LOK SABHA

Thursday, 25th August, 1955.

The Lok Sabha met at Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(See Part I)

12-02 P.M.

COMPANIES BILL.—*contd.*

Clauses 11 to 67

Mr. Speaker: The House will now resume further discussion on clauses 11 to 67 of the Companies Bill. Out of 2½ hours allocated to these clauses, 1 hour and 18 minutes have already been availed of and 1 hour and 12 minutes now remain. This would mean that these clauses will be disposed of by about 1-15 P.M. Thereafter the House will take up the next group which consists of clauses 68 to 80.

Shri S. V. Ramaswamy (Salem): On a point of order, Sir. On the 22nd, when clauses 2 to 80 were taken up, we were asked to give the names of the amendments which we wished to move, and I gave mine, but I find in yesterday's list relating to clauses 11 to 67 that those amendments have been omitted. I was in the Public Accounts Committee on other duty when this group of clauses seems to have been taken. I was not physically present here to move them, but the list shows I have already moved them and in the list issued yesterday they are not there. My submission is that when we are engaged elsewhere, and when we are not able to be physically present here, all the amendments tabled by such Members, in my case at least, may be kindly taken as moved.

Mr. Speaker: That is not the practice which we follow when we are proceeding with a Bill. In the case of resolutions and other things, matters stand differently, but when we take up the clause by clause reading of a Bill, every amendment has to be moved. At least the Member is called upon to say whether he wishes to move. He need not specifically read out the whole amendment, but the Member has to be present and after being present in the House he has to say whether he is going to move or wishes to move the amendments and then specify their numbers. Obviously, *ex hypothesi*, the hon. Member was absent from the House.

Shri S. V. Ramaswamy: I was on other public duty. The point is whether the first list has been superseded by the second. In the first list my amendments are there. It has been circulated as having been moved, but in the second list sent yesterday they are not mentioned. What happened?

Mr. Speaker: The hon. Member will appreciate the difference between the two. The first list is a list of amendments tabled by Members and circulated to Members for their information. In the second list only amendments which are moved are mentioned. So, his amendments, not having been moved by him on account of his absence, could not be included in the second list. There is no point of order in this matter.

Shri S. V. Ramaswamy: On the 22nd, Members were requested to submit a list of amendments that they intended to move. My list is already there. It is on this basis that the key was prepared, but in the subsequent list it is not there.

Mr. Speaker: The hon. Member will see that the intention of a Member to move an amendment is something far different from his actually moving the amendment. The hon. Member may give notice of moving a certain amendment and better counsels may prevail and he may not move the amendment. There are so many things. A Member's notice of an intention to move an amendment cannot be taken as the same thing as moving the amendment.

Shri S. V. Ramaswamy: It was said that they may be taken as moved. That is what the hon. Deputy-Speaker, said.

Mr. Speaker: The practice is—as I have stated in the House,—that in cases of amendments like these to the clauses we never take all amendments as moved. We always call upon Members who are present in the House to say whether they wish to move the particular amendments standing in their names, and if the Member is absent, all his amendments naturally fall through. And in many cases Members get up and say that they do not wish to move, whatever their reasons may be. That is the practice.

Shri Kamath (Hoshangabad): May I ask a question on a point of enlightenment? Can a Member authorise a colleague of his to move an amendment standing in his name in his absence?

Mr. Speaker: That is not the practice, and I do not think it is desirable to introduce that kind of practice. In legislation, if the Member wishes that his amendment should be taken into consideration by the House, it is his duty to remain present and explain personally to the House and not through his deputy.

Shri K. K. Basu (Diamond Harbour): At least in the case of Members who have to attend either the Estimates Committee or the Public Accounts Committee, this should be allowed. We cannot have double presence.

Mr. Speaker: The point is if there is a conflict of duty, the Member has to make his own choice and he has to attend to that which he thinks more important than the other which he has to discharge. The other alternative will be, in case a Member expects to remain absent,—because he has previous notice both as to the work in the House and the Committees,—he can ask any one of his colleagues to give notice of an identical amendment independently, instead of coming himself, and that will serve the purpose. In fact, the principle is that the person who gives the amendment has to be present to explain it to the House.

Shri S. V. Ramaswamy: In view of the inadvertent mistake, I may be permitted to move these amendments which are already in list No. 1.

Mr. Speaker: Amendments to what particular clauses? (*Interruption*) Order, order, Let there be no talk with him.

Shri S. V. Ramaswamy: My amendments are:

Clause 48 — Amendment Nos. 31, 32

Clause 52 — Amendment No. 33

Clause 55 — Amendment No. 34

Clause 59 — Amendment No. 35

Mr. Speaker: He wants to move them now?

Shri S. V. Ramaswamy: Yes, Sir, if you are so pleased.

Mr. Speaker: I feel one difficulty. When these clauses were taken up yesterday, I do not know whether the amendments were all called at that time.

I am told that when clauses 11 to 67 were taken up yesterday, Members were called upon to move amendments in respect of all these clauses. That means, the hon. Member's amendments were called and because of his absence they could not be moved. Having once been called, it is not possible

for me to permit him again to move those amendments, even though the clauses are under discussion. So, we will proceed now with the discussion of the clauses.

Shri Ramachandra Reddi (Nellore): There is a further point which I wish to submit to you. Certain hon. Members coming from the Government side give notice of amendments and they either wilfully or knowingly keep out of the House when the amendments are called. That is the practice. That is another point to be taken into consideration. In such cases they should not have the liberty of moving them at a later time.

Mr. Speaker: I think what I said covers that contingency also.

Shri M. S. Gurupadaswamy (Mysore): These clauses deal with the mechanics of the incorporation of joint stock companies, and incidentally refer to the powers of the Central Government and the power exercisable by the registrars under the Act in various matters such as memorandum, articles, prospectus and so on.

Before dealing with certain provisions in this group of clauses, I would like to make one observation—though it refers to policy—that under these clauses, enormous powers have been given to Government to regulate, to interfere and to supervise the activities in so far as incorporation of joint-stock companies is concerned. Some of us said at the time of the general discussion that it would be better to accept the recommendation of the Bhabha Committee to form a Central authority.

[PANDIT THAKUR DAS BHARGAVA *in the Chair.*]

There is one other point which has to be taken into consideration in this connection, and that is that at the present time, most of the powers conferred on the registrars and deputy registrars are not properly and effectively exercised, merely because these registrars, though they come under the Central authority, function actually under the supervision and direct control of State Governments. Consequently, the administration of company law has become very ineffective. Though Government have been clothed with vast powers even under the existing Act, yet the exercise of these powers has become very ineffective, because it has been entrusted to registrars who function under the control and authority of the State Governments and very little control is exercised by the Central authority over these registrars. Moreover, the registrars have been asked to perform certain other duties and also certain other functions under different Acts. Unless the registrars are given the power and the responsibility only to carry out the purposes and the objectives of this measure, and unless the other functions are taken away from them it is very difficult to expect that company law will be administered very effectively.

Now coming to some of these provisions. My hon. friend Shri Tulsidas was making out a case yesterday that it is not necessary to submit to the registrar the managing agency agreements before they are finalised. His point was that before the agreements are finalised, the shareholders or anybody else will not be in a position to know definitely the various items in the agreement. Therefore, he said that it was unnecessary to file such agreements with the registrars. And he argued that sub-clause (1) (c) of clause 32 should be deleted.

I would like to point out that the purpose of this provision is quite different. It is not simply to pile up papers in the office of the registrar, that this provision is provided. The Joint Select Committee went into this question. I am sure my hon. friend Shri Tulsidas, who was also a Member on the Joint Committee, is aware of what took place there. All the points of view were considered there, and we arrived at the conclusion that such a provision was necessary with a view to safeguarding the interests of the shareholders. The idea was that the shareholder should be in the know of all things relevant to their interest,

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even though things have not reached a final stage. What has been provided in this clause is that the draft agreements in regard to managing agency should be filed with the registrar. There is nothing wrong about it. Shri Tulsidas may say, why go on mounting up these papers and filing them unnecessarily when they have not yet reached a final stage. But I say that it is necessary for the purpose of keeping the shareholders duly informed about the various stages of the managing agency agreements. There is nothing wrong in keeping them informed about it, and there is nothing wrong in having that provision in the Act.

The Bhabha Committee also have gone into this question fully. Shri Tulsidas read para 35 on page 30 of the Bhabha Committee's report in this connection. They have recommended that such a provision is necessary and we are only incorporating the recommendation of the Bhabha Committee in this provision.

My next point is in regard to what you raised yesterday. You were pleased to raise the point yesterday that the service of notice and the provision dealing with that are not satisfactory. To my mind, this provision deals with the service of notice satisfactorily. According to this provision, notice may be issued in two ways, either personally or by post. Of course, the Joint Committee have not provided for the acknowledgement of the notice. They have simply said that notice may be issued through post; the mere issue of the notice or the posting of it would be adequate.

Regarding persons whose addresses are not available, on page 28 of the Bill, there is the following provision that has been recommended by the Joint Committee:

> "A notice advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given on the day on which the advertisement appears to every member of the company who has no registered address in India and has not supplied to the company an address within India for the giving of notices to him.".

I think that will satisfy any critic, and that is the only way of giving notice to such persons. There is no other way of improving this provision. There need not be any apprehension that this provision will militate against the interests of anybody. I think it has covered all the cases. I feel, therefore, that the point raised by you is met sufficiently by this provision, and so it is not necessary to amend it.

Mr. Chairman: Will it not be right for the company to contend that since notice has been given in this form to all persons, except those whose addresses were registered, or if there is no registered address, to the address, if any, within India supplied by him to the company for the giving of notice,—apart from these two exceptions, if there is an advertisement—in any paper,—the company is not bound to give notice by post? It is not an additional form; it may be a substitute form. But the clause does not say whether it is substitute or additional.

Shri M. S. Gurupadaswamy: It is a substitute form in so far as those people whose addresses are not available are concerned.

Mr. Chairman: On what basis does that follow? There is nothing in this section 52 (1) to say that this is the only way in which notice can be given.

Shri M. S. Gurupadaswamy: It is very clear. If you kindly read subclause (3) of clause 52, advertisements in newspapers are meant only to cover those cases where no registered address in India has been supplied.

Mr. Chairman: Apart from these two, notice by advertisement is quite legal. But notice may not be sent by post; it may be advertised in respect of persons who do not come within the

exception. Advertisement may be regarded as good notice to them.

Shri M. S. Gurupadaswamy: What is the difficulty?

Mr. Chairman: The difficulty is that notice need not be sent by post. And because of advertisement, those who do not know English or who live far away from the seat of newspapers or live in a place where there is no circulation of newspapers, will never be informed. No attempt is made here to see that sending of notice by post is obligatory.

Shri M. S. Gurupadaswamy: The circulation of the newspapers is there.

Mr. Chairman: What is the circulation of a paper? Is it a language paper or English paper?

Shri K. K. Basu: Even if it is advertised, it may not be advertised in all papers. The person concerned may be living in a far away village, where none of the papers may be circulating. There is no compulsion.

Mr. Chairman: There should be a condition that the company should at least send it by post to those whose addresses are known.

Shri K. K. Basu: They must.

Shri M. S. Gurupadaswamy: If this could be improved in any manner, I am prepared to welcome it. But I feel the present provision will be sufficient.

Now, I want to deal with clause 24—power to dispense with 'Limited' in the case of charitable or other companies. I generally welcome this clause. But there is no provision here compelling the authorities to give time for filing objections. Objections must be called for before they take a decision in this matter. In the English Act such a provision is there and by making a provision for calling for objections, we will be only improving this particular clause.

Then, directors should be asked to send their consent in writing. That is very necessary. Those directors who want to serve on these companies must, for this specific purpose, assent to serve in these companies in writing. I think such a provision is found in the English Act. After all, it is a small change and we may provide for such a thing here.

Regarding the point about the principle and auxiliary purposes for which a company has been incorporated, I may point out that it is very necessary to keep this distinction very clear. Nowadays, many companies include all sorts of things, from A to Z, in their memorandum of association. Suppose a sugar factory is started. In the memorandum which is prepared, they may say so many other things also. They may say, cultivation of sugarcane, manufacture of molasses; but they may even include manufacture of shoes and other things. It is quite legitimate on their part to include all those things. But the present difficulty has arisen in this way, that we have not been able, in certain cases, to distinguish what is a principal business and what is a subordinate or subsidiary business of a company. Sometimes the subsidiary or auxiliary business takes the form of the principal business, and the principal type of business will be subordinate to the auxiliary business. So this has led to a lot of confusion. I would suggest that with a view to have proper clarity, it would be desirable to bring about a distinction between the principal type of business and the subsidiary type of business. The Bhabha Committee has, of course, dealt with this question, but it has not been able to come to any conclusion. It has not suggested any solution for this. It has simply made an observation that in certain cases, some companies have extended their activities. It felt that it would be very difficult to find a practical solution. But I feel it would be better, when we are amending the company law comprehensively, to find some solution, and we must incorporate a clause to bring about a distinction between the two, to safeguard the interests of shareholders from the activities of the management who, nor-

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mally, are always tempted to extend the activities of the company to cover various things. So from the point of view of shareholders, it is highly imperative and desirable that we should incorporate a clause preventing the management, the board of directors or managing agents, whoever they are, from extending the scope of the company's activities to an illegitimate extent without the knowledge of the shareholders.

There is one thing more. As I said, this instalment of clauses deals with the mechanics of incorporation of companies. I feel that it is necessary, at this juncture, to point out that in all cases of incorporation, we must make a provision that all the joint stock companies should be incorporated either by Indian nationals or in case if there are foreign nationals, at least a certain percentage of Indian nationals should be there in those foreign companies. I would suggest for the consideration of the House that one-third would be a fair proportion. We may say; two people or one, but I feel at least one-third of the board of directors should be Indian. I am not sure which is the proper place to have that incorporated. But since we are dealing with incorporation, I am referring to this matter. And we must see that in all foreign companies, one-third of the directorate is manned by Indian nationals. Unless we make a provision like that, I think we will be failing in our duty and there is no use in saying that we should nationalise this industry and that industry—unless there are our own nationals in the foreign managed companies.

About the memorandum and the penalties provided for certain things, I have nothing much to say but I will only make one remark. We have here given powers to the Central Government to make rules and regulations...

Shri Bansal (Jhajjar-Rewari): What is the number of the amendment, Sir?

Mr. Chairman: All the amendments and the clauses 11 to 67 are under discussion.

Shri M. S. Gurupadaswamy: All the amendments to clauses from 11 to 67.

I feel it is very necessary to take into consideration that under clause 24, sometimes in the name of charity and charitable purposes every other thing is brought in. This provision is a copy of the provision of the British Act. Clause 24(a) deals with the various purposes for which companies may be formed under this clause. It includes commerce, art, science, religion, charity or any other useful object. When we discussed this question in the Joint Committee, we were made to understand that commerce means not the usual commerce but commerce of a kind which will bring about good relationship between various countries or research in commerce and such other kinds which do not in any way involve profit or profit motive. I am not an expert on this subject but I fear that the inclusion of commerce under this head may be exploited by our business community. And what about religion? In England, I can understand, religion might be included. In India, we have made a choice for a secular State and I do not know why we should make a provision for starting companies for religious purposes and with religious objectives. I would ask the Government whether it would be fit and proper in this changed context to encourage starting of organisations, on a joint-stock basis, for the purpose of instilling religious faith or spreading religious principles and dogmas or for the purpose of converting people from one religion to the other.

Shri Bansal: That does not follow.

Shri M. S. Gurupadaswamy: It is not clear; anything may follow from this.

I only submit that these things may give people large scope to indulge in all sorts of activities which are not

truly beneficial to the interests of the community or the country. So, I feel that sufficient care and thought must be bestowed on this provision and a suitable amendment may be brought by the Government. They may think of a proper amendment to circumscribe the possible activities of a few persons who would exploit the religious susceptibilities of the people.

Shri Asoka Mehta (Bhandara): I would like to invite your attention to clause 13 and to clause 16. Clause 13 is concerned with the requirements with respect to memoranda and clause 13 (1)(c) refers to the objects of the company. It has been pointed out by the Stock Exchange, Bombay, in its memorandum to the Bhabha Committee that the objects clause is generally so wide as to cover everything under the sun. We are all aware that that is the normal practice. In order that the company later on may have no difficulty in developing any kind of activity, the object clause is as wide or as prolix as possible, as the Cohen Committee has pointed out. In England, the Cohen Committee wanted that kind of flexibility should even be increased than what it is today and therefore that committee suggested that the provision *ultra vires* should be deleted, which was not agreed to by the Parliament. This matter of the range of activity that should be permitted to a company was considered very fully by the Bhabha Committee. What has been happening, as you know, is that a company embarks upon one particular kind of activity and then it develops or branches out into all kinds of other activities which are in no way related or considered to be anciliary. The Bhabha Committee has thoroughly discussed this particular matter from pages 28 to 31. The Bhabha Committee pointed out that they had received a number of complaints:

> "Several witnessess complained to us that companies incorporated ostensibly for the purpose of manufacturing cotton textiles were engaged in the making of acids, chemicals, sugar, vegetable, ghee, etc., while companies formed for the manufacture of sugar were manufacturing industrial solvents, photographic chemicals etc., and argued that it was highly improper that the resources of the companies should be thus invested in undertakings which had so little to do with the principal business for which they had been formed.".

They have said that they have made certain recommendations and they hope that in the light of the recommendations this prolixity will be curtailed in the future.

On age 29, the Committee points out:

> "It is also our hope that the general result of our other recommendations may be to instil a greater sense of responsibility in directors and managing agents and to create a greater degree of alertness on the part of shareholders. If, however, our expectations in this regard are belied and the managements of companies continue to indulge in activities only very remotely connected with their principal business, we recommend that Government should take stock of the situation and introduce such legislation as may be necessary to check the evil."

This particular report was made in 1952 and in the last three years this evil as has been pointed out by the Bhabha Committee, has not yet been checked. The managements of the companies have not thought it proper to restrict their activities to what might be called the 'principal activities'. Only the other day, I believe it was Shri C. C. Shah, who pointed out in the course of his observations on the Bill, that the Jiyajirao Textile Mills in Gwalior have recently decided to start a soda ash factory. I do not know whether Shri Somani's mill is interested in starting a paper mill. I do not know in what way a textile mill is connected with a paper mill. The Century Mill in Bombay has started a rayon factory; they are, after all, ancillaries. How is paper connected with textiles?

Shri G. D. Somani (Nagaur-Pali): That is incorrect.

Shri Asoka Mehta: The hon. Member is there to correct it. What has Jiyajirao Textile Mill in Gwalior to do with soda ash factory? I am told that Birla Jute Mills in Calcutta have started a cement factory. The Bhabha Committee has gone into this matter thoroughly and has called it an evil. It is hoped that the evil will be checked by the development of public opinion and the management will be more careful. In case it is to be stopped, the Committee says that the Government should take stock of the position and introduce such legislation as may be necessary. Evidently Government have not thought it proper to introduce any legislation. But are they prepared even to take stock of the situation or not? On the one hand we are suggesting that a managing agency should have only ten companies under it, but you are permitting one company to become a composite company, like the Delhi Cloth Mills. You know that the managing agency commission in the Delhi Cloth Mills has been Rs. 21,00,000 every year. If one single company can develop hundred different activities wholly unconnected, we may ultimately have in the country only one, two or half a dozen companies controlling all the industrial units, no matter what kind of relations exist between them. That the Bhabha Committee has gone into it and called it an evil, and it has called upon the Government to take stock of the situation. My contention is that for the last three years this evil has not been checked; it is growing.

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

I was pointing out that there is the possibility of companies trying to expand in the way in which they are expanding, and the result will of course, be that the losses of those factories—my friend Shri Somani is going to start some factories—will be taken out of the profits of the textile mills, and the net result will be that expansion will take place. I agree that there will be industrial expansion, but that industrial expansion would, to a certain extent, be even at the cost of the exchequer. To what extent is this kind of industrial expansion to be permitted? To what extent is this kind of combination units to be permitted? How far are they in keeping with the fundamental purpose? The basic conception with which this particular Act is drafted has got to be considered by us. The idea behind the present Act is to see that the concentration of wealth and control is reduced. Yesterday when we were discussing the definition clauses, almost all of us offered our criticisms on what Shri Tulsidas said, on the plea that we are anxious to expand the area for which people may be able to come forward and shoulder the responsibilities of business. We do not want that a small group or a little group or a chain circle should have a kind of oligarchic control over our industrial life. But if you permit the objectives to remain as prolix as they are today, then what you are seeking to achieve through other clauses may be defeated by this clause. I have not moved any amendment because the Bhabha Committee has stated that it is the responsibility of Government to come out and tell us what they are going to do. Because no kind of amendment was made during the Select Committee stage at all, it seems that Government are satisfied with the things as they are. All that I want to know from them is, in the light of the fact that the expectations of the Bhabha Committee have been belied, whether Government are prepared to take stock of the situation. If they have taken stock of the situation, are they prepared to say that these are not what the Bhabha Committee expected them to be? If they are like that, and if the Government so desire, how are they going to reconcile this sign of growing prolixity on the one side, this kind of development of composite units on the one side, with the general purposes that we have in this Bill? I find that there is a certain amount of basic contradiction between the pro-

lixity of objectives that is permitted, the composite units that are growing up in the country, and the basic desire of all of us to see that concentration of wealth and control is increasingly reduced and some approximation to equality of opportunities is made in our industrial life.

Shri G. D. Somani: I would like, first of all, to make a few observations on the amendments which stand in my name and which were moved by my hon. friend, Shri Tulsidas Kilachand. The first amendment to which I would like to draw the attention of Government is amendment No. 156. That is a very minor amendment and it is to provide for a procedural regulation. Government have already sent an amendment which partially meets the difficulties, but we apprehend that without the provision as made in the amendment that we have proposed, it might be necesssary for a private company, which may later on like itself to be converted into a public company, to alter its memorandum and to go to the court and to the Government for approval for the deletion of the words "Private Limited".

The Minister of Revenue and Civil Expenditure (Shri M. C. Shah): That amendment was not moved by Shri Tulsidas. That is to clause 21.

Shri G. D. Somani: I am talking of amendment No. 156.

Mr. Deputy-Speaker: Amendment to what clause?

Shri G. D. Somani: To clause 21.

Mr. Deputy-Speaker: I think amendment No. 156 to clause 21 was not moved.

Shri G. D. Somani: I was not present in the House then.

Shri C. C. Shah (Gohilwad-Sorath): In view of the Government amendment, Shri Tulsidas said that he was not moving it.

Shri G. D. Somani: In my opinion, the amendment of the Government does not go far enough. I would appeal to the Government that all the formalities for the conversion of a private company into a public company should be dispensed with and that the deletion of "Private Limited" should be automatic and should not require the completion of all these formalities of changing the memorandum, going to the court and going to the Government for approval. This will be putting an unnecessary additional burden both on the company as well as on the administration. As it is only of very procedural nature, Government might see their way to examine whether it will be possible for them to accept this slight change.

Coming to clause 32, amendment No. 157.....

Mr. Deputy-Speaker: Does the hon. Member want that amendment No. 156 should be treated as moved?

Shri G. D. Somani: I am told that it has not been moved, but I would like to appeal to the Government to consider whether they can modify their own amendment in such a manner as will meet these difficulties.

About amendment No. 157, I just heard my friend, Shri Gurupadaswamy, advocating that the shareholders should have all the relevant information regarding the terms of the managing agency agreement. But perhaps there seem to be some misunderstanding in the matter. What I want to submit is this. At a time when a company is registered and when its memorandum and articles are filed with the Registrar, it may not be possible for the managing agency agreement to be finalised. Indeed according to the provisions of the new Bill the managing agent will have to seek Government's permission for all the terms and conditions of the managing agency agreement. That being so, it is quite possible that Government themselves may impose certain restrictions or modifications in the agreement, and I do not think it will be proper for the managing agents to incorporate the draft of the proposed agreement in the articles and memorandum, which are still subject to the approval or

[Shri G. D. Somani]

modification of Government. Moreover, so far as the outside shareholders are concerned, they do not come into the picture at all till the time when the company issues the prospectus for subscription from the public. There is no difference of opinion that the incorporation of the managing agency agreement must be there. My submission is this. So far as the original memorandum and articles of association are concerned, there is absolutely no need to insist on the provisional managing agency agreement to be incorporated with that; that is not final. That is subject to approval by Government. So far as the shareholders are concerned, they are not in any way affected by the non-filing of the proposed agreement with the articles of association. So, it will be quite in order if the managing agency agreement is incorporated only at the time when it is issued to the public. Therefore, I hope that this kind of an amendment is of a nature which it should be possible for the Government to accept because that does not involve any policy nor would it in any way be regarded as a loophole which would be abused. So far as the other amendments—Nos. 158 and 159 are concerned, they are consequential amendments and I have nothing more to say about them.

Regarding amendment 160 relating to clause 43, I have to say this. Sub-section (5) (b) provides that where there is an omission from a prospectus or a statement in lieu of prospectus of any matter which is required to be stated therein under the provisions of Schedule II or IV, as the case may be, which is calculated to mislead, such omission may be considered as an untrue statement. This is something which may have some undesirable repurcussions. There is no such provision in the U.K. Act. If any positive statement is made in the prospectus which is untrue or misleading I can understand it and it is certainly necessary to take action. But in case of an omission, it will be really very difficult; a number of omissions may be made. After all when a new company is floated, there are a number of factors about raw materials, about the cost of manufacture, power, plant and so on which the promoters try to disclose as far as possible. But there is always a possibility that anybody with some mischievous idea might involve the promoters by finding out 101 things which might have been omitted from the prospectus quite inadvertently without any deliberate motive of mischief. Here I would like to respectfully point out that the omission itself might be in favour of and to the benefit of the shareholders but even then it might be misleading. Suppose any company is floated and the prospectus does not contain the nature of the deposits of the raw materials of a particular area—may be the deposits will last 50 years or 100 years—the disclosure of that information would make the investor very keen and it would attract the shareholders in a greater way. In that sense, an omission is rather to the benefit of the shareholder and the investor and even in that case it may be considered as misleading and thereby the entrepreneur who is floating the company might involve himself in a lot of penalties. I submit that this question of omission should be examined keeping in view the implications which might follow. One can find out a hundred and one omissions about a particular industry and therefore the clause as it stands should be confined to positive facts which have been disclosed in the prospectus. If there is anything untrue or misleading in the facts as disclosed in the prospectus certainly action should follow but there should be nothing so far as any omission is concerned.

Shri K. K. Basu: On a point of clarification, Sir. May I say that it is qualified? Where the omission is calculated to mislead, then alone it attracts this provision.

Shri G. D. Somani: As I explained, misleading may be on both sides. Some information is not disclosed: it may be regarded as misleading I say it is possible to discover a hundred and one items which have not been disclosed In the formation of company there are

so many matters which anybody could easily discover and then a charge may be laid that it is misleading. Perhaps the disclosure of that information may have made the investors more keen. Apart from that, this question of omission does involve matters which may be beyond the imagination of those who drafted the prospectus at that time and therefore they may be put to difficulties for something which has been done absolutely inadvertently.

I would now like to come to the important point raised by Shri Asoka Mehta. The memorandum of a company should be kept wide; that is the 'objects'. But he gave certain examples and he drew the attention of the Government to the harm and damage that may be done by keeping the object clause so wide. My approach to this problem is different. I have made certain observations at the time of the general discussion and I wanted a categorical clarification from the hon. Finance Minister as to how the big business or those who are in charge of big industries stand in that connection. So far as we understand the policy of the Government and of the Prime Minister, it is that we have to give priority to the development of the country's resources. On the one side you have imposed taxtion to the extent of 87.5 per cent. on personal income. So far as this is concerned, therefore, there is very little scope for any resources being made available for the development of the country's industries. The only way in which the resources could be made available is through the cooperate sector. If the surplus funds of the various companies are not to be utilised for the industrial development of the country, it certainly seems to me to be a new departure in the policy of the Government. The meeting of the Central Advisory Council for Industries held sometime back that the target for the private sector was of the order of Rs. 750 crores investment. I do not know how the private sector would be able to come anywhere near that target if resctrictions of the nature proposed by my hon. friend, Shri Asoka Mehta, are entertained by the Government. I for one submit that at least during the Second Five Year Plan we have to give more priority and more attention to the development of our industries than point out imaginery fears which friends like him have expressed, namely, concentration of economic power and wealth in the hands of a few and so on.

Shri Asoka Mehta: It is not my fear; the Bhabha Committee itself has suggested this.

1 P.M.

Shri G. D. Somani: The Bhabha Committee has suggested no action. Similar fears had been expressed by the Cohen Committee and the British Parliament took the same view that no action was called for. We have to consider this in the light of the work that we have to do. It is all right to talk about some jute mill taking steps for the development of cement industry in some other parts or some cotton mills taking steps to develop some industry in Saurashtra and so on. But the question remains. If these huge resources which are required for the development of these industries are to be found, they can only be found from the resources of the existing companies and if they are not to be allowed to utilise them for the development of industries, that would in my opinion be something against the policy of the Government to create more new employment opportunities and to develop the resources of the country. In my opinion it is clear that anything that is discussed or advocated, at this stage when we are on the threshold of an investment of the order of Rs 750 crores in the private sector to the effect that a company should be debarred from utilising its surplus funds for developing another line to which its existing line may not be similar, will be a very retrograde step. It will be a step which will discourage, which will come in the way of our development and which

[Shri G. D. Somani]

will retard the economic development of the country. So, from that point of view, I think that this question which has been raised again by my friend Shri Asoka Mehta requires very careful consideration at the hands of the entire Cabinet. After all, the businessmen go to the Government for securing the necessary licences for the development of certain industries. They also go to the Capital Issue Department for securing the necessary sanction for the issue of capital. If they have to be accused of doing anything against the policy of the Government or against the spirit of any Act in the way in which Shri C. C. Shah did the other day, and Shri Asoka Mehta also today has raised the point—I, for one, would like to say that it is wrong. I do advocate that the right policy at present is to allow existing companies who have got the resources to do their utmost in developing whichever line is in the national interest. It does not matter at all if a textile mill is to develop and start a paper factory if it has got the necessary resources. As a matter of fact, the Government's income-tax policy also conforms to the same standard because they encouraged inter-company investment in as much as the investing company is exempted from double taxtion. All these policies, so far as one could see, are in conformity with the action of certain industries who are going forward with the development of the country's resources. Therefore, this point which has been raised again and again should be seen in its proper perspective and those who are in charge of various big companies, and thereby have got surplus funds, have got to be guided by the way in which the Government want their surplus resources to be utilised for the development of the country's industrial field which is lying so wide open. I, therefore, hope that the observations of Shri Asoka Mehta will receive careful consideration at the hands of the Government and we will have some indication about the policy which the business world has to follow

Mr. Deputy-Speaker: How much time is the hon. Minister likely to take? We must conclude this debate at 1.15.

Shri M. C. Shah: I will only say a few words.

Mr. Deputy-Speaker: All right, first I will call Shri Ramachandra Reddi and then the Minister.

Shri M. C. Shah: I will take 15 to 20 minutes.

Mr. Deputy-Speaker: He said he will only say a few words.

Shri Ramachandra Reddi: Sir, I will not take more than 3 or 4 minutes.

Mr. Deputy-Speaker: All right. The hon. Member may speak now.

Shri Ramachandra Reddi: I wish to invite the attention of the House to clauses 17 and 18 which lay down the procedure for alteration of memorandum in certain respects and also provide for the confirmation of any alteration by the court. The operations under these two clauses seem to be too many and as such it is possible that the court will take a very long time to dispose of any application for a change in the memorandum. No time-limit has been prescribed in these two clauses and I think it will be better if some time-limit is prescribed here and now, or in the rules that are likely to be framed under the rule making authority of the Government.

These two clauses envisage the possibility of a dissentient member or any other shareholder objecting to the memorandum. If a company wants to expand itself with a profit motive or if it wants to cut down its activities because of the possibility of those activities landing it in losses, then it will have to wait for several years for achieving the object through the alteration of the memorandum and articles of association. Therefore, I would suggest that the usual delays be prevented in this respect and some time-limit be prescribed

I would also mention a word about clause 38. In clause 38 it is provided that "the documents relating to the agreements, if any, entered into or proposed to be entered into, by the company with any person appointed or to be appointed as its managing agent etc." be sent to a member on being so required. These words: "proposed to be entered into" and "to be appointed" seem to be very vague. As a matter of fact the clause says:

> "....a copy each of the following documents, as in force for the time being...."

It is not possible to conceive of a position where the documents about a proposal to enter into an agreement would be available at the time of presenting these documents and it may also not be possible for anybody or the company to say that the company is going to appoint so and so at a later date. These two things seem to be anomalous and I support the amendment given notice of by Shri Tulsidas saying that the words "proposed to be entered into" be deleted.

Mr. Deputy-Speaker: The hon. Minister.

Shri Kamath: Sir, I will only formally move my amendments to these clauses. They are self-explanatory and I will not, therefore, make any speech.

Mr. Deputy-Speaker: Have they not been moved already?

Shri Kamath: I had suggested that they should be taken as moved, when I left the other day..

Mr. Deputy-Speaker: You mean, not only for yesterday, but for all days to come?

Shri Kamath: I shall be out of Delhi for some time and if that could be done I would be very happy.

Mr. Deputy-Speaker: Shri Kamath is really interesting. Anyway, I have no objection and I will treat them as moved. What are they?

Shri Kamath: I beg to move:

(1) Page 20,

after line 47, *add*:

> "(4) The Registrar should bring out a quarterly journal containing extracts from copies of memorandum, articles, managing agency agreements, registered with him during the previous quarter."

(2) Page 36, line 42,

add at the end:

> "and shall also be liable to make compensation to such person as has entered into an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting shares or debentures, for any damage directly resulting from such false, deceptive or misleading statement, promise or forecast."

Mr. Deputy-Speaker: Amendments moved:

(1) Page 20,

after line 47, *add*:

> "(4) The Registrar should bring out a quarterly journal containing extracts from copies of memorandum, articles, managing agency agreements, registered with him during the previous quarter."

(2) Page 36, line 42.

add at the end:

> "and shall also be liable to make compensation to such person as has entered into an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting shares or debentures, for any damage directly resulting from such false, deceptive or misleading statement, promise or forecast."

Shri S. S. More (Sholapur): Sir, he wants an assurance like this even for the future.

Mr. Deputy-Speaker: Absolutely; the assurance is always there.

Shri A. M. Thomas (Ernakulam): Sir, Shri S. V. Ramaswamy was not allowed to move his amendments by the Speaker.

Shri Bansal: Yes, Sir, he was not allowed.

Shri S. S. More: But you can make a gesture to the Opposition.

Mr. Deputy-Speaker: Shri S. V. Ramaswamy is not here now. Accepting an amendment is in the hands of the House—if it is germane to the issue.

Shri Kamath: This is only an amicable arrangement, Sir.

Mr. Deputy-Speaker: Sometime, a Member who is present here and who could have moved his amendment, if he is indifferent, the Speaker always takes the view that he ought not to be allowed any indulgence. Sometimes, a Member may not be able to be present due to unavoidable reasons and then in that case he is shown some indulgence.

Shri M. C. Shah: I have heard with care and attention to the speeches made by Members who have moved their amendments and so I will just refer to that matter in the beginning.

With regard to the amendment moved by my friend Shri Jhunjhunwala yesterday, just before the close of the day's debate I assured the House that the Government are agreeable to accept his amendment in principle but that amendment required further changes in the language. That amendment is No. 442 and seeks to amend clause 52. Therefore, we have today given a draft of that amendment and we propose to accept that. It is as under:

Page 27, line 49,

after "notice" *insert*:

"Provided that where a member has intimated to the company in advance that notices should be sent to him under a certificate of posting or by registered post with or without acknowledgment due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the notice shall not be deemed to be effected unless it is sent in the manner intimated by the member."

That disposes of the amendments of my friend Shri Jhunjhunwala and my friend Shri K. K. Basu.

Now, I will take the amendments moved by the hon. Member Shri Tulsidas. Yesterday I heard him very carefully. I went through his speech, and he will pardon me if I say that he always finds difficulties in whatever progressive measures are being placed on the statute-book. I went through his speech very carefully this morning also. I found that he has raised nothing but difficulties in everything that has been proposed in the Bill. Rather I appreciate the speech made by my hon. friend Shri Somani wherein he has not mentioned so many difficulties. Shri Tulsidas says that most of the amendments, if put into effect, would create difficulties, that there would be no entrepreneurs coming forward and that perhaps the Heavens will fall. After all, the amendments that he has proposed are practically of no substance. He has moved, first of all, amendment No. 157. He has said that as the Government have already moved an amendment, he did not want to move amendment No. 156. About amendment No. 157, he has said that this registration of an agreement if any should be omitted. The matter was very fully discussed at the Joint Committee where he was also present. He also knows that the Bhabha Committee has also recommended that this should be there. If there is an agreement already entered into, then that agreement has to be filed. I do not understand what is the objection there. I do not understand how there will be some disturbance. Pandit Thakur Das Bhargava said that perhaps there will be rivals and that when these agreements are known somebody will come in and that the managing agency will go away and all that. I do not understand how it will happen. As a matter

of fact, there is no such fear about it. If the agreement is not registered, those who want to have those companies floated, those who want to have their managing agency agreements to be concluded, are not bound to carry on with the work. So I feel that those provisions are not redundant. It is also very necessary and important, and therefore, the Joint Committee has included such a provision in the Bill. I feel that Shri Tulsidas has made, what shall I say, an unnecessary howl about this thing. He feels that it would create very great difficulties. If that provision is made, he says it will put some hurdle in the way. He says that, in the way in which it is put, it will create difficulties. I do not think there is any difficulty and I do not think it is in anyway necessary to omit clause 32(c).

Shri Tulsidas: May I say a few words by way of explanation. The hon. Minister says that he does not see any difficulties. The difficulty lies in the words, "the company proposes to enter into with any individual". Please read the whole line. My point is that whether this agreement is a valid document or not, the document has to be attached to the memorandum and articles of association. But what is the purpose that is going to be served by the proposed agreement? The hon. Minister is not telling us the purpose. I said it will create certain difficulties. The hon. Minister merely says he does not find any difficulties. I would like to ask him, and let him tell me positively, what advantage does he expect in this document which is not a valid document. Let the hon. Minister reply.

Shri M. C. Shah: I say that the words are, "agreement, if any,".

Shri Tulsidas: Please read the whole line.

> **Shri M. C. Shah:** "the agreement, if any, which the company proposes to enter into with any individual, firm or body corporation to be appointed as its managing agent, or with any firm or body corporate to be appointed as its secretaries and treasurers."

What is the objection there? I do not understand how there can be any objection to "the agreement, if any which the company proposes to enter into". Later on he might say that the agreement and the terms may be modified by the Government, and then those terms will come into force. But what is the objection in this provision?

Shri S. S. More: The Minister is not properly comprehending what Shri Tulsidas meant.

Mr. Deputy-Speaker: Why should there be any explanation by the hon. Member?

Shri S. S. More: I am asking the Minister a definite question. It is no use merely saying that there will be no difficulties. We also must know how the mind of the Government is working when they stand by a particular proposal. I would refer the Minister to clause 38 also under which copies of memorandum and articles, etc., are to be given to the members. Clause 38(c) says:

> "the agreement, if any, entered into or proposed to be entered into, by the company with any person,"

Therefore, clause 32(c) will have to be taken along with clause 38(c). As a lawyer, the hon. Minister will see that this agreement cannot be a completed document. It may be in the nature of a draft. Why Government should insist on having that draft, I cannot understand. Both these clauses will have to be read together.

Mr. Deputy-Speaker: The agreement may be either actual or prospective.

Shri S. S. More: A prospective agreement would be more or less in the form of a draft.

Mr. Deputy-Speaker: All that is wanted is a final agreement. If one has not entered into an agreement, it is all right.

Shri S. S. More: Under clause 33, after these documents are submitted, the company is registered, and then it becomes a body corporate capable

[Shri S. S. More]

of issuing, functioning and all sorts of things. When the company comes into existence as a corporate body after registration, then the final stage of the agreement will be affective Government have already laid down that the final agreements shall be submitted. There are different stages. My submission is that the Government can very well see that the final documents representing the agreements concretised between the parties, are submitted to the Registrar or any other proper authority. But there are so many drafts which are likely to undergo mutations through different stages.

Mr. Deputy-Speaker: If possible, to safeguard the company's interests, let them not say one thing at one place and do something else elsewhere.

Shri M. C. Shah: If my hon. friend refers to page 30 of the Bhabha Committee's report—paragraph 35—he will see why such a provision is necessary, and, as a matter of fact, we have discussed this very question for a long time. The House will agree that "the agreement, if any, which the company proposes to enter into with any individual" is of a very vital and fundamental nature. Nothing is lost by registering it with the memorandum and the articles of association. I do not know what is to be lost by doing that. So, such a provision of a fundamental nature has to be provided in the Bill. So, I do not think there can be any complaint or objection as is raised by Shri Tulsidas and supported by my friend Shri S. S. More.

There is another amendment by Shri Tulsidas and that is amendment No. 160 to clause 43. The main point urged by Shri Tulsidas was about clause 43. Under that clause, the prospectus or statement in lieu of prospectus has to be filed by a private company on its ceasing to be private company. He wants to delete clause 43.

Shri Tulsidas: I do not want to delete the whole clause.

Shri M. C. Shah: Rather, he wants to omit sub-clause (5) (b) of clause 43 which says:

> "where the omission from a prospectus or a statement in lieu of prospectus of any matter which is required to be stated therein under the provisions of Schedule II or IV, as the case may be, is calculated to mislead, the prospectus or statement in lieu of prospectus shall be deemed, in respect of such omission, to be a prospectus or a statement in lieu of prospectus, in which an untrue statement is included".

As regards Schedule II, we must remember that Schedule II is not exhaustive and there may be some facts which may not have been brought out. Therefore, I do not think there is any objection to have that clause there.

My friend, Shri Trivedi, has raised certain points which are not very vital and which are practically of no substance. He has said that in clause 11 the following should be added:

> "and a suit by such company.... shall not be maintained in any court of law...." etc.

I do not think it is necessary to provide this in the clause. These companies have been prohibited as unlawful companies and if any action is taken by the promoters, they cannot be sued. Even if they are sued, the court will declare that all these actions are by companies which are prohibited and which are not rather legal.

Shri U. M. Trivedi (Chittor): On a point of order, Sir, I would like to know from where the hon. Minister got this information which he is giving us, namely, that a suit can be stopped from being filed without making a provision that it cannot be filed.

Shri M. C. Shah: They are prohibited under the company law.

Shri U. M. Trivedi: They are not prohibited from suing.

Mr. Deputy-Speaker: The hon. Member is a lawyer; very well.

Shri M. C. Shah: Mr. Trivedi has moved certain amendments to clause 13. If we accept his amendment No. 19, it would mean that no company can be formed with a share capital below Rs. 25,000. There is no such provision or restriction in the U.K. Act and we do not propose to have any such restriction in our Act also. Mr. Trivedi has also suggested an amendment that no share should be of a value which is less than Rs. 10|-. Here also, there is no such restriction on the denomination of the share in the U.K. Act and we do not propose to have any such restriction on the issue of shares. The shares can be of denominations of Re. 1 or Rs. 2 or whatever it may be. He has also suggested that in clause 13 there should be a provision saying that no person shall take shares less than five in number or a value less than Rs. 100. The object of the amendment is to make it obligatory for each shareholder to take a minimum number of shares—at least 5 shares—or to subscribe a minimum amount of Rs. 100. I do not think it is necessary that we should restrict the field in this way.

Again, Mr. Trivedi has moved an amendment that in clause 20, for the word 'undesirable' we should substitute:

> "implies that the company has got any relation with any political party" etc.

We had considered very carefully whether we can put here a list of certain specific names which are considered undesirable, but it was not possible to frame any such big list. Therefore, the Government has taken the powers to declare a name as undesirable; naturally, this matter will be looked into very carefully by the Government. As regards registration of companies having any relation with any political party, I think there is no justification whatsoever for such an apprehension. These are all the amendments which have been moved. We have given full consideration to these amendments and I am afraid we cannot accept any of them.

Mr. Asoka Mehta has pointed out a new development in company practice, namely, the establishment of departments or branches of activity by some companies unconnected with their principal business. Government are fully aware of these developments and they have indeed given some thought to this subject for sometime past. All the considerations which Mr. Asoka Mehta has mentioned have been very much in the mind of the Government; but there are other aspects of the question which also have to be carefully considered by the Government before they can take any action in the matter. While the Government are anxious that no company should be empowered to indulge in activities unconnected with its main business only with a view to make more money, they are also anxious to ensure that no action of theirs impedes the expansion of legitimate investments. The observations of the Bhabha Committee themselves show the difficulties of the problem, but I can assure Mr. Asoka Mehta that the Government are not quite oblivious of the points raised by him.

I would now request the House to accept all the amendments of the Government and the amendments which have been already accepted by the Government.

Mr. Deputy-Speaker: I shall now put to the vote of the House the clauses one after the other; wherever any hon. Member wishes that his amendment should be put to the House, I shall do so.

There are certain amendments to clause 11; if any hon. Member who is present wishes that his amendment should be put, I shall do so. Otherwise I will take it that he does not press his amendments.

Shri U. M. Trivedi: I am pressing my amendment No. 18.

Mr. Deputy-Speaker: The question is:

> Page 12, line 17, *add* at the end—
>
> "and a suit by such company, association or partnership shall

[Mr. Deputy-Speaker]

not be maintained in any court of law if filed by it in its name or in the names of its members."

The motion was negatived.

Mr. Deputy-Speaker: There are no other amendments to clause 11.

The question is:

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 was added to the Bill.

Mr. Deputy-Speaker: There are some amendments to clause 13. Does any Member press any of them?

I find none. So, they are not pressed.

The question is:

"That clauses 12 to 14 stand part of the Bill."

The motion was adopted.

Clauses 12 to 14 were added to the Bill.

Mr. Deputy-Speaker: There is a Government amendment to clause 15, amendment No. 314 moved by Shri C. D. Deshmukh.

Mr. Deputy-Speaker: The question is:

Page 13,

in line 36, *after* the words "shall attest the signature", *insert* the words "and shall likewise add his address, description and occupation, if any".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 15, as amended, stand part of the Bill."

The motion was adopted.

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

Mr. Deputy-Speaker: The question is:

"That clauses 16 to 19 stand part of the Bill."

The motion was adopted.

Clauses 16 to 19 were added to the Bill.

Shri U. M. Trivedi: I want by amendment No. 21 to be put to the House.

Mr. Deputy-Speaker: The question is:

Page 16, line 4, *for* "is undesirable" *substitute*:

"implies that the company has got any relation with any Political party of India or with the Government of the day, unless the company is floated by the Government itself under any provisions of law".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 21 stand part of the Bill."

The motion was adopted.

Clause 20 was added to the Bill.

Mr. Deputy-Speaker: Clause 21. Does anybody want to press amendment No. 22? None. Not pressed.

The question is:

"That clause 21 stand part of Bill."

The motion was adopted.

Clause 21 was added to the Bill.

Mr. Deputy-Speaker: Clause 22. There is Government amendment No. 288.

The question is:

Page 16,

in line 32, *for* the words "it shall be punishable" *substitute* the words "the company and every officer, who is in default, shall be punishable."

Shri Jhunjhunwala: There is no quorum.

Mr. Deputy-Speaker: Do hon. Members want me to put this off till 2.30?

Pandit Thakur Das Bhargava: It is not a question of quorum merely. We feel that the company law is not being properly considered. Nobody takes any interest. Nobody is present. Only 30 people are in the House. That is our difficulty. I do not want any adjournment.

Mr. Deputy-Speaker: I am really surprised. How can anybody compel any hon. Member to be here. Yesterday we saw only 6 persons or 7 persons out of whom four were already in the Joint Committee. If they are asked not to speak, as some other hon. Members wanted to have preference, there are one or two Members who are carrying on the whole deliberations. The others are not taking any interest.

Shri Kamath: I submit that the convention is unconstitutional. I suggest that the voting should be postponed.

Pandit Thakur Das Bhargava: Nobody wants to discuss when there is no quorum. When Members do not come, what can the Deputy-Speaker do?

Mr. Deputy-Speaker: I have no objection to putting off the voting if anybody objects.

Shri Kamath: I object to the voting now.

Mr. Deputy-Speaker: Except for the purpose of a technical objection, I do not see any force in it. This is a technical subject. The commercial magnates interested are here; the socialists are here, the communists are here; the general public are here; Government is here.

Under the convention, voice votes may be taken. If any Member wants the House to divide, we shall divide after Lunch. The hon. Member was not here when the convention was arrived at. On any particular matter in which the hon. Member is interested, I have no objection to divide.

Shri K. K. Basu: Let us go through the business.

Mr. Deputy-Speaker: Let us proceed. No Member supports him in the suggestion that voting should be put off.

Shri Kamath: The convention is unconstitutional.

Mr. Deputy-Speaker: A Constitution can be made and un-made.

Shri Kamath: It should be un-made first.

Mr. Deputy-Speaker: I shall read the convention.

> "Under a convention adopted in September, 1954, the House is not counted between 1P.M. and 2-30 P.M. when the House sits from 11 A.M. to 5 P.M. without any break for lunch. A voice vote is taken during that period; but if it is challenged, no count is taken and the decision on the question is postponed till after 2-30 P.M."

If it is challenged, I shall certainly put it off for decision later on after all Members arrive. In the meanwhile, by voice votes I shall go on deciding.

I was on clause 22.

The question is:

Page 16,

in line 32, *for* the words "it shall be punishable" *substitute* the words "the company and every officer, who is in default, shall be punishable".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 22, as amended, stand part of the Bill."

The motion was adopted.

Clause 22, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 23 stand part of the Bill."

The motion was adopted.

Clause 23 was added to the Bill.

Mr. Deputy-Speaker: New clause 23A.

The question is:

Page 16,

after line 47, after clause 23, *insert* the following new clause as clause 23A:

"23A. *Change of name of existing private limited companies.*— (1) In the case of a company

[Mr. Deputy-Speaker]

which was a private limited company immediately before the commencement of this Act, the Registrar shall enter the word 'Private' before the word 'Limited' in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association.

(2) Sub-section (3) of section 23 shall apply to a change of name under sub-section (1), as it applies to a change of name under section 21."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That new clause 23A stand part of the Bill."

The motion was adopted.

New clause 23A was added to the Bill.

Mr. Deputy-Speaker: Clause 24.

Shri U. M. Trivedi: I press amendment No. 23.

Mr. Deputy-Speaker: The question is:

Page 18, *after* line 36, *add*:

"(11) The association so registered under this section shall not be subject to all or any obligations that have been or may be imposed by any act of any legislature of any State in India."

Mr. Deputy-Speaker: Those in favour will say 'Aye'.

Some hon. Members: Aye.

Mr. Deputy-Speaker: Those against will say 'No'.

Some hon. Members: No.

Mr. Deputy-Speaker: The 'Noes' have it.

Shri U. M. Trivedi: The 'Ayes' have it.

Mr. Deputy-Speaker: This will be put off. Clause 24 and amendment No. 23 will stand over

There are no amendments to clauses 25 to 28.

The question is:

"That clauses 25 to 28 stand part of the Bill.".

The motion was adopted.

Clauses 25 to 28 were added to the Bill.

Mr. Deputy-Speaker: Clause 29; Government amendment No. 315.

The question is:

Page 19,—

in lines 34 and 35, *after* the words "shall attest the signature", *insert* the words "and shall likewise add his address, description and occupation, if any".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 29, as amended, stand part of the Bill."

The motion was adopted.

Clause 29, as amended, was added to the Bill.

Mr. Deputy-Speaker: Clauses 30 and 31: there are no amendments.

The question is:

"That clauses 30 and 31 stand part of the Bill."

The motion was adopted.

Clauses 30 and 31 were added to the Bill.

Mr. Deputy-Speaker: Clause 32. Amendment No. 157.

The question is:

Page 20,

omit lines 29 to 32.

The motion was negatived.

Shri Kamath: There is my amendment No. 353.

The Parliamentary Secretary to the Minister of Finance (Shri B. R. Bhagat): It was not moved.

Mr. Deputy-Speaker: I have allowed it to be moved.

The question is:

Page 20, *after* line 47, *add*:

"(4) The Registrar should bring out a quarterly journal containing extracts from copies of memorandum, articles, managing agency agreements, registered with him during the previous quarter."

Mr. Deputy-Speaker Those in favour will say 'Aye'.

Some hon. Members: Aye.

Mr. Deputy-Speaker: Those against will say 'No'.

Some hon. Members: No.

Mr. Deputy-Speaker: The 'Noes' have it.

Shri Kamath: The 'Ayes' have it.

Mr. Deputy-Speaker: Amendment No. 353 will stand over.

Clause 32 will stand over.

There are no amendments to clauses 33 to 37.

The question is:

"That clauses 33 to 37 stand part of the Bill."

The motion was adopted.

Clauses 33 to 37 were added to the Bill.

Mr. Deputy-Speaker: Clause 38, Amendments 158 and 159: nobody thinks of them. Not pressed.

The question is:

"That clause 38 stand part of the Bill."

The motion was adopted.

Clause 38 was added to the Bill.

Mr. Deputy-Speaker: Clause 39. The amendment is not pressed.

The question is:

"That clause 39 stand part of the Bill."

The motion was adopted.

Clause 39 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 40 to 42 stand part of the Bill."

The motion was adopted.

Clauses 40 to 42 were added to the Bill.

Mr. Deputy-Speaker: Clause 43.

The question is:

Page 24, sub-section (3),

in lines 25 and 26, *after* the word "five hundred rupees" *insert* the words "for every day during which the default continues."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 24, line 27, *omit* "or statement in lieu of prospectus".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 24, *omit* lines 41 to 47.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 43, as amended, stand part of the Bill."

The motion was adopted.

*Clause 43, as amended, *was added to the Bill.*

Mr. Deputy-Speaker: There is an amendment to clause 44. Nobody has stood up. So it is not pressed.

The question is:

"That clause 44 stand part of the Bill."

The motion was adopted.

Clause 44 was added to the Bill.

Mr. Deputy-Speaker: The question is:

Page 25, *after* line 28, *add*:

"Provided that the Central authority may, by notification, limit the amount of such contracts which a praticular class of companies may enter into."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 45 stand part of the Bill."

The motion was adopted.

Clause 45 was added to the Bill.

Mr. Deputy-Speaker: Amendment No. 73. No one has stood up. So, the amendment is not pressed.

The question is:

"That clause 46 stand part of the Bill".

The motion was adopted.

Clause 46 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 47 stand part of the Bill.."

The motion was adopted.

Clause 47 was added to the Bill.

Mr. Deputy-Speaker: Clause 48.

The question is:

Page 26, sub-clause (4)

in line 20, *omit* the word "other" before the word "securities".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 48, as amended, stand part of the Bill".

The motion was adopted.

Clause 48, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 49 stand part of the Bill".

The motion was adopted.

Clause 49 was added to the Bill.

Mr. Deputy-Speaker: Clause 50.

The question is:

Page 27, line 34

(i) *after* the words "on a company" *insert* the words "or an officer thereof"; and

(ii) *for* the words "sending it to its registered office", *substitute* the words "sending it to the company or officer at the registered office of the company".

The motion was adopted.

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*In sub-clause (4) of clause 43, lines 32 and 35, the word "untrue", before the word "statement" was omitted as patent error under the direction of the Speaker.

Mr. Deputy-Speaker: The question is:

"That clause 50, as amended, stand part of the Bill."

The motion was adopted.

Clause 50, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 51 stand part of the Bill."

The motion was adopted.

Clause 51 was added to the Bill.*

Mr. Deputy-Speaker: Clause 52.

Shri Jhunjhunwala: Instead of my amendment No. 374, I beg to move the following amendment:

Page 27, line 49, *after* "notice" *insert*:

"provided that where a member has intimated to the company in advance that notices should be sent to him under a certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the notice shall not be deemed to be effected unless it is sent in the manner intimated by the "member".

Shri M. C. Shah: I shall accept it.

Mr. Deputy-Speaker: The question is:

Page 27, line 49, *after* "notice "*insert*:

"provided that where a member has intimated to the company in advance that notices should be sent to him under a certificate of posting or by registered post with or without acknowledgement due and has deposited with the company a sum sufficient to defray the expenses of doing so, service of the notice shall not be deemed to be effected unless it is sent in the manner intimated by the member"

The motion was adopted.

Mr. Deputy-Speaker: The other amendment is not pressed. The question is:

"That clause 52, as amended, stand part of the Bill."

The motion was adopted.

Clause 52, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 53 to 63 stand part of the Bill."

The motion was adopted.

*Clauses** 53 to 63 were added to the Bill.*

Mr. Deputy-Speaker: No one has stood up. So, the amendment to clause 64 is not pressed.

The question is:

"That clause 64 stand part of the Bill".

The motion was adopted.

Clause 64 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 65 and 66 stand part of the Bill".

The motion was adopted.

Clauses 65 and 66 were added to the Bill.

Mr. Deputy-Speaker: Clause 67.

Shri Kamath: I have got my amendment No. 354.

Mr. Deputy-Speaker: So far as this clause is concerned, the hon. Member is going to challenge. I will put it off.

Shri Kamath: All right. I suppose that is the best course.

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* In clause 51, line 40, the word "him", occurring for the first time, was omitted as patent error under the direction of the Speaker.

**In clause 56, line 10, the word "or", occurring for the first time, was substituted by the word "and", patent error under the direction of the Speaker.

Some Hon. Members: He will not challenge.

Mr. Deputy-Speaker: The question is:

Page 36, line 42, *add* at the end:

"and shall also be liable to make compensation to such person as has entered into an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting shares or debentures, for any damage directly resulting from such false, deceptive or misleading statement, promise or forecast"

Those in favour will say "Aye".

Some Hon. Members: Aye.

Mr. Deputy-Speaker: Those against will say "No".

Some Hon. Members: No.

Mr. Deputy-Speaker: The "Noes" have it.

Shri Kamath: The "Ayes" have it.

Mr. Deputy-Speaker: Then, amendment No. 354 and clause 67 will stand over.

Clauses 68 to 80

Mr. Deputy-Speaker: The House will now take up clauses 68 to 80 for which 1½ 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. No exception will be made hereafter. Shri Kamath is already present here. Therefore he may send it in 15 minutes.

I shall announce after 15 minutes the names of Members who have specified the amendments which they wish to move and those amendments will be treated as having been moved subject to their being otherwise admissible.

These clauses will be put to the vote of the House at 3-15 P.M.

Shri M. C. Shah: Government amendments are Nos. 293, 294, 295, 296, 297 and 298 to clause 75.

The Joint Committee wished that the Government should consider the desirability of providing a ceiling to the commission payable in respect of issues of debentures, as hon. Members will see if they refer to paragraph 13 of the minutes of the 32nd meeting of the Joint Committee. The Government has since examined it and considers that if a ceiling has to be imposed, 2½ per cent. would be adequate in the case of debentures.

The point is not of much practical importance for two reasons: (1) no commissions are usually paid for underwriting debentures, and (2) under the Capital Issues Control Order, Government have the power to regulate not only underwriting commission, but also allowance or discount on the issue price. As a matter of fact, the issue price is invariably taken into account before consents are given.

However, as the Members of the Joint Committee desired that we should consider this question, we have considered it and we are moving these amendments.

Shri Tulsidas (Mehsana West): I have got two amendments to clause 68, namely amendments Nos. 163 and 164. I have actually spoken on these amendments earlier. The point here is very simple. The present Act provides that the period within which the minimum subscription has to be received should be 180 days. Now, this has been reduced to 120 days in this Bill. My point is that in a country like India where the capital market has not yet developed fully it would be desirable to have a fairly adequate period within which the minimum subscription has to be raised. The amendments which I

have sought to move seek to extend the limit of 120 days to 180 days, which is obtaining in the present Act. Such a provision would be helpful to the new *entrepreneurs* who might adopt the company form of management.

I know of a company in the Karnataka area which could not have come into being if these 180 days had been reduced to 120 days. This company had to send back the money that they had collected, i.e. the subscription, with a great deal of difficulty. And it was only after six months that they could collect the required minimum subscription. So, this provision will cause hardship to these *entrepreneurs* who are new in the line. As regards those who are functioning today in the different companies, they will be finding it very easy, for this period of 120 days does not matter to them. But in the case of new *entrepreneurs* this provision will cause hardship. 180 days is the minimum period which is required for a conutry like India which has not got a capital market which has fully developed. So, if a large section of the country wants to subscribe in a particular venture started by a new *entrepreneur*, they will naturally require a period of at least 180 days. I do not see any reason why this period should be reduced to 120 days. I know that the Bhabha Committee have recommended that it should be 90 days, and in the U.K. Act also, it is 90 days. But we have to consider the circumstances and conditions obtaining in this country, and not go merely on the basis of what has been laid down elsewhere. After all, one has to put in a certain adequate period. In the present Act it is 180 days. I feel that there is no reason why it should be changed.

I now come to my amendment No. 165 to clause 69. This amendment is on the same lines as those to clauses 38 and 64, which I had moved earlier, and which the hon. Minister did not think it proper to accept. Here again the question of omission in the prospectus has been brought in. The hon. Minister has just now stated that there may be some other things also besides what is contained in the prospectus which under this Bill is required to have a certain amount of information.

I would invite your attention to schedule II which prescribes the detailed amount of information that is required in a prospectus. I do not understand what further information than this is necessary. You know very well that in a company which is started by new *entrepreneurs* for the first time, the information required is submitted on the basis of what the company has at that time. In the course of business, after the company starts functioning, circumstances may arise which may require certain alterations. But that may be considered as omission under this provision. Even after having asked for such detailed information as is contained in schedule II, still they consider that there may be omission. I do not understand what that omission can be. I would request the hon. Minister to be specific in regard to this matter. After all, we are now legislating in a very detailed way, and therefore, I would ask the hon. Minister to consider this aspect also in detail.

Now, I come to amendment No. 170 to clause 72. This clause deals with permission in respect of allotment of shares and debentures to be dealt in on stock exchanges.. In the entire clause, excepting sub-clause 5, the expression used is 'granted' or 'not granted.' My point is this. The only question that arises is whether permission is granted or is not granted. Supposing a certain company makes an application to the stock exchange, and the stock exchange refuses permission, that would be something, because permission is not granted in that case. But if you look at sub-clause 5 you will find that the word used there is 'refused'. I would suggest that the wording here also should be 'not granted' as is the case in all the other sub-clauses.

Mr. Deputy-Speaker: We can say 'granted' or 'refused.'

Shri Tulsidas: Only in sub-clause 5, the word 'refused' has been used.

Shri M. C. Shah: Instead of 'refused' he wants 'not granted'.

Shri Tulsidas: Yes.

Mr. Deputy-Speaker: 'Granted' or 'refused' will be the normal expression. Is it not so?

Shri Tulsidas: In the whole clause, excepting sub-clause 5, the word used is 'granted or not granted.' Only in sub-clause 5, there is a difference. I want that the expression 'granted or not granted' should be used throughout this clause so that the same wording will be there in all the sub-clauses. I believe there is some clerical error here probably due to oversight, and I hope it will be corrected.

Pandit Thakur Das Bhargava (Gurgaon): The word 'refused' can be put in all the places.

Shri M. C. Shah: I leave the matter to the Deputy-Speaker, who is a distinguished lawyer. If he says it should be 'not granted' I have no objection to that.

Pandit Thakur Das Bhargava: Yes, we may leave it to the Deputy-Speaker. The point here is very clear. In sub-clause (5), you will be pleased to see that unless it is 'refused', it may mean that the matter is under further consideration, and we may not know whether permission has been granted or not granted. So, I think 'refused' would be better. There is no doubt about it. 'Refused' would mean a certain state of things in which the thing has been decided, and not left for further consideration.

Shri U. M. Trivedi: It will lose its meaning, if the word 'refused' is altered.

Mr. Deputy-Speaker: I accept the suggestion of Pandit Thakur Das Bhargava. We cannot go on defining even such expressions as are defined in the dictionary.

Shri Tulsidas: Then, I shall not move my amendment No. 170.

Pandit Thakur Das Bhargava: 'Refused' would mean that the mind has been applied, and then they have refused it. But if it is 'not granted' it will mean that it may be further considered and granted.

Mr. Deputy-Speaker: So, amendment No. 170 is not moved by the hon. Member.

Shri Tulsidas: Then, I have amendment No. 173 to clause 79. Clause 79 deals with power to issue redeemable preference shares. The original Bill provided that preference shares could be redeemed out of the sale proceeds of the property of the company. The Joint Committee have now deleted the words 'of the sale proceeds of the company,' which means that preference shares cannot be redeemed out of the sale proceeds of the property of the company.

Mr. Deputy-Speaker: They can be redeemed from the revenue. Perhaps, the hon. Member wants that it should be from both.

2 P.M.

Shri Tulsidas: I say that it should be redeemable from both. I shall explain presently why I say so. In the Joint Committee also, I had raised this matter. But I need not go into all that now. The point is this. When preference shares are redeemed out of the sale proceeds of any property of the company, it enables the company to reduce its assets and liabilities by the same amount, and it may be profitable to the company because the property concerned may not be of use to the company's business. This is a needless restriction on the discretion of the company, and my amendment seeks to remove the same.

Mr. Deputy-Speaker: They shall not be redeemed by selling any portion of the capital.

Shri Tulsidas: Here it is property.

Mr. Deputy-Speaker: Assets or property. Or even out of the proceeds of a fresh issue of shares.

Shri Tulsidas: That is all right.

Mr. Deputy-Speaker: They do not want these redemptions by selling any portion of the assets of the company.

Shri Tulsidas: I want to know why this sort of restriction should be there. When you float a company, you have either preference shares or ordinary shares, according to the requirements of the company for capital sector structure or working capital. Suppose a property has been sold out. That money is there with the company. Why should they not be allowed to let these shares be redeemed? After all, the liability of the company is reduced. I do not see any reason why they should not be allowed to do so. This provision is there in the present Act. It was also allowed under the original Bill. But the Joint Committee have removed it because in the U. K. they are not allowing it under their Act. The Bhabha Committee has not made any recommendation on this issue.

Mr. Deputy-Speaker: At the time of the forming of a company, they go in for preference shares. Then they will have to wait for sometime, though the earlier dividends will also accumulate. But they may or they may not get. If they get, that will be a preference. When some of the shareholders make up their mind to sell some portion of the property and get rid of the preference shares, does he mean to say that those who came at the outset with a prospect of getting some profit should be disposed of like that?

Shri Tulsidas: I will explain. It can only be redeemed, if it is redeemable. When it is redeemable, it is a particular debt. Suppose they have got some property which they can dispose of and redeem it, why should they not do it? Why should they not be allowed to redeem it? Suppose a company has got 8 per cent. preference shares and it finds that it is a very big liablility. If they have got money, they have the right to redeem it. After all, their capital liabilities are reduced to that extent.

Mr. Deputy-Speaker: But, on the other hand, if they sell only for the purpose of redeeming, what will happen?

Shri Tulsidas: Even then, if it is redeemable, what is the harm in doing it? After all, the equity shareholder takes the risk. In the case of profit, the preference shareholder gets dividend first and the equity shareholder afterwards.

Mr. Deputy-Speaker: Let the converse be put. There is a prospect of getting something more. The equity shareholder wants to avoid these people.

Shri Tulsidas: They cannot get more.

Mr. Deputy-Speaker: They get a definite rate of interest.

Shri Tulsidas: It is a kind of debt which you have to repay.

Mr. Deputy-Speaker: Suppose the rate of interest in the market goes down. These people may like to send them away without paying a heavier interest.

Shri Tulsidas: Would you like the company to carry on with this debt when it has got property by which it can be repaid especially when the property is not useful?

Mr. Deputy-Speaker: Why are the U. K. people not doing it?

Shri Tulsidas: It is a different thing. I do not know.

Mr. Deputy-Speaker: I am not arguing. I am only trying to know; I must also know.

Shri Tulsidas: I do not know why they are not doing it. There is no explanation here. The Bhabha Committee has not made any recommendation on this point.

Pandit Thakur Das Bhargava: May I know if the property can be sold without the sanction of the general meeting?

Shri V. P. Nayar (Chirayinkil): The Minister may explain why it is necessary.

Pandit Thakur Das Bhargava: If the property is sold after the general meeting sanctions the same, there is no harm.

Shri Tulsidas: If the property is sold after the general meeting votes for it....

Shri M. C. Shah: This matter was discussed in the Joint Committee. Shri Tulsidas advanced these very arguments there.

Shri Tulsidas: I am now arguing for the consideration of the House.

Mr. Deputy-Speaker: At this stage, I can only make this suggestion to the hon. Minister. Whatever might have been done in the Joint Committee, all Members of the House were not members of the Joint Committee. Therefore, there is no meaning in saying that it was discussed there. The hon. Minister must convince the House here when a doubt arises.

Shri V. P. Nayar: May I submit that as this is a very technical matter, the Minister may be asked to explain why this provision is necessary?

Mr. Deputy-Speaker: He will reply in the end.

Shri V. P. Nayar: If he could reply now, there is no need of Shri Tulsidas arguing.

Shri Tulsidas: The present restriction seeks to limit the discretion of the company even when the use of such discretion would in no way harm the interests of shareholders; it will reduce the flexibility of operation of companies and make their administration rigid. Why do you want to bring about this state of affairs? When a company borrows money from certain individuals or a bank at a high rate of interest, those persons or the bank would not like it to be repaid; still the company repays. Why? It is only a question of a fixed rate of interest. That person is not interested in higher profits; he gets a fixed rate of interest.

Mr. Deputy-Speaker: But he takes the risk.

Shri Tulsidas: It is no risk; it is a debt.

Mr. Deputy-Speaker: Is it to be paid in preference to a loan? A charged loan has to be paid first, then ordinary loan, then preference shareholders, then ordinary shareholder.

Shri Tulsidas: It may be coming, as you say, in the order of a loan, debenture and so on. But whatever it is, the company would like to get rid of the debt.

Mr. Deputy-Speaker: One set of shareholders wants to get rid of it. What about the other set of shareholders?

Shri Tulsidas: In the present Bill, we have provided no voting rights to preference shareholders unless and until....

Mr. Deputy-Speaker: In the case of winding up or in the case of an adverse decision being taken, they come in.

Shri Tulsidas: They get their fixed amount. They cannot get more.

Mr. Deputy-Speaker: They are the persons who come in the beginning. They find that it has stabilised and they get a decent profit. Though it cannot be augmented, they get a fixed rate of profit. Suppose the market rate goes down. Why should these equity shareholders be allowed to sell away a portion of the property and then get rid of these people, because a rate of interest higher than the market rate is being paid to these people?

Shri U. M. Trivedi: In that case, you are already allowing floating of further shares and then paying them off. It will amount to the same thing.

Shri Tulsidas: After all, they can borrow and repay it. They can even have new capital and then pay it off. What is the idea of restricting their discretion in this matter?

Mr. Deputy-Speaker: Then they will be increasing the block.

Shri Tulsidas: They can repay. There is nothing wrong.

Shri K. K. Basu: Everybody may not be like Shri Tulsidas. Suppose there is scope for dishonesty in this process.

Shri Tulsidas: There is no question of honesty and dishonesty. It is a question of a legal provision for redemption of a certain debt. We should allow this repayment even by the sale proceeds of property.

Mr. Deputy-Speaker: I wish to announce that the following Members have intimated the amendments which they wish to move. The numbers of these amendments are being hung up on the Notice Board and a few spare copies have been kept on the Table for reference by Members. Shri M. C. Shah—Government amendments; Shri S. R. Rane; Shri Tulsidas Kilachand; Shri G. D. Somani; Shri K. K. Basu. We are disposing of these amendments here and now.

Shri U. M. Trivedi: Certain amendments have been suggested to clause 75 by the Government, amendments 293 to 298 and that is with reference to the payment of commission to those who are to underwrite debentures. The original idea was only the payment of commission to the underwriters of shares. It has been extended to debentures also now. The Government has now provided for paying some commission to the underwriters of debentures. I find no justification for making a difference in the amount of commission to be paid.

Mr. Deputy-Speaker: What is the number of the amendment?

Shri U. M. Trivedi: Amendments 293, 294 and 295 all going together.

Mr. Deputy-Speaker: Is the hon. Member opposing them?

Shri U. M. Trivedi: Yes; I am opposing them.

To begin with, 5 per cent. is a very high rate of commission that is being offered. In the ordinary market, an ordinary moneylender so to say can charge a discount or commission of not more than 1 or 1¼ per cent. In this case, I do not know when all sorts of inhibitions are being put upon those persons whom we are not willing to call honest, after having put all these inhibitions, I see no reason or propriety in saying that they should be given a commission of 5 per cent. It is a very big sum; that is to say, for every Rs. 100 they wil get Rs. 5. You are not paying this on shares of companies floated by the Government.

An Hon. Member: This is the maximum.

Shri U. M. Trivedi: Yes; I know this is the maximum. But, why this maximum of 5 per cent? That I cannot understand, when actually loan is being taken, when debentures are issued, when you find that the company is not doing well and that the company wants to raise more capital and it has been frustrated in some manner. When debentures are issued, it is always a kind of loan. The risk is always greater and then you say that the commision paid will be only 2½ per cent. That means you are paying some sort of discount for the raising of that captial which becomes essential. But, where it is not essential, where there is some attraction for buying shares you want to give 5 per cent. I cannot understand the logic behind this. That is

[Shri U. M. Trivedi]

a very wrong principle that high commission should be paid on the issue of ordinary shares and low commission should be paid in the case of debentures. The reverse ought to have been the position and if there is any anxiety on the part of the Government that the provision should stand, I would submit that it should be not more than 2½ per cent. in the case of ordinary shares and 5 per cent in the case of debentures, or say up to 2½ per cent. and up to 5 per cent. (*Interruption*).

Shri M. C. Shah: That is the maximum or ceiling.

Shri U. M. Trivedi: Why should the ceiling or maximum be 2½ per cent. in the case of debentures?

Shri M. C. Shah: As I have already explained it is not necessary because they are controlled by the Capital Issues Act. At the same time we may not agree that it is necessary to pay that.

Shri U. M. Trivedi: If it is so, I would like to submit that the Government is not going to bring legislation that when debentures will be issued to the public, where the question of loan is concerned, where a risk is involved....

Mr. Deputy-Speaker: The debenture holder gets greater security than the shareholder. Therefore less commission. Debenture holder has got a chance of getting something and therefore he has got less risk than the ordinary shareholder. Therefore greater inducement is necessary in that case. When a company comes to the position of having to go into the market, possibly shares may not be subscribed so easily.

Shri K. K. Basu: Does he mean that it is a ceiling?

Shri M. C. Shah: Yes; it is a ceiling.

Shri U. M. Trivedi: That is the maximum commission that they are fixing.

Mr. Deputy-Speaker: Ceiling would always be the maximum; can upstairs be downstairs? Ceiling must be at the top and not the floor.

Shri M. C. Shah: So far as debentures are concerned, the commission is sought to be paid to underwriters on underwriting of debentures. Under the Capital Issues Control Act Government have powers to regulate not only underwriting commission but also allowances or discounts and the issue prices. We have got the powers so far as debentures are concerned. I will try to bring in the issue of shares also.

Shri K. K. Basu: In the issue of shares is permission sought?

Shri M. C. Shah: There is always commission on the shares.

Shri K. K. Basu: Can you control?

Mr. Deputy-Speaker: Hon. Members want to know whether it is open to Government to say that 5 per cent. is the maximum and that in the circumstances of a particular case not more than 3 per cent. can be paid.

Shri M. C. Shah: I think we have that power under the Capital Issues Control Act.

Mr. Deputy-Speaker: The hon. Member may go on; in the meanwhile the hon. Minister will collect the information.

Shri V. P. Nayar: We want to know it definitely; we do not want to leave it vaguely.

Mr. Deputy-Speaker: He will gather all the materials and reply once for all.

Shri U. M. Trivedi: I find very great force in the argument of Shri Tulsidas on this question of the issue and redeemability of preference shares. It is an ordinary principle of law that a man must be allowed to repay his loan whenever he feels. In this case, preference share is always a kind of loan; that is why preference share is given a greater and a higher guaranteed percentage of dividend. If the company finds that it can have easy money in the market after some time, why should it continue to pay more

to these people? In that case why put a sort of check upon the redeemability of the preference shares? I do not see that there is any logic behind this suggestion that shares cannot be redeemed except out of profits. There may be profits but there may not be sufficient profits to redeem these shares. Provision is made that these shares can be redeemed by the issue of fresh shares. If fresh shares are issued you take from others and pay and paying them off. Then, why not and paying them off. Then, why not allow some property to go away and then pay them off? We say, at the same time, in 79 (3) that the redemption of preference shares under this section by a company shall not be taken as reducing the amount of its share capital. There would be no kind of reduction of share capital even if the same is paid out of the property of the company. In that case, I say what Mr. Tulsidas has suggested is a very proper thing and no question of prestige should stand in the way of Government in agreeing to this provision.

Shri T. N. Singh (Banaras Distt.—East): That is very suspicious.

Mr. Deputy-Speaker: The following amendments have been indicated by the hon. Members to be moved, subject to their being otherwise admissible:

Clause No.	No. of amendments.
68	163, 164
69	165
71	385, 386
74	387, 100
75	293 (Govt.), 296 (Govt.), 295 (Govt.), 296 (Govt.), 297 (Govt.), 298 (Govt.)
77	388
78	389
79	173

Clause 68— (*Prohibition of allotment etc.*)

Shri Tulsidas: I beg to move:

(1) Page 37, line 24,—
for "twenty days" *substitute* "eighty days."

(2) Page 37, line 27—
for "thirty days" *substitute* "ninety days."

Clause 69—*Prohibition of allotment in certain cases etc.*)

Shri Tulsidas: I beg to move:

Page 38—
omit line 38 to 43.

Clause 71— (*Application for shares etc.*)

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

Page 40, line 14—
omit "wilfully."

Shri Raghavaiah: I beg to move:

Page 40—
after line 22 *add*:

"(6) All allotments shall be made within one week of the closure of the subscription list."

Clause 74— (*Return as to allotments*).

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

Page 42—

omit lines 6 to 8.

Shri Rane: I beg to move:

Page 42, line 36—

add at the end:

"and exempting the company or officer in default, from any fine referred to above from the first day of default or such period of default, as the court may think proper".

Clause 75— (*Power to pay certain commissions etc.*)

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

(1) Page 42, sub-clause (1), lines 45 and 47—

for the words "shares in" in both the places where they occur, *substitute* the words "shares in or debentures of,".

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(2) Page 43, sub-clause (1), line 2—

before, the words "five per cent.' *insert* the words "in the case of shares".

(3) Page 43, in line 3—

after the words "whichever is less", *insert* the words "and in the case of debentures, two and a half per cent. of the price at which the debentures are issued or the amount or rate authorised by the articles, whichever is less."

(4) Page 43, in lines 6, 8, 14, 16, 20—

for the word "shares" occurring in these lines, *substitute* the words "shares or debentures".

(5) Page 43, in lines 24 and 26—

for the words "shares in" in both the places where they occur in these lines, *substitute* the words "shares in, or debentures of,".

(6) Page 43, in lines 27, 36 and 37-38—

for "shares or money" occurring in these lines *substitute* "shares, debentures or money".

Clause 77—(*Appreciation of premiums etc.*)

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

Page 45—

omit lines 3 and 4.

Clause 78—(*Power to issue shares at a discount*)

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

Page 45, lines 29 and 30—

omit "or such higher percentage as the Central Government may permit in any special case".

Clause 79—(*Power to issue redeemable preference shares*)

Shri Tulsidas: I beg to move:

Page 46, line 15—

after "or the redemption" *add* "or out of the sale proceeds of any property of the company."

Mr. Deputy-Speaker: All these amendments are now before the House for discussion.

Shri K. K. Basu: I have moved certain amendments, but before I go to them, I think the point which has been so ably argued by Shri Tulsidas and Shri Trivedi has to be answered. They have tried to put in every case the preference shareholder on the same footing as the debenture shareholder. They have really hit at the main point on which the difference is to be made. We know fully well that the debenture shareholder is much more secure; he has some preferential right for payment of dividend and also of capital in the case of winding up of the company. Otherwise, he runs more or less the same risk as an ordinary shareholder. Sometimes these debenture shareholders have their own trustees appointed, and if there is any trouble under the deeds of mortgage etc., they can appoint receivers, and they have many other similar rights. Shri Tulsidas stated all his points in the Select Committee and the Select Committee naturally thought over them. As you said, there may be cases in which for the first six or seven years there is no profit and in the eighth year there is a likelihood of a profit, and unless it is a case of cumulative preference shareholder, the preference shareholder has no right to get dividend. In the eighth year on the likelihood of the preference shareholder being paid a dividend, the other shareholders or a majority of them at a general meeting might decide to sell a portion of the property and offer it to the preference shareholders. The result is that these preference shareholders, who have to invest so much, excepting for their preferential right to get dividends in the case of winding up, lose the benefit of their own contribution. Therefore, this has been pertinently put here that the word should be dropped.

The example of the question of a new issue is given. A company which has already a good amount of pre-

ference shareholding, comes to the market and asks for the issue of new shares, and that means that it must have good credit. Those companies will not be affected by this provision. This provision is simply to guard against companies circumventing the normal rights of preference shareholders when there is a likelihood of the company making a good profit and they do not want to pay the preference shareholders their just dues.

Regarding the points which had been raised about commission, 2½ per cent. or 5 per cent. we know in the present state of affairs in our country that it may be necessary to give some sort of impetus to those who are able to procure money.

I have moved my amendments Nos. 385, 387, 388 and 389.

Amendment No. 385 is in respect of the deletion of the word "wilfully" from section 71 of the Bill. I feel that in our country the average shareholders are not so very alert and they often fall a prey to credulousness. The officer of the company should be much more vigilant and dutiful as to their responsibilities. Therefore, I would wish that the word "knowingly" should be there and the word "wilfully" should be dropped.

My amendments Nos. 387 and 388 call for the deletion of the provision in respect of bonus shares. These are more or less related and we ourselves do not wish that the bonus share should be allowed to continue under the statutes of this country.

Mr. Deputy-Speaker: What are the amendments that you refer?

Shri K. K. Basu: Nos. 387 and 388 relating to clauses 74 and 77. From reports that have come out especially since the last war, we feel that quite a number of companies, when they earn a good deal, do not distribute their profit as dividend; they go on accumulating, and after some years, they over-capitalise and pay off the capital in the shape of bonus shares to the shareholders. As the hon. Finance Minister stated, we have not yet decided the principle of taxing the bonus share and that is a question of loss to the exchequer. But if a concern at a particular point of time has earned a good sum and is allowed under the law to distribute it among the shareholders, then it would have to pay a good amount as tax. Now that is left out of the exchequer as far as taxation is concerned. As a result of the issue of bonus shares, often some of these concerns are over-capitalised. We have seen a company with Rs. 50,00,000 as their original capital having accumulated a reserve and after the addition of the bonus shares, it had been capitalised to the extent of Rs. 1,50,00,000 or thereabouts. Therefore, we are opposed to the very principle of bonus shares and we want the deletion of the provision which deals with bonus shares in these two clauses.

Mr. Deputy-Speaker: The employees are sought to be given a share, as it is very often urged, to entrust them with the management and so on. If instead of paying anything....

Shri K. K. Basu: Employees are given bonus pay. Bonus pay and bonus share are different.

Mr. Deputy-Speaker: Bonus shares are paid to persons in lieu of money for a contract of services of various kinds....

Shri K. K. Basu: I do not exactly know. At the time of floating certain companies, it might be given, as for instance, for getting patents and certain skilled staff, and that is when they have no capital. But when the concern is already get going, I do not know whether such a provision can be made. So far as my personal knowledge goes, I have hardly come across any company doing so. When profits are distributed and dividends paid, more taxes will have to be

[Shri K. K. Basu]

paid. So, the companies keep on accumulating the undistributed profits, and after some time they convert it into bonus shares and these shares are issued as against the accumulated profits. That is why we oppose this provision.

We have tabled amendment No. 389 to clause 78, which says:

> "A company shall not issue shares at a discount except as provided in this section.....
>
> (ii) the resolution specifies the maximum rate of discount (not exceeding ten per cent or such higher percentage as the Central Government may permit in any special case) at which the shares are to be issued;"

We want to drop out this special provision regarding the right of the Central Government to permit a higher percentage, because we know that in the present state of affairs, ten per cent. is quite high and the issue of a share at a discount of more than ten per cent. is not commensurate with the conditions prevailing in our country. Therefore, if we keep the maximum at ten per cent., that will be good enough for the purpose for which this provision is embodied in the statute. We, therefore, want the deletion of the words "or such higher percentage as the Central Government may permit in any special case."

There is another amendment moved by my friend, Shri Nanadas, on which I would like to speak; that is amendment No. 386, which says:

> "All allotments shall be made within one week of the closure of the subscription list."

This point has also been referred to by the expert committee presided over by Shri Bhabha and there also evidence was tendered before that committee that after the subscription list is closed, allotment takes a lot of time and some malpractices are found. We have, therefore, suggested that within one week of the closure of the subscription list, allotments should be finalised. If Government, however think that there might be administrative difficulties in the acceptance of this time-limit, they may increase it to a fortnight.

I would urge upon Government to consider all these points and accept the amendments I have moved.

Shri Jhunjhunwala: Regarding the question of preference shares, I am in agreement with what Shri Tulsidas has said. Shri Basu has advanced some arguments and has compared these preference shareholders with debenture holders. He says that the preference shareholders have got some risk, while the debenture holders have got no risk. In spite of so many protections the debenture holders also have got some risk. If the value of the property of a company goes down, the debenture holders suffer. Similarly, the preference shareholders have also got some risk. Now, as has been pointed out so ably by Shri Tulsidas, if those shares can be paid off by raising loans or by any other means, there is no reason why they should not be paid off by selling the property. Supposing the value of the property is going down, and there is no hope of recovery by any other means and the prospect of business is not bright, in that case it is in the interest of the preference shareholders that this should be paid off by the sale of the assets of the company. It has been said that there is some provision in the United Kingdom Act, but no reasoning has been given as to why that provision has been made in the United Kingdom Act that the preference shareholder should not be paid off by selling the property of the company. Of course, it might have been discussed somewhere, but today nothing has come out in the course of discussion that there are reasons behind not selling the assets of the company.

The Minister of Finance (Shri C. D. Deshmukh): The position is that the

existing Act provides for redemption out of sale proceeds of property. The British law (Section 58) does not provide for it and we have now adopted the British law.

Shri Jhunjhunwala: I want to know the reasons behind that. Because the United Kingdom Act provides for it, there must be some reasons behind it. Here we do not see any reason.

Shri C. D. Deshmukh: The reasons we shall give when we reply.

Pandit Thakur Das Bhargava: It would be better if the reasons are given now. In that case we may not pursue the subject. We do not wish to take the time of the House unnecessarily.

Shri C. D. Deshmukh: There is difference between redemption and reduction of capital. There is a provision here which says that redemption shall not be regarded as reduction of capital. In Britain there was a conflict of decisions. There was one decision given at one time that this amounted to reduction of capital; at another time that decision was reversed and they said this shall not be regarded as reduction of capital. It is a question not only of the company's interest, but also of the interrest of the shareholders. In other words, one can imagine a situation where somebody, rather optimistic, collects a lot of share capital; the next year he finds that he does not want all that capital, that he has overshot the mark and wants to reduce the size of the capital. If this were allowed to remain he can immediately return it. The purpose of this section is to replace one debt by another, as happens in a conversion loan. For instance, rates of interest go up. If the credit of the company is much better, after it has been established, it may wish to substitute a 5 per cent. preference share by a 4 per cent preference share. Then the choice is offered to the holder of the preference shares as to anybody else. Therefore, substitution often takes place out of fresh capital raised. These are the sort of considerations which influenced us and the Joint Committee in adopting the scheme of the English Act.

Mr. Deputy-Speaker: Can they be redeemed from the assets?

Shri C. D. Deshmukh: They can be redeemed out of profits, or you build a reserve fund, but you are not supposed to redeem them out of capital, because that amounts to a reduction of capital for which there is a separate provision and for which higher sanction is required. There is justice to be done by the company and the investor. Though he knows it to be redeemable he hopes his money will be invested for a particular period. There is that element involved in it. We thought we should stress the distinction between the redemption and reduction of capital.

Pandit Thakur Das Bhargava: I am very sorry I have not been convinced by the hon. Finance Minister's reasoning. We have got a provision to the effect that redemption of preference shares under this section by companies shall not be taken as reducing the amount of its authorised share capital.

So far as the question of reduction is concerned, it is settled by this clause. When a person takes a preference share he knows that it is for a specific period. It is in the nature of a debt which can be redeemed at any time. So his expectations are not belied if it is redeemed earlier, when it suits the company. No expectations are raised, which are belied subsequently. A preference share is really in the nature of a loan which can be paid at any time from any of the assets of a company. If it suits the purpose of a company, I do not see any reason why it should be debarred from selling some of its useless property and pay off this liability. I quite understand that previously without any reference to the shareholders the property of a company could be sold off. Now the

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property of a company cannot be sold off without sanction at a general meeting of the company. No doubt the meeting will decide whether it is profitable for the company to sell off some useless property and pay off this liability. If it is not profitable the meeting will not agree to it. The real point at issue is whether it is in the interest of the company to terminate that liability or not. Sometimes it may be to the benefit of a company to sell off some of its useless property which they consider will not bring profit. As a matter of fact, the owners of the company are the ordinary shareholders. The preference shareholders have got preference in the matter of dividends, or when the company is wound up. So far as the question of winding up is concerned, it does not arise. The properties are being sold at a time when the company is in a position to see that the liabilities are wiped off, Winding up comes much later.

In my opinion, it should be left to the company itself to safegurad its interest and we should not make a rule whereby the company may be debarred from looking to its best interest. At any rate we should not lay an embargo, as is sought to be done here. I, therefore, think that the amendment is good and it should be accepted.

Shri C. D. Deshmukh: It is not quite correct to say that preference shareholders are not owners of the company. That is a situation brought about by the Bill itself. Before that preference shareholders were entitled to vote and indeed our present scheme is that so far as existing preference shareholders are concerned, they will have the voting right which they have enjoyed before. Therefore, in that particular respect, I do not think this contention is correct that preference shareholders are not owners of the company. Nevertheless hon. Member could have used this argument that although they are owners of the company they became owners of the company under a scheme—under the old section 106 or whatever it is. Preference shares could have been redeemed out of the assets. In fairness, I must say whether they are owners or not they were in a situation where their capital could have been redeemed out of the sale proceeds of assets. That was the position; that is the position now. Therefore, it is all a question of what one considers a better system. In other words what would encourage the preference shareholder? What is the understanding of the contract? The new preference shareholder has some disabilities and some liabilities; he is not going to have any voice in the management of the company. One might, in that case, say: it is better that we should have a scheme whereby their shares are redeemable. The understanding will be that they will be redeemable not by reduction of capital but out of the profits of the company so that the capital remains unreduced. It is the point of view; one cannot argue it much beyond that. We are inclined to think that what the Joint Committee has done is the better course.

Pandit Thakur Das Bhargava: The preference shareholder will be benefited also. He will get back his money. After all, the expectations were that he would get more interest. He will be paid fully his dividends. At the time when the property is sold he will also be benefited.

Mr. Deputy-Speaker: I think there is nothing more to say. I will put these amendments and clauses to the vote of the House.

The question is:

Page 37, line 24—

for "twenty days" *substitute* "eighty days".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 37, line 27—

for "thirty days" *substitute* "ninety days."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 68 stand part of the Bill."

The motion was adopted.

Clause 68 was added to the Bill.

Mr. Deputy-Speaker: Amendment No 165 to clause 69. The question is:

Page 38—

omit lines 38 to 43.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 69 stand part of the Bill."

The motion was adopted.

Clause 69 was added to the Bill.*

Mr. Deputy-Speaker: The question is:

"That clause 70 stand part of the Bill."

The motion was adopted.

Clause 70 was added to the Bill.

Mr. Deputy-Speaker: Amendments Nos. 385 and 386 to clause 71. The question is:

Page 40, line 14,

omit "wilfully."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 40, line 14—

after line 22, *add*:

"(6) All allotments shall be made within one week of the closure of the subscription list."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 71 stand part of the Bill."

The motion was adopted.

Clause 71 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 72 and 73 stand part of the Bill."

The motion was adopted.

Clauses 72 and 73 were added to the Bill.

Mr. Deputy-Speaker: There is amendment No. 387 to clause 74.

The question is:

Page 42—

omit lines 6 to 8.

The motion was negatived.

Mr. Deputy-Speaker: The other amendment I take it, is not pressed.

The question is:

"That clause 74 stand part of the Bill."

The motion was adopted.

*Clause** 74 was added to the Bill.*

Mr. Deputy-Speaker: There are Government amendments, 293 to 298 to clause 75. I shall put them to the vote of the House.

Mr. Deputy-Speaker: The question is:

Page 42, sub-clause (1), lines 45 and 47—

for the words "shares in" in both the places where they occur, *substitute* the words "shares in, or debentures of,".

The motion was adopted.

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* In sub-clause (5) of clause 69—

(i) line 25, the word "authorises" was substituted by the word "authorised" as patent error under the direction of the speaker.

(ii) lines 29 and 32, the word "unture", before the word "statement", was omitted as patent error under the direction of the speaker.

** In part (b) of sub-clause (1) of clause 74, line 5, the word "and", was added at the end as patent error under the direction of the speaker.

Mr. Deputy-Speaker: The question is:

Page 43, sub-clause (1), line 2—

before the words "five per cent". *insert* the words "in the case of shares."

The motion was adopted.

Mr. Deputy-Speaker: The question is.

Page 43, in line 3—

after the words "whichever is less." *insert* the words "and in the case of debentures, two and a half per cent of the price at which the debentures are issued or the amount or rate authorised by the articles, whichever is less."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 43, lines 6, 8, 14, 16, 20—

for the word "shares" occuring in these lines, *substitute* the words "shares of debentures".

The motion was adopted.

Mr. Deputy-Speaker The question is:

Page 43, in lines 24 and 26—

for the words "shares in" in both the places where they occur in these lines, *substitute* the words "shares in, or debentures of,".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 43, in lines 27, 36 and 37-38.—

for "shares or money" occurring in these lines *substitute* "shares, debentures or money".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 75, as amended, stand part of the Bill."

The motion was adopted.

Clause 75, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 76 stand part of the Bill"

The motion was adopted.

Clause 76 was added to the Bill.

Some Hon. Members *rose*—

Mr. Deputy-Speaker: Order, order. Hon. Members ought not to be walking or standing while I am standing. There is an amendment—No. 388—to clause 77.

The question is:

Page 45—

omit lines 3 and 4.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 77 stand part of the Bill."

The motion was adopted.

Clause 77 was added to the Bill.

Mr. Deputy-Speaker: I shall put amendment No. 389 to clause 78.

The question is:

Page 45, lines 29 and 30—

omit "or such higher percentage as the Central Government may permit in any special case".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 78 stand part of the Bill."

The motion was adopted.

Clause 78 was added to the Bill

Mr. Deputy-Speaker: There is amendment No. 173 to clause 79.

The question is:

Page 46, line 15—

after "of the redemption" *add*: "or out of the sale proceeds of any property of the company"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 79 stand part of the Bill."

The motion was adopted.

Clause 79 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 80 stand part of the Bill."

The motion was adopted.

Clause 80 was added to the Bill.

Mr. Deputy-Speaker: There were some clauses held over on account of amendments—clauses 24, 32 and 67. I will first take up amendment No. 23 to clause 24. The question is:

Page 18—

after lines 36, *add*:

"(11) The association so registered under this section shall not be subject to all or any obligations that have been or may be imposed by any act of any legislature of any State in India."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 24 stand part of the Bill."

The motion was adopted.

Clause 24 was added to the Bill.

Mr. Deputy-Speaker: I shall put amendment No. 353 to clause 32 first.

The question is:

Page 20—

after line 47, *add*:

"(4) The Registrar should bring out a quarterly journal containing extracts from copies of memorandum, articles, managing agency agreements, registered with him during the previous quarter."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 32 stand part of the Bill."

The motion was adopted.

Clause 32 was added to the Bill.

Mr. Deputy-Speaker: Now amendment No. 354 to clause 67.

The question is:

Page 36, line 42—

add at the end:

"and shall also be liable to make compensation to such person as has entered into an agreement for or with a view to acquiring, disposing of, subscribing for or underwriting shares or debentures, for any damage directly resulting from such false, deceptive or misleading statement, promise or forecast".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 67 stand part of the Bill."

The motion was adopted.

Clause 67 was added to the Bill.

Mr. Deputy-Speaker: I would only wish to point out to the House that it is not right on the part of any hon. Member to say that the voting on

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these amendments ought to be put off, themselves not being in their seats.

Shri Kamath: I have just arrived, Sir. I am one minute late.

Mr. Deputy-Speaker: Hon. Member must take his seat. At 2-30 he ought to be present. It is not one minute.

Shri Kamath: I thought it was to be put at 3-15.

Mr. Deputy-Speaker: I am not bound to wait here notwithstanding the fact that the work is over.

Shri Kamath: The voting was to be at 3-15, Sir.

Mr. Deputy-Speaker: What is this? Hon. Member is dictating.

Shri Kamath: I am not dictating at all.

Mr. Deputy-Speaker: I take serious exception; hon. Members challenge a division and at the time when it is put to the House are not making their appearance at all. It is very wrong. It is not as if the whole House is intended for his benefit and pleasure.

Shri Kamath: I never meant that; I never even suggested that.

Mr. Deputy-Speaker: I know but the action discloses that. Let us proceed.

Shri Kamath: I thought that the voting would be at 3-15.

Mr. Deputy-Speaker: Nobody guaranteed that it would be at 3-15 notwithstanding the fact that the whole work is over.

Shri Kamath: What could I do?

Mr. Deputy-Speaker: Hon. Members will be a little more careful.

Shri Kamath: I thought the House was well engaged and well occupied.

Mr. Deputy-Speaker: Without his presence.

Shri Kamath: I see that without me it will not be well occupied. I will take care in future.

Mr. Deputy-Speaker: Order, order. Hon. Members must be present in their seats. Now, we go to the next business.

Clauses 81 to 144

Mr. Deputy-Speaker: The House will now take up clauses 81 to 144 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.

I shall announce after 15 minutes the names of Members who have specified the amendments which they wish to move and these amendments will be treated as having been moved subject to their being otherwise admissible.

Shri C. D. Deshmukh: My amendments are Nos. 299, 300, 301, 302, 303, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 304 and 305. I should also like to make a few observations now in regard to these amendments.

As regards amendment number 299 which seeks to amend clause 84 by just inserting the words "or repayment of capital" after the words "winding up", it is not an amendment of any substance.

Then I come to amendment number 300 which seeks to amend clause 86. Preference shareholders are normally given a preferential rate over ordinary shareholders in the matter of repayment of capital even when there is no winding up and the proposed amendment seeks to cover this particular case.

Amendment number 302 seeks to amend clause 86. It has been pointed out that in certain cases the articles of association or other instrument

executed by the company do not prescribe any date on which the dividend on preference shares is due. The existing explanation (i) has been amplified to provide for this case. Where no date is specified the dividend will be deemed to be due on the day immediately following the last day of the period in respect of which the dividend is due since we are concerned with the payment of the dividend and not its accrual.

Amendment number 303 also seeks to amend clause 86. According to technical advice received by us the present definition of cumulative preference shares as contained in explanation (ii) to clause 86 (2) (b) is not only unsatisfactory but also unnecessary. The distinctive features of cumulative and non-cumulative preference shares are well-known and no difficulty arises in ordinary commercial practice in distinguishing between these two classes of preference shares. So, it is proposed to delete the explanation.

Then there is an important series of amendments to clause 110. That begins with amendment number 268 and goes on to 279. According to the Central Board of Revenue there is some difficulty about the registration of shares which have been sold in pursuance of the Income Tax Act to realise arrears of income tax from persons who are shareholders of companies. To remove this difficulty it has been suggested that every involuntary sale at the instance of Government shall result in the automatic registration of the purchasers of shares as members of the respective companies. But, perhaps, this is going too far and may result in forcing strangers into the membership of companies, especially, private companies, and against the intention of the members thereof when they formed the companies and to their disadvantage. Further, purchasers at sales to realise arrears of tax etc. due to the Government cannot be placed on a more favourable footing than other purchasers in execution of decrees of civil courts. Therefore, we thought the best course was to give right to appeal in cases of refusal to register the transfer of shares or debentures arising by transmission by operation of law in the same way as there is right to appeal against refusal to register the transfer of shares or debentures. The amendments suggested to clause 110 are intended to achieve this object. As transmission by operation of law is to come within the scope of clause 110 it is necessary to refer in sub-clause (1) of that clause not only to clauses 107 and 109 which deal with transfers *inter vivos*, but also to clause 108 which deals with one instance of a transmission by operation of law; that is to say, by the death of a holder of shares or debentures.

Then there is another amendment, number 304, to the same clause 110. The object of this amendment is to secure that, when the title to any shares or debentures in the private companies is sold at a court auction or at a sale held by a collector or other like officer, the transmission of the right to the purchaser is not unreasonably withheld or delayed. Where the tax-payer is a member of a private company and the only tangible asset is the shares held by him in the company income tax can be evaded by the simple process of persuading the board of directors of the company to refuse to register the transmission of the right to the shares to the purchasers at the sale held by the revenue authorities for recovery of tax and the Central Board of Revenue have pointed out that such evasions have occurred on a large scale. It is the principal object of this new sub-clause (8) inserted by this amendment to prevent such evasion. The new sub-clause will apply to all sales held by court or by public authorities. In such cases they would have the same right of appeal to the Government as they would have in the case of public companies. At the same time a proviso to the new sub-clause gives power to the Government to enable the existing members of the private company, or such of them as may be interested in the matter to acquire shares or debentures on payment

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either of the price paid by the purchaser at the court or other sale, or such other sum as the Government may consider to be reasonable compensation for the shares and debentures.

I now come to the last amendment and that is number 305 under subclause (4) (f) of clause 124. A charge on stock-in-trade will now require to be registered with a registrar though such a charge does not require registration under section 109 of the existing Act. Whenever more than one such charge has been created by the same company the priorities of the respective creditors are dependent on the doctrine of notice. It has been represented to Government that suitable provision should be made to protect the existing rights of the holders of a charge on stock-in-trade which has been created before the commencement of this Act. The amendment seeks to afford such protection. It is couched in general terms and will preserve all existing priorities.

3 P.M.

Shri Morarka (Ganganagar-Jhunjhunu): I want to speak on my amendment No. 175 to clause 89 which I have just moved. There are two other hon. Members who have moved similar amendments, and they are amendment Nos. 139 and 74. I will briefly explain the purpose of my amendment. Clause 89 is a saving clause. It saves the provisions of clauses 84 to 88 from being applied to certain shares and private companies. In clause 86 we have laid down the voting rights of the equity shareholders and the voting rights of the preference shareholders. For the first time we have laid down now that the preference shareholders would not have absolute voting rights as they used to have hitherto. Now we say that the preference shareholders would have voting rights only in certain contigencies, the contingencies being, either when their own rights are affected or when the dividends remain unpaid. What was the philosophy behind this new provision which after careful consideration, the Bhabha Committee recommended? The Bhabha Committee recommended that preference shareholders should not have unqualified voting rights but their voting rights should be a qualified voting right. Now, in this clause, as it is drafted now, it saves the existing preference shareholders. The principle is accepted that in future the preference shareholders would not have a voting right, but it saves to the extent of the existing preference shares; that is, all the existing preference shares will have a voting right as it is given to those persons under the existing articles. My amendment seeks to do away with this sort of discrimination and distinction. The purpose of my amendment is that whether the preference shares are existing or whether they are going to be issued hereafter, they should not have unqualified voting rights. The voting right should be only in certain contingencies.

The main reasons for the Bhabha Committee to recommend that the preference shareholders should have voting rights only under certain contingencies were these: firstly, these preference shareholders have secured income. The dividend is fixed. They do not have to take any risk and they are assured of the dividend from the company. If the company makes any profit, then, before the ordinary shareholder is given any dividend, the preference shareholder is given the dividend. Similarly, in the event of winding up also, before any amount is paid on the equity shares, the preference shareholders are paid back in full. Therefore, this was the philosophy behind the Bhabha Committee's recommendation, and rightly so, if I may say so with great respect. According to the Bhabha Committee the preference shareholders would always be people who would not like to take any risk and not like to be venture some. If they are given unqualified voting

rights, they may take decisions which may not be in the interests of the company and which may not be in the interests of the equity shareholders. Therefore, they said that the preference shareholders are more like creditors, more like debenture-holders and therefore their voting right should arise only when the dividend is not paid, when the company is not faring well or when the capital structure of the company is being changed so as to affect their rights. If that was the Bhabha Committee's recommendation and if that recommendation is being accepted, I would say with the greatest respect, that that principle applies equally to the existing preference shareholders also. There is no reason why the existing preference shareholders should be treated separately from the preference shareholders who are going to come into being later on.

I would not take more time of the House in quoting authorities in support of the proposition which I make. But few references I may be permitted to give. The first authority on this point is from Palmer's *Company Law Precedents*, 16th Edition. In discussing about the preference shareholders, the author says:

> "Formerly it was not usual to distinguish between the preference shares and the ordinary shares as regards voting. They were all treated as interested alike in the company and given the same right of voting, but for many years past it has been customary to give only qualified voting rights to preference shares. Sometimes preference shareholders are given no right of voting whatsoever at general meetings; but the London Stock Exchange does not generally approve of this. Sometimes the holders are not given any right of voting at general meetings unless on questions specially affecting them—as, for instance, winding up or sale of the undertaking or reduction of capital. Sometimes preference shares are given rights of voting on a modified scale—for example, one vote for every two preference shares against one vote for every ordinary share. In any case the matter is one of great importance, for if the preference shares have full voting rights they may be able to direct the proceedings of the company in a manner opposed to the interests of the ordinary shareholders; they may be in a position, for instance, to elect directors and to control their proceedings, and to restrict the development of the business; and they may undully exercise their powers in their own favour and in a selfish spirit, for the interests of the two classes are very commonly more or less in conflict, the interest of the preference shareholders being to preserve the business on a safe basis sufficient to produce their preference dividend, whereas the interest of the ordinary shareholders is to increase it, and for that purpose to incur some risks, if necessary."

This is what the learned author says, and this was followed by the Bhabha Committee.

Then, another learned author, who is frequently quoted in this House—Mr. Gower—also says that the preference shares are just like a debenture and that the lawyers, who have been discussing this problem for the last 50 years, have come to the conclusion that the preference shares should be treated more in the nature of security holders than in the nature of shareholders. This is what he says:

> "The result is that after lawyers have spent some fifty years trying to teach lay investors that there is a fundamental distinction between Preference shares and debentures, the lawyers themselves have ended up by being largely converted to the layman's original view that both are really "charges" rather than "equities". Today, Preference shares may be expressly created as redeemable and even if they are not, it seems that they may be redeemed at the

[Shri Morarka]

option of the company through the medium of a reduction of capital. And under the canons of construction finally adopted the probability is that they will confer only a right to a fixed return of both dividend and capital. In both respects they closely resemble debentures."

Finally, he says:

"True, they are members of the company, but, as it is usual expressly to deny them voting rights except in special circumstances, in this respect too they do not greatly differ from debenture-holders."

I shall give two more quotations. I do not want to take more time, but those quotations are relevant on this question which I consider as very important. I would quote from an American author, Mr. Levy who has stated his opinion at page 562 of Volume II of his book *Private Corporations and Their Control*. Here is what he says:

"It may lead to awkward consequences if the holders of preference shares have a vote in deciding what the ordinary shareholders shall or shall not receive. For this reason it has become usual, especially in Great Britain and U.S.A. to provide that the preference shares shall carry no voting rights. They may be deprived of a vote once and for all or for so long as they receive dividends. Further there were cases, especially in Germany, where companies mostly very prosperous ones, issued shares with a very low dividend preference; as for example, four percent without further participation and correspondingly with limitation on their quota to the par value of the share in the event of winding up, with a voting preference in the form of a multiple vote. In this way it became possible to secure the control of large corporations by means of small investments."

Now, I shall quote the views of another author whom I regard as a very great authority and who is accepted as such in America—Ballantine. He also says:

"Preference shares are customarily given only on contingent voting rights for directors, which arise in the event of non-payment of dividends for a specified number of dividend periods, in order to give primary control of management to the common shares while all goes well."

Now, I am not saying that on question of principle, whether the preference shareholders should have a right to vote or not. If you feel that they should have a right, let them have a right. My objection is, what is the basis for distinction between the existing preference shareholders and the future preference shareholders? This distinction, if I may say so, is not based on any scientific reasoning or on any proper ground. It is, in a way, arbitrary. The shares issued so far or issued till the date of the passing of this Act will have unqualified voting right but the shares issued thereafter would not have a voting right in this absolute manner. In actual practice also, there may be some difficulty. There may be a company which has got preference shares; the equity shareholders of that company would not know whether these preference shares are issued before or after the commencement of this Act. They would not also know what their rights are with reference to the rights of the preference shareholders. It may be that the equity-shareholders are under the impression that preference shareholders have no voting rights when in fact the preference shareholders do have such rights or *vice versa*.

I must confess that I did raise this point in the Joint Select Committee, but I could not pursuade that committee to accept my views. Therefore, I have taken the liberty of moving my

amendment. I do hope that the House will give serious consideration to my amendment and, if possible, accept it.

Shri Sadhan Gupta (Calcutta South-East): Mr. Deputy-Speaker, I shall confine my remarks to only a few clauses in this group which seem to me to involve certain principles of more or less importance.

Mr. Deputy-Speaker: The hon. Member will kindly stop for a while; let me read out the names of those hon. Members who have sent chits to me giving the numbers of amendments which they would like to be treated as moved: Shri T. S. A. Chettiar, Shri Bansal, Shri Morarka, Shri Tulsidas, Shri G. D. Somani, Shri Thimmaiah, Shri U. M. Trivedi and Shri K. K. Basu.

Shri Kamath: What about my amendments?

Mr. Deputy-Speaker: Why did not the hon. Member pass on a chit to me? He has not cared to conform to the procedure that has been laid. The hon. Member thinks that he can always have an exception made in his case.

Shri Kamath: There is no exception; I did not know.

Mr. Deputy-Speaker: I am not speaking to myself.

Shri Kamath: Next time I will send a chit.

Mr. Deputy-Speaker: The hon. Member can wait till the next group of clauses is taken up and then send the chit.

Shri Kamath: This system is very rigorous. There are not many amendments in my name.

Mr. Deputy-Speaker: I can make no exception.

Shri Sadhan Gupta: Shall I continue?

Mr. Deputy-Speaker: Yes.

Shri Sadhan Gupta: The first clause of importance in this group is clause 84. That, apparently, is restricted only to the definition of classes of shares—preference shares and equity shares. What I object to in clause 84 is this. I find that in this clause there is a permission by way of definition to make dividends free of income-tax or subject to income-tax. We all know that the Taxation Enquiry Commission has set its face against paying dividends free of income-tax, and it is a very correct policy also. The reason is that if you permit dividends to be paid free of income-tax, it means that the small shareholders lose the amount on their shares because a lot of money would go in paying income-tax for the bigger shareholders. It is from this point of view as well as from the point of view of preventing concentration of wealth that the person receiving the dividend should bear his own income-tax and the dividend should not fluctuate with the increase or decrease of the income-tax. What I am worried about is the increase of the income-tax, because as far as we can see, we are likely to increase our taxes and not to decrease our taxes. Therefore, I would very much wish that in clause 84, the particular phrase "which may be either free of or subject to income-tax" is omitted.

I now come to clause 88. This clause provides for the termination of disproportionately excessive voting rights and prescribes a period for the purpose. I do not see why for the termination of such inequitable rights a period of three years should be provided. I should think that a period of one year is sufficient and we need not give the holders of such disproportionate rights and such unconscionable rights, shall we say, any further period for the purpose of keeping their disproportionate rights. There is one other thing in clause 88 concerning which I want to say something. This is regarding the appointment of a managing agent or secretaries and treasurers. We on this side

[Shri Sadhan Gupta]

of the House are against the appointment of managing agents, or secretaries and treasurers at all and so, from that point of view we would wish to delete that particular right. Of course that would be consistent with our opposition to the provisions regarding the managing agency and secretaries and treasurers. Of course, if those provisions remain, then we are in favour of prohibition.

There is another clause which rather perplexes me. It is the first part of clause 89. Clause 89 saves some rights. One of the savings is that the disproportionate voting rights will continue subject to clause 88. Clause 88, as far as I can see, describes the amount of the disproportionate rights which are exercisable, pending their termination. I do not see why another provision should be introduced to save these rights further. I do not pretend to be an expert in company law, but with whatever acumen I have, I have not been able to see the justification of clause 89. As far as I can see, this is going out of the way into saving these disproportionate rights and this may lead to some difficulties. This is giving undue rights to holders of disproportionate voting rights for a period of three years. Therefore, my first impression is that this particular provision should be deleted.

Then, I come to clause 92. Clause 92 makes a provision that the company may pay dividend in proportion to the amount paid up on the shares. There is a clause which entitles the company to accept money in addition to the money paid up on the shares, if the shareholder offers it. The company may accept that money. Having accepted such amount, I do not see why the company should not pay dividend on such amount. Of course, the company may not accept the money even if the shareholder offers it. But when the shareholder offers to pay an amount which is more than what he is required to pay or what he can be forced to pay and when the company has accepted that amount, I do not see why the company should refuse to pay dividend on that amount.

Therefore, I would prefer that in this particular clause, instead of 'may if so authorised by its articles...' the clause should be, 'shall...' that is to say, it should be obligatory on the company to pay dividends on the extra amount which it accepts from the shareholders.

Shri C. D. Deshmukh: Has the hon. Member given an amendment to this effect?

Shri Sadhan Gupta: I did not give any amendment; it is a little late.

Shri K. K. Basu: There is an amendment: No. 448. It is a joint amendment. It was given today. We could not foresee that the whole thing will be coming up.

Shri C. D. Deshmukh: That is all right. I am not raising any point of notice. I just wondered whether I had made a mistake. It was not in my list.

Mr. Deputy-Speaker: Notice of this was given at 1-07 P.M. How can the Government or any hon. Member be expected to know this? Without the permission of the Chair, no notice shall be received. When a matter is being taken up, how can anybody study this?

Shri K. K. Basu: Two hours have elapsed: 3-30 was the scheduled time.

Mr. Deputy-Speaker: I am not going to allow it.

Shri K. K. Basu: The Minister is willing to accept.

Mr. Deputy-Speaker: If the Government accepts, I have no objection. Even otherwise the Members should know what is there in it: a lion or tiger or a lamb. It is rather difficult.

Shri Sadhan Gupta: It is not a very complicated one.

Clause 93 enables companies to increase the share capital. It is understandable that in a *laissez-faire* economy a company may do whatever it likes with its capital. The company is the sole judge of what capital it is to have and whether it should increase it or reduce it and all that. But, we are

pledge not to a *laissez-faire* economy but to a planned economy and to a socialistic pattern of society as it has been repeatedly said. In this case, when there is an increase of share capital, there are various considerations other than the desire of the shareholders, and one of the very important considerations is the effect of the increase on the economic structure and on the general pattern of society.

[PANDIT THAKUR DAS BHARGAVA *in the Chair.*]

It may not be desirable that a particular company should expand, and on the other hand, it may be desirable that other industries should expand. We have been advocating on this side of the House some scheme by which the surplus capital of any company may be pooled for investment in more desirable channels under the direction of the State, some kind of an investment pool for the purpose of channelising the surplus capital of one industry to another. For this purpose, I submit that this increase of share capital when it is made, must be subject to the approval of the Central Government and the Central Government, of course, would give its approval after taking into consideration the desirability of expanding that particular industry or of diverting capital to some other industry.

Lastly, I have something to say on clause 106. Clause 106 gives the dissentient shareholders some protection against the variation of the rights of a particular class of shareholders. It is said that if not less than 10 per cent of the shareholders apply to the court for the purpose of cancelling the variation, the court may cancel it or confirm it. It is also said that they must do it within 21 days. I am objecting to both the percentage and to the number of days allowed. I think the percentage is too high and the number of days allowed is too few. The reason is this. We know that in India,....

Shri C. D. Deshmukh: Are there also amendments to this effect?

Shri Sadhan Gupta: I have got amendments.

Shri C. D. Deshmukh: Are they admitted or received?

Mr. Chairman: No new amendments now.

Shri Sadhan Gupta: I can make suggestions.

Shri C. D. Deshmukh: The suggestions are, in fact, amendments.

Shri S. S. More: Can we not criticise?

Shri C. D. Deshmukh: Can criticise? either for dropping a clause or retaining it. But, an amendment has to be given.

Mr. Chairman: Comments on clauses are always allowed.

Shri S. S. More: In the course of the discussion, can we not make constructive suggestions...

Shri K. K. Basu: In the course of the discussion, he can make suggestions.

Shri Sadhan Gupta: What I was suggesting is that the percentage should be reduced to 5, and 7 more days should be allowed. The reason is this. It has been found that, with the keenest canvassing, only 50 per cent of the voting rights can be gathered together. That is with the keenest canvassing. In the variation of the rights of the shareholders or a class of them, it may be that the canvassing will not be keen and very few of the shareholders may attend. In any case, where the shareholders are not in a position and are not in the habit of taking interest in the company's affairs, it is very difficult to get 10 per cent of the members together and it should be enough to get 5 per cent of the members to apply. When a matter is to be decided by a court, there is no harm in reducing the percentage.

Regarding the number of days, if you insist on 10 per cent or 5 per cent, you have to give the time to get the different shareholders together and make them apply together. Twenty-one days may be very little. For example, the share-

[Shri Sadhan Gupta]

holder who wants to move, may not have been present at the meeting in which the question was decided and he may come to know of it much later. In that case, he has to write to the shareholders or perhaps go about if it is convenient and get together other shareholders to join with him. Therefore, even if it was 5 per cent. seven days more should be allowed. That argument is very much strengthened if 10 per cent is fixed as the minimum limit. Therefore, I have made these suggestions on this group of clauses.

Shri Kamath: On a point of order and procedure, may I seek on information from you, Sir, whether there is any likely prospect of the Deputy-Speaker coming back to the Chair or will you continue till the end, because the point relates to a ruling given by the Deputy-Speaker.

Mr. Chairman: I am sorry, I cannot give any information; I do not know if the Deputy-Speaker is coming back.

Shri Kamath: Or I shall raise the point of order; you may dispose of it.

Mr. Chairman: If the hon. Member wants to raise a point on which the Deputy-Speaker has already given a ruling, it would be better if he can raise it when he is in the Chair.

Shri Kamath: I shall sit on.

Shri S. S. More: In that case, all these rulings become personal.

Mr. Chairman: Is that a point for objection? I know my duty and I will settle every point that arises. As the same time,...

Shri S. S. More: May I make a submission? We have to interpret the rules. We can make our own submissions for the acceptance or ruling of the Chair.

Whosoever is in the Chair, if I make a submission...

Mr. Chairman: I do not want to be advised in a matter like this. I know my duty very well.

Shri S. S. More: I am not trying to advise you.

Mr. Chairman: At the same time, it is not a point of order at all, and I have already requested the hon. Member to raise the matter later.

Shri S. S. More: My objection is .....

Mr. Chairman: Is it a point of order or not? I am distinctly putting the question to the hon. Member.

Shri S. S. More: My submission is...

Mr. Chairman: There is no question of submission.

Shri S. S. More: You are not listening to me.

Mr. Chairman: Order, order. I will not listen to him.

Shri S. S. More: With due deference, I want to submit that the ruling...

Mr. Chairman: I do not allow him to submit anything at this stage. It does not relate to any point of order. What is the point of order that the Member is raising?

Shri S. S. More: Will you kindly give me some patient hearing?

Mr. Chairman: There is no question of patient hearing. Unless there is any point of order, I cannot allow any submission.

Shri S. S. More: Unless you allow me to make a point...

Mr. Chairman: I wanted to know from the hon. Member if there was any point of order. If he says there is a point of order, I will certainly allow him.

Shri S. S. More: So, I will have to repeat that *mantram*.

Mr. Chairman: If there is no point of order, I do not wish to allow.

Shri Bansal: My amendment No. 441 to clause 85 says:

Page 49, after line 12, add:

"provided that Government shall have power to authorise the issue of any other kind of share capital in special circumstances".

This relates to the issue of share capital. Under the Bill only two kinds of share capital will be allowed to be issued in future.

Some Hon. Members: We have not got the amendment.

Shri Bansal: It was circulated. It was given notice of in the morning at 10.30 and it has been circulated.

Mr. Chairman: The hon. Member fully knows that if notice is given today, unless the Government agrees that amendment is usually not allowed.

Shri C. D. Deshmukh: We have not received a copy. I do not know.

Mr. Chairman: Copy may be received now, but unless the Government is agreeable, the practice is that it will not be allowed to be moved.

Shri Bansal: It was given at the Notice Office at 10.30 and it was received by the Notice Office.

Mr. Chairman: It should have been given yesterday.

Shri Bansal: I am in the hands of the House.

Mr. Chairman: Then, the hon. Member does not want to proceed?

Shri Bansal: I want to proceed.

Mr. Chairman: The point is this. If the notice is not given in time, the amendment cannot be allowed, but at the same time if he wants to speak on any of the clauses; I will allow him to speak.

Shri T. S. A. Chettiar (Tiruppur): But not on that amendment.

Shri Gadgil (Poona Central): This is somewhat important. It would be only fair to the House if we had received a copy.

Mr. Chairman: The copy would have been necessary if I had allowed the amendment. I am not allowing it to be moved.

Shri Gadgil: He can say what he wants to say. Speech cannot be banned.

Shri Bansal: First, I wanted to move my own amendment.

Mr. Chairman: The amendment cannot be allowed to be moved, I am sorry.

Shri K. K. Basu: What about suggestion?

Shri Bansal: I can make my suggestion which arises out of the speech made by my hon. friend Shri Asoka Mehta when he spoke on the Bill as reported by the Joint Committee. He made a suggestion that Government should take power to authorise the issue of different types of share capital, i.e., other than equity and preference share capital, and my small amendment only gave Government power to allow this in special circumstances to certain companies, and it will be applicable more to Government companies to issue other types of shares also. I would very humbly request the hon. Finance Minister to give consideration to my suggestion.

Then, I come to the amendment by my friend Shri Morarka. I oppose that amendment. Shri Morarka referred to the report of the Company Law Committee. I am also referring to that very report. On page 37, sub-para (v) the Committee said:

"as regards existing companies which have issued any shares, by whatever named called, conferring on the holders thereof voting rights more favourable than those which we propose should be conferred in future on the holders of equity capital.....Act, reduce the voting rights in respect of the shares first mentioned so as to bring them into conformity with the voting rights attached to such equity shares under sub-section (1) of section 86."

Shri Morarka: My hon. friend has not understood my point. I am not against cutting down the disproportionate voting rights. With that I have got no dispute. Clause 89 says that so far as the existing preference shares are concerned, they would not be touched at all. There is no question of disproportionate right in that case at all. Clause 89 will save clause 88. Clause 89 does not apply to clause 88.

Shri Bansal: That is exactly my point. Clause 89 does not apply to clause 88. While Shri Morarka felt that clause 89 will save clause 88. It does not save. Clause 88 remains as it is, and that is exactly my point. The Bill, therefore, carries out completely the recommendations of the Company Law Committee, and that is why I oppose his amendment. That is my brief point.

Shri T. S. A. Chettiar: I have heard my hon. friend Shri Bansal's arguments. My amendment No. 74 is just the same as Shri Morarka's.

These clauses 81 to 89 are basic ones because they regulate the formation of the company. Previously there were many kinds of shares. There was equity capital and preference capital, and there was also what was called deferred shares, and a good lot of abuses existed because of difference in voting rights. As a matter of fact, the Company Law Committee in page 35 of their report have very clearly pointed out the problems before them. They have said:

> "Some witnesses appearing before us commented adversely on three practices— (a) the conferment of voting rights on preference share-holders in the same way and on the same terms as for ordinary share-holders, (b) the absolute denial of voting rights to preference shareholders and (c) the more recent practice of issuing deferred shares with disproportionate voting rights which grew up rapidly since the outbreak of World War II."

I have heard there are companies in which certain gentlemen have Rs. 3 lakhs and Rs. 50,000 worth of one rupee deferred shares and each share of one rupee is equal to Rs. 100 of the other shares, and it requires no argument to be adduced in this House that these disproportionate voting rights are the bane of company administration till now. The Company Law Committee have also stated that some people wanted to explain away the existence of the deferred shares. Later on in their report, they say that these deferred shares are not good, that these disproportionate rights are not good. What these clauses have done is just to put down in legislation what the Company Law Committee has recommended.

We recognise two kinds of shares, and that is equity and preference capital. And later, when we come to clause 88 we have also accepted the recommendations of the Company Law Committee and three years have been given to the companies to adjust themselves, to abolish deferred shares, the disproportionate voting rights and to fall in line with the provisions of the Companies Act. During the transitional period they have laid down certain conditions as to how these disproportionate voting rights must be exercised. Sub-clause 2) of clause 83 reads:

> "...(a) any resolution relating to the appointment or re-appointment of a managing agent or secretaries and treasurers or to any variation in the terms of an agreement between the company and its managing agent or secretaries and treasurers;
>
> (b) any resolution relating to the appointment of buying or selling agents;
>
> (c) any resolution relating to the grant of a loan or to the giving of a guarantee or any other financial assistance, to any other body..."

On these resolutions, even during the transitional period, there should not be disproportionate voting rights. There is an amendment moved to this clause by my hon. friend Shri K. P. Tripathi and three others, namely amendment No. 394. Amendment No. 394 says that an addition should be made to sub-clause (2) of clause 88. That sub-clause now provides for three resolutions on which there should not be recognised any disproportionate voting rights. A fourth category has been suggested by my hon. friend Shri K. P. Tripathi, and that is 'any resolution relating to the election of a director'. In fact, that is the most fundamental thing on which there should not be any disproportionate voting rights. Supposing these disproportionate voting rights are being held over for a period of three years, it may happen that a director is elected yesterday and he may continue for three terms of three years each and in this way he may go on for nine years. So to my mind, the resolution relating to the election of a director is also one of the most important matters where disproportionate voting rights should not be permitted, even in these three years. So, I feel that this amendment No. 394 should be accepted, and this resolution also should be added to clause 88 (2), if we are to plug the loopholes even in these three years.

It is true that the Company Law Committee have not found fit to include this resolution. They have mentioned only the three resolutions that we now find in clause 88 (2). But still I would consider that this is an important amendment which should be accepted. I am not one of those who believed that the company Law Committee's report is the end of all wisdom. Certainly, we take their suggestions into consideration with great respect.

I do not think that the interpretation which my hon. friend Shri Bansal has given in regard to clause 89 (a) is correct, because nowhere have the Company Law Committee said that the preference shareholders must be maintained with their present voting rights. They have never said it anywhere, and no suggestion has been made also to that effect. The fact that they have not specifically said anything in this regard should not be taken to mean that, because they have said very clearly that disproportionate voting rights of all kinds must be abolished, and therefore, it follows that this must also be abolished. I do not see any reason why we should have this saving clause under clause 89(a). This particular sub-clause saves the differential voting rights of the preference shareholders. That means that eternally the differential voting rights preference shareholders in companies registered before the commencement of the Act will be maintained. To my mind, that is not a very good state of affairs.

People talk about the sanctity of contract. But when we have interfered with the sanctity of the disproportionate voting rights of all other people including deferred shareholders who exercised the greatest amount of voting rights—a one rupee deferred shareholder used to exercise voting rights going with hundred rupee shares—and we have done away with that, I do not see any reason why we should retain the disproportionate rights of only preference shareholders. I do not see there is any case for doing so. If the Joint Committee have failed to do justice to that point of view, I think this House must correct that. I hope, therefore, that amendment No. 74 as moved by me, which is the same as that moved by my hon. friend Shri Morarka, will be accepted by the House.

Now, I come to clause 110. This clause deals with power to refuse registration and appeal against refusals. Whenever a shareholder wants his transfer to be accepted, but for reasons known to the directors, they refuse that transfer, then there is an appeal provided for the shareholder to Government. I would like to know what will happen to cases of inheritance, where persons have got the transfer by devolution or through courts. In such cases, I imagine, no appeal to Government should be neces-

[Shri T. S. A. Chettiar]

sary, and that the mere fact of a court judgment—it may be a district court or a sub-court or a munsif's court to which the party may have gone—would be sufficient. If the court judgment says that a particular share belongs to a particular person, then in my opinion no more appeal need be made to Government, but the court judgment should be acted upon by the company. I hope that is the interpretation that is to be borne upon clause 110, even taking it in conjunction with other clauses. I want Government to examine this point of view; and I hope that my understanding of these clauses is correct.

Shri C. C. Shah: Amongst the group of clause which we are considering now, namely clauses 81—144, the most important clauses in my opinion are clauses 84—89 and 110. Clauses 84—89 deal with disproportionate voting rights, and the rights of preference and deferred shareholders. These are entirely new clauses, which we do not find either in the existing company law or in the corresponding English law. The necessity for these clauses has arisen from the abuse which we have noticed from the Company Law Committee report, and which my hon. friend Shri T. S. A. Chettiar just now referred to.

Those in management issue various classes of shares with two objects. Sometimes, a preference share is issued with certain extra rights with a view to attract capital; and it may be a legitimate purpose to do so. But more often than not, deferred or preference shares are issued not with a view to attract capital, but with a view to obtain control of the management of the company, without paying the proportionate amount of share capital which a control would require to be paid. It is the second kind of abuse which has necessitated this kind of clauses.

As regards preference shares, the position of the preference shareholder is a little anomalous. He is neither a creditor, because the rights of a creditor are more than those of a preference shareholder, nor is he an ordinary shareholder. He is a shareholder, because he does risk his capital. But the risk to his capital as also to his income is qualified or limited. As regards preference shareholder, the practice used to be at one time that full rights were given to him along with ordinary shareholders of all kinds. Another time, we found the practice of complete denial of rights to preference shareholders of any voting at all on any subject or at any time. The healthier practice in recent times has been to give them qualified rights of voting on particular occasions, when their dividends are in arrears of their interests are likely to be affected.

Now, a preference shareholder, as I said, is undoubtedly entitled to have some voice in the management because it may be that the ordinary shareholders by their imprudent management or by risky adventures which they may go into may even wipe out the capital of the preference shareholders. Therefore, the preference shareholder cannot altogether be denied the right of having some voice in the management.

It is very difficult to adjust or balance between the rights of perference shareholders and the rights of equity shareholders. The preference share-holder is at all times in a conservative frame of mind, and does not like to take any risk to his capital and therefore, he acts as a brake upon any expansion of the particular industry in which he has put his capital. On the contrary, the equity shareholder desires development of the industry for which he has put his money, because he wants higher returns for his capital. In this delicate position between the two classes of shareholders, the healthier practice in recent times has been, for all good managements, to give the prefererce shareholders qualified rights of voting. And these provisions which we

have now embodied in this Bill recognise that healthier practice, and give legislative sanction to it.

I refer now to the case of deferred shareholders. As I said, this is a practice which has arisen during the war. I can give you numerous instances of persons who without running any substantial risk of their capital have acquired an overwhelming control of the management of the company. I can give you a few of such instances, because it is very interesting to know how they are. My hon. friend Shri T. S. A. Chettiar referred to a company in which there are deferred shares of the value of Rs. 3,50,000 of Re. 1 each, and all those shares have been taken by the management.

In the company, there are ordinary shares of Rs. 10 each, and there are preference shares of Rs. 100 each and each shareholder has an equal vote. So that a deferred shareholder who has paid Re. 1 has equal vote with a preference shareholder who has paid Rs. 100.

Shri Gadgil: Democracy with a vengeance.

Shri C. C. Shah: In this manner, the capital structure has been so devised as to enable the managing agents, with the help of the solid voting power carried by the large block of 3,50,000 deferred shares, to continue to control the undertaking even without holding ordinary shares, if so desired.

There is another company, for example, in which there are 20,000 deferred shares of Rs. 10 each, 10,000 ordinary shares and 8,000 preference shares of Rs. 100 each. Out of the deferred share, 10,000 have been allotted to the managing agents in consideration of the sale of the undertaking to the company by them. Thus the managing agents, without paying anything in cash, gained the control of the company. The Bombay shareholders memorandum has given numerous and very interesting examples of the manner in which those in management gain for themselves disproportionate voting rights. Now, clause 88 seeks to do away with those disproportionate voting rights, but a period of three years is given to them to bring them on a par with the provisions made in clause 86. But there are certain matters of vital importance which arise immediately; and on which these disproportionate voting rights cannot be permitted to be exercised even for a period of three years and, therefore, it is provided in sub-clause (2) that in regard to the matters therein mentioned, they will not continue to exercise those voting rights even during that period. But there is an amendment, No. 394, which is a very important amendment, which says that they will not exercise those disproportionate voting rights even on any resolution relating to the election of directors. If we do not introduce that amendment, the result will be that for about six years, or possibly nine years—because there is retirement of one-third directors every year—those deferred shareholders who have disproportionate voting rights will continue to have their nominees on the board by exercise of those disproportionate voting rights, I , therefore, submit that that amendment is a matter of equally vital importance as the appointment of buying and selling agents or appointment of managing agents or scretaries and treasurers. I hope Government will accept that amendment.

Shri C. D. Deshmukh: We are going to accept it.

Shri C. C. Shah: I am glad to learn that (*Interruptions.*)

As regards clause 89, which is a saving clause, my friend, Shri Morarka, has very ably explained the amendments which he has moved to it. But there are two things about it. Preference or deferred shareholders have two things: one, the disproportionate voting rights which they have, and secondly, the subjects on which they can vote. As regards the savings

[Shri C. C. Shah]

which we have made, so far as disproporationate voting rights are concerned, whether it is preference shareholders or deferred shareholders, clause 88 is the overriding clause which removes those rights for existing as well as furture shareholders. But so far as the rights as to the subject-matter on which preference shareholders can vote are concerned, this clause saves the existing situation and, therefore, if in any articles preference shareholders are at present permitted to vote on matters other than arrears of their dividend or where their interests are affected, those rights continue. The second saving clause is that if there are any rights attached to those shareholders, namely, preference and deferred shareholders, which are rights relating to dividend, capital or otherwise, those rights are saved. That is to say, if deferred shareholders are paid higher dividends irrespective of their shareholding or the amount of their shareholding or if they have a right in winding up, in repayment of capital to be paid their capital in preference to any other shareholders, such kinds of rights are being saved for the existing shareholders. Arguments can be advanced both ways, and forcibly. On the one side, it can be said that preference shareholders have risked their capital, knowing that these are the terms on which they are enabled to risk their capital; on the other hand, it can be said—and logically and rightly, in my opinion—that if you do away with those rights for furture shareholders, there can be no justification to continue them for the existing shareholders either. It is for the Government to consider which course of action they would like to follow under these circumstances. The recommendations of the Bhabha Committee—I have carefully scrutinised them—are capable of both meanings.

Shri Gadgil: That is the trouble.

Shri Bansal: I am glad he says that.

Shri N. P. Nathwani: Only one meaning.

Shri C. C. Shah: Of course, when my friend, Shri N. P. Nathwani, says 'only one meaning'—I am only a solicitor; he is an advocate; and therefore, one would accept the advice of an advocate in preference to that of a solicitor—I prefer to go by his opinion.

Shri T. S. A. Chettiar: Even in spite of that, we can do it.

Shri C. C. Shah: I agree with Shri T. S. A. Chettiar. Even if the Bhabha Committee had said something to the contrary, we can have our decision. We have done so in several cases, when we found that the recommendations of the Bhabha Committee did not go to the length that they should. For example, we have included the terms relatives in the definition of 'associate'—which they did not—and we have differed from their recommendation where it is ambiguous. Therefore, I would request the hon. Finance Minister to give his anxious consideration to the arguments so ably adduced by my friend, Shri Morarka.

Then I will come to clause 92. I am making a passing reference to it because an hon. Member opposite asked whether, when the member of a company paid uncalled capital in advance the company must have obligation to pay dividend on the uncalled capital, which the member has paid without the capital being called. I do not think that is fair, because the company has not called that capital. Therefore, it is wisely left to the articles to provide by contract whether if a member in advance pays uncalled capital, the company should pay dividend on it. That is the existing law—sub-section (3) of section 49 Therefore, I submit that there is no reason to amend clause 92.

Now, I come to a very important clause, clause 110, which has given the right of appeal against, refusal to transfer shares. That, in my opinion, is a very important clause. The legal position at present is that where the management or the board of directors refuse to transfer shares, the shareholder has no remedy, unless he proves that the refusal is *mala fide*. It is always very difficult to prove *mala fides* of any board of directors. Particularly, judicial decisions have said that where the board gives no reasons for its refusal, the court will presume that it has acted *bona fide* in the interests of the company, and in the absence of any reasons by the board, the court will not infer any *mala fide;* when no reasons are given, the court will not ordinarily interfere with the absolute discretion vested in the board. Therefore, the position is that even when a transferee has purchased the shares for full consideration and goes for transfer, if the board either arbitrarily or capriciously refuses to recognise the transfer, he has in fact no remedy. Now, that has led to several abuses. I can understand that in some cases there may be a good reason or justification for the board to refuse to recognise the transfer The person may be an undersirable person. It may be that that person acquires those shares....

Shri U. M. Trivedi: How undesirable?

Shri C. C. Shah: I need not go into the motives of people. I know some cases in which this has happened. It may be that that person acquires those shares with ulterior motives. There may be a very good company in the hands of a first-class management, and some speculator desiring to get control of that company because of its large reserves or for any other reason, may corner the shares of that company at any price, and then remove the good management and get control of that company for these reserves. Such cases have occurred, recently. Therefore, all that we do is to give a right of appeal to the Government. The Government will consider the matter very carefully whether the refusal of the management to transfer is on good grounds. That is why we have also said that any inquiry held by the Government shall be confidential, because the management may not like to disclose all those reasons publicly for its refusal—it may not be in the public interest even that such reasons should be disclosed.

Shri U. M. Trivedi: That is all the more reason why that man should go to the High Court in that case.

4 P.M.

Shri C. C. Shah: Well, my hon. friend is very much enamoured of High Courts. I have also a legal practice of 30 years....

Shri Gadgil: Don't say what you did there.

Shri C. C. Shah: I am not going to say that. But, there are occasions when a judicial enquiry cannot do certain things which can be done only by an executive order or a departmental enquiry. I do concede that I have the highest respect for the judiciary and I do concede that ordinarily speaking I would certainly prefer to appeal to the High Court. If the management gave reasons for their refusal, then, certainly, the man can easily go to the High Court. But, my hon. friend knows, as well as I do, that deliberately the managements do not give reasons for their refusal to avoid or prevent people from going to the High Court and in several cases that I know of where transfers have been refused they have an absolute discretion and the articles provide that the management shall not be bound to give any reason for its refusal.

Shri U. M. Trivedi: I may put a question to my hon. friend if he is prepared to answer. I may be a very undesirable person for him and he may be equally undesirable for me.

[Shri U. M. Trivedi]

A particular party may be undesirable for you and for that party you may be very undesirable and that cannot be an excuse for saying that it should be hushed up and that the decision should not be taken before a court of law and all the more so when we have got provisions of article 226 of the Constitution. We should also see that the man should get natural justice. Why not allow him to go to High Court?

Shri C. C. Shah: In a matter of this nature to go to the High Court would mean taking 6 or 7 years. A transaction in the nature of transfer of shares cannot be permitted to be delayed for years together. It is a matter which requires expeditious and speedy decision. A man may go to the High Court or the Supreme Court; the litigation may drag on for years and years on end.

Shri Altekar (North Satara): Besides, is it not a question of policy also?

Shri C. C. Shah: It may also be a question of policy to a certain extent. If my hon. friend has no confidence in Government then I have no argument with him. But, we have given so many powers to the Government (*Interruption*). The whole basis of the powers that we have given to the Government is that we have confidence in the Government and, as my hon. friend, Shri Altekar points out, and rightly too, this may become sometime a matter of policy, whether the Government would permit a certain kind of transfers or not, when a speculator for reasons other than the industrial development of the country, for ulterior motives, has cornered shares in a certain company. I know, in an Insurance Company—and my hon. friend Shri Tulsidas Kilachand knows it very well—how a share whose value was Rs. 200 was purchased for Rs. 2,200—and the purchasers were even prepared to pay a higher price—and the management refused to transfer the shares for very good reasons. The litigation dragged on for years and years. Therefore, I submit that the provision which we have made in clause 110, while it is wholesome in the sense that it protects the interests of the shareholders, it is also expedient in the sense that it would make for speedy decision at a level at which it should be made.

My hon. friend, Shri Tulsidas Kilachand will give his reasons for the amendments which he has moved and I do not want to anticipate him. He wants to go to the High Court and he wants the High Court wherever we have put the Central Government. The usual reasons which I have advanced against my hon. friend will be advanced with great advocacy because he is as good an advocate of his case as I am of my case. I support clause 110, with Government amendments.

Mr. Chairman: The following are the amendments to clauses 81 to 144 of the Companies Bill, which the hon. Members have intimated to be moved subject to their being otherwise admissible:

Clause No.	*Amendment Nos.*
84	299
86	300, 301, 302, 303, 392
87	174
88	394
89	74, 175, (same as 74), 176
93	115, 116
110	268, 269, 396, 270, 271, 272, 117, 273, 179, 180, 274, 275 181, 276, 182, 277, 278, 183, 279, 184, 185, 304.
112	118
139	188
144	305

Shri Morarka: Has amendment No. 175 been added?

Mr. Chairman: 175 and 74 are the same.

Shri C. D. Deshmukh: In this new list amendments Nos. 444, 445, 446 etc. are not moved.

Mr. Chairman: They were not allowed.

Clause 84— (*Two kinds of Share-capital*)

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

Page 48, sub-clause (1), line 24 and lines 29 and 30,

In paragraph (b) *after* the words "winding up", in both the places where they occur, *insert* the words "or repayment of capital."

Clause 86— (*Voting rights*)

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

Page 49,

(1) In lines 13 and 14, *for* the words "Sections 87 and 88" *substitute* the words "Section 88".

(2) Page 49, line 28,

In the *Explanation* to sub-clause (2) (a), *before* the word "reduction," *insert* the words "repayment or"

(3) Page 49-50, *For* the existing Explanation to sub-clause 2(b), *substitute* the following:

"*Explanation*—For the purposes of this clause, dividend shall be deemed to be due on preference shares in respect of any period whether a dividend has been declared by the company on such shares for such period or not—

(a) on the last day specified for the payment of such dividend for such period, in the articles or other instrument executed by the company in that behalf; or

(b) in case no day is so specified, on the day immediately following such period."

(4) Page 50, lines 4 to 11,

Delete Explanation II to clause 86 (2) (b).

Shri N. P. Nathwani: I beg to move:

Page 50, lines 16 to 18,

for "be in the same proportion as the capital paid up in respect of the preference share bears to the total paid up equity capital of the company" *substitute*

"be the same as it would be if such preference share capital were equity share capital"

Clause 87— (*prohibition of issue of shares etc.*)

Shri Tulsidas: I beg to move:

Page 50, lines 22 and 23

omit "or rights in the company as to dividend capital or otherwise."

Clause 88— (*Termination of disproportionately excessive voting rights etc.*)

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

Page 50

after line 45, *insert*:

"(aa) any resolution relating to the election of a director;"

Clause 89— (*Savings*)

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

Page 51

omit lines 27 to 30.

Shri N. P. Nathwani: I beg to move:

"Page 51, *omit* lines 27 to 30."

Shri Tulsidas: I beg to move:

"Page 51,—

(i) line 32, *after* "company" *add* "or"; and

(ii) *after* line 22, *add*:

"(c) apply to a public company or a subsidiary of a public company, which is not managed by a managing agent or secretaries and treasurers."

Clause 93— (*Power of limited company etc.*)

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

(1) Page 52, line 32,

add at the end:

"except the exercise of the power under clause (e) of sub-section (1)."

(2) Page 52, *omit* lines 33 to 35,

Clause 110— (*Power to refuse registration.*)

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

(1) Page 59, sub-clause (1),

in line 39 *for* "sections 107 and 109" *substitute* "sections 107, 108 and 109"

(2) Page 59, sub-clause (1),

in line 40 *after* the words "refuse to register the transfer of" *insert* the words, "or the transmission by operation of law of the right to,"

Shri Jhunjhunwala: I beg to move:

Page 59, *after* line 42, *add*:

"Provided however that before refusing any transfer the company shall obtain the approval of the Central Government for such refusal by writing to the Government stating their reasons for refusing to transfer; and if the Government is satisfied that the transfer shall not be in the interest of the proper working of the company the Government shall give its approval and on receiving such approval the company shall write to the transferor and the transferee refusing to transfer the shares giving its reasons for such refusal."

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

(1) Page 59, sub-clause (2), in line 44, *after* the words any such transfer," *insert* "or transmission of right."

(2) Page 59, sub-clause (2), in line 45, *after* the words "the instrument of transfer." *insert* the words, "or the intimation of such transmission, as the case may be,"

(3) Page 59, sub-clause (2),

in line 47, *after* the word "transferor" *insert* the words "or to the person giving intimation of such transmission, as the case may be."

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

Page 59, line 47,

add at the end;

"and giving its reasons therefore."

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

Page 60, sub-clause (3),

in line 5, *after* the word "transferee" *insert* the words "or the person who gave intimation of the transmission by operation of law, as the case may be,".

Shri Tulsidas: I beg to move:

(1) Page 60, line 7,

after "a public company" *insert* "and where the transfer relates to a class of shares which are fully paid up"

(2) Page 60, line 7,

for "the Central Government" *substitute* "the High Court."

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

(1) Page 60, sub-clause (3),

in lines 8 and 10, *after* the word "transfer" *insert* the words "or transmission."

(2) Page 60, sub-clause (4),

in line 12, *omit* the words "by the transferor or transferee."

Shri Tulsidas: I beg to move:

Page 60, lines 12 and 13,

for "the Central Government" *substitute* "the High Court."

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

Page 60, sub-clause(4),

In line 15, *after* the word "transfer" *omit* the coma and *insert* the words "or transmission."

Shri Tulsidas: I beg to move:

Page 60, line 20.

for "The Central Government" *substitute* "The High Court."

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

(1) Page 60, sub-clause (5),

In line 21, *after* the words "to the company," *insert* "and also to."

(2) Page 60, sub-clause (5)

In lines 21 and 22, *after* the words "transferor and the transferee," *insert* the words "or, as the case may require, to the person giving intimation of the transmission by operation of law and the previous owner, if any,"

Shri Tulsidas: I beg to move:

Page 60, line 23, *omit* "in writing."

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

Page 60, sub-clause (5)

In line 24, *after* the word "transfer" *insert* the words "or transmission".

Shri Tulsidas: I beg to move:

(1) Page 60, line 27

for "The Central Government" *substitute* "The High Court."

(2) Page 60, line 31—

after "shall be" *insert* "heard in Camera and shall be".

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

"Page 60, new sub-clause (8),

after sub-clause (7), *add* the following sub-clause:

"(8) In the case of a private company which is not a subsidiary of a public company, where the right to any shares or interest of a member in, or debentures of, the company, is transmitted by a sale thereof held by a Court or other public authority, the provisions of sub-sections (3) to (7) shall apply as if the company were a public company; provided that the Central Government may, in lieu of an order under sub-section (5), pass an order directing the company to register the transmission of the right unless any member or members of the company specified in the order acquire the right aforesaid within such time as may be allowed for the purpose by the order, on payment to the purchaser of the price paid by him therefor or such other sum as the Central Government may determine to be a reasonable compensation for the right in all the circumstances of the case."

Clause 112— (*Limitation of time etc.*)

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

Page 61, line 34

after "sub-section (1)." *insert* "subject to the provisions of sub-section (3) hereof."

Clause 139— (*Copy of memorandum etc.*)

Shri Tulsidas: I beg to move:

Page 71, line 30 *omit* "if so required."

Clause 144— (*Application of Part etc.*)

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

Page 73, after line 18,

insert the following paragraph as a sub-paragraph of this clause:

"Nothing contained in this section shall be deemed to affect the relative priorities as they existed immediately before the commencement of this Act, as between charges on the same property."

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

Shri Gadgil: It is very difficult to say what exactly is the correct interpretation of the relevant recommendations of the Bhabha Committee so far as proportional rights of voting are concerned. I think clause 89 should stand as it is. May I suggest that as the whole spirit is to limit the evil in terms of time, instead of the words 'within a period of three years' the Finance Minister may consider 'within a period of one year.' In that case, just as he has provided three years or the 15th August, 1960,

[Shri Gadgil]

whichever is earlier, in the same way it will be approximately coming to that. I would like him to consider whether the word 'three' should not be substituted by the word 'one'.

Shri Tulsidas: I would like to deal with my amendments to clauses 87 and 89, amendments Nos. 174 and 176.

I fully appreciate the feeling of a number of speakers about these types of shares being abused. I would like the hon. Minister to consider certain aspects which I would like to put before him, whether the suggestion which I have made would be at least in the interests of the small new entrepreneurs. Under the Bill, the issue of shares carrying disproportionate rights of voting, dividend and capital and other matters is not provided for. Such a provision does not exist in the present Act nor in the U. K. Act nor in any Act of any country, so far as I know. Such a provision was recommended by the Bhabha Committee. The question is the prevention of minority control of companies. This argument will apply only to shares carrying proportionate voting rights and would be irrelevant to the kind of shares carrying disproportionate rights of dividends, capital and other matters. Besides the problem of voting right, there is the problem of dividend and capital rights. Sometimes a company may be up to the neck in debt and its shares may be quoted in the market at half or even less than half their paid-up value. I would like the hon. Minister to hear me on this point and consider this aspect of the problem. In the case of such a company it will not be possible to raise equity or preference capital in the market.—I am not referring to the voting right of shares, but I am only on the question pertaining to dividend and capital—especially when it is realised that under clause 78, shares are not allowed to be issued at a discount exceeding ten per cent, except with the Government sanction. The only way left would be to issue shares with differential rights on the dividend. This might, in certain cases, be the only way to save the company as nobody would be willing to take up a fresh issue of shares....

Shri C. C. Shah: Preference shares can be issued always.

Shri Tulsidas: But if the company has got debt up to the neck and if they want the company to function, is it possible for the company to raise any capital? Supposing a company is losing and its share value is 50 per cent, then it is not possible, in any capital market, to float even preference shares. I am not referring to voting rights, but only to dividend and capital rights. What is essential is that an amount of freedom or discretion should be left to promoters and directors in the matter of rights attaching to shares, and a flexibility should be introduced in law in this respect. The corporate form of organisation has to compete with other forms of organisation in attracting capital and if the hands of the company promoters and directors are fettered by such rigid provisions, the growth of the corporate sector will be retarded. I would like you first to realise that the rights attaching to shares vary with the state of financial requirements and the state of the company needing capital. If the promoters or directors are unable to place shares on the market, which satisfy its needs, many issues are likely to fail. After all, if shares are allowed to carry disproportionate rights as to dividend or capital, it is not likely to lead to minority control of a company. There is no voting right. We are really on the question clause 87. If there is a preferential right with regard to dividend and capital, there is no question of any minority control of the company. He gets preference only with regard to dividend and capital. The main reason adduced by the

Bhabha Committee in favour of their recommendation is the question of voting right. My amendment is merely with regard to dividend and capital.

Shri C. D. Deshmukh: Would they not be preference shares then?

Shri Tulsidas: It may be a question of capital right. It may be a question of getting the money at the time of winding up, and they may be given a better right than even a preference shareholder.

Shri C. D. Deshmukh: Whatever is not equity share is preference share, under the definition.

Shri Tulsidas: I am saying that you do not have preference shares with disproportionate rights, according to clause 87. No shares shall be issued carrying disproportionate rights both with regard to voting rights as well as dividend rights.

Shri C. D. Deshmukh: If there are dispropotionate rights other than voting rights, under the definition they will be preference shares.

Shri C. C. Shah: What my friend wants is that amongst equity shares, they should have also disproportionate rights on capital.....

Shri C. D. Deshmukh: Immediately they become preference shares by the definition, and preference shares are not barred under clause 87.

Shri Tulsidas: The point is this. My amendment No. 174 refers only to the question of dividend and capital rights. The Bhabha Committee has rightly objected to having disproportionate voting rights, because they lead to minority control.

Mr. Chairman: How will they be differentiated from preference shares?

Shri Tulsidas: But you cannot issue them today. I cannot issue shares which would be considered as preference shares. Supposing there are founder shares or some sort of shares, on which there is no question of any disproportionate voting right, but there is the question preferential rights as to dividend and capital.....

Shri C. D. Deshmukh: They will be called preference shares.

Shri Tulsidas: They may not be preference shares; they may be still shares with disproportionate rights on capital.

Shri C. D. Deshmukh: Whatever they are called, under the definition they will be called 'preference shares'.

Shri K. K. Basu: There will be two categories. After all, shares might be given on the existing system, and these rights—disproportionate rights—will not be there. There will be some people holding shares with all types of preferential rights.

Shri C. D. Deshmukh: Under clause 87, you cannot issue founder shares. Any share that you issue other than an equity share will be preference share, and the issue of preference shares is not barred under clause 87. There is a portion within brackets which says "not being preference shares".

Shri Tulsidas: Anyway, if that is your reading, I leave it at that. I may perhaps be wrong as I am not a lawyer.

Shri C. D. Deshmukh: Nor am I.

The Minister of Labour (Shri Khandubhai Desai): Neither of them.

Shri Gadgil: And something more.

Shri S. S. More: Why everybody is disowning lawyers, I do not know.

Shri Gadgil: The hon. Member has got lawyers, one by his side, one in front and one behind.

Shri Tulsidas: With regard to amendment No. 176, I would like first to express that I fully realise that minority control always assumes the managements when there is diffe-

[Shri Tulsidas]

rential voting right. I fully appreciate the points which Shri C. C. Shah has made and a number of instances and abuses have taken place, but in almost all these abuses, there were the managing agents or persons who were interested to take over the management side of it. In one or two instances, Shri Shah pointed out that the managing agents tried to take control of the company with these disproportionate voting rights, and with a small amount of capital invested, they would get the right of being appointed managing agents.

My amendment seems to enable companies not managed by managing agents or secretaries and treasurers, my amendment qualifies that this right should not be given to those companies managed by managing agents or secretaries and treasurers—to issue shares of different kinds and carrying differential voting and other rights. You know very well that we have a capital issue control and any issue comes to the examination of the Government. Government has to say 'yes' or 'no' before any issue is put out. I am merely asking why this bar should be put on those companies which have no managing agents or treasurers. I am requesting the hon. Minister to examine this. He has been telling us that he would like to evolve a new type or system of management. Secretaries and treasurers is one of the forms. My suggestion is that ultimately we shall have to fall back upon the types of management which exist in other parts of the world; there will be no other alternative. In our country we, on the other hand, want to limit and put all sorts of restrictions on the companies of managing agents and secretaries and treasurers and rightly so on account of the abuses. But in doing so we are also trying not to encourage any other system because these laws apply to such companies also—those who do not have managing agents or secretaries and treasurers. My point is that in other countries there is no bar at all whatsoever on the issue of shares with disproportionate voting rights, the reason being, to my mind, that there has been no managing agency system in other countries. There has been the system of director controlled companies in America and England and there is no bar on the disproportionate voting rights. In fact in America is a system which gives still more rights but that is in one country. There was such a system in England but in England they have ruled it out after the Cohen Committee went into this. Here, how do we expect any other type of company management to be born if we put these restrictions on companies which are not managed by managing agents or secretaries and treasurers. We have seen that there were many abuses in this particular system and the hon. Members have said that there have been so many abuses that we want to plug the loopholes. I can understand the plugging of the loopholes so far as the companies managed by managing agents and secretaries and treasurers. I cited the other day at the time of the general discussion that we have in other countries examples of people who start their business in a small way. There may be an engineer and he might have some sort of an idea or an invention; there may be some chemists who may have some idea of invention. He starts a small company and he wants that that company should remain under his control and not under the control of the financier. In this country also, we want to evolve some new system; and in view of the abuses of the managing agency system we also want to keep some sort of control on the other systems. It is not posible to evolve any other system because the new entrepreneur will have always to fall back upon the persons who want to subscribe shares and therefore, he

may not be able to keep his control on the management. As I said we have the instrument of capital issue control and we can say 'no' to any issue. But I go further. Supposing a person wants to float a company with disproportionate voting rights, do you expect that in the present set-up people would subscribe to these shares? They will fail. Under the present conditions, it will not be possible. It is only for those people who can afford to have a certain amount of capital issue and those who have not the facility of getting financial help and who want to continue in certain type of business run on proper lines that this would be possible. I do not know whether the hon. Finance Minister feels that this sort of thing is desirable or not. What is the objection if we give such powers of issuing shares to those companies which are not managed by the managing agency system? I know he mentioned in his speech that there are abuses not merely in these companies. There may be other abuses in other companies like a board controlled company. In board controlled companies there may be certain amount of abuses but not to that extent. Therefore, in this particular case, where there is a chance of a small man coming in and having a share and his own line of management in the company, we may allow disproportionate voting rights. I do not see why that sort of thing should not be allowed and that is why I have given my amendment. That amendment clearly shows that I do not wish this facility to be given to those companies which have managing agents or secretaries and treasurers. I have therefore said that this will not apply to a public company or a subsidiary of a public company which is not managed by a managing agent or secretaries and treasurers. I would like him to please consider this aspect. The law has become very complicated and it would be feasible to have this other system encouraged and therefore some sort of facilities must be given to companies where there is no managing agency or where there are no secretaries and treasurers. That is one thing which I wanted to mention.

With regard to clause 110, Shri C. C. Shah pointed out the difficulty. After all he is a lawyer of thirty years standing. Naturally I cannot compete with his legal knowledge.....

Shri S. S. More: Only Shri S. V. Ramaswamy can do it.

Shri Tulsidas: I have moved certain amendments—179 to 185 regarding the right to hear appeals against refusal of transfer of shares only in the case of fully paid shares. You are now allowing these rights to exist only in fully paid shares and not on all shares whether fully paid or not as now provided. Such appeals shall lie to the High Court and not to the Central Government as now provided. Representations against appeals may be made in writing or orally instead of in writing only as provided in the Bill and such appeals shall be heard *in camera*. That is the present position.

Both the existing Indian Act and the U.K. Act do not contain such provisions. A company is a voluntary association of certain persons, formed to carry out certain given objects. It should, therefore have the right to determine its membership, and admission to, and exclusions from it. It is on this principle that the company is given absolute discretion in determining its membership.

The Bhabha Committee recommended that the right to refuse transfer should be made subject to appeal in the case of fully paid-up shares. When shares are fully paid-up, the question of the transferee not being able to pay calls which may be made in future does not arise. However, the Committee did not consider the other aspect of such transfers, namely, the activities of professional mischief-mongers. I hope that whoever exercises the right to hear appeals will consider

[Shri Tulsidas]

this aspect of the reason behind refusing transfers. Now, as Shri C. C. Shah put it, even in the case of courts there is a lot of delay. I know that delays will be there in courts. I do not know whether these delays will not be there in the department also.

Shri C. C. Shah: Delays ought not to be there.

Shri Tulsidas: This is a question of judgment and when a person has to sit in judgment it is difficult for even a departmental person to decide on an issue as to why this should be allowed or this should not be allowed. Whoever may be in charge, it will take much time even for a departmental man to decide the issue because now you are providing that both the transferor and the transferee have to give reasons and having given the reasons then it becomes a question of judgment. It is a matter for the person in charge to decide whether the reasons given by one or the other are good. Previously, there was this anomaly that they were not required to give any reasons. The persons concerned can refuse to give any reasons and simply say: "No". Here, at least you say that both the parties have to give reasons. Therefore, I personally feel that, as far possible, in this particular case, the responsibility of the Government should be lessened. However, I do not think that the responsibility on the Government will be very much in deciding an issue of this nature, because, if the Government decides in favour of one, still there will be the right to appeal and the person concerned can go to a court of law. Again, I say that I am not a legal man.

Shri K. K. Basu: Then why not accept our advice?

Shri Tulsidas: The legal practitioners are such now-a-days that they would naturally advise the persons to go to the court after the Government has given its decision. They will say that there is the question of oppression and that Government has not done the right thing. Today, we know how things are done in the legal World. Lawyers carry the people to the court inspite of the fact that the case is not in their favour. Therefore, I say, why not leave it to the court? Let their decision be final and we may give the court a certain power to see that they decide cases within three or six months.

Shri C. C. Shah: There is no appeal against Governments' decisions to a court.

Shri Tulsidas: They may go to court for other decisions. That is why I am saying that the responsibility of Government is too great in this particular aspect. If the Government is willing to take this responsibility and to carry it out properly I have no objection; but I feel the responsibility is too great on the Government on an issue like this. I, therefore, feel that the Government should not carry this responsibility. Let it be decided by the court so that both the parties may not have any sort of grievance. Otherwise, one party might say that some persons have influenced the Government in its decision. Even after pointing out this difficulty if the Government thinks that they would like to take this responsibility I have no objection. I leave it to the hon. Finance Minister to decide whether this responsibility should be given to the Government or to the Court. I feel that it would be better, to have "High Court" instead of "Central Government" and I have given an amendment to this effect.

There is only one more amendment, No. 188 to clause 139. Here again I would invite the attention of the honourable Shri C. C. Shah.....

An Hon. Member: Honourable?

Shri Tulsidas: I expect that time to come.

Here, a company should be entitled as of right to receive a copy of memorandum of satisfaction and it should be made incumbent upon the registrar to supply copies to the companies soon after a memorandum of satisfaction is entered. This is necessary as under clause 138 the satisfaction of the charge may be communicated to the registrar by the creditors of the company and the company may not be aware of the satisfaction being entered. Therefore, I have given an amendment which removes the words: "if so required". This is just to make it compulsory on the registrars to send copies. Why should it be left to his discretion? Under clause 138 there is a sort of necessity. Therefore, why not put the responsibility on the registrar to send it to every company instead of somebody asking for it. That is all that I have to say.

Shri K. K. Basu: Clause 138 says that where a company does not inform he can enter in the register of charges a memorandum of satisfaction.

Shri Jhunjhunwala: As has been pointed by my hon. friend Shri C. C. Shah clause 110 is one of the most important clauses which have to be considered properly. I am speaking on my amendment No. 396 to clause 110.

My hon. friend Shri C. C. Shah has said that there has been a great hardship on the shareholders because of this clause giving the power to managing agents to refuse transfer of shares without giving any reasons. It is not only once in a year, as the hon. Finance Minister said that the *adhikaris* had power to behead one person, but the managing agents have got power without assigning any reasons to refuse many persons.

Shri C. D. Deshmukh: Sir, on a point of order. The hon. Member said that he was speaking on amendment No. 396 to clause 110. But, that is not among the amendments which you were pleased to announce.

Mr. Chairman: When I made the announcement I did include 396 also.

Shri C. D. Deshmukh: Is that so? Then, I am sorry.

Shri K. K. Basu: Do not be frightened by technicalities.

Shri Jhunjhunwala: Sir, I was saying that the managing agents have got power to refuse transfer of shares without giving any reasons and under the present law the shareholder has got the power to go to the court and prove the *mala fides* of the managing agents. Shri C. C. Shah being a solicitor in Bombay has got great experience of such cases. He has pointed out in how many cases the shareholders have been successful in proving the *mala fides* of the managing agents. When the shareholders have got no evidence they have no source from where they will be able to know what the managing agents are doing behind the curtain.

Shri C. C. Shah: It is not the managing agent; it is the Board.

Shri Jhunjhunwala: I know; the Board which is in the hands of the managing agents. It is only that Board which refuses such transfer. If it is in the hands of an independent Board, as my hon. friend Shri C. C. Shah contemplates, then there will be no grievance on the part of any shareholder and there will be no such refusal of the transfer of shares.

Sir, I subscribe to the views and the underlying principle of this clause which seeks to avoid any undesirable persons coming into the company, creating trouble and thereby destroying the management. My friend Shri Tulsidas has said that if this power is not given to the managing agents, the professional people will enter and create trouble. But the managing agents got this power because the Government gave them this power with full faith and confidence in the honesty of the managing agents, but how this power has been used and what relief they could get from the court are known fully well to Shri C. C. Shah who has got ex-

[Shri Jhunjhunwala]

perience. Shri C. C. Shah has said that there has been great harassment of the shareholder in this respect. The shareholders are compelled to sell their shares at the rates as dictated by the managing agents, or, I might say, the board of directors, as Shri C. C. Shah says. The board is in the hands of the managing agent, one director being the managing agent himself, the second director being his nominee who has purchased shares at the mercy of the managing agent, say, to the tune of 5,000, the third director being the manager serving in his private firm and the fourth director being a *benami* shareholder of the managing agent thereby evading payment of income-tax. Of course, there have been so many provisions now, so that such board of directors cannot be constituted, but unless the amendments of my hon. friends Shri Nathwani and Shri Morarka are accepted, there is likelihood of such boards coming in again.

Shri C. C. Shah: You mean proportional representation?

Shri Jhunjhunwala: Whatever it may be, there is likelihood of such boards coming in again.

Shri Gadgil: A rubber stamp board!

Shri Jhunjhunwala: Such boards will come in and bring harassment to the shareholders. Now, what is the amendment going to do? Instead of the transferor and the transferee going to the court, in this clause, the Government have taken the power of the court to decide as to whether the shares should be transferred or not. Clause 110 (3) says as follows:

> "(3) The transferor or transferee may, where the company is a public company or a private company which is a subsidiary of a public company, appeal to the Central Government against any refusal of the company to register the transfer, or against any failure on its part, within the period referred to in sub-section (2), either to register the transfer or to send notice of its refusal to register the same."

Sub-clauses (4) and (5) say:

> "(4) An appeal by the transferor or transferee to the Central Government under sub-section (3) shall be made—
>
> (a) in case the appeal is against the refusal to register a transfer, within two months of the receipt by him of the notice of refusal; and
>
> (b) in case the appeal is against the failure referred to in sub-section (3), within two months from the expiry of the period referred to in sub-section (2).
>
> (5) The Central Government shall, after causing reasonable notice to be given to the company, the transferor and the transferee and giving them a reasonable opportunity to make their representations, if any, in writing, by order, direct either that the transfer shall be registered by the company or that it need not be registered by it; and in the former case, the company shall give effect to the decision forthwith."

Now, the transferor and the transferee have to send in writing to the Central Government that the transfer of share has been refused. I do not know what more the transferor and the transferee have got to say. The desire of the transferor and the transferee is clear from the fact that they had applied to the board of directors or the managing agent for the transfer of the shares. The transferor has sold his share to the transferee and they want this transfer. If they go to the Central Government, what more will they say? They will simply say that "here is an instrument which we have filed before the managing agent or the board of directors and we want these shares to be transferred." They do not know

why the managing agent had transferred these shares. They do not know it at all. So with all the arguments, with all the reasons, they have to come to the Central Government. Unless they have got some reasons before them which have been adduced by the managing agent, how will they give the reasons? Are they to come to the Central Government on the same point and to prove before the Central Government the *mala fides* of the managing agent or the board of directors? It is the same thing as they have to do before the court. I do not understand what is the difference between the appeal before the Central Government and the appeal befor the court. Of course, there is one difference. As my friend Shri Tulsidas says, the Central Government is likely to take more time, and there is no guarantee that the Central Government will settle the case soon. But I do not agree with Shri Tulsidas on that point. The Central Government will certainly decide the case sooner.

Shri Gadgil: Very quickly!

Shri Jhunjhunwala: So, what will be done in the court? Further. the expenses to be incurred and the trouble they have to undergo by going to the solicitors. going to the barristers, counsels and all those people will no longer be there. At the same time, I want to know from the hon. Finance Minister as to what they will say to the Central Government? What will they say? They want their share to be transferred and that is clear from the deed of instrument which they have filed. They do not know why the transfer has been refused by the managing agent. If they have no reasons, it may be that the transferor and the transferee might not come to the Central Government at all. They might sit quite at home saying that they had given good reasons. If the reasons given by them are bad, they will go.

Shri C. D. Deshmukh: The good reasons will be that the man is bad.

Shri Jhunjhunwala: The good reasons will be that the man is bad. I now wish to ask the hon. Finance Minister whether the onus will be on the board of directors and the managing agent to prove that the man is bad, or whether the onus will be on the man with regard to whom they say that he is bad. There is no provision for that in this Bill.

Mr. Chairman: The question of owners only arises if it is a matter befor the court; before the Government, the reasons advanced by both sides are there.

Shri Jhunjhunwala: Before the Government, both sides will be there; but I want to know whether as a transferor or transferee, I have got the right to appeal to the Government saying, "I am not a bad man; I am a good man. So, kindly transfer my share." I do not understand what will be the criterion by which the Government will decide the matter. Will the Government ask the managing directors the reasons as to why they are not transferring the shares or....

Shri A. M. Thomas: They will be forced to give it afterwards at the second stage.

Shri Jhunjhunwala: Where is it provided for?

Shri A. M. Thomas: Under sub-clause (5).

Shri Jhunjhunwala: Sub-clause (5) says:

> "The Central Government shall, after causing reasonable notice to be given to the company, the transferor and the transferee and giving them a reasonable opportunity to make their representations, if any, in writing, by order, direct either that the transfer shall be registered..." etc.

[Shri Jhunjhunwala]

So, I take it that the managing agents or the managing directors will come with their reasons to the Government; will these reasons be disclosed to the transferee?

Shri C. D. Deshmukh: Yes.

Shri Jhunjhunwala: Then, of course, it means something.

Mr. Chairman: According to the amendment of the hon. Mover, the Government is asked to give an *ex parte* judgment to the Board, so that the action of the Board may be confirmed. The amendment is only to the effect that the company will get the approval of the Government at the back of the transferee.

Shri Jhunjhunwala: Yes, that is what I have said. But again they have to write to the transferor and the transferee...

Shri K. K. Basu: You have not followed the Chairman's point.

Shri Jhunjhunwala: I follow what the Chairman says. I shall give my arguments in support of my amendment.

As I was pointing out there is another difficulty for the managing agent, namely, that some undesirable person a speculator who has amassed a large amount of money, might come in, purchase the shares in the market at a higher price and then go to the managing agent and say "transfer the shares to me". The managing agent refuses to transfer the shares and the shares are not transferred. I shall explain afterwards regarding my amendment, but even as the law stands at present, even if the managing agent transfers these shares, the fear that some speculator who has no knowledge might come in is there.

Shri A. M. Thomas: Trouble-maker also may come in.

Shri Jhunjhunwala: He will not have so much money and he will not play with his money. So, if the managing agent transfers the shares to a speculator who has purchased the shares at a high rate in the market, what will happen in that case? He will have the majority and with that majority, he can command the shares in his favour. But the Government has got rights not to accept that he should be the managing agent. The change in the managing agency will come with the approval of the Government and as such there is no fear. So far as the big speculators and others are concerned, there is absolutely no fear. This refusal of shares, in my opinion, should be made seldom. It should not be that as a rule the refusal should be there. Managing agents can refuse to transfer the shares without giving any reasons; but if they are honest, they will not refuse to transfer the shares without good reasons. If they refuse to transfer all the share with good reasons, these instances in my opinion will be very few. As such, my amendment stands like this. In order to avoid the trouble of the transferor and the transferee, who may not be a speculator, but who may be a *bona fide* investor and who may be living at a great distance from Delhi, they want their shares to be transferred and subsequently to know the reasons from the Government as to what the managing agents have to say. That transferor or transferee may not be a very intelligent or learned man, a vakil or some such thing; he has to go to somebody to enquire from him as to what reply he should give. He has to undergo all these troubles. I have said that in the case of honest managing agents or managing directors, these instances of refusal shall be very rare. It is only the dishonest people who want to exercise some undue influence on the shareholders to sell their shares at a low rate who will refuse to transfer the shares for some capricious reasons. My submission to the Finance Minister and this House is it is a great hardship on the

transferor and the transferee that they should come to the Central Government. What my amendment seeks to do is to throw this burden of coming to Delhi not upon the transferor and the transferee, who may not be speculators and who may be *bona fide* investors, but as my hon. friend Shri Gadgil has told me in the beginning, to shift the burden to the managing agent of the company to come to the Government and take the transfer. They should say that such and such are the reasons whereby there is a danger of some undesirable person coming into the company and spoiling everything and thereby destroying the industry.

Shri S. S. More: It is time to adjourn. It is now 5 O'clock.

Mr. Chairman: The difficulty is this. The Business Advisory Committee thought that we should avail of one Saturday either on the 27th August or 10th September; or, in the alternative, we should sit longer by one hour on six days. If it pleases the House that we should sit one hour longer than usual today, we may do so.

5 P.M.

Shri K. K. Basu: Though it was expected by the Business Advisory Committee that we will take so much time on the first group, we finished 35 minutes earlier. We may finish other groups also earlier. In any case, we cannot sit today.

Mr. Chairman: Just as the House pleases. I am in the hands of the House.

Shri Gadgil: This should have been announced earlier.

Mr. Chairman: We may sit one hour longer today.

Shri C. D. Deshmukh: I have an important meetng at 5 O'clock. I was under the impression that we will sit only upto 5.

Shri S. S. More: We have also less important meetings.

Mr. Chairman: So far as today is concerned, we adjourn.

Shri C. D. Deshmukh: We are saving a little time in our programme.

Mr. Chairman: What is to happen tomorrow? Let us apply our mind.

Shri Kamath: After Moharrum we will consider.

Mr. Chairman: When is it coming?

Shri Kamath: On Monday.

Shri Gadgil: Tomorrow the official business ends at 2-30. It may be extended to 3-30. The time that is cut off from non-official business should be extended till six.

Some Hon. Members: No, no.

Mr. Chairman: What is the reaction of the Government ? Shri Gadgil's proposal is that we start the non-official business at 3-30.

Shri C. D. Deshmukh: That is agreeable to me.

Mr. Chairman: Or we must curtail the arguments so that we may be able to finish within time.

Shri K. K. Basu: Regarding the first group we have seen that we completed it about 35 or 40 minutes earlier. It may so happen that certain important clauses may not take so long a time as was visualised by the Business Advisory Committee. How can we now sit for one hour more? We shall decide next week.

Mr. Chairman: As the House pleases. The House now stands adjourned to 11 A.M. tomorrow.

The Lok Sabha then adjourned till Eleven of the Clock on Friday the 26th August, 1955.