

[Mr. Deputy Speaker]

The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

"Clause 2, as amended was added to the Bill.

Clause 3, Clause 1, the Enacting Formula and the Title were added to the Bill.

Sardar Swaran Singh: I beg to move:

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

Shri Kamath rose.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

Shri Kamath: I must protest against this attitude. You are very fast, we cannot keep pace.

Mr. Deputy-Speaker: The hon. Member is faster than myself. He will have ample opportunity on the Companies Bill.

Shri S. S. More: That does not mean that he cannot speak on this Bill.

Shri Kamath: I cannot speak on Companies Bill in this connection.

Mr. Deputy-Speaker: It is not as if every hon. Member should speak on every subject.

Shri Kamath: I was going to speak on entirely different points, the administrative set-up.

Mr. Deputy-Speaker: The hon. Member appeared only at the *fat* end of the discussion. Some hon. Members do not take interest. I know the name of every hon. Member who was sitting here and rose or sent chits. I called 12 hon. Members. The hon. Member comes in like a lightning at the end, and wants to speak.

Shri Kamath: I did not send a chit, but I rose thrice.

Mr. Deputy-Speaker: I am going to next item.

Shri Kamath: Most unfair, most unfair.

Mr. Deputy-Speaker: It can never be said about me.

Shri Kamath: On this occasion, you have been very unfair. I am walking out.

COMPANIES BILL—contd.

Mr. Deputy-Speaker: The House will now take up clause by clause consideration of the Companies Bill

The first group consists of clauses 1 to 80 and 9 hours have been allotted for it. As usual, clause 1 will be held over until all the clauses and schedules of the Bill have been disposed of. 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 and they will be treated as having been moved subject to their being otherwise admissible.

Shri K. K. Basu (Diamond Harbour): Are all the amendments to these clauses taken as moved.

Mr. Deputy-Speaker: Whosoever is not here, his amendments will not be treated as moved. I do not treat every amendment that is tabled as moved. Those hon. Members who are present need not all move their amendments. The normal procedure is that I ask every hon. Member to get up, then ask "Do you move this amendment?" He might say, "No, Sir; I will move some other amendment", and so on and so forth. So, in order to avoid waste of time, I am asking hon. Members who are present to send chits giving the numbers of the amendments which they would like to move. 15 minutes have been given for this purpose. I will treat those amendments as moved and I will also read out the numbers of the amendments taken as moved. In the meanwhile, discussion may go on. I will not treat as moved the amendments of those hon. Members who are not present. Others who are present should send chits to the Table. This is for the purpose of saving time.

Shri S. S. More (Sholapur): Does it

mean that as far as clauses 2 to 80 are concerned only the amendments of those who are present here at the moment will be treated as moved? 9 hours are allotted for this group and a Member who may not be present now may be present sometime afterwards. What about his amendments?

Mr. Deputy-Speaker: I will be indulgent. What I want is that within half an hour hon. Members must know what are the points on which they wish to speak. If at the end of eighth hour, an hon. Member comes and says, I want to move my amendment, what is to be done! For instance, Mr. More who might have already spoken may say, I would have spoken about this matter also. That is the difficulty.

Shri Tulsidas (Mehsana West): Instead of taking clauses 2 to 80, may I suggest that we should start from the first chapter and consider the amendments to those clauses only? The other chapter may come in later on.

Mr. Deputy-Speaker: I am agreeable. I have also felt that after having allotted nine hours for clauses 2 to 80, it may require some sub-division also. The sub-committee which was appointed went into the matter and it felt that clauses 2 to 80 could be placed under one head.

Shri N. C. Chatterjee (Hooghly): I suggest and I hope the hon. Minister will agree that clauses 2 to 10 should be taken up first. If you kindly look at the clauses, Part I detention starts from clause 2 goes up to clause 6 which deals with meaning of 'relative'. Then, come clauses 7, 8 and 9: Interpretation, power of the Central Government to declare an establishment not to be a branch office, and overriding of memorandum, articles, etc., and clause 10 deals with the jurisdiction of courts. It will be better if we take up this group and dispose of it.

Mr. Deputy-Speaker: I agree. In the meanwhile, hon. Members, including the hon. Minister of Revenue and Civil Expenditure, who has taken some pains to look into this matter, will please indicate to us how these 9 hours could be apportioned among these

clauses. That is Part I: it relates to definition and jurisdiction, etc. Then comes to Part II: Incorporation of company and matters incidental thereto, Memorandum of Association, etc. I think we can conveniently take clauses 2 to 10 as one group. Then, clauses 11 to 19 will be another group. Then comes clause 20: provisions with respect to names of companies Articles of association, etc. clauses 25 to 30. Then we may take up clauses 31 to 41: change of registration of companies, general provisions with respect to memorandum and articles. Then come clauses 42 to 44: private companies. Then, contracts and deeds, service of notice, authentication of documents, etc. That will be another group. Then comes Part III: Prospectus and allotment, commissions and discounts, issue of shares at premium and discount, redeemable preference shares. If these are the 6 or 7 groups, we can take up. The arrangement is this. Clauses 2 to 10 may form one group, definition group or Preliminary or Part I. Then, clauses 11 to 19 will be another group: Incorporation of company, Memorandum of association, etc. The third group will be clauses 20 to 24. The next group will be clauses 25 to 30. The next group will be clauses 32 to 39. The next group will consist of clauses 40 to 53.

Shri Asoka Mehta (Bhandara): May I point out that the largest number of amendments are to clause 2. I am afraid, we shall have to devote considerable time to a discussion of that clause.

Mr. Deputy-Speaker: I am on another point.

Shri Asoka Mehta: You are grouping like this. There are a number of clauses on which there are very few amendments. In some clauses there are 2 or 3 amendments. Can we divide the time in that arbitrary fashion? If you divide like that, perhaps the same person may have to speak 3 or 4 times. If you keep them as they are kept together, perhaps each speaker will speak only once in the course of 9 hours and make his observations on the various amendments.

Some Hon. Members: That would be very difficult.

Shri N. C. Chatterjee: May I suggest one course? It is quite true, that **Shri Asoke Mehta** points out that the largest number of amendments are centered round the first group, that is Part I, covering clauses 2 to 10. If you make it one group and give us 5 hours, I think that would be best. If you split the rest as Parts II and III and give two hours each, it would be best: Part II clauses 11 to 53 and Part III clauses 54 to 80. There will be some symmetry and some basis.

Mr. Deputy-Speaker: My grouping, as I did, does not necessarily mean that time will be allotted merely because it is a group. The importance of the group will be taken into consideration. In regard to clauses 2 to 10, there are a lot of amendments and this group will get more time. For the purpose of enabling hon. Members to speak, we may put it in two groups. As suggested by **Shri N. C. Chatterjee**, we may take Part I, clauses 2 to 10. Then we may take Part II. We may split it into two parts: Memorandum of Association, articles of association, etc.

Shri N. C. Chatterjee: Clauses 11 to 53 may be taken as one group.

Shri S. S. More: Even then, the subject of Prospectus will be closely associated with Memorandum of Association. I suggest all these three, Articles of association, memorandum of association and prospectus can go together so far as discussion is concerned. They are cognate subjects.

Mr. Deputy-Speaker: Very well; prospectus is only issued to the public.

Shri S. S. More: Articles and the memorandum will be the basic documents and prospectus is what will be announced to the public.

Shri C. C. Shah (Gohilwad-Sorath): I wanted to suggest what **Shri N. C. Chatterjee** has suggested. What **Shri N. C. Chatterjee** has suggested is more practical that Parts I, II and III may

be taken up separately as each group. Each Part deals with entirely different independent subjects. Particularly, Part I will be the part which will take more time than the other two parts.

Mr. Deputy-Speaker: We are all agreed. As suggested by **Shri S. S. More**, that part of Part III dealing with prospectus goes with Memorandum and articles of association rather than with allotment, commissions, etc. That is the small point.

Shri S. S. More: Instead of stopping at clause 53, we may stop at clause 67. Allotment, etc., will be a different problem.

Shri C. C. Shah: Really speaking, prospectus is by itself an independent subject, independent from articles and memorandum. It can be dealt with separately. That is my suggestion as suggested by **Shri N. C. Chatterjee**.

Mr. Deputy-Speaker: Anyhow, it is not going to be dealt with separately. Even in Part III. Prospectus is only a portion. The only point is whether it should be tacked on to Part II or Part III.

Shri C. C. Shah: All right; as you please.

Mr. Deputy-Speaker: The final agreement is this. Clauses 2 to 10 will be taken up as group 1. Clauses 11 to 67 will be taken in the second group, that is including prospectus. The rest of Part III will be taken as the next group, that is clauses 68 to 80, both inclusive. That is, clauses relating to capital issue, allotment, etc., will be a homogeneous group. Time will be allotted not only according to the amendments tabled, but also according to the importance of the clauses. Hon. Members may not have tabled amendments; I cannot say that they ought not to speak. Notwithstanding that there are no amendments with respect to any particular portion, issue of capital, allotment, etc. are very important matters: not merely definition. After all, the definition goes with what follows. The number of amendments is not the

criterion. I would like hon. Members to decide among themselves how the 9 hours may be distributed.

Shri N. C. Chatterjee: I am suggesting that 5 hours may be allotted for the first group.

Mr. Deputy-Speaker: Allotment and other things do not require time?

Shri N. C. Chatterjee: You will have 4 hours left over, You may split it into two hours for each part.

Mr. Deputy-Speaker: Four hours, 3 hours and 2 hours; that is my feeling.

The Minister of Finance (Shri C. D. Deshmukh): I think, 5, 2½ and 1½ hours would be all right. Allotment is not a matter of controversy.

Mr. Deputy-Speaker: All right.

Shri Tulsidas: Even if we take clauses 1 to 10 as one group, there are different subjects. In Definitions, there are different subjects. Then, definition is only from clauses 2 to 7. Then, there are other subjects, as already pointed out by Shri N. C. Chatterjee which require explanation. When we deal with clause 10, we will have to deal with all the clauses up to 80.

Mr. Deputy-Speaker: We originally wanted to speak on clauses 2 to 80. Now we will take clauses 2 to 10. Any hon. Member may speak on any of these clauses and the amendments relating thereto. When the question of putting them to vote arises, if any hon. Member says that a particular clause or amendment may be put separately, I will do so. Otherwise, if there is no objection, I will put them all together.

Now, clauses 2 to 10 will get 5 hours; 11 to 67—2½ hours, and the rest; 68 to 80—1½ hours.

Shri Asoka Mehta: A Member can speak thrice?

Mr. Deputy-Speaker: Oh yes, a Member can speak thrice.

As soon as the five hours are over, I will close the discussion and apply the guillotine.

Shri C. D. Deshmukh rose.

Mr. Deputy-Speaker: Does the hon. Minister want to say anything?

Shri C. D. Deshmukh: Do we begin now?

Mr. Deputy-Speaker: Yes.

Shri N. C. Chatterjee: First, the hon. Minister might like to say something about the amendments and their implications.

Mr. Deputy-Speaker: And it will also be useful. With respect to these clauses if the hon. Minister himself has tabled any amendments or he is going to accept any of these amendments, to a large extent we will know where we stand, and hon. Members need not press those points which are admitted. With respect to the others, they may pick and choose and devote their attention.

The hon. the Finance Minister.

Shri S. V. Ramaswamy (Salem): The consolidated list has not yet been distributed to us.

Mr. Deputy-Speaker: What is the consolidated list? They are all numbered together.

Shri S. V. Ramaswamy: No, Sir. Clause by clause. The numbers are different.

Mr. Deputy-Speaker: I have got a list here for each clause. I will ask them to circulate this.

This has been circulated.

Shri S. V. Ramaswamy: That gives only the number of the amendment for each clause. That will not be enough.

Mr. Deputy-Speaker: What will be enough?

Shri S. V. Ramaswamy: The number of the clause, for instance, for which the Government have given amendments, that has also to be tabulated.

Mr. Deputy-Speaker: I am not able to follow the hon. Member. What has been done is, all the amendments that have been tabled have been serially numbered. That is number one. And the office has further done this: under each clause the numbers of the amendments have also been put down. Furthermore evidently the hon. Member wants a synopsis of the amendments.

Shri S. V. Ramaswamy: My submission is this. It is all in the form of lists 1, 2, 3, etc. I want a consolidated list.

Shri S. S. More: On the previous occasion a consolidated list was prepared to amendments on all the clauses, giving all the amendments, giving the whole amendment, not only quoting the number.

Mr. Deputy-Speaker: I do not know what the hon. Members want. I have got in my hands here a list, and I am informed by the office that this has been circulated. It gives for example against clause 2 all the amendments to clause 2.

Shri K. K. Basu: The numbers.

Mr. Deputy-Speaker: Yes. And then wherever Government have tabled amendments, at these places we have indicated "Government". We have got the serial numbers of the amendments there. Hon. Members will have to read that along with this.

Shri T. S. A. Chettiar (Tiruppur): Till now when Bills have been brought forward, these numbers were not given but the actual amendments were given for the clauses. Now, doing work as we do, it takes quite a lot of time because each of these numbers are in different lists, and it is not indicated here in which list these amendments are. Amendment No. 63 may be in the twelfth list whereas 64...

Mr. Deputy-Speaker: That does not matter. They are all serially numbered. I am afraid there is a confusion about the lists. Hon. Members may

forget these lists. From 1 to 1,000 all of them are serially numbered, in whatever list they might be. For the purpose of circulation it is put as a list, but that list does not start once again from number one. The tenth list starts with the number 150. Therefore, the lists may be left out of account. This is the practice that we have been adopting for nearly a year and half so.....

Some Hon. Members: No, no, Sir.

Mr. Deputy-Speaker: No or yes, this is the practice at least for the Companies Bill. I am not going to spend more time on this matter. Hon. Members must take more pains in this regard.

Shri K. K. Basu: Tomorrow they can circulate the consolidated list.

Shri T. S. A. Chettiar: May I point out to you that we think it is a very inconvenient system? It will not facilitate the study of amendments and following the proceedings in the House, and I think we should adopt the old procedure, that for each clause all the amendments are printed. That was the old procedure and that should be adopted. This is a very inconvenient form, and I think that within the few hours that are allotted, the discussion will be stifled by merely referring to it. I think that the old system should be adopted.

Mr. Deputy-Speaker: The hon. Member has, I think, a short memory. We have adopted a different method. The hon. Member has been here for twenty years now. The old practice is that of having lists and each list starting with serial numbers beginning from No. 1. Then the procedure was adopted of gathering all these. Formerly there was list No. 7 and amendment No. 10 for example. There were two uncertain factors. The procedure that has been now adopted is to tabulate all the amendments, number them serially from 1 onwards.

Therefore, there is no difficulty, and then the key is also given here. For clause 2, you have only to refer to all

these amendments. The difficulty if any is not going to be obviated if there is a tabular statement under each clause repeating them once again and printing the whole thing. It may be that some amendment that comes now may not be put in that order of serial numbers—1, 2, 3, amendment (a) sub-division (a) and so on and so forth. That takes time for the office as it does for the hon. Member. This key with the serial numbering is what has been adopted for some time past. Under these circumstances, hon. Members will kindly put up with whatever inconvenience there is. I do not think there is any help.

Shri T. S. A. Chettiar: The office is there to help us. It is for the office to put up with some inconvenience.

Shri U. M. Trivedi rose.

Mr. Deputy-Speaker: Very well, the hon. Minister.

Clause 2 to 10

Shri C. D. Deshmukh: I have amendments Nos. 245 to 267 without any break and Nos. 282 to 284. These are amendments to clause 2. Then No. 285 which is Government amendment to clause 3; No. 286 to clause 4, and No. 287 to clause 6.

I propose to say a few words in regard to these. Before I do so, I would also like to say that since you have received intimation that certain other amendments have been moved which are acceptable, I would like to name them. They are against clause 2—Nos. 325, 327, 329, 333, 335 and 337. They all stand in the name of Shri C. C. Shah. We propose to accept them.

Now, in regard to amendments 245 to 267, they appear very numerous. but the explanation is a very short one. The object of these amendments is to make the definition of the expression "associate" in clause 2, sub-clause (3) more water-tight. It is obviously necessary to disqualify a relative of a director or manager of a managing agency company, as otherwise the provision restricting the appointment of

associates, as selling agents, buying agents etc., under clause 356 and the following clauses will be defeated. The disqualification of a relative without disqualifying the firm in which such relative holds a share—it may be a fourteen anna share—will be anomalous and will tend to nullify the object with which the disqualification is imposed. Likewise, the disqualification of a partner entails the disqualification of a firm in which the partner is a member. In counting the percentage of the total voting power in a body corporate which would entail the disqualification of the body corporate, it is necessary to include the voting powers exercisable not only by the partner or partners or firm of firms, but also the voting power exercisable by a relative or relatives and the private company or companies. The position of a partner is similar to that of a relative and the position of private companies is similar to that of firms. The inclusion of firms alone without including private companies will tend to defeat the object, as the firm may then by registering itself as a private company easily get over the disqualification. This deals with all the amendments to clause 2 (3).

As regards clause 2 (4), the amendments are modelled on the amendment suggested to sub-clause (3) about which I have spoken. They involve no new points and the reasons for the amendments are exactly the same as those for the amendments to sub-clause (3).

Then, I come to some other amendments to clause 2. There is clause 2 (15).

Shri K. K. Basu: Which amendment?

Shri C. D. Deshmukh: Amendment No. 282. This is intended to clarify clause 50, which lays down the mode of service of documents applicable to income-tax notices etc., issued in pursuance of the Indian Income-tax Act as well as to communications sent in the ordinary course to companies and not in pursuance of any Act. This is a

[Shri C. D. Deshmukh]

small amendment in pursuance of a recommendation made by the Central Board of Revenue.

Then there is a small amendment, namely amendment No. 283 to sub-clause 30 of clause 2.

Shri Heda (Nizamabad): Clause 287

Shri C. D. Deshmukh: Sub-clause 30. Clause 2 happens to have many sub-clauses.

Three sections that are named there have crept in by mistake. There is no reference to auditor in anyone of them. The omission of the reference to these clauses therefore rectifies a clerical mistake.

Then, there is amendment No. 284 to sub-clause 40 of clause 2. This is consequential on the amplification of clause 604. It has been proposed separately to provide for the Central Government to appoint additional joint and deputy registrars.

Then, there is amendment No. 285 which is to clause 3 (1) (ii) (f). This amendment expands paragraph (f) so as to make it cover not only Part B States but also merged territories which will include some Part C States as well as territories merged in Part A States. It brings the paragraph into line with the definition of 'existing company' in the Indian Income-tax Act. Here, we should refer to clause 7A of section 2 of the Income-tax Act, which was inserted therein by Act XLI of 1954.

Then there is an amendment to clause 4, which is numbered 286. The explanation is, where the voting system in a body-corporate registered in England or some other country is different from that adopted in this Bill, it may happen that the company is a subsidiary or a holding company of the body corporate under the English or other law, but not under the Indian law. This would result in an anomaly, i.e.

the subsidiary of an English Company in England will not be treated as a subsidiary of the same company in this country. It is therefore considered desirable to make the subsidiary or holding company of the foreign body-corporate a subsidiary or holding company of that body-corporate for the purposes of this Bill also.

The last amendment in this group is amendment No. 287, which is an amendment to clause 6. It is considered desirable that first cousins should not be treated as relatives unless they are members of the same joint family.

That is all in regard to Government amendments and the amendments which Government are prepared to accept.

Mr. Deputy-Speaker: I have been just discussing with the office as to what can be done. No doubt, it will help hon. Members if this key is translated further and regular amendments which have been tabled are also reproduced in *extenso*, instead of making it necessary for every hon. Member to take up the key and also the lists of amendments, and just go on looking into them from time to time. This matter was examined, and it was found that the following difficulty arises. For instance, at present we are taking clauses 2 to 80. If as soon as the discussion on this group of clauses is started, by a particular time all the amendments come, then we can have a consolidated list. But as we go on, their children, grand-children and great grand-children are also coming in, and even at the last minute, amendments come in. If that is the position, then how can the consolidation take place? In the House of Commons they issue a first consolidated list, then second consolidated list, and then a third consolidated list. Let us see whether we also can adopt that here. I find that in practice it is not often possible for hon. Members to think of everything completely at one stage; after some discussion also, they think of some amendments. Then, we have to rule them out, if the consolidation

does not fit in. Anyhow, let us see in practice what we find. There is no intention not to enable an hon. Member to refer to these lists of amendments in a convenient manner, or to cause other inconvenience to the hon. Members on the floor of the House.

Originally, the practice was that the amendments were numbered serially only within each list, and not serially and consecutively from list to list. Thereafter, the practice of giving consecutive numbers to all the amendments has been adopted. Now, their key also has been given. Now, an addition to this key is expected, namely that the entire amendments under each clause and its sub-clauses should be printed together, so that it will enable hon. Members to refer to them without inconvenience. Certainly, that would be a good thing. But let hon. Members also think about this point as to whether, so far as this group is concerned for the present, they will stop giving amendments after a particular time, so that there will be time for preparing a consolidated list, and similarly, whether when we go to another group of clauses, they will be prepared to agree that the last day for receiving amendments to that particular group of clauses, and the last hour, last minute etc. will be a particular day, a particular hour and a particular minute. If they can agree to that, we can have a consolidated list placed in the hands of hon. Members. Let us consider that matter.

Shri T. S. A. Chettiar: This can be done; till a particular date all the amendments might be given in the consolidated list. The amendments that come later may be in separate lists. Then, again, the consolidated list may be revised. Otherwise, the discussion will become difficult.

Pandit Thakur Das Bhargava (Gurgaon): At the time when we were framing the Constitution, in the Constituent Assembly, we were following this practice. First, there was one consolidated list; then, there was another consolidated list, and so on. What is the difficulty in that? Supposing we have now got 15 lists, then these 15

can be consolidated first. If others come, they will remain separate, if they cannot be consolidated. Even that would facilitate us very much.

Now, for instance, the hon. Minister has moved many amendments. We have not quite followed what amendments he is accepting, and what his own amendments are. Personally I have seen all these amendments and I have gone through everyone of them, and so I have followed. But the House has not understood fully what amendments he has moved in his name, and what amendments he is accepting from others. Now, he has stated the numbers of his amendments. He has said that he is moving amendment No. 284. I have got to look up the list and find out what that amendment is. The next number may be 280, and the number after that may be 323. It is impossible to follow the whole thing. If the House wants a good discussion, then the only course is that we have a consolidated list, from which we shall be able to follow. Otherwise, we cannot follow at all.

Mr. Deputy-Speaker: I shall consider this.

Shri S. S. More: May I make one suggestion? The Finance Minister was pleased to give us the numbers of his amendments. To find out or search from the so-called great reservoir of amendments a particular amendment is extremely difficult. We know the fate of other amendments, and so we are not very particular about those amendments, or at least I for my part will not be very particular. But in respect of amendments which Government propose to move, and which stand in the names of other hon. Members but are going to be accepted by Government, if we are given prior intimation, we shall come prepared. As far as my hon. friend Shri C. C. Shah is concerned, I know that he simply acts as, zamins for Government. But, for all these amendments, at least prior intimation should be given saying that Government are going to accept such and such amendments. Then, we shall come prepared.

Mr. Deputy-Speaker: That is an impossible practice. What has been happening all these days is this. Hon. Members have got both the amendments as also the key circulated to them. They are expected to come prepared with everyone of them. Against amendments tabled by Government, the word 'Govt.' is also noted there in the key. If perchance on the floor of the House the hon. Minister is persuaded to accept an amendment, and in view of the volume of opinion here he decides to accept an amendment, how can he give advance intimation and say, I am going to accept this amendment?

Shri C. D. Deshmukh: I may even accept an amendment from the opposite side; I do not know.

Shri S. S. More: I am not so optimistic.

Mr. Deputy-Speaker: Every hon. Member is expected by himself or with a group of other hon. Members, to read everyone of the amendments that have been tabled, and in respect of which a key has been given, besides the original amendment lists that have also been circulated. I do not think it is easy if hon. Members ask the Finance Minister to say in advance what amendments he is going to accept. That is rather difficult.

So far as the preparation of the consolidated list is concerned, I shall consider; I shall discuss it with the office and the Hon. Speaker, and if it is possible to enable hon. Members to have it, we shall see that it is done. For the present, let us get along with this.

Shri C. D. Deshmukh: These are in a consolidated form, because my amendments are from amendment No. 245; 245 follows 244, and it goes on serially up to 267. They are all there in one lump. So, with reference to what Pandit Thakur Das Bhargava has said...

Pandit Thakur Das Bhargava: So far as I am concerned, I have followed, for I have looked into every amendment. But it is rather difficult for every Member to follow.

Mr. Deputy-Speaker: Other Members also will be equally able to follow.

Shri C. D. Deshmukh: I am really announcing a numerical truth that if you begin with 245, you go on till 267. On that, I have made a very short statement. They are all small amendments because they are in various lines; and the other lot of amendments is from 282 to 287. That is, again, in another place. That cannot be any worse than if you had the consolidated amendments; they would just stand out in exactly the same form before hon. Members. So that it requires a little previous study of the amendments if the commentary on them is to be followed, but if hon. Members look at them while I read 245 to 267, of course they will never be able to follow.

Mr. Deputy-Speaker: We are now proceeding with all the amendments to clauses 2 to 10.

Dr. Krishnaswami (Kancheepuram): May I make a submission? Clauses 2 to 10 deal with definitions. They may be taken up after we have disposed of the other clauses, the substantive clauses.

Mr. Deputy-Speaker: What are they?

Dr. Krishnaswami: From Part II onwards, because here the meanings of terms are given.

Mr. Deputy-Speaker: The hon. Member is a little too late. All hon. Members who have spoken so far have pinned their faith on this group of clauses, 2 to 10, as if this is the very soul of company law, and they have allotted five hours for it. The other clauses have been thrown to the background.

Shri Tulsidas: I have amendments to the following clauses: clause 2—amendments Nos. 147, 148, 149, 150, 151, 152, and 153; clause 5—amendment No. 154 and clause 6—amendment No. 156. That covers most of the clauses excepting clause 7 which I wanted to delete by an amendment.

But that amendment has not been admitted, because I was told that I could oppose the whole amending clause, and there could not be an amendment to delete a clause. But I wanted to delete clause 7, though they have not accepted my amendment.

[SRI BARMAN in the Chair]

It is rather difficult for me to go into all the different aspects. I would first like to deal with amendments 147 to 150 relating to clause 2. Regarding clause 7, I will speak afterwards. Amendments Nos. 147 to 150, relate to the question of relatives. My amendments seek to exclude relatives from the definition of 'associate'. I would like the hon. the Finance Minister to mark that I am not opposed to associates, but I am trying to see that relatives are excluded from the scope of 'associates'. On the recommendation of the Company Law Committee, the term 'associates of managing agents' was introduced in the Indian Companies (Amendment) Act 1951. The aim of the Committee in including the associate of managing agents in the Bill was to extend certain disabilities which are imposed on managing agents to their associates. In para 28 of the Report of the Company Law Committee, it is said:

"The need for the definition of 'associate of a managing agent' arises from the fact that experience has shown that if the provisions of the Indian Companies Act relating to managing agents are to be adequately enforced, it is necessary to close the loophole, now provided by this category of persons. For, it is obvious that it is no use laying down restrictions on some particular activities of managing agents, if they can be legally carried on through the agency of their 'associate'."

These restrictions and disabilities will relate mainly to investigation of the affairs of the associates, appointment of the associates as buying and selling

agents for the company, contracts between the company and the associates and the grant of loans to the associates.

The clauses affected in this connection are as follows: clauses 2, and 88(2) (c) which relate to existing disproportionate voting rights not being exercised in case of loans to bodies corporate; clause 238—investigation of the affairs of the associates; clause 239—power to require production of documents; clause 240—Inspector's report; clause 241—prosecution on inspector's report; clause 242—application for winding up; clause 244—recovery of expenses of investigation; clause 246—investigation of ownership; clause 248—investigation regarding association with managing agent; clause 306—register of directors' shareholdings; clause 356—appointment as selling agent prohibited in India; clause 357—sale and services; clause 358—appointment as buying agent prohibited in India; clause 359—payment of commission from other persons; clause 360—contracts between company and associate; special resolution required for every contract; clause 361—existing contracts to cease; clause 363—remuneration in contravention of above to be held in trust; clause 369—loans absolutely prohibited; and clause 371—penalty.

In the original Bill, the recommendation of the Bhabha Committee as regards the definition of 'associate' was accepted. However, the Joint Committee reconsidered the definition and included within it a group of other persons including relatives, who will now be subject to the disabilities and liabilities mentioned above. The definition of 'associate' is so wide that a person may become the associate of another even without his knowing it or without he himself having anything to do with it or without his having any business connections whatsoever with his co-associates. This may lead to absurd and anomalous situations. The circle of associates of a person still fluctuates with domestic events like births, adoptions, deaths and marriages, with changes in shareholding and of partnership shares and with appointment or retirement of directors, managers or managing

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agents or secretaries or treasurers. However persons who are not associate to start with might become associates later on by virtue of marriages or the events mentioned above. This would create an embarrassing situation.

What many be argued is whether this Bill intends to continue in normal times, abnormal-time measures brought in to meet abnormal circumstances, imposing disabilities and thus encroaching upon the rights of a wide group of persons connected with the managing agents to whom alone the disabilities applied originally. The provision seems to be based on the doctrine of guilt by association and tends to restrict an individual's freedom to carry on trade.

I would like to point out and also request the hon. Finance Minister to take into consideration the fact that, after all, the companies which are functioning in this country are not all companies which are manufacturing concerns but there are also companies which have trade and other activities. Therefore, one has to consider that this definition has to apply also to other companies which have other types of activities apart from manufacturing activities. Such conditions will have the effect of preventing an individual managing agent from becoming a partner of another concern as, in such cases, the firm and the other partners of the firm will be prevented from acting as buying agent or selling agent for the managed company or obtain loans from it. The inclusion of the body corporate in the category of associates is most undesirable. And, it denies the legal distinction between a body corporate and its shareholders. Even when the individual managing agent has a small shareholding in a body corporate, his partners' and relatives' shareholding may be such as to constitute the body corporate in the category of his associates. One result will be to reduce the marketability of shares of such a body corporate by eliminating the individual managing agent, his partners and relatives as a source of demand for such

shares lest they impose disabilities on an associate of the body corporate.

I would like the hon. Finance Minister to take into consideration our Constitution. The extension of the original definition to include relatives and other categories of persons is likely to violate, in my opinion, article 19 (1) (g) in so far as it lays down that a person should be allowed to carry on his trade and that under the definition now proposed an associate will be prevented from becoming a buying or selling agent of the company because he is not allowed to be remunerated for such service. I would ask the Finance Minister to see the article. Article 19 (1) says—

"All citizens shall have the right—"

and (g)—

"to practice any profession, or to carry on any occupation, trade or business."

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular, nothing in the said sub-clause, shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

That is what I feel; I am not a constitutional lawyer.

Shri A. M. Thomas (Ernakulam):
More than a lawyer.

Shri Tulsidas: As a layman, I consider that you violate this article, 19 (1) (g).

The relationship itself should not be a ground for imposing a disability. The definition, without the inclusion of the word 'relative' is in itself quite broad-based to cover cases of identity of financial or business interests. Under the categories mentioned earlier in the definition, all relatives having business and financial connections are automatically included.

My point is that those relatives who have any connections in business or finance will be automatically included as associates of the managing agent. Simply because he is a relative, why should he be roped in and have all the disabilities of the law? There is little justification for roping in a relative. It was also the intention of the Bhabha Committee that such relatives should not be made subject to disabilities and liabilities imposed on associates. In a schedule to the draft of the section on the general powers of the managing agents given on pages 367 and 368, the Bhabha Committee has drafted only the following disabilities for relatives. The managing agent shall only exercise the following powers to the previous partner of the directors of the company—the power to engage on behalf of the company any person who is a relation of any director or of any partner of the managing agency, company or firm or of any director of the managing company. This recommendation was amplified in the original Bill in schedule VII where powers of managing agents were to be enumerated. The restriction in the original Bill was as follows:—

"The managing agent shall not exercise any of the following powers except after obtaining the previous approval of the directors of the company in regard to such exercise:—

.....Power to appoint as an officer or member of the staff

of the company payable from its funds (as distinguished from the funds of the managing agent or out of any remuneration payable to him by the company) any person who is a relative of the managing agent, or where the managing agent is a firm, of any partner in the firm, or where the managing agent is a private company, of any director or member of such company;"

That was the restriction which was in the original Bill. In an Explanation, 'relative' was defined in the same way as in clause 6 of the present Bill. What the Joint Committee did was to include relatives in the list of associates and shift the entire definition of the "relative" from the schedule to that.

I may again, with your permission, refer to the Constitution, article 16, which provides as follows:—

"(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

Shri S. S. More: The company is under the State.

Shri K. K. Basu: I wish Shri Tulsidas surrenders all his property to the State.

Shri Tulsidas: I said I am not a lawyer as my hon. friend is. I am trying to say that the spirit of all these things is so wide; the Government has wide powers, in the approval of managing agents etc. So, the Government is more or less creating these restrictions and discrimination against the relative because he is a relative and not because of anything else.

Shri Syamchand Sahaya (Muzaffarpur Central): He becomes a relative by descent.

Shri Tulsidas: If it is proper in the case of State that relationship should not be a bar to appointment, may I know why relationship is considered to be such a bar in the case of private employment? (*Interruption*). If relationship is not a bar in government service, naturally, it should not be applicable to the private sector also.

Shri C. D. Deshmukh: Nobody is related to Government.

Shri Tulsidas: To the Minister anyway... I only say that the managing director or a manager is an individual; similar is the case of the Minister....

Shri Syamnandan Sahaya: The Minister being the managing agent of the Government.

Shri Tulsidas: After all, the Cabinet is something like a board of directors.

Shri Asoka Mehta: What about the secretaries and treasurers?

Shri Tulsidas: The Secretary is a manager and just as a manager is now given the disabilities, in that his relatives will have all these disabilities because he is a manager of a particular company, a secretary or a joint secretary of any department of Government, whether at the Centre or the State, will have the same disabilities. If this is applied to private employment, the definition as it stands now, especially when we take into account the other amendments suggested by other Members of the House, is so wide that it will be necessary to entrust such important functions as buying and selling to outsiders, a consequence which may not be in the interest of the company itself. I, therefore, suggest that relatives be excluded from the definition of associates.

I would like again to point out to the hon. Finance Minister, as I pointed out earlier, that different clauses will apply and these disabilities will be put on a relative merely because he is a relative. Take for example clause 238 dealing with power to require production of documents. Merely because he is a relative, he will be

subjected to this limitation. He may not have any business whatsoever; he may be entirely a student; but because he is a relative he has to produce documents to the investigating inspector. They may be father and son who may be living entirely separately and perhaps brothers may be living entirely separately, but simply because he is a relative, why should he be subjected to this sort of treatment in the law? Similarly, in investigation why should that be so? Unless and until he is associated with the managing agent of the company in any way whatsoever, why should he be subjected to this treatment because of his being a relative? Why should there be any disabilities for a relative as long as he is not related to any one of the companies? For instance, a relative may be doing some business in Calcutta and the company may be in Bombay, and still because of the fact that he is a relative, you will not allow a certain legitimate business which he may be doing. Or again he may not have any connection with the company and the company may have gone into liquidation; why should that person staying in Calcutta, merely because he is a relative, be subjected to these disabilities?

I would go further. Supposing a person is a relative or a distant relative of a manager of a managing agency firm or a company of which there is a managing agent, then that manager's relative will also be hounded out, whether he is a relative or not, according to the definition. I cannot understand how these disabilities can apply merely because he is a relative. As I pointed out, those who have any connection with the company, under the different definitions, will be roped in. Why should a relative be included in the definition of associates? That is where I object.

As regards my amendments Nos. 149 to 151, this explanation of associates is not contained in the 1913 or 1951 Act, or in the Bhabha Committee Report or in the original Bill. None of these has ever put this explanation.

The explanation brings within its scope a few additional categories of associates which would not otherwise be covered by the definition. Thus it ceases to be an explanation and becomes an extension of the definition. This can be seen from the following instances:

(1) Where a private company is a managing agent, under sub-section 3(d), every member of the company is its associate where such member is a managing agent, under sub-section 3(a), only those private companies of which he is a director or manager become his associates and those private companies of which he is a member only will not become his associates.

But the explanation will make each private company of which managing agent is a member, the associate of such member though such member may not be a director of the company.

(2) Under sub-section 3 (c) every director of the body corporate is its associate. Where such director is himself a managing agent, under sub-section 3 (a), only those bodies corporate will be his associates in which, he along with his partners holds majority interest.

The effect of the explanation will be to make such body corporate the associates of directors even though the director together with his partners does not hold one-half of the total voting powers.

I pointed out that this explanation is not an explanation but is an extension of the definition, and to that extent I feel that this explanation is not necessary, because if you want to expand the scope of the definition, it should have been included in the definition, and I do not see any reason, when the Government or the Select Committee had no desire to include it there, why this extension should be made by way of an explanation.

Then I come to the question of the definition of debentures. Before I do so, I would like the hon. Finance Minister to realise the amount of difficulties which will normally take place if the definition of associates includes relatives. It will unnecessarily create more hardships on companies which will find it difficult to carry on their day to day work. I would like him also to realise the human factor. If a person has to do a certain amount of business, in whom he will have more confidence? Will he be a stranger or a relative? Therefore, as long as there is no question of any *mala fides* by which a relative is not coming in the way of normal working, why should the fact of his being a mere relative be a bar to him? I cannot understand this. After all, the human factor is that if I have to entrust a certain amount of work I will entrust it to persons whom I know and I will not entrust it to strangers. Here, by this definition, I will not be able to entrust my work of selling and buying, which is the most important thing, to a stranger. If a stranger creates trouble it does not matter, but the person should not be a relative—I cannot understand this. But as long as the company does not suffer, as long as the company's functions and he does work in the interests of the company, what is wrong in his being a relative? I do not understand this thing, namely, that merely because he is a relative, he must not be employed in the company. The definition of a relative goes so wide that it covers grandparents of Indian descent, full blood, half blood, legitimate and illegitimate, etc. I would request the hon. Finance Minister that before he agrees to this definition being included, he should take notice of all these facts. After all, there are 30,000 companies and we want to grow more number of companies in this country. Is it possible even for any one to realise that in the 30,000 companies a relative of a manager, director or partner, has been given a certain amount of work in any part of India? If there is an appointment according to this provision you have got to take

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the approval of the board of directors. But one does not know whether one is a relative of the manager. How does anybody come to know whether a particular person employed is a relative of a manager. The latest amendment of the Finance Minister has gone much further. They have included the word 'Manager or director'. In every place, relative has been put in and defined. It will hinder the day-to-day working. There is no question of *mala fides* as I said in the consideration stage. I have no sympathy for such people who are out to do certain things. I do not want the companies to have this unnecessary handicap which would affect the normal day-to-day working and I do want the Finance Minister to consider this question very seriously. I shudder to think even if I were to approve of an appointment of a person of enquiring whether a person is a relative of the manager or not. He may be a distant relative of the manager. How am I going to find out? It is difficult for anybody to find out with the definition that we have got. I would therefore like him to seriously consider this because this is going to be a great hardship for the day-to-day working of the *bona fide* companies.

I would then come to the definition of 'debentures'. If I had to go over the amendments which I have given for all the ten clauses, I would like to deal with a number of aspects. But I would now come to my amendment No. 152. I want this definition to be something as it was in the previous Act. It has been there for all these years. Under the 1913 Act, debenture includes debenture stock. The Bhabha Committee recommended in para 27 practically the same thing. They reviewed the above definition. They appreciated that the debentures may constitute a charge on the assets of the company or they may be such a charge. Following the U.K. Act, the Company Law Committee, therefore suggested that the definition of the debenture may be reconsidered to include debenture stock, bond and

other securities of a company whether constituting a charge on the assets of the company or not. The definition provided in the proposed Bill is on the lines of the above recommendation. But, the definition gives rise to the following practical difficulties which the Bhabha Committee failed to appreciate when they blindly recommended the U.K. definition. The wide scope implicit in the words 'other securities' may include short-term borrowings from banks in the ordinary course of business, secured by hypothecation of goods. Further in the above circumstances, the debentures issued by a company will rank next in point of time, that is, rank second in priority after the bank loan secured by such hypothecation. But the Insurance Act provides, *vide* section 27(a)(i) that the insurance companies can keep their funds invested in debentures only if they are first debentures secured by a floating charge on its assets. As most companies issuing debentures may have borrowed money from the bank secured by hypothecation of stock, this would preclude the insurance companies from investing in the debentures which rank next in respect of the charge over assets. The debentures will thus not attract investment, as I have said, from the insurance companies, which otherwise provide the main source from which the companies can hope to obtain their long-term finance.

It is also to be remembered that in many places, where the word 'debenture' has been used in the Bill, it is apparent that the wide connotation proposed to be given in the definition will not be appropriate. The words 'other securities' can bring within their purview hypothecation of stocks or of consumable stores or of book debts and a loan even without a security. The clauses where in regulation for debenture is provided in the Bill cannot have application to the above instances as is apparent from the following clauses, namely, clause 102 relating to transfer of debentures by

instrument of transfer, clause 145 relating to register of debenture holders, clause 232 giving power to investigate ownership of debentures, clause 379 giving time-limit for issue of debentures and clause 380 giving right to holders of debentures to get accounts. In none of these contexts it is desired to include short-term loans etc. within the category of debentures.

The existing definition as it stands in the present Act has not given rise to any difficulty and the amendment therefore seeks to provide a more concise definition by deleting from the proposed definition the words 'other securities whether constituting a charge on the assets of the company or not, so as to read as: 'debenture includes debenture stock and bonds'. For all these years, there has been no difficulty and just because of the U.K. Act you want to have a change. I request the Finance Minister to consider whether it is necessary to make these changes and also whether it is desirable.

I now come to clause 5. I have given notice of an amendment No. 154. There has been no provision in the 1913 Act nor in the 1951 amending Act. The U.K. Act contains only the latter part, that is, 'who knowingly and wilfully authorises or permits such default, non-compliance, failure, refusal or contravention.' The Bhabha Committee had made no recommendations. In the original Bill, in both cases, that is, where an officer does a thing and where he authorises a thing to be done, he was, knowingly, though not wilfully, guilty. In the Joint Committee, the word 'wilfully' was added to the latter part of the definition. That is the position with regard to this particular clause. There does not exist any definition in the present Act specifically describing as to what constitutes 'officer in default'. But wherever any offences are involved it provides somewhat as follows. If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding so much rupees for every day during which the default continues

and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty. The Bhabha Committee did not make any recommendation for the revision of this provision. The U.K. Act defines 'officer in default' in specific terms:

"For the purposes of any enactment in this Act which provides that an officer of a company who is in default shall be liable to a fine or penalty, the expression 'officer who is in default' means any officer who knowingly and wilfully authorises or permits the default, refusal or contravention mentioned in the enactment."

This definition as prevalent in the U.K. Act purports to include only those points which exist in the present Act, that is, knowingly and wilfully authorising or permitting the default.

It is strange that the drafters of the original Bill somehow thought that the officers had no will, discretion or sense of judgment, and provided curiously enough as follows:

"Officer in default means any officer of the company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision or who knowingly authorises or permits such default, non-compliance, failure, refusal or contravention."

Thus the original Bill unnecessarily created two categories of officers: (1) officers knowingly guilty of default, and (2) officers knowingly authorising or permitting such default. This distinction is superfluous. At the Joint Committee stage it has been provided that officers guilty of offences shall be considered 'officers in default' when they are knowingly guilty, while officers who authorise or permit such default shall be considered 'officers in default' only in case they authorise or permit it knowingly and wilfully.

I cannot understand the reason which has motivated the Joint Com-

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mittee to deprive the persons who do a thing on the defence that they had not done the thing wilfully. Does it mean that a subordinate officer who may be required to do a thing against his will, on instructions from his superiors, may be considered 'officer in default' when he does it only knowingly while the superior officer who authorises or permits such offence comes within the definition of 'officer in default' only when he does authorise or permit knowingly and wilfully.

It would have been much better if the definition as given in the U. K. Act had been reproduced in the Bill. However, if, for any reasons, it is thought necessary to keep both the categories i.e. 'officers who are guilty of default' and 'officers who authorise or permit such default', let the former category be also considered, in the name of fairness, to be held in default only when the default is made knowingly and wilfully.

The amendment seeks to provide for a fair treatment in all cases of offence.

The Bill is now being made replete with penal provisions at every stage and it is necessary that the Members of the House bring an impartial and judicial outlook to bear on the examination of this question. I have no doubt, that this House which prides itself on the establishment of equality of consideration in such wide and multifarious directions will not allow the Bill to be distorted by such arbitrary and illusory distinctions.

Sir, I would like the hon. the Finance Minister to know—he knows, of course—that this definition has been included because of the U. K. Act. If we are following the U. K. Act, then why make this change? In the U. K. Act—we have got the words 'knowingly' and 'wilfully'. Why do you now change at some places the word 'knowingly' and remove the word 'wilfully' at some places? I do not see any reason even though the reasons which I surmise may be that because we have got a peculiar system of managing agents.....

Shri U. M. Trivedi (Chittor): This is only to save you and not to trap you.

Shri Tulsidas: I feel that there should be both 'knowingly' and 'wilfully'.

Shri Syamnandan Sahaya: God save us from our friends;

Shri Tulsidas: Then I come to clause 7—Interpretation of 'person in accordance with whose directions or instructions directors are accustomed to act'.

Shri C. D. Deshmukh: What is the amendment?

Shri Tulsidas: I am opposing this clause and I say that this clause should not be there. This was not there in the 1913 Act and it was also not there even in the 1951 amending Act. The U.K. Act contains section 455(2) and the Bhabha Committee's recommendation is contained in paragraph 13. This term "person in accordance with whose directions or instructions or instructions directors are accustomed to act" is not contained in the U.K. Act and the 1951 Act; but there is only one specific instance where it is used. The Bhabha Committee has recommended its introduction in the Company Law. With regard to grant of loans to directors the Committee has recommended that the prohibition in regard to grant of loans to directors may be extended to other persons who are accustomed to act in accordance with directions or instructions of superiors. The original Bill, however had gone beyond this specific recommendation by introducing this system in six other clauses of the Bill. They are: clause 161—penalty and interpretation; clause 202—power to restrain fraudulent persons from managing companies,

Shri C. D. Deshmukh: Does the hon. Member want to deprive the professional adviser the protection that is sought to be given by clause 7? If that clause is omitted that would be the effect of it.

Shri K. K. Basu: There would be subsequent amendments also.

Shri Tulsidas: I am opposing the entire clause. I will presently explain why I am opposing it.

Pandit Thakur Das Bhargava: That clause saves certain people.

Shri Tulsidas: In clause 161 the penalty which is provided for directors is sought to be extended to certain other members.

Shri C. C. Shah: What is pointed out is that it is not a definition. It merely excludes.....

Shri Tulsidas: I want to oppose the entire clause.

Shri C. D. Deshmukh: If the hon. Member removes the other references to 'persons accustomed to act in accordance with instructions and so on' then the removal of clause 7 will be a consequential amendment. Therefore, the hon. Member need not speak on clause 7 by itself because that only gives protection to the professional adviser.

Shri Tulsidas: My point is that the Company Law should be limited to controlling the activities of persons engaged in the management of companies. The principle behind the introduction of a category of persons accustomed to act on instructions is to extend the operation of the Company Law to other persons.

Shri N. C. Chatterjee: But by omitting clause 7 you really avoid the immunity which is being given by it.

Shri C. D. Deshmukh: That is what I am pointing out.

Shri Tulsidas: Then would you like me to take up this question when the other clauses come up?

Shri C. D. Deshmukh: If you succeed in getting these words removed somewhere else then only you can point out that clause 7 may be omitted; otherwise you are taking away the immunity that is provided in this clause.

Pandit Thakur Das Bhargava: Supposing this clause is passed then the House is committed to the principle.

Shri Tulsidas: Then how can I move any amendment to the other clauses once this definition is accepted? Therefore, what I am trying to say is that today, if the hon. Minister is agreeable to put off this clause until the other concerned clauses come up, then I am willing to accept it; otherwise, if this particular clause is passed I am completely debarred from moving any amendment to clauses where this particular reference is made. Unless we consider the implications of this clause it will be difficult for me to enumerate the difficulties that this clause will create. I would request him to consider whether it would not be advisable, therefore, to keep this clause pending until we take into consideration those clauses wherein this particular expression or definition is used. Whenever it is necessary that this should be included I am prepared to do it. If today, at this stage I do not oppose it, then it will not be possible for me to move any other amendment to other clauses. That is my point.

Pandit Thakur Das Bhargava: We can give him that accommodation, Sir.

Mr. Chairman: The hon. Member wants that this particular clause be deferred for the present. I think it can be done. Is there any objection?

Shri C. C. Shah: What I was pointing out was that if substantial amendments to substantial clauses are accepted by the House, namely, that wherever these words occur they may be deleted, then the removal of this clause becomes a consequential amendment. If those words are deleted, then the provision of this clause is unnecessary.

Pandit Thakur Das Bhargava: Supposing this clause is passed, then the House will be committed to the principle; but, at the same time we have always accepted this principle that when a clause comes up, it will be open to the hon. Member to say that these words be taken away and this

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particular clause, as a consequence will go off. But then the Chair would assure him that this would be the case. That is all. He cannot be debarred from discussing all these clauses.

Shri N. C. Chatterjee: What I say is, this is merely a definition: "Person in accordance with those directions or instructions directors are accustomed to act". Wherever these words occur, that interpretation will have to be put on those particular words in this particular part of the statute, but supposing you do not pass that clause, naturally this will become obsolete.

Shri C. D. Deshmukh: That can apply to all the definition clauses. Supposing you remove the words "associate" from all the subsequent clauses, what will you do, having accepted the definition of 'associates'? Then it will remain an otiose kind of definition which has no counterpart in the substantive part of the law. I should say that there should be some provision by which one can consider this as a consequential amendment.

Mr. Chairman: It will merely be a consequential amendment.

Shri C. D. Deshmukh: On the other hand, if the meaning is sought to be imported that by accepting or rejecting this clause we are committing ourselves to the substance of the other clauses, then he is asking us to do too much, because we have not given our mind to those other clauses. The consequences of 'accustoming to act' in accordance with the advice, is a substantive matter which must be considered in the context of the relevant part.

Shri S. S. More: I think we should have elasticity of procedure.

Shri Tulsidas: Yes; we must have elasticity of procedure.

Mr. Chairman: I agree with what Shri Chatterjee has said. We are now

passing this definition. Supposing, later on, we do not pass any substantive clause to which this definition applies, then it automatically goes. So, the discussion on that point need not be deferred.

Shri C. D. Deshmukh: The only thing to be decided is, do we agree to the principle of immunity conferred on the professional adviser or not. That is the rather narrow point to be considered here.

Shri N. C. Chatterjee: If we take the other view, then we should postpone the whole of the definition clauses. Take, for instance, the managing agent. We might decide to abolish managing agent in any sector.

Mr. Chairman: Shri Tulsidas may pass on to the next argument.

Shri Tulsidas: I would like to ask the hon. Finance Minister how this definition will be applied, namely, "accustomed to act". Take, for instance, the manager of the Sindri Fertiliser Company. Will he be considered to act "as a person accustomed to act"? Look at the vagueness of this clause. Will a person who is managing a particular show, or company, which is a public enterprise, be considered to act or be "accustomed to act." Is he to be taken as a person accustomed to act because of a particular enterprise under a particular Ministry? It will be very difficult. It is so vague and we have to consider also the different other clauses in which these words occur. I will come to those clauses at the time when those clauses come in. I personally feel that this clause is so vague. It should be so worded that it should not have so much of this vagueness. I say only this much at this stage. When the particular clauses come, I will say how this will affect those clauses.

Shri U. M. Trivedi: What the hon. Finance Minister has said has got great force in it. Does my hon. friend

wish to suggest that he does not want immunity? We have not been able to gather anything from his point. If he wants immunity to be there, then all the other clauses will be affected.

Shri Tulsidas: I was just explaining clauses 161, 202, 302, 304, 309 and 597. Clause 597 also refers to the directors of companies and the phrase 'accustomed to act'.

Mr. Chairman: May I enquire so far as this definition is concerned, is it not possible for us to postpone it for the present? What is the harm?

Shri Asoka Mehta: We are only discussing the immunity, and not the definition as such.

Shri N. C. Chatterjee: By passing this clause you are committed to the acceptance of the other clauses. Once that is made clear even if this is passed, it is tantamount to the House adopting substantive clauses for this expression. Logically, this should come later.

Mr. Chairman: Shri Tulsidas may go on. It will be decided tomorrow.

Shri Tulsidas: Up to clause 10, I have these amendments, and I have no amendments on any other clauses. I have dealt with quite exhaustively on the amendments to these clauses which I have moved, and I would request House to consider the different implications which I pointed out. Merely because there has been a certain amount of abuse which has taken place, we should not generalise this sort of abuses. Obviously, we are carried away that by putting this in a particular clause in a particular manner, those abuses will be stopped. As I said even at the time of the consideration stage, abuses can only be stopped if the administration of the Act is properly done. I am afraid that the Act is now becoming so complicated and complex that I do not know whether the person who has to administer this Act will find it so easy to administer. He will not find it so easy and he will find it difficult to administer the Act in the manner that he would be required to administer it.

As I said, one has to consider this law not from the point of view of making this law a bureaucrat's paradise and the lawyer's delight. I would like the Finance Minister to realise this one aspect. After all, even Lord Keynes has said that tyranny of the bank barons is preferable to political tyranny. I only hope that this law will not become a political tyranny, instead of creating some sort of better law and administration and a better way of working the law. I do feel that it is necessary that in the matter of relatives and similar other definitions, the Bill requires modification resulting in a much better way of understanding things, and so that the people will be able to follow it well. I would like the Finance Minister to take this aspect into account.

Shri T. S. A. Chettiar: There are just a few minutes left for the House to rise, and I hope that the large number of points that I have to make will be made tomorrow. Today, I would like to say just this much. This definition of "associate" in relation to a managing agent is really a very important matter. Perhaps this is one of the most important clauses in this Bill. It tries to rope in many people who were till now free, and as the Bhabha Committee has reported, many of the abuses of the managing agents have been that they tried to make money in other people's name, who have been closely related to them, and that has led to the definition and expansion of this meaning of 'managing agents'. But in speaking on this amendment I would like to refer to one Government amendment that has been tabled recently, and that is amendment No. 280. In that amendment, not only any partner or relative of any director is an associate, but also the manager or relative of any manager becomes an associate.

Mr. Chairman: Shri Chettiar may continue tomorrow. Let me make the announcement regarding the amendments, taken as moved.

The following are the amendments to Clauses 2 to 10 of the Companies Bill, which the hon. Members have

[Mr. Chairman]

intimated to be moved subject to their being otherwise admissible:

Clause No. No. of amendments.

2. 63, 64, 245 (Govt.), 246 (Govt.), 13, 247 (Govt.), 248 (Govt.), 322, 323, 249 (Govt.), 250 (Govt.), 251, (Govt.), 252 (Govt.), 253 (Govt.), 147 (same as 253), 254 (Govt.), 255 (Govt.), 256 (Govt.), 324, 257 (Govt.), 258 (Govt.), 259 (Govt.), 148 (same as 259), 260 (Govt.), 325, 326, 327, 328, 329, 149, 261 (Govt.), 262 (Govt.), 263 (Govt.), 330, 331, 264, (Govt.), 265 (Govt.), 266 (Govt.), 150 (same as 266), 332, 267 (Govt.), 333, 334, 91, 335, 336, 337, 151, 152, 65, 282 (Govt.), 92, 93, 29, 283 (Govt.), 66, 284 (Govt.), 153, 14, 343, 344.
3. 285 (Govt.), 30, 93 (same as 30).
4. 350, 95, 286 (Govt.).
5. 154, 351, 352.
6. 96, 155, 287 (Govt.).
8. 15.
9. 68.
10. 69, 16, 17.

Clause 2.—(Definitions).

Shri Rane: I beg to move:

Page 1,

for line 14, substitute:

"additions, omissions and modifications".

Shri M. S. Gurupadaswamy: I beg to move:

Pages 1, 2 and 3,

omit lines 24 to 33, lines 1 to 54 and lines 1 to 10 respectively.

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

(1) Page 1, sub-clause (3),

in line 29, after the word "partner" insert the words "or relative".

(2) Page 1, sub-clause (3),

in line 30, after the words "such individual" insert the words, "partner or relative".

Shri U. M. Trivedi: I beg to move:

(i) Pages 1 and 2, lines 31 to 33 and lines 1 to 12 respectively,

omit all the words after the word "partner";

(ii) Page 2,

omit lines 13 to 34;

(iii) Page 2,

omit lines 35 to 54;

(iv) Page 3,

omit lines 1 to 10; and

(v) Pages 3 and 4,

omit lines 11 to 51 and lines 1 to 9 respectively.

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

(1) Page 1, sub-clause (3).

in line 33, after the words "any such partner" insert the word "relative".

(2) Page 2, sub-clause (3).

in line 3, after the word "manager," insert the word "and".

Shri K. K. Basu: I beg to move:

(1) Page 2 line 5,

for "one-half" substitute "one-third".

(2) Page 2, line 9,

after "individual" insert "and/or any of his relatives".

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

(1) Page 2, sub-clause (3),

in line 10, omit the words "any such".

(2) Page 2, sub-clause (3),

in line 10, after the words "partner or partners" insert "relative or relatives".

(3) Page 2, sub-clause (3),

in lines 10 and 11, omit the words "and any such".

(4) Page 2, sub-clause (3),

in line 11, after "firm or firms;" insert "and private company or companies;".

(5) Page 2, sub-clause (3),

in lines 11 and 12, omit the words "and any relative of such individual;"

Shri Tulsidas: I beg to move:

Page 2, lines 11 and 12,

omit the words "and any relative of such individual;"

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

(1) Page 2, sub-clause (3),

in line 16, after the word "partner" insert the words "or relative".

(2) Page 2, sub-clause (3),

in lines 17 and 18, after the words "any such member" insert the words, ", partner or relative".

(3) Page 2, sub-clause (3),

in line 21, after the word "partner" insert the word ", relative".

Shri K. K. Basu: I beg to move:

Page 2, line 26,

for "one-half" substitute "one-third".

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

(1) Page 2, sub-clause (3),

in line 32, after the words "partner or partners" insert the words "relative or relatives".

(2) Page 2, sub-clause (3),

in line 33, for the words "and other firm or firms" substitute the words "other firm or firms and private company or companies;"

(3) Page 2, sub-clause (3),

in lines 33 and 34, omit the words "and any relative of any such member".

Shri Tulsidas: I beg to move:

Page 2, lines 33 and 34,

omit the words "and any relative of any such member".

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

Page 2, sub-clause (3),

In line 44, after the word "thereof;" insert the words "any partner or relative of any such director or manager; any firm in which such director, manager, partner or relative, is a partner;"

Shri C. C. Shah: I beg to move:

Page 2,

(i) line 38, before "any subsidiary" add "(i)";

(ii) line 44, after "thereof," insert "any partner or relative of any such director or manager; any firm in which such director or manager, partner or relative, is a partner;" and

(iii) for lines 45 to 54, substitute—

"(ii) any other body corporate at any general meeting of which not less than one-half of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate and the companies and other persons specified in paragraph (i) above; and".

Shri K. K. Basu: I beg to move:

Page 2, line 54,

add at the end "or any body corporate in which any member of, or any person connected with the Managing Agents is a director and".

Shri C. C. Shah: I beg to move:

Page 3, lines 2 and 3,

after "private company" add "or a body corporate having not more than fifty members".

Shri K. K. Basu: I beg to move:

Page 3, line 6,

add at the end "or any relative of the member".

Shri C. C. Shah: I beg to move:

Page 3, line 6,

add at the end "or body corporate".

Shri Tulsidas: I beg to move:

Page 3,

omit lines 7 to 10.

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

(1) Page 3, sub-clause (4),

in line 16, after the word "partner" insert the words "or relative".

(2) Page 3, sub-clause (4),

in line 18, after the words "any such member" insert the words "partner or relative".

(3) Page 3, sub-clause (4),

In line 21, after the word "partner" insert the word "relative".

Shri K. K. Basu: I beg to move:

(1) Page 3, line 26,

for "one-half" substitute "one-fourth".

(2) Page 3, lines 30 and 31,

after "members" insert "and/or, any relatives thereof".

(1) Page 3 sub-clause (4),

in line 31, after the words "partner or partners" insert the words "relative or relatives";

(2) Page 3, sub-clause (4),

in lines 31 and 32, for the words "and other firm or firms" substitute the words "other firm or firms, and private company or companies";

(3) Page 3, sub-clause (4),

in lines 32 and 33, omit the words "and any relative of any such member".

Shri Tulsidas: I beg to move:

Page 3, lines 32 and 33,

omit the words "and any relative of any such member".

Shri K. K. Basu: I beg to move:

Pages 3 and 4,

omit lines 34 to 51 and 1 to 6 respectively.

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

Page 3, sub-clause (4),

in line 42, after the words "holding company thereof," insert the words "any partner or relative of any such director or manager; any firm in which such director or manager, partner or relative, is a partner;"

Shri C. C. Shah: I beg to move:

Page 3,

(i) line 37, before "any subsidiary" add "(i)";

(ii) line 42, after "thereof," insert "any partner or relative of any such director or manager; any firm in which such director or manager partner or relative, is a partner;" and

(iii) line 42, before "any" insert "(ii)" and for lines 43 to 51, substitute—

"other body corporate at any general meeting of which not less than one-half of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate and the companies and other persons specified in paragraph (i) above; and".

Shri K. K. Basu: I beg to move:

Page 3, lines 44 and 45.

for "one-half" substitute "one-fourth".

Shri M. S. Gurupadaswamy: I beg to move:

Page 4,

omit lines 1 to 6.

Shri C. C. Shah: I beg to move:

Page 4, line 3,

add at the end "or a body corporate having not more than fifty members".

Shri K. K. Basu: I beg to move:

Page 4, line 6,

add at the end "or any relative of the member".

Shri C. C. Shah: I beg to move:

Page 4, line 6,

add at the end "or body corporate".

Shri Tulsidas: I beg to move:

(1) Page 4,

omit lines 7 to 9.

(2) Page 4,

(i) line 28,

after "debenture stock" insert "and"

(ii) lines 28 to 30,

omit "and any other securities of a company, whether constituting a charge on the assets of the company or not;"

Shri Rane: I beg to move:

Page 4, line 31,

after "person" insert "substantially".

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

Page 4, sub-clause (15)

(i) in line 36, after the word "notice" insert the word "requisition," and omit the word "and";

(ii) in line 37, after the words "and registers" insert the words "whether issued, sent or kept in pursuance of this or any other Act, or otherwise;"

Shri M. S. Gurupadaswamy: I beg to move:

(1) Page 5,

omit lines 1 to 6.

(2) pages 5 and 6,

for lines 46 and 47 and lines 1 to 7 respectively, substitute:—

"(30) "officer" includes any director, manager or secretary;"

Shri S. V. Ramaswamy: I beg to move:

Page 6, line 6,

omit "536".

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

Page 6, sub-clause (30),

in line 6, omit the figures "616, 617, 618".

Shri Rane: I beg to move:

Page 6, line 8, and wherever they occur in the Bill,

for "officer who is in default" substitute "delinquent officer".

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

Page 6, lines 41 and 42,

in sub-clause (40), for the words, "or an Assistant Registrar" substitute the words "an Additional, a Joint, a Deputy or an Assistant Registrar".

Shri Tulsidas: I beg to move:

Page 6,

omit lines 43 to 45.

Shri U. M. Trivedi: I beg to move:

Page 6, lines 43 to 45,

for "any one who is related to such person in any of the ways specified in section 6 and no others" substitute "any one who is a spouse or is related in the first degree and no others".

Shri K. K. Basu: I beg to move:

(1) Page 7, lines 4 and 5,

omit "or body corporate (not being the managing agent)".

(2) Page 7, lines 8 and 9,

omit "or body corporate".

Clause 3.—(Definitions of "company" etc.)

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

Page 8, sub-clause (1) (ii) (f), lines 2 and 3,

[Shri C. D. Deshmukh]

for the words and figures "in a Part B State at any time before the first day of April 1951", substitute the words and figures "in the merged territories or in a Part B State or any Part thereof, before the extension thereto of the Indian Companies Act, 1913 (VII of 1913)".

Shri S. V. Ramaswamy: I beg to move:

Page 8,

omit lines 31 to 34.

Shri M. S. Gurupadaswamy: I beg to move:

Page 8,

omit lines 31 to 34.

Clause 4.—(Meaning of "holding company" etc.)

Shri K. K. Basu: I beg to move:

Page 8, line 39,

for "controls the composition" substitute "has a right to nominate or elect one-third of the membership".

Shri M. S. Gurupadaswamy: I beg to move:

Page 9, line 25,

omit "or by a subsidiary of it".

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

Page 10, new sub-section (6),

after line 8, add the following sub-clause:

"(6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary or holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not".

Clause 5.—(Meaning of "officer who is in default".)

Shri Tulsidas: I beg to move:

Page 10, line 14,

after "knowingly" insert "and wilfully".

Shri K. K. Basu: I beg to move:

(1) Page 10, line 15,

after "provision" insert "or made no diligent efforts for the prevention of such acts".

(2) Page 10, lines 15, and 16,

omit "and wilfully".

Clause 6.—(Meaning of "relative".)

Shri T. S. A. Chettiar: I beg to move:

Page 10,

after line 26, insert "(iiiia) as sons-in-law or daughters-in-law or as brother's-in-law or sister's-in-law".

Shri Tulsidas: I beg to move:

Page 10,

omit lines 28 and 29.

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

Page 10,

in line 29, after the word "grand-parent", insert the words "provided the cousins are members of a Hindu Joint family whether governed by the Mitakshara, the Dayabagha, the Marumakkhatayam, the Aliyasanthana or any other system of law".

Clause 8.—(Power of Central Government etc.)

Shri U. M. Trivedi: I beg to move:

Page 10, after line 44, add:

"provided that the company is given seven days notice to show cause against such declaration being made and no such declaration shall be made till the company has been heard".

Clause 9.—(Act to override memorandum etc.)

Shri Rane: I beg to move:

Page 11, line 3,

after "shall" insert "at once come into operation and".

Clause 10.—(Jurisdiction of Courts.)

Page 11, for lines 21 to 24, substitute:

"(b) the District Court, in respect of companies having their registered offices in the district or elsewhere if empowered by the Central Government under sub-clause 2 of this section or the High Court under any provisions of this Act".

Shri U. M. Trivedi: I beg to move:

(1) Page 11, after line 24, add:

"Provided however that the District Court shall not transfer such cases to any court subordinate thereto notwithstanding any provisions of any law authorising such transfer".

(2) Page 11,

omit lines 40 and 41.

5 P.M.

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

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 24th August, 1955.