwise suitably dealt with under the other provisions of the Act. We accordingly recommend the enactment of two sections:

(i) to provide for a remedy for the oppression of minorities on the lines of section 210 of the English Act, 1948; and

(ii) to provide for a remedy in cases of mismanagement of a company's affairs in a manner prejudicial to the interests of the company."

Of course, in the draft recommended by them, this clause does not find a place, but even then from certain of the observations of the Bhabha Committee we will be able to find that if this suggestion was pointedly placed before them, they would certainly have been prepared to accept that suggestion. It would have been good if Shri Tulsidas had taken into account the strong feelings that have been expressed by various sections of this House with regard to permitting proportional representation of shareholders in the board of management. One of the arguments that was given by the Government also was that in case of mismanagement, for the protection of minority shareholders they are just having this clause 407 and hon. Members should be satisfied with that. And the House having depended on this clause 407 for safeguarding the rights of minority shareholders it is too much for Shri Tulsidas again to press for the deletion of this clause.

I also submit that in the constitution as well as the administration of the advisory commission healthy conventions and precedents may be laid down so that it may infuse confidence and may also carry out the functions which Shri Chatterjee has in view.

Pandit Thakur Das Bhargava: It would have been much better, as my friend Shri Thomas has just expressed, if Shri Chatterjee had been here at the time of the general discussion in the House on this Bill. At that time this matter of the statutory board was so much discussed, and as a matter of fact, all of us were very much impressed that we practically took a decision. I therefore do not want to go into that matter again, but at the same time, I want to say something about the appointment of this advisory commission.

In the first instance, it is right that so far as this advisory commission is concerned, clause 409 is expressed in very wide words. I will just call your attention to this aspect. The words are:

> "For the purpose of advising the Central Government on any matter arising out of the provisions of this Act referred to in clause (a) of section 410 or..."

This is not all. The advisory commission is a commission which can advise the Government on any matter arising out of the provisions of this Act referred to in section 410, which means a very wide field. And the Government does not stop even there. They go further and say:

> "....or on such other matters as the Central Government may think fit, the Central Government shall—
>
> (a) constitute a Commission...."

So that not only on matters arising out of the provisions of the Act but also on other matters the Central Government wants this commission to give advice. The commission as such should, in my humble opinion, have been invested with the powers which are theirs by virtue of clause 409. What do we find in clause 410? There, the powers which were sought to be given in clause 409 have been crippled to an extent. Clause 410 reads thus:

> It shall be the duty of the Advisory Commission to inquire into and advise the Central Government—
>
> (a) on all applications made to the Central Government under sections 258, 259, 266, 267, 309, 310, 325, 327, 328, 331, 344, 345, 351, 407 or 408;
>
> (b) on all other matters which may be referred to the Commission by the Central Government."

This is also fairly wide covering all matters which are referred to the commission by the Central Government. But now it is in the power of the Government to refer or not to refer any matter to the commission and the advisory commission cannot insist that they shall tender advise on all matters of policy which arise out of the Act. It is within the powers of the Government to indicate the matters on which they want advice. In regard to these particular provisions which I mentioned in sub-clause (a) of clause 410 these are generally matters which have reference to directors, their remuneration, appointment and increase in the number of directors, etc. These are generally matters which are of course difficult, and the presence of an Advisory Commission would inspire much more confidence. And this is not all.

When I refer to clause 412 I find that very plenary powers have been given so far as the Advisory Commission is concerned: an enquiry and finding out the truth in regard to matters of dispute. So far so good.

Even when I go to penalties I think this august body has been given powers far more extensive than what we find in the provisions of the ordinary Penal Code. If somebody refuses to make an answer, the punishment is two years, whereas under the Penal Code the ordinary punishment is one month or six months. If a person does not come or does not produce a document, under sections 176 and 177 of the Penal

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Code the punishment is not so great. But under clause 413 two years' imprisonment is awarded. So far so good.

I want that this Advisory Commission will in many matters be the conscience keeper of the persons in authority. Shri Gurupadaswamy was very insistent and he said it must be laid down in the clause itself that all their advice will be binding. I do not agree. I know that all advice cannot be binding. Otherwise there is no occasion for having an Advisory Commission. Then it means that Government have no control.

But at the same time I feel the force of what is passing in his mind. He feels that if it is a mere ornamental thing, if it is only an appendage to that authority who will really exercise authority under the Act, it is nothing, it is an eye-wash.

I therefore expect that the hon. the Finance Minister will kindly rise in his seat and assure the House that as a matter of fact in all these matters the advice will be regarded as a good advice. After all, we have invested them with powers of enquiry, and it will be a very respectable body. My view in respect of these Commissions is that so far as the theory, philosophy and wisdom of a particular policy is concerned, it rests with the advisory board, but so far as the actual implementation is concerned it is the function of the authority which exercises the power. So far as the final authority is concerned, the power of disagreeing with the Commission in theory should be there, in rare cases. Otherwise it won't work. The responsibility is of the Minister in charge.

Therefore I think in many matters if we want to make this advisory board just like a statutory board into whose working we cannot pry, it is useless. Then why have this advisory board? Have that Commission. But I am opposed to that on principle as I want that the ultimate authority, the ultimate responsibility, must be that of Government. But in ninety-nine out of hundred cases this advice should not be disregarded. Otherwise there is no meaning in having this advisory board. Ordinarily there must be very cogent reasons why the advice of such a responsible body should be ignored.

Shri Gadgil (Poona Central): Then why not have a statutory body?

Pandit Thakur Das Bhargava: So far as a statutory board is concerned, Parliament cannot look into its affairs. We saw it in the case of the D.V.C. and the Industrial Finance Corporation. The whole thing is so complicated that unless and until you cast the entire responsibility on the Government the provisions of the company law cannot be worked by a statutory board. But at the same time I am quite clear that even when you make it only an advisory body, the responsibility may be shared between the Government and this advisory board. They are also responsible. It is not all.

If you want their advice and if you want that the advice should be a good one—and we should expect that it will be a good one—it must be respected in all possible matters.

Shri N. C. Chatterjee: Normally it should be accepted.

Pandit Thakur Das Bhargava: In those days when the old Government wanted to have Ministers in the Provinces, Mahatmaji said "No, we won't allow our people to become Ministers unless there is a gentlemen's agreement that their advice will be accepted", and the Government accepted Mahatmaji's proposal. This is the gentlemen's agreement. Unless the Finance Minister says like this, suppose our revered friend Shri Gadgil is appointed, the next day he will tender his resignation if his advice is not accepted. And if all the members of the Advisory Commission resign the people will conclude the Government is in the wrong and these people of the Advisory Commission are right.

When you allow these people to become members of this Advisory Commission, we do expect that ordinarily and normally speaking their advice will be the last word, though in many matters Government may not be able to implement it for reasons best known to itself. I can understand that for particular reasons Government may not accept it. Otherwise there is no meaning in an Advisory Commission. It will always....

Shri Gadgil: How will it function?

Pandit Thakur Das Bhargava: The functions are given. They are there. The advice is there. Government cannot accept the advice for particular reasons. For instance I am.....

Mr Deputy-Speaker: If an economic Adviser gives some advice or a Chemical Expert gives advice, the moment the advice is not accepted the Minister must go or he must go, is it?

Pandit Thakur Das Bhargava: So for as experts are concerned it is different. These people are not experts in that sense. On the contrary they are people who are invested with powers of enquiry and prying into accounts and all that. They will know the state of things better than perhaps even the person in authority. I am a member of an advisory board. I feel the difficulty. If my advice is not respected by the person to whom I give my advice on a very essential and fundamental matter, I think I should no longer remain a member of that advisory board.

Mr. Deputy-Speaker: Normally.

Pandit Thakur Das Bhargava: I am not speaking of extraordinary things. I do not want that it should be a case like the D. V. C. or the Industrial Finance Corporation where even the Government is helpless and we cry in the wilderness and ask Government to issue instructions but they are not able to do so. I do not want that.

But at the same time if the Finance Minister does not agree that even normally their advice will be respected, then I do not see any purpose in this Advisory Commission. After all, the powers given to the Government are so immense, so wide that I cannot think that they will be rightly exercised unless with the advice of a board.

Where Government have said "on all other matters which may be referred to the Commission by the Central Government", I would have liked a further liberalization of the provisions, or by rules, that all matters of policy must be referred to them. Otherwise, if the Government does not choose to refer matters of dispute to them, what is the use of the Board? Therefore in all other matters where discretion is given, it must be provided by the rules that Government should ordinarily refer such matters of policy to them. Otherwise it will be in the arbitrary discretion of the Minister to consult them or not. We want the Advisory Commission to be effetive, and I would have therefore liked if they had said that in matters of policy the Advisory Commission, if they so choose, will be able to tender advice. I would have liked it. To this extent I do not think Government would have gone. Therefore I did not give an amendment. But without an amendment on this point I hope the Finance Minister will make rules in such a manner that ordinarily their advice may be sought on matters of policy and they may be effective. After all, they are very respectable and big people, and their advice should be respected.

As regards the Advisory Commission I would very respectfully ask the Finance Minister to kindly elucidate the point and tell us how he means to work it so that the House may get assured. He won't be able to do everything; his officers shall have to decide many matters. He personally cannot decide every matter. He has to deal with fifty thousand companies and he cannot possibly do all these things. When he is there there may be no advisory body; we have full confidence in him. But as I submitted at the time of the first reading, I

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am really afraid, I shudder to think how so many rights and duties will be discharged, how they will be exercised by Government; I am very much afraid, I am very unhappy with the fact that you have taken many of the civil liberties of the people. I did not like it. Now all these powers may be exercised in such a manner that the Government is able to inspire confidence and people may not say that by this change of the law the position in the country has become worse. I do not want to conceal this. I am afraid there will be plenty of nepotism, bribery, corruption etc. All the people will rush to you. Now, these managing agents, managing directors, managers are all within the hollow of your hand, and they will run about and ask for approval.

3 P.M.

Shri C. D. Deshmukh: Is it the hon. Member's short point that if the commission is to be overruled, it must not be done without the Minister's specific consent?

Pandit Thakur Das Bhargava: That is true. So far as the Minister is concerned, I have already said that the Minister is directly responsible to the House and to the country, and therefore, I do not want to curtail the powers of the Minister. It is perfectly right that he should have the powers. But at the same time I should think that the Minister will also think twice before disagreeing with them in normal matters; and so far as normal matters are concerned, their views should be accepted. But in special matters where the Minister finds it impossible to give effect to their decision, or in other matters which I cannot think of and which I cannot illustrate now, the Minister shall have full authority to disagree with their views. Otherwise, there is no meaning in its being called an advisory commission. I want that ordinarily and normally their views should be accepted. But in certain matters where the Minister thinks that for the discharge of his duties he must disagree with them, I do not say that he should not disagree at all. But so far as the other people, excepting the Minister, are concerned, I would rather like that their advice is not ignored by any authority. After all, there will be five men in that commission who will....

Shri C. D. Deshmukh: I say that if that is the point, then that could be easy to secure. That almost goes without saying namely that no one below the Minister will have the authority to overrule the commission. That is obvious. One need not say that.

Pandit Thakur Das Bhargava: So far as the Minister is concerned, I have submitted that except in exceptional matters where it will become very difficult for him to accept their advice *in toto*, the Minister also will not ordinarily differ from them. After all, it is the advice of five or six people, and moreover it is the advice of people whom you yourself have selected and in whom you have got confidence, and in whom the country has got confidence....

Shri Gadgil: Not the country.

Pandit Thakur Das Bhargava: If the Finance Minister appoints any person, I shall have certainly confidence in the wisdom of the Finance Minister in appointing that man, and also confidence in that man.

Mr. Deputy-Speaker: My own reading is this. The hon. Finance Minister wants to have a department under him,—just as the Railway Minister has got a department under him, namely the Railway Board, or just as the Finance Minister himself has got the Central Board of Revenue under him, not clothed with such executive powers —without consigning all this to a statutory board, in which case he will be tied hand and foot and will be regulated by their decisions. In between, he must have freedom to accept or not to accept. But he would not give that power to anybody in his office below himself. That is what he says.

Shri C. D. Deshmukh: That was the short point I made, because the hon. Member referred to the staff under the Minister and he said that he was afraid that so many powers had been taken. I just wanted to know what exactly his point was. And if his point was that there was a danger of the staff under the Minister disagreeing with the commission....

Mr. Deputy-Speaker: He has no such fears.

Shri C. D. Deshmukh:....then he need have no such fears. As for the other point, I shall deal with that in my reply. I only wanted to deal with a short point here.

Mr. Deputy-Speaker: He is agreeable to that. The only point is whether the Minister should be free to accept or not to accept....

Shri C. D. Deshmukh: I shall deal with that in my reply.

Mr. Deputy-Speaker:....or whether ordinarily he is bound to accept.

Pandit Thakur Das Bhargava: Ordinarily, he will accept their advice. Only in certain circumstances, he may or may not accept. As a matter of fact, this is an advisory commission. But whom does it advise? It is not to advise the officers under the Minister.

Mr. Deputy-Speaker: To that the hon. Minister is agreeable.

Shri Jhunjhunwala: He has agreed to that.

Mr. Deputy-Speaker: The hon. Minister has already said that he is agreeable to that. So, the hon. Member need not labour the point.

Several Hon. Members: *rose.*

Mr. Deputy-Speaker: I find a number of hon. Members rising in their seats. As hon. Members will be aware, the time that we have allotted to this group of clauses—or I should say for all these our groups put together—is up to 4.10 P.M. The hon. Minister wants 40 minutes, in which case....

Shri Gadgil: Give us five minutes each.

Shri T. S. A. Chettiar (Tiruppur): You can extend the time.

Shri U. M. Trivedi (Chittor): You can extend the time.

Mr. Deputy-Speaker: Let us assume that we extend the time till 4.30 P.M. In that case,.....

Shri U. M. Trivedi: Till 5 P.M

Mr. Deputy-Speaker:....I would request the hon. Minister to start at 3.50 P.M. Will that do?

Now, there are a number of hon. Members who want to speak. I have noted down their names. They are Shri Jhunjhunwala, Shri C. C. Shah, Dr. Krishnaswami, Shri G. D. Somani.....

Shri T. S. A. Chettiar: I would also like to speak.

Shri C. D. Deshmukh: In response to appeals, I have cut down my time to 30 minutes.

Mr. Deputy-Speaker: Where is the need for any response? Hon. Members want to hear the Finance Minister. So, what is the good of his cutting his time in response to appeals?

Shri U. M. Trivedi: You have omitted my name.

Mr. Deputy-Speaker: The hon. Member's name is bracketed with that of Shri N. C. Chatterjee in the amendment. Shri N. C. Chatterjee has already spoken. So, Shri U. M. Trivedi need not speak.

I shall give ten minutes to each one of these Members. There are six of them now. Since the discussion on this group of clauses must close by 4-30 P.M. I shall call the hon. Finance Minister exactly at 4 P.M.

Shri Gadgil: May I speak? I shall require only five minutes.

Mr. Deputy-Speaker: I am calling upon Shri C. C. Shah, because he may take less than five minutes.

Shri C. C. Shah: I welcome Government amendment No. 1133 to clause 407. The proviso which is added by that amendment gives additional power to Government. When an application is made by shareholders under clause 407, Government can do two things, either appoint two directors or ask the company to introduce proportional representation. If the company has already exercised the option under clause 264, then no occasion arises for the exercise of the latter power, in which case Government may consider the desirability of appointing two directors if it becomes necessary in the interests of the company. Therefore, there is no overlapping between the two powers. It is not as if the power given in the clause will not be exercised if the company has already exercised the option under clause 264, and therefore there need be no apprehension that Government will ask the company to do only the one and not the other. Both powers are given to Government, and I think they are both necessary and wise.

Shri Jhunjhunwala: They will not be exercised simultaneously.

Shri C. C. Shah: No, not simultaneously.

I shall now deal with the clauses relating to the advisory commission. Now, there appears to be, with respect to the hon. Members who have said so, a little misunderstanding about what exactly the Central authority has recommended. I can appreciate the anxiety of the hon. Members that the advisory commission or the Central authority must be a proper body which will discharge the functions which have been entrusted under this Act, because the administration of this Act becomes a matter of vital importance.

The Bhabha Committee have rightly pointed out that so far, this Act was grossly under-administered, and a large number of evils, which have arisen and which we are now removing, have arisen not so much because there was not a provision in the Act, but because the provision was not enforced. And they have given, and rightly, two reasons for that.

The principal reason is that there was decentralisation of administration. While the company law was a Central subject, the Central Government delegated all their powers to the various State Governments who did not take proper care to administer the Act as it should have been. The second reason was that the various offices were not properly staffed with registrars and other staff. Therefore, the Bhabha Committee have advocated a Central authority. In other words, what they have advocated is that the administration of the Act must be taken over by the Central Government, and it must be Centrally administered, instead of there being a decentralised administration.

Another reason which they have given, and very rightly, and which becomes more relevant in the present circumstances, is that we are now adopting a more positive attitude towards the management of companies than a mere negative one. Until now, we were content with providing in company law statutory restrictions as to what the management should not do.

Shri Gadgil: Now, we are saying "do's".

Shri C. C. Shah: Now, we are imposing on them obligations to do things, which are to be watched by the authority which is to watch the administration of the Act; and the Central Government have undertaken many things to be done by that. Also, they have rightly given the reason that the economic policy of Government is closely linked with the private sector, and therefore it is more important to watch the manner in which that private sector shall function through corporate management. So, if the economic policy of Government is to succeed and not to fail, it becomes obviously and vitally important that the administration of company law should be a positive duty

of Government rather than a negative duty of police action. For these reasons, the Bhabha Committee have advocated a Central authority.

Having done that, they rightly point out that that Central authority can be organised in two ways. One of the ways is as in England, namely, by a Board of Trade, which is a department of the Ministry, and the other way is to have a statutory autonomous authority. As my hon. friend, Shri A. M. Thomas, rightly pointed out, they admit that there are advantages and disadvantages of both methods. One may adopt one or the other. We have adopted the first course, but to say that we are rejecting the main recommendation of the Bhabha Committee is wrong. We are accepting the main recommendation, namely, to have a central authority for administration of company law. But we are rejecting only their recommendation as to the form which that central authority should take, and out of the two forms which they have recommended, we are adopting the one which is prevalent in England. Therefore, I submit that it is entirely erroneous to say that we are taking away the main recommendation of the Bhabha Committee. I would like to draw the attention of Shri N. C. Chatterjee—I am not sorry he is not here and I am glad Shri U. M. Trivedi is here.....

Shri U. M. Trivedi: I would request that I may be given an opportunity to speak.

Mr. Deputy-Speaker: Subject to time being available.

Shri U. M. Trivedi: The unfortunate thing is that I have been bracketed with Shri N. C. Chatterjee. But I want to speak.

Shri C. C. Shah: What is his recommendation? His main recommendation is based on a misconception. His amendment No. 1123 says:

> "The Central Government shall refer to the Commission for inquiry and report all matters for which the approval, consent or sanction of the Central Government is required to be taken under this Act."

Now, it is said "for inquiry and report". Report to whom? Obviously to the Central Government. And who is to take the decision? Obviously, the Central Government. And, therefore, it becomes an Advisory Commission, not a Statutory Autonomous Commission of the nature which Bhabha Committee has envisaged. His very amendment speaks of an Advisory Commission, not a Statutory Commission of the nature he has envisaged, because it only says the Central Government shall refer for inquiry and report and ultimately it is the Central Government which has to take a decision. Now, I will tell you how the misconception has arisen. What the Bhabha Committee recommended was that if you accept a Statutory Commission, then all the powers which are given to the Central Government ought to have been given to that statutory authority whose decision may be final. Therefore, wherever you have used the words 'the Central Government' in all the previous clauses, you ought to have said 'the Central authority under the Act'. Now, at that time, no Member was awake to this. Now, we have said the Central Government will issue notification under clause 323. At that stage, it ought to have been said that the Statutory Commission shall issue the notification. We have said that the Central Government will approve the managing agent's appointment or reappointment; you ought to have said the central authority shall approve the managing agent's appointment or reappointment. All that is gone.

Shri A. M. Thomas: It can be done in the third reading stage.

Shri C. C. Shah: If you will refer to page 195 of the *Report of the Company Law Committee*, they have rightly said that the functions of the Commission shall be that it shall carry out all the functions which are to be entrusted to the central statu-

[Shri C. C. Shah]

tory authority under the Act. They envisaged that all the powers which are given to the Central Government will be given to the Statutory Commission. If we have not done that, to ask for this amendment now is, with all respect, shall I say, most inappropriate.

An Hon. Member: Shutting the stable after the horse has left!

Shri C. C. Shah: Therefore, I am submitting that the amendment proceeds on a basis which is totally wrong. I can understand the anxiety of the hon. Members that, ordinarily speaking, the recommendations of the Advisory Commission ought to be accepted. I am quite sure it shall be so, in 99 cases out of 100. If there is to be any rejection, it shall be at ministerial level only.

Another thing is that nothing has been said in these clauses about the personnel or the tenure of office or the terms of appointment of the members of such a Commission. I am quite sure Government will take all these factors into consideration. Shri M. S. Gurupadaswamy's amendment is, with all respect, I should say, entirely inappropriate, because he says 'whose members shall be appointed by the President....and shall only be removed from office in like manner and on the same grounds as Judges of the Supreme Court'. One has only to read the amendment to see the absurdity of it, if I may say so with respect.

Shri M. S. Gurupadaswamy: It is not absurd.

Shri C. C. Shah: Then as regards the matters which are to be referred to the Commission, I am glad the Government themselves have moved amendments to include more matters which will be referred to the Commission. Particularly, Government have added clauses 268, 323 and 342 to this. As regards clause 323, as my hon. friend, Shri T. S. A. Chettiar has rightly pointed out, this is a matter of such importance that the Commission should advise them.

Shri M. C. Shah: That is accepted

Shri C. C. Shah: Only one word more and I have done.

The Advisory Commission is also an experimental measure. We will watch the experiment for a period of about five years, and we shall have to see how the Commission works. I do not know what exactly is envisaged, whether they will be whole-time members or whether they will be entirely advisers of a peripatetic nature who will come occasionally, once in a month or two months, see the files and decide. The work of the Commission is so much and so important that.....

Mr. Deputy-Speaker: Is there no provision here that the rules will regulate this?

Shri C. C. Shah: There is no such thing in these provisions as regards rules for this Commission.

Shri U. M. Trivedi: They are beautifully vague.

Shri C. C. Shah: I hope the hon. Minister will explain the position.

Mr. Deputy-Speaker: What is the clause relating to rules?

Shri T. S. A. Chettiar: Clause 633.

Mr. Deputy-Speaker: This may be relegated to the rules. It says, 'for all or any of the matters which by this Act are to be, or may be prescribed by the Central Government'.

Shri C. C. Shah: But this is not a matter to be prescribed by the Central Government.

Mr. Deputy-Speaker: Generally, it carries out the purposes of this Act. Probably it may be provided by the rules.

Shri C. C. Shah: It can be so.

Mr. Deputy-Speaker: When we come to clause 633, we may have a specific rule concerning the composition, qualifications etc.

Shri C. C. Shah: It will be necessary.

Pandit Thakur Das Bhargava: These rules may be modifiable by Parliament.

Dr. Krishnaswami (Kancheepuram): Yes.

Mr. Deputy-Speaker: Therefore, if you put in the rule that all these rules should be laid before Parliament, that will be all right.

Dr. Krishnaswami: Not only laid before Parliament, because that is only for information.

Mr. Deputy-Speaker: When they come to that portion, if they want to give that power to modify these rules, let them say so. A clause may be added.

Shri C. C. Shah: I would say only one word more before I sit down. The Bhabha Committee Report has a whole chapter—chapter XVIII—on company statistics. They expect that the central authority which they envisage will collect all company statistics. In fact, as we have found in the course of the debate, many of the decisions which we have taken had to be deferred for want of statistics on many vital matters of company law. I hope that the new department which the Government have set up will pay more adequate attention to the necessity of providing company statistics in all matters to which the Bhabha Committee has drawn our attention.

Lastly, in clause 631 we have provided that the Government shall make an annual report to Parliament of the administration of the Act by the Government. That is a very important thing which has been added because at that stage Parliament will have an opportunity of seeing how far the Advisory Commission has functioned, how the Government have administered the Act, and Parliament will have an opportunity of expressing its views as to the manner in which the Act has been administered.

Shri Gadgil: I think I am entitled to give my advice on this subject particularly because I had the opportunity of watching and working with all the three varieties of organisations, namely, company, department and corporation such as the Damodar Valley Corporation, the Sindri Fertilizer Factory and the department itself. My own experience is that if one wants to have full parliamentary control over the expenditure of people's money and if we want that control to be real, direct and effective, then you cannot have a better organisation than the department itself. Where the question is one of executing a single project or a project the confines of which are not very wide, then you can have a corporation or a company but where we contemplate the investment of power on such a large scale as is contemplated in this Bill, I think the department is the best organisation and with that is to be associated the suggested advisory board.

My friend Pandit Thakur Das Bhargava wanted to know how the advisory board would function. I am reminded of a couple who went before a marriage registrar. They asked the marriage registrar to define the conditions on which they could have a divorce if they wanted to secure one.

Pandit K. C. Sharma (Meerut Distt.—South): Farsighted people.

Shri Gadgil: Farsighted or nosighted at all.

The point is that the advisory board contemplates a situation in which the advice of an expert type will be available to the department as such. But, whatever be the advice, it is the duty and responsibility of the permanent civil servants as represented by the department itself to tell the Minister whether the particular advice is consistent with the overall policy of the Government as already defined and in case the department differs from the advisory board, it does not mean that in any way the importance of the advisory board is belittled or slighted. In actual working, traditions grow, conventions grow

[Shri Gadgil]

and normally the Minister, who is always a tenant-at-will of the people, —he may come and go—is usually cautious to accept the advice, as far as possible, of the permanent civil servants as represented by the Secretary of the Department and if that advice is reinforced by the advice of the advisory board. I am certain the Minister will never differ. But, if there is a difference between the views and the viewpoints of the advisory board and the views of the permanent civil servants, I have not the slightest doubt that the responsible Minister in normal circumstances should accept the advice of the civil servants as represented by the Secretary of the Department.

Mr. Deputy-Speaker: The hon. Member goes beyond what the Minister is prepared to concede.

Pandit Thakur Das Bhargava: It means that the Minister is an automaton and he should carry out the wishes of the civil servants.

Shri Gadgil: Whether he is an automaton or a live person is a matter which can be experienced only by those who are in those circumstances. I speak with some experience and with some authority.

Pandit Thakur Das Bhargava: Then it is a very sorry experience.

Shri Gadgil: The point is that we want parliamentary control to be real, direct and effective. For this reason at least I am of the view that there should an advisory board to be associated with the Department. The department contemplated deals with the private sector which exists as it is represented by 30,000 companies with—I do not know how many—crores of paid up capital and working capital and it is not only a sector by itself but it is a part of the bigger economy. It is therefore necessary that matters of policy that are bound to arise must be discussed by the Government from a different level than they may be possibly discussed by an autonomous corporation as is contemplated. An autonomous corporation may be autonomous and may have got the best and expert people represented there. Yet there is such a thing as the economic policy of the Government. As such it is for the Government to take the responsibility. Suppose we create an autonomous corporation and questions are raised then the Minister is likely to say that this is what the independent corporation has recommended; thereby you fragmentise the responsibility. It is not in the highest interests of the country or for the smooth working of the administration. Therefore, when we have followed a policy of interfering with private enterprise with a view to bring it in line with our overall economic policy, there cannot be anything like autonomous corporation. It must be a department which will be directly responsible to Parliament through the presiding Minister. I, therefore, submit that what Mr. Chatterjee has said cannot be accepted. There is a general feeling in the House that what the Government propose has the general support of the House.

As regards the rules, this, that and the other about the actual working of the advisory board, I submit, these matters must be left where they are. As I said, conventions will grow, traditions will grow, understandings will grow. If we lay them down here and now, instead of smooth working, every time there will be conflict and what we have in view will not be achieved. For this reason, I would request my esteemed friend, Pandit Thakur Das Bhargava, not to insist on the rules being made here and now.

Shri Jhunjhunwala: Though five minutes would not have sufficed if I had been asked in the beginning to speak; but, now since most of the points which I wanted to make out have been covered by the previous speakers, I think, I shall be able to finish within 5 minutes.

So far as the question of Mr. Chatterjee's amendment is concerned, as has been pointed out by previous speakers, this point was very well discussed at the time of the general discussion and our Finance Minister has convincingly explained before the House that it was in the interests of the administration that all these things should be in the hands of the Government. As such, now for Mr. Chatterjee to come and say that there shall be a separate statutory body in order to deal with different matters. I do not think, was any convincing argument at all.

The only point which I want to make is regarding clause 407. Mr. Chatterjee pointed out that now that the Government has taken the power of appointing two directors there should not be this subsequent proviso:

> "Provided that in lieu of passing an order as aforesaid that Central Government may, if the company has not availed itself of the option given to it under section 264, direct the company to amend the articles in the manner provided in that section and make further appointment....."

I was not in the Joint Committee and I did not know as to why this power of appointing two directors had been given to the Government whenever any representation is made before the Government that the affairs of the company are not being conducted in a fair and proper way. I thought that this was independent of anything contained in the Act. But I was informed by one Member of the Joint Committee that this was done because the proviso of proportional representation was not accepted and therefore it was put down as a safeguard against that. Now, I find, as has been explained by the hon. Finance Minister that it was not so. It is independent of that. It was done because in spite of the fact that there is proportional representation in any company, the Government should have the right, in public interest or in the interests of the shareholders. to appoint two directors and that point has been made clear.

Now, they are taking additional power. That is, they can also ask the company to introduce proportional representation in their articles of association, and can compel them to do so. Here I agree with Shri Tulsidas when he says that when the Government have taken one power in their hands—of appointing two directors when they find that the affairs of the company are not properly conducted—why should they have this additional power of asking the company and compelling them to introduce proportional representation in their articles of association. I think he is right. Even if the Government does not accept what Tulsidasji said I do not understand what this proviso means. Here it is said:

> "...in lieu of the passing of an order as aforesaid the Central Government may, if the company has not availed....."

So far as other companies are concerned, where there is already a proviso in the articles of association that they will have proportional representation, there the Government has got power to appoint more directors, but here the language stands "provided that in lieu of passing the order aforesaid (that is, appointing two directors), the Central Government may..." What I understand from this is that if the Central Government find that it is not necessary to appoint two directors, they can, in lieu thereof, ask the company to introduce compulsory proportional representation, and in that case they will give that order. So according to the language, I do not think that once the Central Government has done like that, they will have again the power to appoint two additional directors. But what the Finance Minister said was: "No, the Government will have power and it is right that the Government should have that power." In regard to other companies also

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where in their articles of association they have provided that they will have proportional representation, irrespective of the fact that a particular company has got proportional representation, Government has power under this clause to appoint additional directors. I think Government has taken this power very lightly for this reason that if it finds that in the public interests they are not doing well, Government can appoint additional directors not only because a few shareholders are suffering but in the public interests. When I pointed out the words "public interests", my friends here laughed and said, "What has the public to do with it?" But the whole Act is meant for the public and not only for a few shareholders of the company. It has been said that so many social activities, so many social values etc., have been overlooked by the companies, that there has been concentration of power and of wealth, that there are cases of giving of jobs to relatives, giving selling agencies to relatives, etc. These things may not be in the interest of the shareholders alone but also of the public. I do not know why my friends were amazed and began to laugh and said: "What has the company to do with the public? The company has to do only with the shareholders." They must forget this background.....

Pandit Thakur Das Bhargava: According to the section, only the interests of the company are mentioned there.

Shri Jhunjhunwala: My hon. friend is a lawyer.

Shri U. M. Trivedi: A great lawyer.

Shri Jhunjhunwala: So I do not want to criticise him here and I cannot. After all, the lawyer will succeed, but I say that the whole Act, as the hon. Minister has also said, is not only to protect the few shareholders, of the company but it is to protect public interests. Therefore, my submission before the House is that even if the Government has asked a company to have compulsory proportional representation, Government should have the power, if another representation is made before the Government or if anything comes up before the Government that the company is not carrying on quite well, to appoint two additional directors in the public interests. As such, if the wording is found to require any change, it may be made.

Dr. Krishnaswami: In the brief time at my disposal I shall only indicate a few of my doubts on clauses 395, 407, 408 and 409.

In regard to clause 395, I doubt whether the Central Government should have these powers embodied in company law. I do not know how many cases will arise where the Central Government will have to intervene to provide for the amalgamation of companies in national interest. There was only one instance that I know of, and that is the Iron and Steel—Martin Burn—which was amalgamated through the agency of Government. I should like to ask two questions. The phrases "national interest" and "essential" are used freely, but I would like to ask the hon. Finance Minister what is "national interest" and what is "essential". How do we determine whether a thing is essential. Obviously it is left to the Government to decide. Even if a certain course might be in the national interest, amalgamation need not be the best way of achieving it. In other words, in clause 395, there are two areas in which the Government's judgment is going to be exercised. What is the purpose of bringing into the company law this particular provision? We have already got the Industries Development Act, and if necessary, a special Bill can be introduced in Parliament for amalgamating companies. After all, the purpose of legislation is not to cover unlikely cases and arm the executive with unlimited powers; the purpose of legislation is to create a framework in which company law is carried on efficiently. I feel that this

clause gives arbitrary powers to the executive and clothes it with far too much authority. It is said that copies of every order made under this clause shall, as soon as may be after it has been made, be laid before both Houses of Parliament. In other words, it is to be laid before the Houses of Parliament only for information. When the Government decides to use its coercive powers for the purpose of amalgamation, it will not be against public interest, if a special Bill is introduced for this purpose. On the other hand, if we give the executive this blanket power, what will happen is that we might have hasty types of amalgamation which may not be in the public interest and which Parliament will be powerless to question. That is my first observation.

I pass on to clause 408. This is a rather important clause and although I have been critical of the Government having powers, I think this is one of the salutary provisions of this Bill. Clause 408, as you will recollect, Sir, refers to the power of the Central Government to prevent changes in the board of directors likely to affect companies prejudicially. This is a residuary power. All that I wish to ask the Finance Minister is that he should indicate broadly to the House the considerations which will weigh with the Government in exercising its discretion. Of course, the clause has been worded with great care. Government will not interfere unless there is a solid basis for the complaint, and I take it that the purpose of this clause is to prevent the transfer of management to unscrupulous financiers or businessmen using company funds as a milch cow. Indeed at an earlier stage when this Bill was discussed, I put forward a strong plea for differential voting rights being given to certain companies in order that those who were pioneers might retain control over them. The Finance Minister then did not accept that view on the ground that those who had equal financial stake should have equal voting power. I hope that in future when the Government intervenes, it will take into account the effort that has gone into the building up of some of these companies and prevent unscrupulous financiers coming into the field merely for the purpose of cornering the company and using its funds. I think that it will be very valuable power and I hope it will be exercised with great care.

I pass on to clause 409. On this section there has been a grand debate on whether we should have an advisory body or a statutory body. I am not in favour of a statutory body, and although this is going to be an advisory body, I should only like to suggest to the hon. Minister that since so much power has been given to the Government and since they have to consult the Advisory Commission on so many occasions, there is need for a reviewing authority. When the Capital Issues Committee rejects certain applications or considers the advisability of sanctioning capital issues for certain industries, the last word has not been said. There is a Reviewing Committee over which my hon. friend Pandit H. N. Kunzru presides and he submits a report on how the discretion has been exercised by the Government and that Committee. I, therefore, suggest that the Government should consider the advisability of having a reviewing commission that can advise on how discretion has been exercised both by the Government and by the Advisory Commission. This must be taken into account before the report under clause 631 is submitted. It is important that we should have somebody to review the discretion of both the Government and the Advisory Commission and when these matters are brought to the notice of the public by the reviewing commission, it would be a valuable check on executive discretion. It would also help the legislature to understand how certain problems of company management had been dealt with and how the discretion had been exercised and what factors had been taken account of by the executive. Since

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undoubtedly in the Company Law, as it has been drafted, and as it is likely to be passed, there is a large margin for subjective judgments being exercised, I wish that as far as possible Government should consider the advisability of having at least a reviewing commission for the purpose of finding out how far such Judgment is exercised effectively. I think the whole matter as to how far advice tendered has been taken into account will be analysed by the reviewing body which will have to make its report available to the Government. Parliament would be in a better position to watch and know how the Act is being worked, how the department has been bound by advice tendered and in what respect the Advisory Commission itself has not exercised its Judgment properly. I hope the hon. Minister would indicate to the House briefly the considerations which weigh with him in either accepting or rejecting this suggestion. Should he decide to accept my suggestion of having a reviewing commission, I think when the time comes for me to move an amendment to clause 631, I shall do so and I hope at that stage the hon. Minister will accept my amendment.

Shri G. D. Somani: During the short time at my disposal I would like to confine myself to clause 407. The section as it stood before was had enough but today the Government's amendment had made it definitely further worse. I have heard a good deal of arguments which hon. Members Shri Thomas and Shri C. C. Shah had to make about this clause. I am also aware of the various other arguments put forward and the strong feeling that exists in the House about the system of proportional representation. I definitely feel nevertheless that it is detrimental to the smooth functioning of the companies and will do more harm than good to our corporate sector.

I shall now come to the principal arguments. I might recall the references that were quoted by many speakers the other day about the speeches made by our present Home Minister Pandit G. B. Pant and various other distinguished Members of the Congress. My hon. friend Bansal had pointed out the other day the circumstances under which the Congress Party put in this amendment for proportional representation on that occasion. I would also like to take this opportunity of informing the hon. Members that I had an opportunity of discussing this matter with one of the leading spokesman of the business community who had played an active part in submitting the viewpoint of the nationalist section of the business community at that time. I understand that it was on the unanimous advice of the nationalist section of the Indian business community that the Congress Party in that year decided to press forward this amendment about proportional representation and that was for obvious reasons because at that time there was a preponderance of British joint stock companies on the boards of which there were hardly any Indian directors. It was to make the door open for Indian nationals to get into them, under those special circumstances the business community had advocated that. I can assure the House that those very spokesmen of the business community who suggested those amendments are now totally opposed to them.

Now coming to the suggestion that has been made about the system being prevailing in the USA, I would only like to submit that those who were making this suggestion on the basis of something prevailing in other countries, conveniently forgot certain things.

Mr. Deputy-Speaker: The House has already accepted this in another clause.

Shri G. D. Somani: I would only take a few minutes.

Mr. Deputy-Speaker: I have no objection but what is the meaning of going into the general principles.

Shri G. D. Somani: Government have now taken powers to force any company to alter its articles to provide for proportional representation

Mr. Deputy-Speaker: It is already there in another clause.

Pandit Thakur Das Bhargava: It is directly in this clause.

Shri G. D. Somani: The issue arises from the amendment that the Government have moved today. The Finance Minister gave certain information about the system prevalent in America. I would like to ask whether in those States where this system is prevailing they have got such wide powers as we have under the present Bill. I refer to clause 234 to 250 about which one of our senior Members, Pandit Thakur Das Bhargava pointed out how sweeping and wide powers had been provided. There are then clauses 396 to 402. All these clauses give more than ample protection to the minorities for any case of oppression or mismanagement. Our friends who have suggested the incorporation of this proportional representation have not suggested that these clauses should go. They want that all the restrictive clauses wherever they may be prevalent, in any part of the world, should be pooled together and incorporated in our present Companies Bill as if our Bill should be a model so far as the question of restrictions and inhibitions are concerned.

I have got here two issues of *London Economist* which says something about the system prevalent in America. The issue of London Economist dated March 26th says:

> "The chairman of Montgomery Ward, Mr. Sewell Avery, has called upon the Senate Banking Committee to investigate the 'in-board of directors. In a series of Mr. Louis Wolfson to gain control of the giant mail order company's rich reserves. Mr Avery is anxious that a full disclosure regarding Mr. Wolfson's financial backers and his claim to control. 500,000 shares of Ward stock be made available to the company's shareholders before the annual meeting next month."

In May 21st issue of this journal, a report about the proceedings of this meeting was given and it says:

> "The great battle for control of the Montgomery Ward mail-order empire ended in an incomplete but unquestionable victory for the challenger, Mr. Louis Wolfson.....Mr. Wolfson's chief difficulties, however, may originate from Congress rather than from his opponents on the board of directors. In a series of hearings beginning on May 26th, a sub-committee of the Senate Banking Committee, with Senator Lehman in the chair, will investigate the entire mechanism of proxy fights....."

The report ends:

> "It is in proxy battles and company mergers that many observers see a greater danger to stability than in ordinary operations on the stock exchange."

This is what is happening in America. Proxy battles are going on for economic control of certain important companies. If our elections of directors to the companies are not to be converted into political battle fields then it is highly desirable that this power which the Government are taking should be exercised with due restraint. We have no dearth of mischief-mongers who will now be busy with canvassing votes from the ill-informed and unintelligent shareholders and it is quite possible that the Government may be flooded with applications from these interested parties to get themselves anyhow into the boards of various companies and a genuine difficulty will be created in the functioning of various companies. As it is, so far as the interest of the company is concerned the majority directors have as much interest and they lose much more

[Shri G. D. Somani]

than the minority section if they do anything against the interest of the company. So far as the risk of the majority party doing anything to support their self-interest is concerned, there are now more than enough and adequate provisions in the Bill as it stands to ensure that no such abuses will be allowed. I, therefore, do not see the slightest justification for going beyond the clause as it stood before. But, if the Government are now anxious to take further powers I will only end by expressing the hope that utmost restraint and caution will be exercised in ensuring that no undue advantage is taken which will interfere with the day to day smooth working of the companies.

Mr. Deputy-Speaker: Now, five minutes for Shri U. M. Trivedi.

Shri U. M. Trivedi: Sir, I should get more time but I will take only five minutes. I will remined you of your words that those who were in the Joint Committee should not be called first. On this group of clauses 9 Members who were in the Joint Committee have spoken whereas others have not been allowed. Any how ..

Mr. Deputy-Speaker: Was Shri N. C. Chatterjee in the Joint Committee?

Shri U. M. Trivedi: He was, Shri C. C. Shah was, Shri G. D. Somani was, Shri Tulsidas was, Shri T. S. A. Chettiar was and so many others were there.

An Hon. Member: Anyhow, you take only five minutes.

Shri U. M. Trivedi: The hon. Member need not dictate; it is for the Deputy-Speaker to say so.

Anyhow I will not take longer time and I will do my best in this respect. I would not have even risen to say something, but I heard Shri C. C. Shah speak of the absurdity of the amendment No. 1123 and that has prompted me to say something. When he opened his speech I thought that something would come out of it. He said that there are advantages and disadvantages of providing a statutory body and then I expected that some of the disadvantages would be narrated to this House. But, I find that the whole thing was empty and except for the dogmatic speech that he made giving his views that this is bad, that is bad and so on, he said nothing about the disadvantages. I for one as a lawyer—and he also is a solicitor—feel that there is a very great advantage in always providing for a statutory body. To an average man this statutory body always sounds to be an honest body; this commission business is always a hush-hush. Anybody can approach this commission. Any good capitalist, richman, any influential person or any party boss may go and tell them to do this, that and so may other things. But, in the case of a statutory body nothing of this kind is likely to take place.

Then there is another thing. An experienced man like Shri Gadgil also said that conventions will grow and with those conventions we will be able to achieve that which we cannot achieve by virtue of this Act. I say, what wrong is there in making a law instead of depending upon conventions. The days of fictions are gone. We used to read the judgment of the Privy Council formerly and the Privy Council used to say at the end of a judgement: "We humbly advise Her Majesty to do like this". But, that advice was always accepted in full. However, in this particular instance there is nothing wrong in our departing from those fictional powers. We must have statutory powers, actual powers and well defined powers. Instead of that we are making provision to have some fictional powers. I do not quite know whether any catch lies or whether we are afraid of facing the very authority which is also recommended by the Company Law Committee.

I am taking a bit of your time, but I shall refer to page 194 of this Company Law Committee's Report which says:

> "We suggest that the statutory authority may be called "The Cor-

porate Investment and Administration Commission", and should be located at the headquarters of the Central Government. We have suggested this name because we wish to focus attention on two major aspects of the Commission's work."

It is to these things that I very pertinently want to refer. The report goes on to say:

"We shall presently describe the functions and the duties that we propose to entrust to the Commission, but may anticipate our recommendations on this point by pointing out that in our view, the functions of the proposed Commission should be not merely the administration of the matters that arise out of the working of joint stock companies under the Indian Companies Act, but should also include the maintenance of a close and continuous watch over the investment market from the earliest stage of the promotion of a company to its management and final dissolution. These comprehensive functions should, we think be reflected in the Commission's name."

I am not very much enamoured of the name. What I say is when these two aspects of the case are taken into consideration and when the powers that are given here are also looked into comprehensively, we find that at every stage we have got the interference of the Central Government provided under this law so much so the whole of the Appendix VI gives us all the various clauses under which the Central Government has to be referred to. Our clause 410 here provides the duties of the Advisory Commission. It says:

"It shall be the duty of the Advisory Commission to inquire into and advise the Central Government.—

(a) on all applications made to the Central Government under section 258, 259, 266....."

I do not know what application can be made under sections 259 and 266 and it must be by some mistake that these have been put in.

Shri C. C. Shah: There is an amendment to omit these two.

Shri U. M. Trivedi: You might have moved an amendment but I am reading the Bill as it is. What I say is that when you have not been careful enough to look into this, you are likely to commit similar type of mistakes. So, my submission is that when you make this law and when you have still got the power to make this provision that a statutory body must be there, if you are still afraid of it, provide for some other appellate authority in all cases. Today we have got the Constitution. There is still a vacuum in the provisions of this Constitution whereby certain powers of the Supreme Court are not yet exercisable. Why not give those powers to the Supreme Court to decide if there is anything wrong in the way in which the advisory body may decide this particular thing? Then we will have complete faith in the decisions that are taken by the advisory body. It is quite right for us to say, as Shri Gadgil has put it and I think he is right—perhaps our present Finance Minister a very able man that he is may not be guided by the considerations which guided the very experienced and honourable Shri Gadgil—that the Minister would first take the advice of the Secretary and act according to the advice of the Secretary setting aside the advice of the advisory body. It may not be so in the case of the present Finance Minister and he may not do so. But there is every chances and there is some truth in what Shri Gadgil says that he will be guided by those persons who consider themselves some sort of supermen and are not guided by the intelligence of others and act in a manner caring little for this merely advising body. They are bound to act in a manner which will bring their own intelligence to bear upon it and they will set at naught what advice might have been rendered

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Now, in the provisions, as they stand, there is not even a mention as to whether they will be persons holding office temporarily or permanently. There, there is not even a time-limit fixed. Under these circumstances, the persons who are there will work in a most perfunctory manner, and such vast powers are to be wielded by such persons. So, there is nothing wrong in creating a body which will have control over the functioning of the whole of this company law. Shri C. C. Shah was kind enough to point out that my amendment No. 1123 does not go very far. I will ask him to read the whole of it.

Mr. Deputy-Speaker: It is in the Order Paper and he will read it.

Shri U. M. Trivedi: He did not read the whole of it. I think the Chair is looking at the clock and therefore, I will not waste any more time. When you read this amendment No. 1123, you ought to read sub-clause (3) of it. Sub-clause (3) casts a duty on the Commission "to determine in which case the powers of inspection and investigation should be exercised under sections 234 to 250 of the Act". Then, there is the statutory duty to supervise the winding up proceedings of companies. Then again, there is the statutory duty to study the balance-sheets and profit and loss accounts of companies and then to pass such orders as will be necessary and incumbent upon them. It will not be sufficient for us to frame rules and then frame a further safeguard that those rules of appointment of those people and the exercise of the powers by the Advisory Commission must be placed before the House and then the report will be placed before the House and then we may have an opportunity of discussing the post-mortem thing. There will be no end of it. We may, of course, have a satisfaction of abusing some persons or we may have the satisfaction of saying that this judgment was not right, or that the Ministry did not act very wisely or prudently in this matter and all that. But that would not give any satisfaction to those persons whose rights will be effected by the exercise of certain powers and for which they would have no remedy. I therefore say that even today it is not very late for the Government to consider this proposition of having a statutory body.

Shri C. D. Deshmukh: It is quite obvious that out of all the matters that have been discussed today, by far the most important is this question of Advisory Commission. I do not use the word 'statutory' or 'non-statutory' Commission because we are creating the Advisory Commission by statute. Therefore, there is no question of the word 'statutory'. I cannot understand the difference between statutory and non-statutory in the context in which hon. Members have been using these words.

Mr. Deputy-Speaker: They did not know for how long it will work, the terms, etc.

Shri C. D. Deshmukh: I am coming to that. While I was away, you said that these matters about terms, tenure and so on can be provided for in the rules, and so long as these things are provided for in the rules, then, it is as good as part of the statute. It is a delegated statute.

Pandit Thakur Das Bhargava: It is a statutory Advisory Commission.

Shri C. D. Deshmukh: It is a statutory Advisory Commission and it is an Advisory Commission. I really think that no further discussion is necessary. I am very sorry that Shri N. C. Chatterjee was not present when the previous discussion took place. I have no doubt that he has studied the record of that discussion, because I pay the greatest respect to his views in view of his special experience. I pay respect, of course to the views of all hon. Members—I do not wish to make an invidious distinction—but, as Shri Chatterjee has very special experience in these matters I should have liked to agree with him, but I really think that the scheme he is advocating is not a practicable one.

Reference has frequently been made to the Bhabha Committee's recommendations. As one hon. Member pointed out, they were not so one-sided as hon. Members think. What is more important is that Mr. Bhabha himself has been the Chairman of an Advisory Commission which for the last three years has been advising the Government, and therefore, he may be said to have accepted the scheme of things—it may be in his personal capacity—which is embodied in this Bill.

I am quite certain that hon. Members would like to know what exactly the experience of this Advisory Commission has been. Pandit Thakur Das Bhargava said that he hoped that at least in 99 per cent of cases the advice of the Commission would have been accepted. In other words, he would not mind if their advice was departed from in one per cent of cases. As a matter of fact, we have departed from their advice in ·005 per cent of cases. In other words, in over a thousand cases which have been handled by the present Advisory Commission during the last three years, we can recall only one case where Government did not accept the recommendations of the Advisory Commission in the form in which it was made and there was a special reason for it. It was a question of change in the managing agency and we pointed out that as we were approaching the days when the Bill would be discussed in the House and as there was a provision that a managing agency, in certain circumstances, may be changed—the transfer of a managing agency by special resolution—we had better now adhere to the scheme which was embodied in the Bill rather than take an *ad hoc* decision and that was our only reason for departing from their advice.

Pandit Thakur Das Bhargava: It was wrong that I said 99 per cent. I should have said 100 per cent or 99·9 per cent recurring.

Shri C. D. Deshmukh: I thought on that point I could catch the hon. Member out.

Pandit K. C. Sharma: What is the percentage of acceptance where the Secretariat differed from the advice of the Commission?

Shri C. D. Deshmukh: The Secretary was not a member of the Commission. There were three members: one was Mr. Bhabha. Another was one of the Deputy-Governors of the Reserve Bank and the third was an officer who had previous experience of the working of this Committee and had special experience of this matter. That was the Commission. Therefore, as I said, in this particular case there was a very special reason connected with the language of the Bill as introduced later in the House. So, I think our record is extremely good although I cannot agree that therefore it follows that in cent per cent cases we shall follow the advice of the Advisory Commission. I should say that the chances are that in almost all cases—I should not like to mention a percentage—we shall be guided by the advice of the Advisory Commission.

One must remember, as I think you Sir, pointed out, that after all, the responsibilities of the Minister are different from the responsibilities of a body of experts. One cannot have it both ways. One cannot say that you had better be guided by the advice of experts. Experts have their uses but they also have their limitations. We have not yet quite decided, and I think rightly, with any precision as to what kind of people should constitute the Commission. There is an amendment here which I hope will not be accepted by the House although I accept it in principle. As a matter of fact, I have in my pocket a paper where I put down my own ideas as to what the Commission should consist of, and it is over a large field. I read it out, not as a commitment but to show you the idea that struck me.

Shri M. S. Gurupadaswamy: It is in your pocket!

Shri C. D. Deshmukh: It tallys more or less with the qualification mentioned by the hon. Member in his amendment, and these results have been arrived at by a process of independent thinking. I might say, firstly—it is almost thinking aloud—that there should be a whole-time chairman who would be either a public man with a legal background and possessing sufficient experience of finance and commerce or general administration, or, if I cannot get one—because most public men like that are actively in politics—I should like a person of the status and standing of a high court judge with extensive judicial experience and possessing a general knowledge of business matters. I should like someone, a senior member of the accountancy profession, may be either an *ex-officio* president of the Institute of Chartered Accountants or, if regional considerations have to be borne in mind, as they should be, someone who is suggested by that body. Then I thought there should be one representative of the business community. That is going to be difficult, because he would have to refrain from taking part in certain decisions....

An. Hon. Member: What about a retired businessman?

Shri C. D. Deshmukh: Of course, if there was such a person as retired businessman—I do not think there is such a person—it would have been the best choice. I have known other people to retire, but I have not known of a businessman retiring. But nevertheless we shall make an effort to keep a man who may be said to be capable of representing the business world.

Mr. Deputy-Speaker: You may consider a businessman who has got a son over 35 years of age who is looking after the business, the father himself rarely getting into the business.

Shri C. D. Deshmukh: They either reside in a holy place or take part in politics. Even then they do not really remain idle.

I should think that a representative of shareholders is necessary on a body like this; whether he should come through the Stock Exchange or through the shareholders' Association, I do not quite know. But one person should be of that kind. Lastly, I think we should have a representative of organised labour, because, after all, it is amply clear here that labour is affected from time to time by the various decisions that are and will be taken under these powers. That is what I think the Advisory Commission would be. They would be all experts and each one will have his own point of view. It will be for the Minister to coordinate all those points of view. Probably in some cases he will find that, since the Advisory Commission will have *ex-hypothesi* agreed on his recommendations, there would have been already a fusion, a synthesis, of all the points of view of those respective experts. Nevertheless, as some hon. Members have pointed out, the Minister is the link between that Commission and the Parliament and I cannot imagine how hon. Members are suggesting that there should be a commission with powers which are completely independent of the Minister. It will then mean that indirectly they want a commission which will be independent of themselves, that is to say, the Parliament. In other words, it seems to me that under another name, what they want to create is a Company Law Special Court. There are matters which ought to go to court which we have indicated here in the Bill; but in these other matters I am certain that there is no room for court. In other words, these matters are not juridical; they are not capable of that kind of fine precision. For instance, the word "usually" is used in connection with many of these clauses; so also are the words "public interest" or "national interest". I say that it is (a) for Parliament and (b) for the Ministers who are responsible to Parliament to decide from time to time what is national interest or what is public interest. This is all the more necessary in these days when one's prevailing philosophies are undergoing a

change under the stress of developments in this country and elsewhere. In other words, we are living in a fast moving age and it is impossible to crystallise all these and hand it over to a commission of experts who have learnt their expertise in different fields. They cannot possibly be expected to take a comprehensive bird's-eye-view of prevailing philosophies. Therefore, there should be that power left to Government to intervene, trying to interpret the wishes of the Parliament in this matter, in the matter of economic policy or industrial policy. Therefore, I am quite convinced that what we are trying to take is the best possible course under the circumstances.

As I said, for the last three years we have already been having an Advisory Commission and most of the matters which we have been referring to them are matters which we shall continue to refer to them, especially because what was once in the schedule in the original Bill is now being incorporated in the Bill itself. I am having in mind some of these powers for instance, the powers conferred by clause 408. Some hon. Member asked—I think it was Dr. Krishnaswami—why we were introducing it. My simple answer is that it corresponds to some section, I think section 86 (j) (ii), or something like that, of the 1951 amendment; and I have given the reasons why we ought to make these temporary provisions permanent. It is these powers which are going to be referred to the Advisory Commission for advice—increase in number of directors, increase in remuneration of managing agent either before the commencement of the Act or after, approval of the appointment of a managing agent. This is undone. Now we have suggested that even the notification of an industry under clause 323 should be done by the Central Authority. This is also one function which the Central Authority has, in addition to these various other powers, to discharge. Therefore, we shall have to constitute a competent and well-staffed central authority. It is not as if one is exclusive of the other. I have pointed out 94 or 95 powers which the central authority will have to exercise. Out of these powers about 15 powers, with the deletion of these two clauses, will be referred to the Commission plus this power under clause 323 plus any other matters of policy that we may refer to them. What I foresee is that a body of case law will grow as a result of the close working of the advisory commission and the central authority. Both of them will learn; we shall learn to adjust our own ideas of remuneration and so on. As I pointed out on a previous occasion, it will all depend on what kind of commission we have. If it happens to have rather conservative views in regard to remuneration and so on, we may have to have discussions with them. so that one may revise one's ideas of remuneration. If, on the other hand, they are ultra-progressive, one might have to say that it is better to go slow. Although there might be discussion between the Minister and the central authority on the one hand and the Advisory Commission on the other, what I expect is as a result of these discussions, a body of case law and philosophy will grow, and we shall cojointly regulate the affairs of the companies in those respects which are in controversy today.

There was some reference made to the Board of Trade. Although it was a pleasent reference, it has been made over and over again and I think I ought to give some details as to what exactly the Board of Trade is.

Mr. Deputy-Speaker: Is there any body of persons constituting the Board of Trade?

Shri C. D. Deshmukh: I am going to give the details, because the House seems to be interested in it. The Board of Trade was originally set up at the end of the 18th century as a committee of the Privy Council. It consisted of several members including the Archbishop of Canterbury, who was appointed presumably to look

[Shri C. D. Deshmukh]

after the welfare of the people of the plantations. That was the euphemistic name given to colonies in those days. By the beginning of the 19th century, i.e. by about 1800, the members had almost ceased to function; till about 1845 the President and the Vice-President of the Board functioned as the only two active members. In 1845 the Vice-President of the Board became the Parliamentary Secretary and since then the present constitution of the board has continued almost unchanged. The head of the Board of Trade is the President and he is an important member of the Cabinet. He is an important member of the Cabinet and he is assisted by his junior colleage. Therefore, the Board of Trade is a department of Government just as the Treasury is another department of Government in the United Kingdom. It is one of the largest Government departments in the United Kingdom and it has responsibilities combining some of the functions which in our country are now discharged by the Ministry of Finance, the Department of Economic Affairs and the new Department of Company Law Administration, as well as the Ministry of Commerce and Industry. The specific responsibilities of the Board include (a) company law, (b) insurance.....

Shri A. M. Thomas: Insurance also comes in.

Shri C. D. Deshmukh: (b) insurance but not banking; (c) stock exchange, (d) control over industries—not electricity; (e) internal and external commerce and commercial relations and (f) all other connected subjects. I won't take the time of the House by giving the actual organisation of the Board of Trade. But, it consists of the Second Secretary, Overseas, Second Secretary, Home, the Principal Finance Officer under the President, the Parliamentary Secretary and the Permanent Secretary.

Mr. Deputy-Speaker: They are all Government servants.

Shri C. D. Deshmukh: Yes. Then, under the Second Secretary there are various departments which I have read out now. There is nothing to be gained by those who advocate that the Central Authority should be like the Board of Trade. That argument is in favour of the scheme which is advocated by the Joint Committee.

Shri M. S. Gurupadaswamy: What about America?

Shri K. K. Basu: Instead of Advisory Commission, change the name.

Shri C. D. Deshmukh: I should now come to another point in regard to this, that is, the subjects which have, at the moment, been assigned to this Central Authority. There are two arguments. One is that this is a new department which we are setting up. I should not like to give out the number of people in it at the moment. We have not yet organised it completely. We have a chart just as the Board of Trade has a chart. We shall require a large number of officers. I do not quite know how many cases will come up. I gave as an instance that 2000 cases have come up in the last 2 or 3 years. Since we have now extended our powers, as one hon. Member complained, it may be several thousands more. I have given an assurance to the House that we shall try to dispose of these cases as quickly as possible. Therefore, I am anxious that I should not over-burden this new department with responsibilities which can, for the moment, at any rate, be discharged in some other way. That applies to banking, insurance and certainly electricity. Electricity is not even under my charge, speaking for myself as Finance Minister.

Mr. Deputy-Speaker: Probably the advice of Parliament is that the hon. Finance Minister would do well to take that also.

Shri C. D. Deshmukh: On the ground that it is a question of power, yes. What I meant was that the very reason which the hon. Member gave

that there is the Banking Companies Act, there is the Insurance Companies Act, there is the Electricity Act, I said, this is a very good argument for not bringing all of them, because, it has been found necessary not only to include provisions here which will apply to banking companies in the Company law, but also to have other sets of provisions contained in another law, which means that there is division of functions. Banking companies and insurance companies function as companies so far as issue of prospectus, board meetings and so on are concerned. It is not our intention to include them within the purview of the new department. But, so far as credit creation is concerned, I cannot imagine how the Company law administration or an Advisory Commission, statutory or non-statutory, would be able to do this, although the hon. Member had the temerity to suggest that even credit creation should be given in the charge of this new department. I say that this is a most inadvisable course of action to take. We have the Reserve Bank's advice on the matter. It has many complications. Similarly with insurance. It has also connection with the economic life of the country, with the generation and collection of savings and so on. These are matters with which the Company law is concerned. If we want the Company law department to be specialists in the matter, I think it is a wise course not to over-burden it with responsibilities which can be discharged better by other specialist organisations. So long as the Minister is at the head of this department, barring electricity but not power, one may be quite sure that we shall find out ways to co-ordinate the work. That is what the Minister is for. It is only now that the Economic Affairs Ministry has been split up. Suppose I had said that this department will be in the Economic Affairs Ministry under one Secretary, the question would not have arisen, because in addition to Company law, banking, insurance, there is foreign exchange, planning and various other things. But, because we found that it will be too much work for the present Secretary of Economic Affairs, we have created a new department and have appointed a new Secretary. That is our reason for excluding these things from the purview of the Central Authority or Central department. I think I have covered most of the points made by hon. Members. I have given the assurance which was asked of by me and therefore I am unable to accept any amendment.

Dr. Krishnaswami: What about a Review Commission?

Shri C. D. Deshmukh: I come now to the last point about the Review Commission. This is almost as bad as the other thing. That is just like asking for conditions of divorce when a marriage is being arranged. As hon. Members said, we have not yet started our work. After all, a review is necessary. But, one does not review before one starts working.

Shri A. M. Thomas: But the law of marriage also provides for divorce.

Shri C. D. Deshmukh: But not an individual act of marriage. I say that there will be plenty of time for us to consider whether we should review or not. By what channel that review would come, I cannot say. I hope that Parliament will be taking a continuous interest not only in the rules and regulations, but also in the reports that would be put out by the Central Authority and then they might suggest that a review be made. It may be made in three years' time, or five years. There is nothing to be gained by providing a statutory commission that there shall be a review in this matter any more than in any other activity of the Government. We are frequently appointing Commissions. For instance in taxation. I have a Finance Act every year. Do we have a provision there that this shall be reviewed during the course of the year? But a time comes when it is necessary to review the taxation structure.

Dr. Krishnaswami: In the case of capital issues, there is a review by

[Dr. Krishnaswami]

a Reviewing Committee over which Pandit H. N. Kunzru presides.

Shri C. D. Deshmukh: That is called an Advisory Committee. It is not a Reviewing Committee. That committee meets once in three months to discuss policy aspects of this matter. It is not the same kind of review as the hon. Member has in mind. What I have in mind is a very much more comprehensive review and in the fullness of time, I have no doubt, that we shall have to make it. I believe that that exhausts most of the points which were made in regard to this Commission.

Then, I come to the question of labour representation either on the directorate or while the assets of a company are being transferred and so on. I have every sympathy with the point of view urged by the hon Member and I know that he is quite an expert almost in the affairs of tea companies. I am also aware that they are being transferred in the sense that their assets are being purchased. I have no doubt that there have been cases where the new owners of the assets or the transferees of the shares have insisted on dismissing certain people. That is where the shoe must have pinched. Nevertheless, I feel that this matter ought to be considered in connection with labour legislation. If the present Industrial Disputes Act does not contain a definition or does not contain provision to look after this state of affairs, then, just as it is open here to do something, some kind of provision can be made and would look more appropriately a fitting part of labour legislation. In any case, this is a matter in which I must take counsel with my colleague here the Labour Minister and Government will have to consider this matter. I am not in a position to say yes or not. I cannot say yes. But I am not rejecting it finally. There is difficulty, there is necessity for labour to be represented somewhere. It may be that part of it may come here. For instance if a final decision is for labour representation, I have no doubt that would have to be implemented by amending the Companies Act. So far as transfer of assets and employees interests, etc., are concerned, it will come as part of some other Act. That is why I resisted the amendments of hon. Members although I accepted in general the principle that labour should be regarded as entitled to some kind of representation and they must continue to have a living interest in more than one sense so to speak in the proper management of companies. Therefore, I am not opposing the spirit of it. I am declaring my inability to accept such amendments here as part of the Bill which we are discussing. Then, that leaves the third important point, that is about clause 407. I have, in the course of my intercessions, already removed some of the difficulties which hon. Members have felt, as for instance Shri Chatterjee. Shri Jhunjhunwala again referred to it. I am quite clear in my mind that (a) we have accepted the principle that it may be a good thing for a company to have proportional representation, and (b) if we come across a case of oppression of a minority, then one should consider what kind of steps one should take. It may be that one would be content with the appointment of two Government directors without going to the expedient given in the proviso, that is to say even in a company which has no rule of proportional representation. But one may come to the conclusion that the circumstances indicate that it is because of the way in which shareholders are represented in this company that the oppression of minorities is taking place in which case Government may say: "Well, we won't proceed now except as an interim measure to appoint two Government directors, but we would like you to adopt this system of proportional representation, so that we may see that by the representation of the minorities, the oppression of the minorities ceases." But, as I pointed out, even in such companies there may be mismanagement of the

affairs of a company not necessarily implying the oppression of a member or members, and in that case obviously, this remedy has ceased to be effective, or is not expected to be effective, and that is why as the law stands and as I read it, we still have the power to appoint Government directors, because that limit is only three years at a time. I cannot say the occasions might multiply, although one hopes that in the same company there might not be such occasions, but if such an occasion were to arise, then it would be open to us to appoint Government directors even where there is a scheme of proportional representation, not because perhaps minority interests are being neglected, but because the affairs of the company are mismanaged and in a way which is prejudicial to the interests of the company.

Now that I am on this clause, there is some small.....

Shri K. K. Basu: Shri Jhunjhunwala put it this way. If you want to introduce proportional representation, subsequently is it open to the Government to resort to the other provision also, namely to appoint Government directors? According to me you can, but I think he has doubts.

Shri C. D. Deshmukh: I have already said that according to me also we can. That is to say, there is nothing to prevent it. All that the proviso says is if in lieu of this, that is to say the existence of that remedy is not barred.

Shri A. M. Thomas: But I think Shri C. C. Shah's point was different, that it is alternative.

Shri C. C. Shah: That is the same point which the hon. Finance Minister is making. If there is a company in which there is already proportional representation, even then there may be a case for the Government to appoint two Government directors.

Shri K. K. Basu: Suppose in a particular company in 1955 you decide that there should be proportional representation and you give three months time. Four months hence you get some facts which may not be oppression of the minority, but something which is not in the interests of the company. Then, is the Government competent to utilise the power to appoint two directors?

Shri C. D. Deshmukh: I am maintaining that Government is competent. That is what I am saying. The only thing is that the other remedy, even if it was a misconceived remedy for dealing with such a situation, is vacated because you have already adopted proportional representation. Therefore, one would be left with only one power, and that is appointment of Government directors.

There is some small point about "part of members". The actual wording here in the English law is "some part", not "part", and I have looked into the Oxford dictionary. It says "part" means some but not all of things or a number of things; and the other meaning is portion of animal body like the part of a man and so on. I do not think therefore it is very good drafting to use the word "some part", and although it is used, that is not the word which is in hon. Member's amendment, and I think our wording is quite clear as one hon. Member said. First an application will be received on behalf of the specified number of people or people having a specified range of interest....not range, but a size of interest, and therefore, there is no danger of frivolous cases being brought up.

Shri A. M. Thomas: But the words used are "any members". Is it good English?.

Shri C. D. Deshmukh: Oh, yes. Any matters can be discussed. So, "any matters" is very good English. I do not quite understand the difficulty, but "any member or members".....

Shri A. M. Thomas: Usually, "any member".

Mr. Deputy-Speaker: The hon. Member's point is that it is in singular and therefore it must not be followed by a plural.

Shri C. D. Deshmukh: I can refer to any number of books.

Mr. Deputy-Speaker: "any number of books" is all right.

Shri A. M. Thomas: I do not think "any books".

Mr. Deputy-Speaker: It qualifies the word "number" which is singular. "Any number of members" is different. Not "any members". Anyhow, we are not very particular.

Shri A. M. Thomas: The words used are "any members".

Mr. Deputy-Speaker: Any or all.

Shri C. D. Deshmukh: I think "any members" is permissive, is permitted.

Mr. Deputy-Speaker: Why not use the singular "any member"? "Member" includes the plural also.

Shri A. M. Thomas: Having regard to the purport, it will not be correct.

Shri C. D. Deshmukh: Oppressive to any member of the company.

Dr. Krishnaswami: Any member or members.

Shri Tulsidas: That is not correct.

Mr. Deputy-Speaker: Any member or members.

Shri A. M. Thomas: A group is contemplated. For that "any member" will not be enough.

Shri Tulsidas: It is not intended for one member.

Shri C. D. Deshmukh: Since it is a purely drafting point, it may be that at the last reading we might be able to devote a little more attention to the grammar of it and we might be able to bring a small amendment perhaps.

Shri Kamath: Why not have "some member or members"?

Shri C. D. Deshmukh: So, I have dealt with three of the important matters that were raised by hon. Members. There are various other small points in respect of which I say I am unable to accept the amendments, for one reason that sometimes they are not necessary, like amendment No. 1108 to clause 392. We think that the amendment is unnecessary, because the disclosure of material interests must include a disclosure of the holdings of shares by the members.

Then, in clause 393, I have dealt with the question of employers as a matter for legislation in a different place.

Then, in the case of national interest I have made the general statement that this is really not a justiciable kind of matter and the final dicision must be taken by Government.

Then there is clause 396—"conduct which is oppressive to any member in his capacity as director". My reason is that the analogy given by the hon. Member was not a fitting one because here we were thinking of legislature and a reference to the Speaker, whereas what we are dealing with here is reference to somebody else outside which is other than the central authority, and I should say also that any oppression of a director might concievably be constructively the oppression of members also because the director represents some of the members, and therefore I think that is also a misconceived amendment.

Shri Kamath: I admitted that the analogy was not on all fours with that.

Shri C. D. Deshmukh: But I must give my reason for not accepting, because hon. Members seem to have made a grievance that I have not got an open mind in spite of the fact that I accepted one amendment of his, just to show my good intentions and openness of my mind.

Shri A. M. Thomas: Consolation prize.

Shri C. D. Deshmukh: I think I have finished now.

Shri Tulsidas: What about clause 410?

Shri C. D. Deshmukh: I am sorry there is one clause about which I should like to say something. Hon. Member asked why we were taking the powers to amalgamate. I would draw his attention to the note which we have given against clause 366 of the Bill as introduced, and I would also remind him that the point was made before the Fiscal Commission that amalgamation might be resorted to or might be necessary on a large scale in regard to protected industries in order to bring the cost of protection to the community to a minimum. Therefore, all I am saying is that it is conceivable that there are cases in which....

Dr. Krishnaswami: You have got power under the Industries Development Act, and in any case, a Bill can be introduced in Parliament for amalgamation.

Shri C. D. Deshmukh: Not for amalgamation.

Shri A. M. Thomas: As we did for the two steel companies.

Shri C. D. Deshmukh: What the hon. Member said was that steel companies were the only instance and that the matter ought to come. This is a matter of direct legislation and delegated legislation. What we are taking power is under delegated legislation, having guidance in this matter from the Act in regard to those steel companies. And we feel we should be able to take care of it by executive consideration and a notification which Parliament will have occasion to see, because the notification will be laid on the Table of both Houses of Parliament and therefore will be subjected to parliamentary scrutiny.

Shri U. M. Trivedi: What about powers of investigation to the Commission?

Shri C D. Deshmukh: I am not accepting that amendment. It involves a different set of measures altogether and it is not a function which the Advisory Commission has to perform.

Shri Kamath: What about *suo motu* powers to courts under clause 423?

Shri C. D. Deshmukh: Application will cover both *suo motu* as well as on application; that is the view we take.

Mr. Deputy-Speaker: We may start from clause 389. There are no amendments to clauses 389 and 390.

The question is:

"That clauses 389 and 390 stand part of the Bill."

The motion was adopted.

Clauses 389 and 390 were added to the Bill.

Mr. Deputy-Speaker: To clause 391 two amendments have been moved by Government.

The question is:

Page 196, line 9—

for "sub-section (3)" *substitute* "sub-section (4)".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 196—

after line 20 add—

"The provisions of sub-sections (3) to (6) shall apply. in relation to the appellate order and the appeal, as they apply in relation to the original order and the application."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 391, as amended, stand part of the Bill."

The motion was adopted.

Clause 391, as amended, was added to the Bill.

Mr. Deputy-Speaker: New clause 391A. The question is:

Page 196—

after line 20 *insert*:

"331A. *Power of High Court to enforce schemes of arrangements, etc.*—(1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company it—

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 431 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (VII of 1913) sanctioning a compromise or an arrangement."

The motion was adopted.

New clause 391A was added to the Bill.

Mr. Deputy-Speaker: There is one amendment, No. 1108, to clause 392. Need I put it?

Shri Kamath: Yes.

Mr. Deputy-Speaker: The question is:

Page 196, line 31—

after "otherwise" *insert*:

"including particulars of shares held by them."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 392 stand part of the Bill."

The motion was adopted.

Clause 392 was added to the Bill.

Mr. Deputy-Speaker: To clause 393 there is an amendment, No. 1109.

The question is:

Page 198, line 6—

add at the end:

"and that it will not prejudicially affect the employees of the transferor company as regards tenure, terms of employment, conditions of service or in any other manner."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clauses 393 and 394 stand part of the Bill."

The motion was adopted.

Clauses 393 and 394 were added to the Bill.

Mr. Deputy-Speaker: To clause 395 there is an amendment, No. 1110.

The question is:

Page 201—

after line 19 *add*:

"(6) The companies concerned or creditors, members or

debenture holders thereof or any other person interested in the affairs of the company may move the High Court against the order of the Central Government made under sub-section (1), and the High Court shall make such order as it deems fit."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 395 stand part of the Bill."

The motion was adopted.

Clause 395 was added to the Bill.

Mr. Deputy-Speaker: To clause 396 there are three amendments, Nos. 1111, 1021 and 1022. Shall I put them together?

Shri Kamath: Separately.

Mr. Deputy-Speaker: The question is:

Page 201—

after line 29 *add*:

"*Explanation* I.—Conduct which is oppressive to any member in his capacity as director and not in his capacity as member does not entitle the member to apply to the Court for an order under this sub-section.

Explanation II.—In the sub-section 'member' includes also debenture holders."

The motion was negatived.

Mr. Deputy-Speaker: I shall now put the other two amendments, Nos. 1021 and 1022 moved by Shri Tulsidas.

The question is:

Page 201, line 26—

for "member or" *substitute* "part of the".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 201, line 33—

for "member or" *substitute* "part of the".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clauses 396 and 397 stand part of the Bill"

The motion was adopted.

Clause 396 and 397 were added to the Bill.

Mr. Deputy-Speaker Now, I come to clause 398. There is amendment No. 1023. Is the hon. Member Shri Tulsidas pressing it?

Shri Tulsidas: I am not pressing it.

Mr. Deputy-Speaker: The question is:

"That clauses 398 and 399 stand part of the Bill."

The motion was adopted.

Clauses 398 and 399 were added to the Bill.

Mr. Deputy-Speaker: The question is:

Page 203—

for clause 400 *substitute*:

"400. *Right of Central Government to apply under sections 396 and 397.*—The Central Government may itself apply to the Court for an order under section 396 or 397, or cause an application to be made to the Court for such an order by any person authorised by it in this behalf."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That substitute clause 400 stand part of the Bill."

The motion was adopted.

Substitute clause 400 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 401 to 406 stand part of the Bill."

The motion was adopted.

Clauses 401 to 406 *were added to the Bill.*

Mr. Deputy-Speaker: There is a Government amendment to clause 407, *viz.*, amendment No. 1133.

The question is:

Page 205—

(i) *Renumber* clause 407 as sub-clause (1) of that clause;

(ii) In sub-clause (1) as so renumbered—(a) line 28, *after* "not exceeding three years" *insert* "on any one occasion"; (b) line 29, *after* "on the application" *insert* "of not less than two hundred members of the company or"; and (c) line 30, *after* "is satisfied" *insert* "after such inquiry as it deems fit to make";

(iii) *after* line 34, *add*:

"Provided that in lieu of passing an order as aforesaid, the Central Government may, if the company has not availed itself of the option given to it under section 264, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the Central Government."; and

(iv) *after* sub-clause (1) as so renumbered, *add*:

"(2) In case the Central Government passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors, are appointed in pursuance of the order aforesaid, not more than two members of the company specified by the Central Government shall hold office as additional directors of the company.

(3) For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or (2) shall not be taken into account."

The motion was adopted.

Mr. Deputy-Speaker: There are three other amendments to this clause, namely, amendments Nos. 1112, 1024, and 1113. I take it that they are not pressed.

The question is:

"That clause 407, as amended, stand part of the Bill".

The motion was adopted.

Clause 407, *as amended, was added to the Bill.*

Mr. Deputy-Speaker: Then there is amendment No. 439 seeking to introduce a new clause 407A.

The question is:

Page 205—

after line 34, *insert*:

"407A. *Power of Central Government to nominate representatives of the Trade Unions as Directors.*—Where in a company the majority of the workers are organised in a union, and that union applies to the Government, it may nominate two representatives of the Union to the Board of Directors, whereupon they will have the same rights and duties as the other Directors of the company. Their term of office will last till the next election of the Directors of three years, whichever happens earlier, and thereafter the Union shall submit names afresh for nomination by Government."

The motion was negatived.

Mr. Deputy-Speaker: Now, I come to clause 408. There is an amendment by Shri Kamath to this clause, namely, amendment No. 1114. Does the hon. Member want to press it?

Shri Kamath: Yes.

Mr. Deputy-Speaker: The question is:

Page 206—

after line 8, *add*:

"The company or any director or member thereof aggrieved by the said order may move the High Court against the same, and the High Court shall pass such orders thereon as the justice of the case may require."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 408 stand part of the Bill."

The motion was adopted.

Clause 408 was added to the Bill.

Mr. Deputy-Speaker: There is amendment No. 546 seeking to introduce a new clause 408A.

The question is:

Page 206—

after line 10, *insert*:

"408A. *Power of appropriate Government to prevent change in employment conditions of workers when company changes hands*— Where a complaint is made to the appropriate Government by any organisation of workers or a trade union that a company, or a business or industrial unit of the same, has been sold or is about to be sold or transferred involving whole sale or substantial change in employment conditions including discharge in retrenchment of workers, the appropriate government may direct that no such changes be made whereupon the transferee shall be bound to restore the workers of the company or the unit employment as well as employment conditions as obtained with the transferer, and any such order shall have effect notwithstanding anything to the contrary contained in the provisions of any law or contract.

(2) The appropriate Government shall have power to make any interim order pending any enquiry it may deem fit.

(3) The aforesaid provision is without prejudice to the power of the transferee as an employer to take any disciplinary action under standing orders of the company or the unit (as the case may be) against individuals as employees.

Explanation: 'Appropriate Government' means the government which exercises jurisdiction over the company or the unit in matters arising out of industrial disputes."

The motion was negatived.

Mr. Deputy-Speaker: Now I come to clause 409.

The question is:

Page 206—

lines 14 and 15:

for "on any matter arising out of the provisions of this Act referred to in clause (a) of section 410" *substitute* "on the matter referred to in clause (a) of section 410 and the applications referred to in clause (b) of that section."

The motion was adopted.

Mr. Deputy-Speaker: There are three more amendments to this clause. Does any hon. Member want to press his amendment?

Shri Kamath: I want to press amendment No. 1115.

Shri U. M. Trivedi: I want to press amendment No. 1116.

Mr. Deputy-Speaker: The question is:

Page 206—

for clause 409 *substitute*:

"409. (1) There shall be an Advisory Commission whose members shall be appointed by the President by warrant under his hand and seal, and shall only be removed from office in like manner and on the same grounds as judges of the Supreme Court.

(2) The members shall elect one of their number to be chairman thereof. The salary and other conditions of service of the members including chairman shall be such as may be determined by the President and shall not be varied to their disadvantage after their appointment. Chairman and the members shall not be eligible for further office either under the Government of India or the Government of any State.

(3) The chairman shall appoint such officers and servants as he thinks fit and make rules prescribing their conditions of service.

(4) The administrative expenses of the Commission including all salaries, allowances and pensions payable to or in respect of such officers and servants shall be charged upon the consolidated Fund of India".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 206—

(i) *for* line 12 *substitute*: *'Constitution and Powers of Central Authority'*; and

(ii) *for* clause 409 *substitute*:

"409. *Appointment of Central Authority.*—(1) For the purposes of this Act, the Central Government shall establish a Central Authority called 'The Corporate Investment and Administration Commission' which shall consist of not less than five whole-time members appointed by the Central Government and one of them shall be nominated by the Central Government to be chairman thereof.

(2) Members of the Commission shall be persons with suitable qualifications and capacity in dealing with problems relating to commerce and industry, the promotion and management of companies or their administration or who have such special knowledge in any matter as renders them suitable for appointment of the Commission."

The motion was negatived.

Mr. Deputy-Speaker: I take it that the other amendment to this clause are not pressed.

The question is:

"That clause 409, as amended, stand part of the Bill."

The motion was adopted.

Clause. 409, *as amended, was added to the Bill.*

Mr. Deputy-Speaker: Clause 410. There are two amendments moved by Government.

Shri K. K. Basu: They may be put separately because in one amendment they want to add a sub-clause and in the other, they want to omit, and also add, certain clauses under a sub-clause.

Mr. Deputy-Speaker: The question is:

Page 206—

(i) *after* line 25, *add*:

"(a) before a notification is issued under section 323 in repect of any description of industry or business on the necessity for, and advisability of, issuing the notification;";

(ii) line 26, *for* "(a)" *substitute* "(b)"; and

(iii) line 29, *for* "(b)" *substitute* "(c)".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 206, line 27—

(i) *omit* "259, 266";

(ii) *after* "267" *insert* "268"; and

(iii) *after* "331" *insert* "342".

The motion was adopted.

Shri Tulsidas: Amendment No. 1025 may be put.

Mr. Deputy-Speaker: The question is:

Page 206—

(i) line 27—

after "section" *insert* "234, 236, 238, 247, 248, 249."

(ii) line 27—

after "267," *insert* "268".

(iii) line 27—

after "331" *insert* "342".

(iv) line 27—

after "351" *insert* "395".

The motion was adopted.

Mr. Deputy-Speaker: I take it the other amendments are not pressed.

The question is:

"That clause 410, as amended, stand part of the Bill."

The motion was adopted.

Clause 410, as amended, was added to the Bill.

Mr. Deputy-Speaker: Clause 411. There is Government No. 1136.

The question is:

Page 206, line 33—

for "clause (a)" *substitute* "clause (b)".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 206—

for clause 411, *substitute*:

"411. *Appointment of Officers and other employees and sittings of the Commission.*—(1) Subject to such Rules as may be made by the Central Government in this behalf, the Commission for the purpose of enabling it to efficientiy discharge its functions under the Act may appoint such number of officers and other employees as it may think fit and determine their conditions of service.

(2) Sittings of the Commission shall be convened by the Chairman and shall not be open to the public unless the Commission in any particular case decides otherwise.

(3) The Chairmn shall preside at all sittings of the Commission at which he is present, and in his absence from such sittings, the members present thereat shall elect one of the members to preside as Chairman."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 411, as amended, stand part of the Bill."

The motion was adopted.

Clause 411, as amended, was added to the Bill.

Mr. Deputy-Speaker: Clause 412. The question is:

Clause 412.

Page 207—

for clause 412 *substitute*:

"412. *Powers and Functions of the Commission.*—(1) The Central Government shall refer to the Commission for enquiry and report all matters for which the approval, consent or sanction of

[Mr. Deputy-Speaker]

the Central Government is required to be taken under this Act; and

(2) The Central Government may refer to the Commission any other matter arising out of the administration and working of this Act, for enquiry and report.

(3) It shall be the duty of the Commission—

(a) to determine in which case the powers of inspection and investigation should be exercised under sections 234 to 250 of the Act:

(b) to supervise the winding up proceedings of companies: and

(c) to study the balance sheets and profit and loss accounts of companies with a view to determining to what extent they conform to the requirements of the Indian Companies Act, keep under observation the investment markets in the private sector, undertake a systematic study of prospectuses, of the terms and conditions of new issues of capital and make reports thereon to the Central Government."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 207, line 22—

add at the end:

"and require any of the aforesaid persons to produce before it any books or documents in their possession, custody or control relating to any matter under enquiry."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 412, stand part of the Bill."

The motion was adopted.

Clause 412 was added to the Bill.

Mr. Deputy-Speaker: Clause 413. The question is:

Page 207—

for clause 413 *substitute*:

"413. *Powers of the Commission.*—For the purpose of exercising its powers and functions under section 412, the Commission may:

(a) require the production before it of any books or other documents in the possession, custody or control of the company, relating to any matter under enquiry;

(b) call for any information or explanation, if the Commission is of opinion that such information or explanation is necessary in order that the books or other documents produced before it may afford full particulars of the matter to which they purport to relate;

(c) with such assistance as it thinks necessary, inspect any books or other documents so produced and make copies thereof or take extracts therefrom; and

(d) require any managing director or any other director, managing agent, secretaries and treasurers, manager or other officer of the Company or any shareholder or any other person, who, in the opinion of the Commission, is likely to furnish information with respect to the affairs of the company relating to any matter under inquiry, to appear before it and examine such person on oath or require him to furnish such information as may be required; and administer an oath accordingly to the person for the purpose."

The motion was negatived.

Mr. Deputy-Speaker The question is:

"That clause 413 stand part of the Bill".

The motion was adopted.

Clause 413 *was added to the Bill.*

Mr. Deputy-Speaker: Clause 414. The question is:

Page 207—

for clause 414 *substitute*:

"414. *Penalities.*—If any person refuses or neglects to produce any book or other document in his possession or custody which he is required to produce under section 413 or to answer any question put to him relating to any matter under enquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 414, stand part of the Bill".

The motion was adopted.

Clause 414 *was added to the Bill.*

Mr. Deputy-Speaker: New Clause 414A. There is an amendment, No 1127, for a new clause, 414A.

The question is:

Page 207—

after line 34 *insert*:

"414A. *Immunity for action taken in good faith.*—No suit of other legal proceeding shall lie against the Commission or the Chairman or any member thereof or against the Central Government, in respect of anything which is in good faith done or intended to be done in pursuance of this Chapter, or of the provisions referred to in section 412 or of any rules or orders made thereunder."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clauses 415 to 422 stand part of the Bill".

The motion was adopted.

Clauses *415 *to* 422 *were added to the Bill.*

Mr. Deputy-Speaker: The question is:

Page 210, line 5—

after "Court" *insert*:

"whether on an application made to it or of its own motion".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 423, stand part of the Bill."

The motion was adopted.

Clause 423 *was added to the Bill.*

Clauses 424 to 555.

Mr. Deputy-Speaker: The House will now take up clauses 424 to 555 for which 5 hours have been allocated.

Hon. Members who wish to move their amendments to these clauses will kindly hand over the numbers of their amendments, specifying the clauses to which they relate, to the Secretary at the Table within 15 minutes.

Shri U. M. Trivedi: May I suggest that the House adjourn today at 5 o'clock, because we have to go to the President's house for the investiture ceremony at 6 o'clock? We have to go home and dress.

Mr. Deputy-Speaker: The Bill has to be finished by the 12th evening. I will adjourn 5 minutes before 6.

Shri U. M. Trivedi: Half past five at least.

Mr. Deputy-Speaker: All right, at ten minutes to six. Whatever is lost today should be made up tomorrow.

Shri C. D. Deshmukh: Sir. I will move all the amendments that stand in my name in the list; but I shall make observations only with regard to some of them.

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*In sub-clause (2) of clause 415, line 5, the words "of the Board or Directors", were omitted as patent error under the direction of the Speaker.

[Shri C. D. Deshmukh]

The first one is 1036, which seeks to introduce a new clause 430A. This new clause closely follows clause 430 and makes a provision similar to that in 430 where a body corporate which is a contributory is ordered to be wound up.

The next lot of amendments I should like to speak on is 1044, 1045 and 1046, to clause 443. The reason is that it has been made clear that a certified copy of the winding up order should be filed with the Registrar. A penalty has been provided in case of default in complying with the provisions of sub-clause (1).

The next amendment is also to clause 443, sub-clause (3). Not only are servants of the company but also its officers should be deemed to have received notice of their discharge from the service of the company. 'Officers and employees' is a phrase used in other places in the Bill and is more general than 'officers and servants' and is accordingly used here.

The next amendments I would expect to speak on are amendments 1050 and 1051, to clause 452. The first amendment relates to negotiable securities which could be easily disposed of or fradulently made away with on the same footing as cash. The second amendment makes it clear that securities given by an officer of the company are also within the scope of the clause.

[Shri Barman *in the Chair*]

Then, amendments 1058 and 1059. When a liquidator is appointed, not only the Board of Directors but the managing directors, directors, secretaries and treasurers all should cease to function. This is made clear by the first amendment proposed. The addition made by the second amendment will reconcile the provisions of this clause with those of clause 491. Notice of the appointment of the first liquidator has necessarily to be given by the board of directors or the managing director or other persons mentioned in the clause.

Then, I come to amendment 1061, inserting a new clause 543A. The Bhabha Committee wished that section 338 of the English Act should be incorporated in the Bill. By inadvertence, this recommendation was not considered and, therefore, was not carried out. The amendment seeks to rectify the omission. It is obviously a desirable provision which is sought to be added and I hope there will be no controversy about this matter.

5 P.M.

Then I come to amendment No. 1062, which seeks to insert a new clause 551A. Here again, the Bhabha Committee recommended that section 337 of the English Act should be incorporated in the Bill, and again by inadvertence this was not considered or carried out. This omission is sought to be rectified.

The last amendment I shall speak on is amendment No. 1063 to clause 554. This clause empowers the court to declare the dissolution of a company to be void on application made by the liquidator or by any other person who appears to it to be interested, within two years of the date of dissolution. The exercise of this power is not in terms restricted to cases where the company has been dissolved under the winding up provisions in Part VII, but the fact that this clause is included in Part VII raises a reasonable doubt as to the scope of this power. The proposed amendment seeks to remove this obscurity; it makes it clear that the dissolution of the company howsoever brought about may be declared void by the court. The proposed amendment will remove such difficulty.

Shri K. K. Basu: I am very much interested in these clauses. I have given notice today of amendments No. 1137 and 1138 to clause 527, relating to preferential payments in the case of winding up. The Joint Committee considered most of the

recommendations of the Bhabha Committee, and we have the experience of many of our friends in this particular branch of law. My amendments are very limited in scope but they are very important.

Shri M. C. Shah: What is his amendment?

Shri K. K. Basu: It is to clause 527.

Shri M. C. Shah: But he has given notice of it just now. To be exact, we got it about half an hour ago.

Shri K. K. Basu: This is restrictive in scope. In clause 527, where it deals with the provision regarding preferential payments....

Shri M. C. Shah: But we have not accepted that.

Shri K. K. Basu: Let the Minister try and hear me first. The question is whether the wages not paid and also the provident fund dues should be considered as preferential payments as defined in clause 527. I want to make the position clear. When the witnesses appeared before us in the Joint Committee, some of them told the Committee—and from our experience we also know it—that sometimes the wages of the workers which are in arrears or any provident fund dues, have to be considered after the debenture holders and other secured creditors. It may look under the normal law that debenture holders and secured creditors have a prior claim; after all securities have been discharged and debts paid off, the question of the payment of wages of the employees and their provident fund dues should be taken into consideration. As I said earlier in the morning in reply to one of the interpellations which Shri Tulsidas, made, it may be very difficult for the companies to get a debenture or to charge their assets. Naturally, it is quite a determinable entity and three months' wages of the workers or the provident fund dues at a particular point of time can be taken into consideration. I have only to say that these two dues should be considered and their payment should be prior to the payment of the debenture holders or any charge that may be secured by the creation of any instruments registered or unregistered or whatever it may be. I use the word 'unregistered' because I do not know whether in Part B States there is registration. I do not know; I am told that in certain areas a creation of charge is made not exactly by a registered instruments as is usually done in the old British India. Therefore, my whole proposition is this. These dues are to come prior to the dues of debentureholders and other charges. We know quite a number of banking companies went into liquidation in Calcutta and it was found out that even the provident fund contributions that were made by the employees had been utilised for other purposes by the directors. Of course I am fully conscious that we have provided for the provident fund payments under the present Bill; they have to keep them either in post office savings bank or a scheduled bank. They will not be entitled to utilise it to some other purpose unless there is a definite agreement between the employees on the one hand and the employers on the other. But in spite of that fact I know fully well that this might guard only in future against the contingencies which had been so strongly urged by those representing the working journalists, the INTUC, etc. In all fairness the Government should accept my proposition.

The Finance Minister said something about the labour representation. Government have not yet decided as to what they will do. As and when they decide that labour should participate diretcly or by their representatives or by their nominees, then Government might bring forward an amending Bill to incorporate that decision. But this amendment is very simple and I think it can be incorporated in this Bill. Otherwise it may look from the general law of the land that the wages or provident fund come prior to the securities like debentures, Moreover, as I said earlier, it is the duty of the

[Shri K. K. Basu]

mortgage to find out whether there are any dues by way of debentures or some Government charges. He cannot take up the position and say: "I do not know; I am only a mortgagee, the deed is here and I have to be reimbursed and my money is to be paid back." They should know what is the asset of a particular concern or what the liabilities are. If there are three or four months' wages in arrears, it should be made known. It should be the duty of the company every month or every three months to declare the assets and the liabilities—say the arrears of wages that still remains to be paid or the provident fund dues of the employees so that the debenture-holder might find out things. If he finds that his security has dwindled down and it is not enough he can immediately enforce his charge. In the case of winding up when we are thinking of payment of the claims of the debenture-holders other creditors, who should have preference in payment? If there are arrears of wages for employees and if there is some provident fund, the employees should have priority on other debts and charges that might be payable by the companies. These are shortly my amendments and I hope the Government will accept them.

Shri Kamath: Sir, it is winding up business.

Shri K. K. Basu: Let us wind up the debate today and go home.

An Hon. Member: What is the allotted time?

Shri K. K. Basu: Five hours. I do not know why. It is only a lawyers' paradise.

Shri Kamath: I have got four amendments—1129, 1130, 1131, 1132 to clause 516, 540, 542 and 555 respectively. There are in all four amendments. The first amendment No. 1129, seeks to confer upon the liquidator or any contributory or creditor further rights in relation to this voluntary winding up. After sub-clause (b) of this clause 516, my amendment seeks to insert a new sub-clause (c) "to direct the public examination in the same manner as is provided for in section 475"—section 475 defines what public examination is—"of any officer or other person who in his opinion has committed a fraud in relation to" there is a small very minor typist's error or may be a mistake in my own manuscript, and it should be: "or in the promotion or formation of the company". The words "or in" after the words "relation to" have been omitted and hon. Members may kindly correct their copies accordingly.

This amendment is in order to see that no evidence of whatever kind that will be relevant in this connection is shut out and full examination of anybody concerned in the matter is made by the court.

My next amendment is to clause 540 which deals with the power of court to assess damages against delinquent directors. This, I suppose is not really necessary because the provisions in the Indian Limitation Act will otherwise apply in all these matters. Section 5 of the Indian Limitation Act reads as follows:

> "Any appeal or application for a review of judgment or for leave to appeal or any other application to which this section may be made applicable (by or under any enactment) for the time being in force may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not referring the appeal or making the application within such period."

Then there is an explanation which says:

> "The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period of

limitation may be sufficient cause within the meaning of this section."

Mr. Chairman: That will automatically apply.

Shri Kamath: But, I want to make it quite clear by the proviso suggested in my amendment No. 1130 which says:

"Porvided that section 5 of the Indian Limitation Act shall apply to all such applications."

Then I come to clause 542 which deals with prosecution of delinquent officers and members of company. By way of amending this clause I have my amendment No. 1131, which seeks to insert a new proviso to this clause which says:

Page 254—

after line 32, *add*:

"Provided that this section shall not preclude he liquidator who has not obtained the prior direction of the company Court under this section, or any other person from instituting or carrying on a prosecution."

What I mean to say is that it should not be made obligatory that the liquidator should obtain permission of the court. Even if he has not obtained the permission he should be at liberty to institute and carry on prosecution against the persons concerned.

Lastly, I come to clause 555 which is the last in the winding up clauses. My amendment to this clause relates to the notice sent by the Registrar. I want to make that clear. Perhaps it is clear as it is, but to make it—may I use the words which had been quite current in this Parliament, perhaps the constituent Assembly—quite foolproof and knave-proof, I have made this amendment:

"and upon such order being made the company will be deemed never to have been struck off."

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It gives them power to restore the company after it and once been struck off, and that clause says:

"and the Court may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off".

I want to add these words:

"and upon such order being made the company will be deemed never to have been struck off".

If they are added, it should make the clause very clear. I commend these amendments for the acceptance of the House.

Shri C. C. Shah: I wish to say a few words about the amendments of Shri K. K. Basu—Nos. 1137, and 1138. I do not know if he is allowed to move them. I shall just say a few words on them because the Joint Committee carefully considered clause 527 and we have made some changes which perhaps have not been taken notice of by the hon. Member. Clause 527 begins by saying:

"In a winding up, there shall be paid in priority to all other debets...."

That means, all other debts which are secured or unsecured. The debts mentioned in (a) to (g) have to be paid in priority to such debts. Shri Basu, proposes that the amount due as wages or salary under (b) and the amount or sums due from a provident fund, pension, gratuity, etc. under (f) ought to have prioirty over the other debts mentioned in (a), (c), (d), (e) and (f). In sub-clause (5), it is provided that all the debts mentioned in (a) to (g) are to rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions. If you kindly see the debts which are mentioned in (a), (c), (d), (e) and (g), which Shri Basu, wishes to put after giving priority to (b), and (f), you will find that except

[Shri Kamath]

(a), they are equally accruing to the employees of companies for whom he wants to give the priority. For example, under (c), we find:

> "all accrued holiday remuneration becoming payable to employee;" etc.

So, it is also a debt due to the employees which is to rank *pari passu* with the other debts. The debts mentioned under (d), are those under the Employees' State Insurance Act, and the company has to make contributions to that fund under that Act. If the company fails to make it, it must be paid in priority. Under (e) the debts are those due by the company to employees under the Workmen's Compensation Act. All these debts are obviously payable to the employees for the benefit of the employees and there is no purpose in suggesting that only the wages and salaries and other sums due for provident fund and gratuity should rank in priority to those due either under the Workmen's Compensation Act or the Emplyoees' State Insurance Act or for all accrued holiday remuneration. All these, by the provisions of law, have been made to rank equally among themselves, and therefore I submit that there is no purpose in the amendments of Shri K. K. Basu.

Only one more point I would make, and it is a very important point to which I would like to draw the attention of the House. In the original Bill, the words under clause (b) were: "All wages and salaries in respect of services rendered to the company during four months next before the relevant date," etc. So, under that clause, only the wages due for four months immediately before the relevant date, it being the date of liquidation, were to be paid. In the circumstances pointed out to the Joint Committee, it may happen that a factory is closed for twelve months before it goes into liquidation so that for twelve months prior to the relevant date, there may be no wages due to the employees. But employees' wages may be in arrears to a period prior thereto, which would not have been covered by the clause as it originally was; and so, the Joint Committee has changed it so that all wages for four months due during a period of 12 months before the relevant date will be paid in priority. Therefore, even if the factory is closed, we are going to provide for four months during twelve months prior to the repayment date, so that if, wages are due for 4 months during a period of 12 months, they will be paid in priority. The Joint Committee have deliberately introduced this priority, in order that the employees may be benefited. Therefore, I submit that the amendments proposed to be moved by Shri Basu have no substance.

Mr. Chairman: The hon. Minister will now reply.

Shri K. K. Basu: Mr. M. C. Shah usually adopts the arguments of Mr. C. C. Shah!

Shri M. C. Shah: I shall now deal with the amendments which were moved by Mr. Kamath.

Mr. Chairman: I take it that there no other amendments.

Shri M. C. Shah: I have to explain now why we cannot accept Mr. Kamath's amendment. Hhis amendment No. 1129 is to clause 516. It provides that the court shall have power—

> "to direct the public examination in the same manner as is provided for in section 475 of any officer or other person who in his opinion has committed a fraud in relation to the promotion or formation of the company."

Under clause 475, only when the official liquidator has made a report publicly stating that in his opinion, a fraud has been committed by the promoters or directors etc. that the

court will keep jurisdiction to order a public examination. But it will be dangerous to confer a similar power the case of a voluntary winding up by a contributory or a creditor. The question whether the liquidator referred to in clause 560 should be enabled to apply to the court for public examination of a promoter, director etc. is a more difficult one. *Prima facie* there is nothing wrong in principle against according such a right to the liquidator. This may be accepted in principle, but I think it will require redrafting of the clause. So, if my friend presses us to accept his amendment, we will consider redrafting the clause.

Shri Kamath: I take it that the principle of my amendment is accepted.

Shri M. C. Shah: Yes; we accept the principle, but it requires some redrafting. We will examine it and perhaps we may give a redraft tomorrow. We will try to bring in this point in the redraft, but if we cannot bring in this, the hon. Member will excuse us.

Shri Kamath: I am not a good draftsman.

Shri M. C. Shah: Now I come to amendment No. 1130 to clause 540. Sub-clause (2) of clause 540 says:

> "Any application under sub-section (1), shall be made within five years from the date of the order for winding up...." etc.

By amendment No. 1130, the hon. Member wants that this limitation should apply to all such applications. There is already a generous limit of 5 years and also, the courts have powers, when there is sufficient reason, to condone the time-limit. Therefore, I think it is not necessary to have this amendment here.

The hon. Member has moved another amendment No. 1131, to clause 542. Clause 542 deals with prosecution of delinquent officers and members or company. Sub-clause (1) of clause 542 gives the right to any person interested in the affairs of the company to convince the court that there is a *prima facie* case for taking action against the delinquent officers or members of the company. If such a person fails to make out such a case, it is difficult to proceed and say whether he should have the liberty to prosecute on his own responsibility. This would practically destroy the safeguard provided by sub-clause (1), which is the sanction of the Court before proceedings are launched. The liquidators are subject to the control of the court when a company is being wound up by a court or subject to the supervision of the court. They should not be permitted to launch prosecutions involving expenditure from out of the assets of the company except with the sanction of the court. Therefore, we cannot agree to that.

Then, Sir, the last amendment is not necessary because sub-clause (7) provides for the matter practically in the same manner as suggested in this amendment. The powers are there. Therefore, it is unnecessary. I submit that we cannot accept these amendments except the one in principle, that is amendment 1129 to clause 516. That clause may be held over. If there is a possibility of having a good re-draft we will accept the principle. Otherwise, as I said, my hon. friend will excuse me.

Shri Kamath: I have only given the principle.

Mr. Chairman: Now, let me verify. These are the amendments that are proposed to be moved and taken as moved.

Shri M. C. Shah: I will make one request. Before you put all these clauses to vote.....

Mr. Chairman: I am not putting them to vote. I am verifying whether these are the amendments that are proposed to be moved.

Shri M. C. Shah: There is one more.

Mr. Chairman: I am announcing the numbers of the amendments that are proposed to be moved. If there is

[Mr. Chairman]

anything more, it can certainly be added. You may point out at that time. They are:

Clause 425.—1032 (Government), 1033 (Government), 1034 (Government), 1035 (Government).

Clause 430A (New).—1036 (Government).

Clause 433.—1037 (Government), 1038 (Government).

Clause 437.—1039 (Government), 1040 (Government).

Clause 441.—1041 (Government), 1042 (Government).

Clause 442.—1043 (Government).

Clause 443.—1044 (Government), 1045 (Government), 1046 (Government), 1047 (Government).

Clause 444.—1048 (Government).

Clause 451.—1049 (Government).

Clause 452.—1050 (Government), 1051 (Government).

Clause 453.—1052 (Government).

Clause 474.—1053 (Government), 1054 (Government).

Clause 480.—1055 (Government).

Clause 485.—1056 (Government).

Clause 486.—1057 (Government).

Clause 489.—1058 (Government), 1059 (Government).

Clause 516.—1129.

Clause 527.—1137, 1138.

Clause 540.—1060 (Government), 1130.

Clause 542.—1131.

Clause 543A (New).—1061 (Government).

Clause 551A (New).—1062 (Government).

Clause 554.—1063 (Government).

Clause 555.—1132.

Clause 425. *Liability as contributiories etc.*

Shri C. D. Deshmukh: I beg to move:

(1) Page 210, line 37—

for "a past member shall not be liable to contribute" *substitute*:

"no past member shall be liable to contribute".

(2) Page 211, line 1—

before "member" *insert* "past or present."

(3) Page 211, line 1—

omit "if any".

(4) Page 211, line 21—

after "any shares held by him" *add*:

"as if the company were a company limited by shares".

New Clause 430A.

Shri C. D. Deshmukh: I beg to move:

Page 212—

after line 36 *insert*:

"**430A.** *Contributories in case of winding up of a body corporate which is a member.*—If a body corporate which is a contributory is ordered to be wound up, either before or after it has been placed on the list of contributories,—

(a) the liuqidator of the body corporate shall represent it for all the purposes of the winding up of the company and shall be a contributory accordingly, and may be called on to admit to proof against the assets of the body corporate, or otherwise to allow to be paid out of its assets in due course of law, any money due from the body corporate in respect of its liabiilty to contribute to the assets of the company; and

(b) there may be proved against the assets of the body corporate the estimated value of its liability to future calls as well as calls already made."

Clause 433.—(*Transfer of winding up, etc.*)

Shri C. D. Deshmukh: I beg to move:

(1) Page 213—

(i) line 36—

after "in a District Court" *insert*:

"subordinate thereto or, with the consent of any other High Court, in such High Court, or in a District Court subordinate thereto; and

(ii) line 37—

for "such District Court" *substitute*:

"the Court in respect of which such direction is given".

(2) Page 213, line 39—

for "the High Court" *substitute* "a High Court under this Act".

Clause 437. — (*Provisions as to applications for winding up.*)

Shri C. D. Deshmukh: I beg to move:

(1) Page 214—

after line 26 *insert*:

"(1A) A secured creditor, the holder of any debentures (including debenture stock) whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and also the trustee for the holders of debentures, shall be deemed to be creditors within the meaning of clause (b) of sub-section (1).

(1B) A contributory shall be entitled to present a petition for winding up a company, notwithstanding that he may be the holder of fully paid-up shares or that the company may have no assets at all, or may have no surplus assets left for distribution among the share-holders after the satisfaction of its liabilities."

(2) Page 215—

for lines 15 and 16 *substitute*:

"(6) Before a petition for winding up a company presented by a contingent or prospective creditor is admitted, the leave of the court shall be obtained for the admission of the petition and such leave shall not be granted."

Clause 441.— (*Powers of Court etc.*)

Shri C. D. Deshmukh: I beg to move:

(i) Page 216—

for line 21, *substitute*:

"(d) make an order for winding up the company with or without costs or any other order that it thinks fit."

(2) Page 216—

for lines 26 to 36 *substitute*:

"(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is or opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy".

Clause 442.—(*Order for winding up etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 217, line 4—

for "it" *substitute* "the Court".

Clause 443.—(*Copy of winding up order etc.*)

Shri C. D. Deshmukh: I beg to move:

(1) Page 217, line 9—

for "copy" *substitute* "certified copy".

(2) Page 217—

after line 10 *add*:

"If default is made in complying with the foregoing provision, the

[Shri C. D. Deshmukh]

petitioner, or as the case may require, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for each day during which the default continues."

(3) Page 217, line 11—

for "a copy of a winding up order" *substitute*:

"a certified copy of the winding up order".

(4) Page 217, line 16—

for "servants" *substitute* 'officers and employees".

Clause 444.—(*Suits stayed on winding up order.*)

Shri C. D. Deshmukh: I beg to move:

Page 217, line 21—

for "shall be proceeded with or commenced" *substitute*:

"shall be commenced, or if pending at the date of the winding up order, shall be proceeded with".

Clause 451.— (*Receiver etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 219, line 7—

add at the end:

"except by, or with the leave of, the Court."

Clause 452.—(*Statement of affairs etc.*)

Shri C. D. Deshmukh: I beg to move:

(1) Page 219, line 16—

add at the end:

"and the negotiable securities, if any, held by the company;"

(2) Page 219—

lines 20 and 21—

after "securities given" *insert*:

"whether by the company or an officer thereof."

Clause 453.– (*Report by Official Liquidator.*)

Shri C. D. Deshmukh: I beg to move.

Page 220—

lines 33 and 34—

for "shall be submitted" *substitute* "need be submitted".

Clause 474.—(*Power to Summon persons etc.*)

Shri C. D. Deshmukh: I beg to move:

(1) Page 228, line 1—

for "tendered" *substitute* "paid or tendered".

(2) Page 228, line 2—

for "refuses to come" *substitute* "fails to appear".

Clause 480.— (*Mode of dealing etc.*)

Shri C. D. Deshmukh: I beg to move:

Pages 229 and 230—

Transpose clause 480 *after* clause 628, and number it as clause 628A.

Clause 485.—(*Effect of voluntary winding up etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 231—

for line 2, *substitute*:

"of such business".

Clause 486.—(*Declaration of solvency etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 231, line 13—

for "that the company will be able to pay its debts" *substitute*:

"that the company has no debts or that it will be able to pay its debts".

Clause 489.—(*Board's powers etc.*)

Shri C. D. Deshmukh: I beg to move:

(1) Page 232—

lines 15 and 16—

after "Board of directors" *insert*:

"and of the managing or whole-time directors, managing agent, secretaries and treasurers, and manager, if there be any of these".

(2) Page 232, line 16—

after "except" *insert*:

"for the purpose of giving notice of such appointment to the Registrar in pursuance of section 491 or in".

Clause 516.—(*Power to apply to Court etc.*)

Shri Kamath: I beg to move:

Page 241—

after line 16, *insert*:

"(c) to direct the public examination in the same manner as is provided for in section 475, of any officer or other person who in his opinion has committed a fraud in relation to the promotion or formation of the company."

Clause 527—(*Preferential payments.*)

Shri K. K. Basu: I beg to move:

(1) Pages 243 and 244—

In sub-clause (1), re-letter parts (b) and (f) as (a) and (b) respectively and re-letter remaining parts accordingly.

(2) Page 245—

for line 6, *substitute*:

"(5)(i) The debts described in parts (a) and (b) as so re-lettered in sub-clause (1) shall have priority in payment over all other debts and claims including debentures and any other charge secured by any instrument registered or unregistered.

(ii) The foregoing debts save and except mentioned in (i) above shall".

Clause 540.—(*Power of Court to assess damages etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 253, line 42—

for "or liquidator, or any officer" *substitute* "liquidator or officer".

Shri Kamath: I beg to move:

Page 254—

after line 14, *add*:

"Provided that section 5 of the Indian Limitation Act, shall apply to all such applications".

Clause 542.—(*Prosecution of Delinquent officers etc.*)

Shri Kamath: I beg to move:

Page 254—

after line 32, *add*:

"Provided that this section shall not preclude the liquidator who has not obtained the prior direction of the company Court under this section, or any other person from instituting or carrying on a prosecution."

New Clause 543A

Shri C. D. Deshmukh: I beg to move:

Page 256—

after line 25, *add*:

"543A. *Notification that a company is in liquidation.*—(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and any of the following persons who willfully authorises or permits the defaut, namely, any

[Shri C. D. Deshmukh]

officer of the company, any liquidator of the company and any receiver or manager, shall be punishable with fine which may extend to five hundred rupees."

New Clause 551A

Shri C. D. Deshmukh: I beg to move:

Page 260—

after line 26, *add*:

"551A. *Enforcement of duty of liquidator to make returns etc.*— (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidential to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid".

Clause 554— (*Power of Court to declare etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 261, line 14—

after "where a company has been dissolved" *insert*:

"Whether in pursuance of this Part or of section 393, or otherwise".

Clause 555— (*Power of Registrar etc.*

Shri Kamath: I beg to move:

Page 262, line 35—

add at the end:

"and upon such order being made the company will be deemed never to have been struck off."

New Clause 460A

Shri M. C. Shah: I have to move one more amendment. With your permission, I beg to move:

After clause 460, *insert* the following new clause 460A:

"460A. *Control of Central Government over liquidators.*—(1) Central Government shall take cognizance of the conduct of liquidators of companies which are being wound up by the court and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Act, the rules thereunder or otherwise with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor or contributory in regard thereto, the Central Government shall inquire into the matter and take such action thereon as it may think expedient.

(2) The Central Government may at any time require any liquidator of a company which is being wound up by the Court to answer any enquiry in relation to any winding up in which he is engaged and may, if the Central Government thinks fit, apply to the Court to examine him or any other person on oath concerning the winding up.

(3) The Central Government may also direct a local investigation to be made of the books, and vouchers of the liquidators."

Mr Chairman: All these amendments are before the House.

Shri Kamath: No copies of the last amendment?

Shri M. C. Shah: The new clause 460A, corresponds to section 250 of the English Act and specifically gives power to the Government to see that the liquidator exercises the powers and performs his duties properly. Otherwise, a contumacious liquidator may argue that he is answerable only to the court. He will not care even if he is removed from his appointment of official liquidator. He may have lined his pockets adequately already. Therefore, as it is in the English Act, this was being considered. I am sorry it has taken some time, but before they are put to vote I just move this amendment, and I hope the whole House will agree to the amendment because after all we are bringing the official liquidators also under the control of the Central Government if they misbehave or do not perform their duty properly. I do not think there can be any objection to it.

Shri K. K. Basu: Apart from the discussion being held over till tomorrow, suppose there are liquidators who may not be official liquidators. Normally, the official liquidator in future should be appointed liquidator, but there may be continuation of old liquidators or there may be some voluntary liquidation. Does he want to include all liquidators or only court liquidators?

Shri C. C. Shah: Only court liquidators.

Shri M. C. Shah: He will always say: "I am not obliged to answer you".

Mr. Chairman: Order, order. I think this is a last-minute amendment. So,...

Shri M. C. Shah: I suggest that if necessary we may keep it over till tomorrow and we may take voting of the others except 516.

Mr. Chairman: This new clause 460A that is proposed now will be circulated to members tonight and it will be discussed and put to vote tomorrow. But for this, the others may be put to vote.

Shri M. C. Shah: Yes, Sir, except 516.

Mr. Chairman: The quesetion is:

"That clause 424 stand part of the Bill."

The motion was adopted.

Clause 424 was added to the Bill.

Mr. Chairman: The question is:

Page 210, line 37—

for "a past member shall not be liable to contribute" *substitute*:

"no past member shall be liable to contribute".

The motion was adopted.

Mr. Chairman: The question is:

Page 211, line 1—

before "member" *insert* "past or present."

The motion was adopted.

Mr. Chairman: The question is:

Page 211, line 1—

omit "if any".

The motion was adopted.

Mr. Chairman: The question is:

Page 211, line 21—

after "any shares held by him' *add*:

"as if the company were a company limited by shares".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 425, as amended, stand part of the Bill".

The motion was adopted.

Clause 425, as amended, was added to the Bill.

Mr. Chairman: The question is:

"That clauses 426 to 430 stand part of the Bill."

The motion was adopted.

Clauses 426 to 430 were added to the Bill.

Mr. Chairman: Now I shall put Government amendment No. 1036 proposing new clause 430A.

Shri K. K. Basu: We can have a formula that all amendments moved by Government may be accepted.

Mr. Chairman: The question is:

Page 212—

after line 36 *insert*:

"430A. *Contributories in case of winding up of a body corporate which is a member.*—(1) If a body corporate which is a contributory is ordered to be wound up, either before or after it has been placed on the list of contributories,—

(a) the liquidator of the body corporate shall represent it for all the purposes of the winding up of the company and shall be a contributory accordingly, and may be called on to admit to proof against the assets of the body corporate, or otherwise to allow to be paid out of its assets in due course of law, any money due from the body corporate in respect of its liability to contribute to the assets of the company; and

(b) there may be proved against the assets of the body corporate the estimated value of its liability to future calls as well as calls already made."

The motion was adopted.

New clause 430A was added to the Bill.

Mr. Chairman: The question is:

"That clauses 431 and 432 stand part of the Bill."

The motion was adopted.

Clauses 431 and 432 were added to the Bill.

Mr. Chairman: To clause 433 there are two amendments, Nos. 1037 and 1038.

The question is:

Page 213—

(i) line 36—

after "in a District Court" *insert*:

"subordinate thereto or, with the consent of any other High Court, in such High Court, or in a District Court subordinate thereto; and

(ii) line 37—

for "such District Court" *substitute*:

"the Court in respect of which such direction is given".

The motion was adopted.

Mr. Chairman: The question is:

Page 213, line 39—

for "the High Court" *substitute* "a high Court under this Act".

The motion was adopted.

Mr. Chairman: The qusetion is:

"That clause 433, as amended, stand part of the Bill."

The motion was adopted.

Clause 433, as amended, was added to the Bill.

Mr. Chairman: The question is:

"That clauses 434 to 436 stand part of the Bill".

The motion was adopted.

Clauses 434 to 436 were added to the Bill.*

Mr. Chairman: To clause 437 there are two amendments, Nos. 1039 and 1040.

The question is:

Page 214—

after line 26 *insert*:

"(1A) A secured creditor, the holder of any debentures (including debenture stock) whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and

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*In clause 434, line 43, the word "within", was substituted by the words "with in", as patent error under the direction of the Speaker.

also the trustee for the holders of debentures, shall be deemed to be creditors within the meaning of clause (b) of sub-section (1).

(1B) A contributory shall be entitled to present a petition for winding up a company, notwithstanding that he may be the holder of fully paid-up shares or that the company may have no assets at all, or may have no surplus assets left for distribution among the share-holders after the satisfaction of its liabilities."

The motion was adopted.

Mr. Chairman: The question is

Page 215—

for lines 15 and 16, *substitute*:

"(6) Before a petition for winding up a company presented by a contingent or prospective creditor is admitted, the leave of the court shall be obtained for the admission of the petition and such leave shall not be granted."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 437, as amended, stand part of the Bill."

The motion was adopted.

Clause 437, as amended, was added to the Bill.*

Mr. Chairman: The question is:

"That clauses 438 to 440 stand part of the Bill."

The motion was adopted.

Clauses 438 to 440 were added to the Bill.

Mr. Chairman: To clause 441 there are two amendments, Nos. 1041 and 1042.

The question is:

Page 216—

for line 21, *substitute*:

"(d) make an order for winding up the company with or without costs or any other order that it thinks fit."

The motion was adopted.

Mr. Chairman: The question is:

Page 216—

for lines 26 to 36, *substitute*:

"(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 441, as amended, stand part of the Bill."

The motion was adopted.

Clause 441, as amended, was added to the Bill.

Mr. Chairman: To clause 442, there is an amendment, No. 1043.

The question is:

Page 217, line 4—

for "it" *substitute* "the Court".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 442, as amended, stand part of the Bill."

The motion was adopted.

Clause 442, as amended, was added to the Bill.

Mr. Chairman: To clause 443 there are some amendments, Nos. 1044, 1045, 1046 and 1047.

The question is:

Page 217, line 9—

for "copy" *substitute* "certified copy".

The motion was adopted.

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*In sub-clause (3) of clause 437, line 38, the word "in", occurring after the words "in pursuance of", was omitted as patent error under the direction of the Speaker.

Mr. Chairman: The question is:

Page 217—

after line 10 *add*:

"If default is made in complying with the foregoing provision, the petitioner, or as the case may require, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for each day during which the default continues."

The motion was adopted.

Mr. Chairman: The question is:

Page 217, line 11—

for "a copy of a winding up order" *substitute*:

"a certified copy of the winding up order".

The motion was adopted.

Mr. Chairman: The question is:

Page 217, line 16—

for "servants" *substitute* 'officers and employees".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 443, as amended, stand part of the Bill."

The motion was adopted.

Clause 443, as amended, was added to the Bill.

Mr. Chairman: To clause 444 there is an amendment, No. 1048.

The question is:

Page 217, line 21—

for "shall be proceeded with or commenced" *substitute*:

"shall be commenced, or if pending at the date of the winding up order, shall be proceeded with".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 444, as amended, stand part of the Bill."

The motion was adopted.

Clause 444, as amended was added to the Bill.

Mr. Chairman: The question is:

"That clauses 445 to 450 stand part of the Bill."

The motion was adopted.

Clauses 445 to 450 were added to the Bill.

Mr. Chairman: To clause 451 there is an amendment, No. 1049.

The quesion is:

Page 219, line 7—

add at the end:

"except by, or with the leave of the Court."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 451, as amended, stand part of the Bill."

The motion was adopted.

Clause 451, as amended, was added to the Bill.

Mr. Chairman: The question is:

Page 219, line 16—

add at the end:

"and the negotiable securities, if any, held by the company;"

The motion was adopted.

Mr. Chairman: The question is:

Page 219, lines 20 and 21—

after "securities given" *insert* "whether by the company or an officer thereof."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 452, as amended, stand part of the Bill."

The motion was adopted.

Clause 452, *as amended, was added to the Bill.*

Mr. Chairman: The question is:

Page 220, lines 33 and 34—

for "shall be submitted" *substitute* "need be submitted".

The motion was adopted.

Mr. Chairman: The question is.

"That clause 453, as amended stand part of the Bill."

The motion was adopted.

Clause 453, *as amended, was added to the Bill.*

Mr. Chairman: There are no amendments tabled to clauses 454 to 473.

Clause 460A is held over. So, I shall put the other clauses to vote.

The question is:

"That clauses 454 to 473, stand part of the Bill."

The motion was adopted.

Clauses 454 *to* 473, *were added to the Bill.*

Mr. Chairman: The question is

Page 228, line 1—

for "tendered" *substitute* "aid or tendered."

The motion was adopted.

Mr. Chairman: The question is:

Page 228, line 2—

for "refuses to come" *substitute* "fails to appear".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 474, as amended, stand part of the Bill."

The motion was adopted.

Clause 474, *as amended was, added to the Bill.*

Mr. Chairman: The question is:

"That clauses 475 to 479 stand part of the Bill."

The motion was adopted.

Clauses 475 *to* 479 *were added to the Bill.*

Mr. Chairman: The question is:

Pages 229 and 230—transpose clause 480 after clause 628 and number it as clause 628A.

The motion was adopted.

Mr. Chairman: The question is:

"That clause 480, as amended, stand part of the Bill"

The motion was adopted.

Clause 480, *as amended, was added to the Bill.*

Mr. Chairman: The question is.

"That clauses 481 to 484, stand part of the Bill."

The motion was adopted.

Clauses 481 *to* 484, *were added to the Bill.*

Mr. Chairman: The question is:

Page 231—

for line 2, *substitute* "of such business".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 485, as amended, was added to the Bill."

The motion was adopted.

Clause 485, *as amended, was added to the Bill.*

Mr. Chairman: The question is.

Page 231, line 13—

for "that the company will be able to pay its debts" *substitute* "that the company has no debts or that it will be able to pay its debts".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 486, as amended, stand part of the Bill."

The motion was adopted.

Clause 486, as amended was added to the Bill.

Mr. Chairman: The question is:

"That clauses 487 and 488 stand part of the Bill."

The motion was adopted.

Clauses 487 and 488 were added to the Bill.

Mr. Chairman: The question is.

Page 232, lines 15 and 16—

after "Board of directors" *insert* "and of the managing or whole-time directors, managing agent, secretaries and treasurers, and manager, if there be any of these".

The motion was adopted.

Mr. Chairman: The question is.

Page 232, line 16—

after "except" *insert* "for the purpose of giving notice of such appointment to the Registrar in pursuance of section 491 or in."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 489, as amended, stand part of the Bill."

The motion was adopted.

Clause 489, as amended, was added to the Bill.

Shri M. C. Shah: Clauses 490 to 539, excluding clause 516, which is to be held over, may be put together.

Mr. Chairman: Let us first take clauses 490 to 515. I take it the amendments to clauses 499 and 500 are not pressed.

The question is:

"That clauses 490 to 515 stand part of the Bill."

The motion was adopted.

Clauses 490 to 515 were added to the Bill.

Mr. Chairman: Clause 516 is held over.

The question is:

"That clauses 517 to 526 stand part of the Bill."

The motion was adopted.

Clauses 517 to 526 were added to the Bill.

Mr. Chairman: The question is:

Pages 243 and 244—

In sub-clause (1), re-letter parts (b) and (f) as (a) and (b) respectively and re-letter remaining parts accordingly.

The motion was negatived.

Mr. Chairman: The question is:

for line 6, *substitute*:

"(5) (i) The debts described in parts (a) and (b) as so re-lettered in sub-clause (1) shall have priority in payment over all other debts and claims including debentures and any other charge secured by any instrument registered or unregistered.

(ii) The foregoing debt save and except mentioned in (i) above shall."

The motion was negatived.

Mr. Chairman: The quetsion is:

"That clause 527 stand part of the Bill."

The motion was adopted.

Clause 527 was added to the Bill.

Mr. Chairman: The question is:

"That clauses 528 to 539 stand part of the Bill."

The motion was adopted.

Clauses 528 to 539 were added to the Bill.

Mr. Chairman: The question is:

Page 253, line 42—

for "or liquidator, or any officer", *substitute* "liquidator or officer".

The motion was adopted.

Mr. Chairman: The question is:

Page 254—

after line 14, *add*:

"Provided that section 5 of the Indian Limitation Act, shall apply to all such applications".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 540, as amended, stand part of the Bill."

The motion was adopted.

Clause 540 *as amended, was added to the Bill.*

Mr. Chairman: The question is:

"That clause 541 stand part of the Bill."

The motion was adopted.

Clause 541 *was added to the Bill.*

Mr. Chairman: The question is:

Page 254—

after line 32, *add*:

"Provided that this section shall not preclude the liquidator who has not obtained the prior direction of the company Court under this section, or any other person from instituting or carrying on a prosecution."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 542 stand part of the Bill."

The motion was adopted.

Clause 542 *was added to the Bill.*

Mr. Chairman: The question is:

"That clause 543 stand part of the Bill."

The motion was adopted.

Clause 543 *was added to the Bill.*

Mr. Chairman: There is a Government amendment for a new clause 543A. The question is:

Page 256—

after line 25, *add*:

"543A. *Notification that a company is in liquidation.*—(1) Where a company is being wound up, whether by or under the supervision of the court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property or the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company and any of the following persons who wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be punishable with fine which may extend to five hundred rupees".

The motion was adopted.

New Clause 543A *was added to the Bill.*

Mr. Chairman: I shall now put clauses 544 to 551 to the vote of the House. I hope amendment to clause 544 is not pressed.

The question is:

"That clauses 544 to 551 stand part of the Bill."

The motion was adopted.

Clauses 544 *to* 551 *were added to the Bill.*

Mr. Chairman: There is a Government amendment, No. 1062, for a new clause, 551A.

The question is:

Page 260—

after line 26, *add*:

"551A. *Enforcement of duty of liquidator to make returns etc.*— (1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Court may, on an application made to the Court by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid."

The motion was adopted.

New Clause 551A was added to the Bill.

Mr. Chairman: The question is:

"That clauses 552 and 553 stand part of the Bill."

The motion was adopted.

Clauses 552 and 553 were added to the Bill.

Mr. Chairman: The question is:

Page 261, line 14—

after "where a company has been dissolved" *insert* "Whether in pursuance of this Part or of section 393 or otherwise".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 554, as amended, stand part of the Bill."

The motion was adopted.

Clause 554, as amended, was added to the Bill.

Mr. Chairman: The question is:

Page 262, line 35—

add at the end:

"and upon such order being made the company will be deemed never to have been struck off".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 555 stand part of the Bill."

The motion was adopted.

Clause 555 was added to the Bill.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, the 8th September, 1955.