

COMPANIES BILL—contd.

Clauses 323 to 367

Mr. Speaker: The House will now resume further consideration of clauses 323 to 367 of the Companies Bill. Out of 8 hours allotted to these clauses, about 6½ hours have already been availed of on the 3rd and the 5th September, and about 1½ hours now remain. This would mean that these clauses would be disposed of by about 1-30 P.M. Thereafter the House will take up the next group consisting of clauses 368 to 388 for which 3½ hours have been allotted.

The following are some further amendments to the group of clauses from 323 to 367 which have been indicated to be moved by hon. Members subject to their being otherwise admissible. A revised list showing all the amendments to this group, including the ones just now mentioned has been circulated to Members yesterday:

Clause 323	997, 998 (same as 930), 999
Clause 324	1000
Clause 327	1001 same as 103 and 935, 1002
Clause 328A (New)	973
Clause 331	1003 (same as 908)
Clause 341	974
Clause 348	987 (same as 881), 988
Clause 349	989
Clause 353	990
Clause 360	991
Clause 363	992
Clause 365	993

Clause 32'—(Power of Central Government etc.)

Shri Sivamurthi Swami (Kush-tagi): I beg to move:

(1) Page 171, line 8—

after "Gazette" insert:

"after consulting the Advisory Commission constituted under section 409 of this Act."

(2) Page 171, line 17—for "three years" substitute "one year."

(3) Page 171, line 18—for "1960", substitute "1957".

Clause 324—(Managing agency company etc.)

Shri Sivamurthi Swami: I beg to move:

That in the amendment proposed by Shri C. D. Deshmukh, printed as No. 470, for "the 15th day of August 1956" substitute: "the day on which this Act comes into force"

Clause 327 — (Term of office etc.)

Shri Sivamurthi Swami: I beg to move:

(1) Page 172, line 23—

for "fifteen years" substitute "ten years".

(2) Page 172, line 25—for "ten years" substitute "four years."

New Clause 328A

Shri Kamath (Hoshangabad): I beg to move:

Page 173, after line 3, insert:

"328A. From the decision of the Central Government under clause (b) of sub-section (1) of section 325 or under section 328, an appeal shall lie to a bench of three Judges of the High Court at the instance of the Company or a member or creditor or debenture holder thereof."

Clause 331.—(No person to be managing agent etc.)

Shri Sivamurthi Swami: I beg to move:

Page 173, line 30—

for "ten companies" substitute "five companies."

Clause 341.—(Resignation ofowce etc.)

Shri Kamath: I beg to move:

Page 177, line 25—after "mentioned above" insert "any representation made by the managing agent."

Clause 348 — (*Determination of net profits*)

Shri Kamath: I beg to move:

(1) Pages 179 and 180— omit lines 41 to 44 and lines 1 and 2.

(2) Page 181, after line 2, add:

“(o) bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf by any Government.”

Clause 349— (*Ascertainment of depreciation*)

Shri Kamath: I beg to move:

Page 181, line 18—
omit “initial.”

Clause 353— (*Time of payment etc.*)

Shri Kamath: I beg to move:

Page 182, line 15—add at the end:
“and shall be apportionable.”

Clause 360— (*Contracts between managing agents etc.*)

Shri Kamath: I beg to move:

Page 185, after line 6, insert:

“(2A) A contract as aforesaid shall not be made for a term not exceeding three years but may be renewed from time to time for a term not exceeding three years on each occasion, provided that such renewal shall be effected only in the last year of the exceeding term.”

Clause 363— (*Remuneration etc.*)

Shri Kamath: I beg to move:

Page 185, line 35—add at the end:
“and such sum may be deducted by the company from any sums due from it to the managing agent.”

Clause 365— (*Prohibition of payment etc.*)

Shri Kamath: I beg to move:

Page 186, after line 27, add:

“(i) where payment of such compensation to the managing agent would be otherwise inequitable or improper.”

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

Shri Tulsidas (Mehsana West):
When I was speaking yesterday, I was pointing out that the different clauses in this particular group are such that it would be not in the fitness of things, particularly as to how these clauses will bear the court's interpretation. I was also saying that we should not put in language or words which would be difficult for the courts to interpret and which would, in my opinion, be perhaps a laughing-stock in other parts of the world.

[MR. DEPUTY-SPEAKER in the Chair]

Mr. Deputy-Speaker: Laughing-stock of the entire world? Is there not somebody at least who may be agreeing with this?

Shri Tulsidas: I mean laughing stock in other countries where the democratic principle governs, not in other countries where dictators rule—there the rule of law is the word of the dictator.

Shri U. M. Trivedi (Chittoor): Have we got no dictator here?

Shri Tulsidas: We have accepted democracy here, and we must word our language in legislation in such a way that the courts will be able to interpret it in a proper perspective.

Now, let us examine what is the meaning of ‘fit and proper person. We have in this Bill a clause relating to disqualification in respect of anyone being a managing agent. At the same time, power has been given to the Government to decide whether a person is fit and proper. Now, I do not wish to dwell much on this. I would only like to point out that this looks, to my mind, very ridiculous, to put such onus on a person, who applies to the Government for becoming a managing agent, to prove that he is a fit and proper person. My amendments are to the effect that it should be the onus of the Government to find out whether he is a fit

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and proper person, and if he is not a fit and proper person, Government may refuse his application. I do not say that I am defending a particular system of management of companies in this country.

Mr. Deputy-Speaker: May I interrupt the hon. Member for a minute? How long is the hon. Minister likely to take for his reply?

The Minister of Revenue and Civil Expenditure (Shri M. C. Shah): About 50 minutes. There has been discussion for about 7 hours, and as far as this very important matter is concerned, we will take about 50 minutes.

Mr. Deputy-Speaker: That means he must start at 12.40 P.M.

Shri Tulsidas: I am afraid I may have to take some more time.

Mr. Deputy-Speaker: The hon. Member is not going to take so much time.

Shri Tulsidas: I have a number of amendments, some of which have been explained by Shri G. D. Somani, I will not go into those amendments, but I would like to explain the implications of some of the amendments which are standing in my name as well as his. I would like to explain amendments Nos. 822 and 824 to clause 323. My point is that whenever Government consider that a particular industry should be notified under clause 323, it would be proper to constitute an Inquiry Committee to go into the question of that industry and then decide on the findings of that Committee. I have also mentioned that this should be placed on the Table of the House, and with the permission of this House or both the Houses, the matter might be taken up. The reason why I want this is this. Several times the question was put to the hon. Minister whether Government had made any decision with regard to any particular industry. It has been said on behalf of Government that the matter has not come to

that specific stage of decision, and they do not yet know which industries are going to be notified. In view of that, it would be proper that any industry which will be notified in future, should be notified only after the matter is gone into by an Inquiry Committee and the findings of that Committee discussed by both Houses of Parliament.

Several times it has been mentioned here, and the hon. Minister also mentioned in his speech, that the managing agency system is on its probation. Even yesterday many Members mentioned it.

Shri U. M. Trivedi: From now onwards.

Shri Tulsidas: Most of the Members who mentioned it also used the same tone, except of course, two Members who are of leftist tendency, who have mentioned it the other way round.

Mr. Deputy-Speaker: They are all sitting to the right of hon. Member.

Shri Tulsidas: I said 'who are of leftist tendency', not 'who are sitting to my left'

Shri U. M. Trivedi: Shri Tulsidas is to the extreme left.

Shri Tulsidas: Now, I would like to say that with this measure we are now adopting, to my mind, it will not be possible to have this system or any other system functioning effectively. The number of clauses that we have included are so restrictive and rigid that it will not be possible for any system to function in this country. If at all it is able to function it will be able to function with a lot of difficulties. It will be said afterwards that the industrial sector, particularly the private sector, has not been able to deliver the goods, I would like to warn the Government that if anything happens in the future in which industrial production or production in the private sector has not gone up, it

would be not because of any lack of efforts on the part of the private sector but because of the measure that we are now adopting.

I have mentioned several times how this particular Bill is very restrictive and how it will hamper the normal growth of companies in this country. It is a pity that when we are on the threshold of the Second Five Year Plan, such a measure should be passed in this House.

I would now like to make a few observations about the speeches of some of the hon. Members here. Shri Asoka Mehta justifies the restrictions on managing agents by saying that managing agents are no longer the main source of finance. He also argues that profits have been high and will continue to remain high, and, therefore, he would like to see the managing agents being paid on a sliding scale. He is in the habit of referring to a number of books and making quotations from a number of them published in America or in other countries and particularly by some of the Professors. Of course, Shri Asoka Mehta is very fond of quoting. I would like him to realise that even the Bhabha Committee on page 96 mentions as follows:—

"A suggestion was made to us that instead of fixing an overall maximum, we should prescribe a scale of varying percentages applicable to companies of different size and carrying on different types of business. Theoretically.."

Just as Shri Asoka Mehta, they say, 'theoretically',

"Theoretically this suggestion is attractive, but it is impossible to work any such scale in practice. Even if we had the benefit of a full and detailed analysis of company statistics at our disposal, we doubt if we could have drawn up any such scale. We have, therefore, refrained from persuing this line of thought further."

This should be enough for Shri Asoka Mehta. It is difficult, to my

mind, to prepare any sliding scale for this type of remuneration.

I would also like to mention to him that even when companies are floated it requires a certain amount of confidence amongst the investing public and it is because a particular firm is managing a particular company that this confidence is created in the investing public.

Shri K. K. Basu (Diamond Harbour): What about banks and insurance companies?

Shri Tulsidas: Even there, as the hon. Finance Minister has said, there is a sort of over-all tight control. New banks and insurance companies are not floated nowadays. What you have are only the few banks which are existing and the few insurance companies that are existing today which carry on the business. You do not find new big banks.

The other point is that the credit-worthiness of the managing agency firm does count to a certain extent in getting credit from the banks and other financial institutions.

Yesterday it was mentioned by my hon. friend Shri C. C. Shah that the crux of the problem is the question of payment of remuneration to a particular managing agency system. He said that in this Bill a definite encouragement has been given to the alternative type of management, namely, the managing director or the manager, where an individual has been permitted to take 5 per cent while in the case of the managing agency it has been permitted to take about 10 per cent. I would like to point out to him that it is not merely the question of remuneration which will decide the alternative type of management. The remuneration is not a very important thing. Unless and until you allow a certain amount of flexibility for any system to function, it will not be possible to evolve any other system to take the place of the managing agency system. In spite of so many shackles you may find that those few business houses which are carrying on now may have to

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carry on on the present basis; you may not find many new people coming in the field.

Shri K. K. Basu: There may be a change from the worker to the managing agent.

Shri Tulsidas: Let him come up; nobody is barred in this country.

It has been mentioned several times here and Shri N. C. Chatterjee also said that there should be a certain code of conduct. It has been mentioned by so many hon. Members. I would like to point out to them that in other professions a certain code of conduct prevails because if one wants to enter a profession one has to take a certain diploma.

Shri Kamath: It is tragic that so soon after Question Hour the quorum has vanished.

Mr. Deputy-Speaker: Hon. Members will individually and collectively, persuade other Members to be here. I have done my best.

Shri Kamath: It is not now the hour between 1 and 2.30. It is sad that the Companies Bill should have such a fate.

Mr. Deputy-Speaker: I am having the bell rung—Now, there is quorum.

Hon. Members may be responsible for bringing ten Members each.

Shri Kamath: Ministers should be responsible for how many? At least fifty?

Shri K. K. Basu: There should be a Minister for Quorum.

Mr. Deputy-Speaker: Shri Tulsidas may now continue.

Shri Tulsidas: Several times it has been mentioned in this House why the business community has not prescribed for itself a code of conduct. In this connection I would like to point out that a degree or diploma is essential for the profession and in case of violation of the code, sanction should be provided by it to prevent a person from practising the profession.

Today Even Shri Asoka Mehta and Shri C. C. Shah can set up a grocery shop and become businessmen. Nobody lays down any condition for starting business and nobody can prevent others from continuing it, but I would like to point out that with regard to the code of conduct, there is a certain amount of ethics and there are certain standards and traditions on which business houses function. If a particular firm has not got proper ways of managing its business, you will find that that business house will find it difficult to function and it would be difficult for it to command the confidence of the business community. It would practically not be possible for it to function as effectively as a firm which has proper ways of managing its business. That is sufficient as a code of conduct. It is not possible to prescribe a certain code of conduct in the manner it is done for the professions. In spite of the professions having got a certain amount of sanction, we know very well how the code of conduct functions in each profession and that in a number of cases the profession looks down upon certain practices which some of the members do adopt. Similarly, I can tell you that in the business community no person of proper standing will be looked down upon and any person who has not the proper ways of conducting his business will be looked down upon by the business community. That is enough and I would not like to dwell upon this point further.

With regard to the question of clause 325, I have a number of amendments as I mentioned yesterday. I would like the Finance Minister to take note of it. My amendments are 826, 827, 828, 831, 832, 833, 834 and 835. These do not seek any departure from the principle contained in the Bill. The Central Government should refuse permission only when it is revealed that the public interests are jeopardised by a particular managing agency and that the managing agent is not a fit and proper person to manage the affairs of the company.

As regards the question of conditions which Government would lay down, I would like the House to realise that the powers which will be included in the managing agency agreement are already in the schedule. There are a number of clauses which are now restrictive and rigid with regard to the management of a particular firm and I do not know what further conditions would be applied by Government, but I do feel that if the conditions are going to be on the lines of the managing agency holding a particular number of shares, it would be rather not possible and I do not think that there is any need for further conditions in view of the number of conditions already laid down in the Bill.

I would like to say a few words with regard to clause 331 relating to the question of ten companies. It has been mentioned that this question is merely a question either of a token or an experimental measure. I do not understand this. This is one of the measures put in the Bill and to my mind it is so ridiculous that people will say, what is the meaning of this clause? A company may have Rs. 50,000 and a company may have Rs. 50 crores as capital. After all, Government has powers to approve the managing agents and they can certainly take into consideration the capacity of the different firms, etc. and it is no use providing such a clause as this in our law. After all, this is a permanent statute and we should not try to put anything and everything there. Every time it is mentioned that it is a question of showing to the country as a token of the concentration of the economic power. At least, when I spoke for the first time in the consideration stage, I said that this question of concentration of economic power is connected always with several other factors, and that concentration of power to the common detriment should not be encouraged. The hon. Finance Minister in his reply to the first reading of the Bill also mentioned simuarily that we have to see

that concentration of economic power to the common detriment should not be encouraged. That is the line on which we have to base our different policies and you should not forget that the Constitution provides fully to what extent the concentration of economic power is to be allowed.

[SHRIMATI SUSHAMA SEN in the Chair]

Mr. Chairman: The hon. Member's time is up.

Shri Tulsidas: May I just have five or seven minutes more?

I have moved a number of amendments.

Mr. Chairman: The Finance Minister has to begin his speech at 12-40 and I have one or two more Members to speak before that. The hon. Member may finish by 12-30.

Shri Tulsidas: I have an amendment on clause 348. Sub-clause (4) (1) provides that the loss of the past years should also be taken into account in ascertaining the profits of the company on which the managing agent, that is, the same managing agent, that is, The provision may be accepted where the affairs are being managed by the same managing agent, that is, where a managing agent has held office for a period, his remuneration should be in proportion to the profits that he has enabled the managed company to earn during his managing agency. But in cases where the loss relates to a period when the present managing agent did not function, it would not be fair to penalise him for the mistake of the past managing agent. Suppose the managing agency has been changed, then the mistakes of the past managing agent should not be taken into account for penalising the present managing agent. Where a company has accumulated losses and its managing agent retires, it would need a more efficient managing agent, if its affairs are to be put on a sound footing and he will have to provide the finances as well. Under the present provision, no managing agent will come forward to provide such

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services. So, it is the company that will die and not the managing agent. My amendment, therefore, seeks to meet this situation by putting a proviso to sub-clause (4) (1).

Mr. Chairman: There are two speakers and the Finance Minister will start at 12.40.

Shri M. S. Gurupadaswamy (My-sore): I will finish in seven minutes.

Mr. Chairman: He cannot take seven minutes because the Finance Minister has to start at 12.40.

Shri M. S. Gurupadaswamy: I will be very brief.

A member of the Congress Party, Shri K. P. Tripathi, spoke like a Praja Socialist and demanded the abolition of the managing agency system which is nothing but a meddling agency. Somani spoke feelingly that some of us who belonged to this side lacked practical experience and that we were not competent to speak on the managing agency system on that account. If experience alone should be the measuring rod of speaking on a subject or doing any thing, then I may say that one should not love because one has no experience; one should not become a husband because one has no experience of a husband (*Interruptions*). This system had been in existence for a number of years. What the Finance Minister is trying to do is to remove certain evils of the managing agency system. He thinks that by doing this, he would be able to reform the entire system. I am sorry that he is mistaken because much of what has been said in defence of that system has been exploded.

It has been pointed out by some of us that the so-called capital formation and financing of industries by the managing agents is not true and even in cases where there has been some financial help it is only chimerical. In the past the banking institutions were in league with the managing agency houses and so it was possible for them to make an

appearance and to say that but for them the industry or trade could not have been developed. The greatest drawback and flaw in the old system was that the banking institutions were in league with them. Only certain groups of managing agents used to get credit facilities in the form of overdraft, loan, guarantee, etc. and others were denied such facilities. For the sake of a flaw in the working of the banking institutions, should we say that the managing agent which exploited that advantage should continue. Hereafter the banking institutions have to function properly and there are so many institutions coming now to aid the industry. The credit structure is taking a new shape and the Government is stepping in to help the industries. I cannot understand in these circumstances why we should say that the managing agency system is still indispensable.

Mr. Chairman: The hon. Member's time is up.

Shri M. S. Gurupadaswamy: I would therefore urge upon the Finance Minister to fix up a time-limit before which the managing agency system should go once and for all. I commend the amendment of Shri Asoka Mehta in this matter. In so far as the managing agency system is concerned the Bill as it is drafted is very halting and very reactionary and I must say that we have not advanced enough and we have not even incorporated the recommendations of the Bhabha Committee which said that by 1959 all the managing agency agreements should be terminated. Now, we are extending the period up to 1960. There is also no assurance that they will come to an end in 1960; there is no guarantee at all. So, I say that the provisions in this matter are very unsatisfactory and I would urge upon the Government to see that the Managing Agency would come to a close at least by August 15th, 1960.

Shri Gadgil (Poona Central): I do not want to take the time of the House except for one point. It was at my suggestion that voting on clause 197 was postponed and clause was kept pending to be taken along with clauses 347 and 351. The reason why I made that suggestion was that an amendment moved by Shri Bogawat about the rate of managing agents' commission beyond a certain limit was very much appreciated by certain sections of the House. If the Government cannot accept it—it is obvious that the Government cannot accept it for reasons which are convincing to them—I feel that the powers which are now with the Government can be used. I suppose I am correct in saying that within the terms of those powers Government can insist when agreements come for their approval and impose such conditions on certain companies both when they are in public interest and necessary. My own view is that Government is competent to do that. As a matter of fact, certain companies like the Tatas are already doing it.

As regards the managing agents we have our own views and personally I have my own views. I would have very much liked that this institution should have been liquidated here and now. But those who follow constitutional methods cannot always get the best, but at the same time they should not consider good to be the enemy of better. Therefore, obviously for the next five years, they are, so to say, sentenced to death but some sort of reprieve is given. I think that reprieve will stand. If it is possible to do away with them earlier, by all means Government will do that and I am encouraged in this belief by the statement made by the hon. Finance Minister when he said that when one passed a Bill of this huge character, one could not escape bringing another Bill very soon for correcting certain irregularities that were sure to arise.

श्री शिवमूर्ति स्वामी : मैं अपनी एमेंडमेंट नं० ६६९ से १००२ पेश करता हूँ। मैं मैनेजिंग एजेंसी सिस्टम के बारे में केवल दो बार बातें कहूँगा। मैं खास तौर पर अपनी एमेंडमेंट नं० १००० के बारे में कहता हूँ कि फइनेंस मिनिस्टर साहब ने जो एमेंडमेंट पेश की हैं उसकी जगह पर मैं यह अलफाज रखना चाहता हूँ :

In the amendment proposed by Shri C. D. Deshmukh, printed as No. 470, for "the 15th day of August, 1956" substitute: "the day on which this Act comes into force."

मेरी प्रार्थना यह है कि आप जो इस मैनेजिंग एजेंसी को खत्म करने के लिए १६६० ई० की जो बात करते हैं, वह ठीक है लेकिन मेरा कहना यह है कि जो पावर्ज आप अपने हाथ में ले रहे हैं और जैसी बातें आप करते हैं उस से यह साफ नहीं होता कि इस सिस्टम को १६६० में खत्म कर ही देंगे। मैनेजिंग एजेंसी मुल्क में एक खटमल की तरह से हैं। यह सासाइटी के इन्ट्रस्ट्स के खिलाफ हैं कि इसको कायम रखा जाए। इसका ध्येय आज तक सम्पत्ति इकट्ठा करना रहा है। अब भी जो मैनेजिंग एजेंट्स हैं उनकी क्वालीफिकेशंस साफ तौर से ले हाउन किए बगैर वेग अलफाज में इस चीज को रखना मुनासिब नहीं होगा। लिहाजा जो मैं न एमेंडमेंट्स पेश किए हैं वह इसी लिए किए हैं ताकि इस सिस्टम को जल्दी से जल्दी खत्म किया जा सके और मैं आशा करता हूँ कि ऐसा किया भी जाएगा। मैं चाहता हूँ कि इनको खत्म करने के बाद कॉओपरेटिव बीसस पर था सहकारिता के आधार पर इन इन्डस्ट्रीज को चलाया जाए। मैं इंतखता हूँ कि हेंदराबाद में जो सुगर मिल थी और जो सिरपुर पेपर मिल थी उनके लिए बिड़ला को मैनेजिंग एजेंट रख लिया गया है और इस तरह से जो स्टेट एंटरप्राइज भी थे उनको भी प्राइवेट एंटरप्राइज में तबदील कर दिया गया है। इस से बहुत ज्यादा तकलीफ हो रही है और बहुत सी कठिनाइयाँ भी पैदा हो गई हैं।

क्योंकि मेरा वक्त हो गया है इस वास्ते मैं आखिर में सरकार से यही प्रार्थना करता हूँ कि

(श्री शिवमूर्ति स्वामी)

जल्दी ले जल्दी मनीजिंग एजेंसी का जो सिस्टम है इस को खत्म कर दिया जाए।

The Minister of Finance (Shri C. D. Deshmukh): Madam Chairman, I should first like to declare my attitude in regard to certain amendments. First, with regard to our own amendment No. 471 to clause 329. I should like to say that on full consideration we do not consider it necessary and, therefore, I would like to withdraw it as the provision has been made elsewhere in clause 324.

Then, we want to move an amendment in place of Government amendment No. 670 to delete the entire clause 352 because if we delete the first part of it then the second part has no meaning. Clause 197 really covers the whole field and from a drafting point of view clause 352 is unnecessary. I am advised, therefore, to delete it and it makes no change of substance.

I wish to accept amendment No. 933 by Shri Sadhan Gupta and Shri K. K. Basu in respect of clause 326 but in a slightly revised form that I shall suggest here. I will read it out and later hand it over to the Table. It is suggested that the amendment may be recast as follows:

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line 15, omit the word "and";

line 17, add the word "and";

and at the end after line 17 add the following clause:

"(c) a private company which is not a subsidiary of a public company unless the Central Government by a general or special order specifically exempt the private company."

The result will be that these clauses 327 to 330 will apply but it will be open to the private limited company to approach the Government and say that there is a special case and if Government agrees

then exemption will be given. That is what is secured by this amendment.

Shri U. M. Trivedi: May I interrupt the hon. Finance Minister. It has been held over and over again after the coming of our Constitution into force that any power of exemption without any basis or proper classification is void in law. Under those circumstances, if this clause is added as you have worded it, it will be *ultra vires* and it will offend against the Constitution unless there is some basis for it. A proper note may be taken of it and this may be held over for some further consultation.

Shri C. D. Deshmukh: I cannot say that.....

Shri K. K. Basu: If one individual case is exempted and another similar one is not exempted possibly it may be wrong. If a certain category of private companies which have no very important significance to the economy is left out, I do not think that is objectionable.

Shri C. D. Deshmukh: I am not quite sure if the hon. Member's facts are correct; that is to say, that no power of exemption has anywhere been given without classifications or without a statement of guiding principles. As far as I am aware, in the Income-Tax Act there is a provision for exemption. I think in the Estate Duty Act also there is a provision for exemption. Although I am not able to lay my hands on them right now, I do not believe that, that power of exemption is not there.

Shri U. M. Trivedi: It must be for a particular class; then the exemption can be given. If it is only for a private company on special grounds, then it cannot be granted.

Shri C. D. Deshmukh: By the time we come to voting we might be able to throw a little more light on that point.

Now, there is another amendment, No. 111 to clause 329 of Shri T.S.A. Chettiar. I think that is the same as amendment No. 997 of the speaker who last spoke. I accept the principle of it, but I think the proper place to provide for it will be in clause 410 which state which are the matters that shall be referred to the Advisory Commission and also it goes on to say: "on all other matters which may be referred to the Commission by the Central Government." That is the fit place for this amendment. I accept the principle of it here because I think it is an important enough matter for statutory reference to the Advisory Commission. When it is a case of abolishing the managing agency and notifying the whole industry I think proper enquiry should be made and that enquiry may be made in a preliminary way by whatever means are open to the Government; either it may be by a team of officers or it may be by a sub-committee of the Advisory Committee or any other means. But, that will be for fact finding and, after all the facts bearing on the situation have been gathered, then I think it is important that the Advisory Commission should have an opportunity of studying them and of tendering their advice to Government before Government takes a decision.

Now, I shall proceed with..

Shri K. K. Basu: So far you have said about acceptance, and now how about non-acceptance, of amendments?

Shri C. D. Deshmukh: And, that is the major portion of it. Because I might forget in my zeal that I have accepted some of them, I thought of taking them first.

Now, I shall not deal so much with amendments because I oppose all the other amendments and I should like now to reply to some of the points raised by the various speakers. First of all I should like to make a general remark that I find

it difficult to go into the question of the interpretation of my own speech. Hon. Members who spoke yesterday said that I said such and such a thing, then I said something, then my intention must be so and so and the meaning of what I said must be so and so. We have already one difficulty, namely, fitting the language to the Bill which we wish to pass. The second difficulty is interpreting the language which the Finance Minister uses in piloting the Bill. It is very difficult to cope with this double aspect of interpretation. All I should like to say to hon. Members is—it may be that in my thought or expression I am not as lucid as some of the hon. Members who have spoken on the subject—that I have tried to express my intention as clearly as I can and I find it difficult to enter into a controversy as to labels; that is to say, what a particular language means. In other words, if I say something or try to say something over two pages of my speech then I find it very difficult to join issue with hon. Members to say whether it shows an intention to abolish managing agency system, either in whole or piecemeal, or whether it shows bias or an inclination or partiality. These are all matters of opinion, I leave (i) the language of the Bill before the House, and (ii) my gloss on it or my explanation on what is the intention of the Government and what I presume to be the intention of the Joint Committee in putting forward these proposals.

It would be a waste of time to read my own speech again because the same question of labelling would arise again as to what it means, and therefore, all that I would ask the House today is to try and read my speech....

Shri Kamath: Let us have a *Bhashya Karika*.

Shri C. D. Deshmukh: It is not as mysterious or sententious as what the hon. Member is pleased to call

[Shri C. D. Deshmukh]

a *Bhashya Karika*. I shall make another attempt to define precisely what Government's stand is in the matter, irrespective of what Members on that side or this side of the House have spoken. It is my duty to lay before the House what, according to me, is the interpretation of Government's intention in the matter. Anyone, as I said, could connive at the massive evidence that has come forward before us in regard to the evils that have been encouraged by the managing agency system over a period of years. From time to time, attention has been given to correcting this state of affairs. Therefore, I begin by saying that there is a bias now in trying to see whether any good is served at all by continuing this particular form of managing joint stock companies. That bias undoubtedly is there, because, as I said, of the weight of this evidence. On the other hand, as I made it clear, there is no present judgment at the moment,—although there might have been judgments in the past to which hon. Members have referred either in the party or elsewhere,—there is no judgment at present that it is our definite intention steadily and systematically to abolish managing agencies. We have divided the problem into two parts, having in view our responsibilities in regard to securing that the private sector should, so to speak, deliver the goods so far as the next few years are concerned. We have, therefore, had to take into account the possible advantages of that system as shown by past historical evidence. We want to satisfy ourselves, before we take any action, that these alleged advantages do not exist either by an industry or by a particular unit. Therefore, the first thing that we have provided for is what is embodied in clause 323. We shall examine industries and find out whether for the industries as a whole, it is necessary to continue the managing agency system. Now, it would not be reasonable to read that clause as if it was never intend-

ed to exercise that power. Neither would it be reasonable to assume that that clause is intended to enable Government to notify all industries as industries in which no managing agents are required. Because, if that intention was clear today, it would have been easy to frame the Bill accordingly: in other words, either not to provide for power to terminate managing agencies or to do the reverse. So, the intention is what it is—to make as honest and as comprehensive an examination as possible of various industries, and in doing so, as I have just said, we shall be anxious to have the best expert advice that we can get on that matter.

Now, if that examination has been concluded and we come to the conclusion that in a number of industries there does not seem to be any need for the managing agencies, that the nation would not lose anything quite significant if we abolish them, then the next logical step would be to issue a notification and to say that after the period of notice, no managing agent will exist in that particular industry. That means that at any given period of time—one can only consider it with reference to a period of time, because what is true today may not be true fifty years hence or a hundred years hence, and nobody knows—so far as one can see, the judgment would be that for the other industries, till their examination is completed or till the occasion for examining them has arisen, there may be some good which will be served by allowing this form of management to continue subject to the safeguards that we are providing for in the new Bill.

Then we come to individual capacity and individual qualifications to continue as managing agents, and that is when we come to clause 325. In clause 325, the sub-clause is important. The first sub-clause is that it is not against the public interest to allow the company to have a managing agent. What we therefore consider is, for the industry as a whole, may be it is necessary to have a managing

agent and yet, in respect of that particular company, it may be against the public interest to allow the company to have a managing agent, in which case we would say, "we feel that the interests of the company will not be served by its having a managing agent," and in spite of the fact that this is a non-notified industry, we would say, "we will not allow a managing agent." If we proceed a little further, that is to say, if we feel that some public interest is likely to be served by the company being allowed to have a managing agent if it wants to—it can serve the public interest in other ways if it wants to and it is not that we want to force the managing agency system on it—and if it is alleged that they should have a managing agent in the public interests, then we will proceed to find out whether that managing agent is a fit and proper person and whether the conditions of the managing agency agreement are fair and reasonable. That incidentally answers the point raised by the hon. Member who spoke last as to whether we can take notice of the remuneration. Certainly, we can, and if we find that the scale of remuneration is unconscionable, then certainly we can tell the managing agent, "Your existence may further the public interests of this company and you may be the fit or proper person but it looks to us as if you are demanding too high a price for the services you are hiring by yourself to render to the company," and it would be open to us to place that proposition before the managing agent, saying that "unless you are prepared to reduce your remuneration to whatever scale may appear fair to us, we will not agree to the renewal or to the establishment of your managing agency."

Now, one need not be committed to a particular scale. Even 6½ per cent may be too high in a particular company. Hon. Members gave figures of certain companies in England and so on. There was 1.5 and 1.68 per cent, etc. Generally the figures are below five. It may be that in the case of a big company, even 5 per cent may be too large a remuneration. Therefore,

I think it is better to leave the matter flexible, and so, I have nothing in principle against any kind of scale. As I said, we are not trying to do everything in a general way for the shareholder. The shareholder must decide the matter for himself and after he has taken a decision it would be open to us to decide it. We shall have a splendid opportunity in 1960 or even earlier, in the same manner, to see whether even what the shareholder has agreed to is reasonable or not.

Then I come to the other conditions. I cannot say what those conditions will be, apart from the condition of remuneration and the extent of control which the managing agent is going to exercise under his agreement. But one can conceive that there may be other conditions by which the Central Government may wish to bind the managing agent. It is a kind of residuary general power. Unless we exercise those powers in a number of cases I would not be able to say what are the category of cases in which other conditions have been imposed, but, nevertheless, I think it is wholesome to have that residuary power given to the Government. That is all that we propose to do, and as I said, I do not wish to say whether it amounts to a determination to abolish the managing agency system or it amounts to a persistence in the desire to retain the managing agency system. It is exactly what the law says, and if an interpretation of Government's intention is needed, I can say authoritatively what I have said in my speech—that is exactly what I have said in my speech—and what I have tried to supplement by my observations this morning.

1 P.M.

One might consider again the general question as to the desirability of abolition of the managing agency system. One has gone over and over these arguments again and this debate has really now become a reply, a retort, a rejoinder and so on and so forth. We do not know who is going to argue last; perhaps I shall have the last word....

Shri Kamath: Unfortunately.

Shri C. D. Deshmukh: But that is not the end of it, because my speech will then be read in the Rajya Sabha. Many times it happens that these arguments are taken up there in the Rajya Sabha and my figures are challenged in the other House. But there also, I have the satisfaction of having the last word.

Shri Kamath: You will have the best of both the worlds, Lok Sabha and.....

Shri C. D. Deshmukh: I want to have the best of this world at any rate. In regard to concentration of wealth and power, the point has already been made that what we are concerned with is the concentration of economic power to the common detriment. Probably here also there is a presumption that the larger the concentration of power, the greater the possibility of that power being to the detriment of the common good. One might admit that; but, as I said, it is not axiomatic that all this concentration of power is the function solely of the managing agency system. I myself am a believer in the infinite variety of experience and resourcefulness that is at the command of people in business; may be that it may be the other way in which power may be concentrated. I am reinforced in stating this by what I have read and what I have been told of the experience of other countries. Indeed one would not have the anti-trust laws in the United States, unless there had been concentration of power; and it is well known that the United States has no such thing as a managing agency system. Nevertheless there is a great deal of concentration of economic power and judging from an article in one of the bank bulletins recently, it is the view of some people in their legislatures that this concentration is growing apace, perhaps to the apprehension, not to the detriment, of the common man and those who are charged with looking after the interests of the common man. This is a problem with which

we shall have to deal with all the time. But it is not necessary that one should consider that as synonymous with the managing agency system. Anyhow, we have given an indication of our general view that the greater the extent of domination of any particular interest, the greater the danger to the common interest; and that is why, illogical as it is, we have given this first token of our inclination to keep this phenomenon under observation by limiting the number of managing agencies to ten. It is a platitude, perhaps, to say that the number ten by itself does not mean anything. From one's experience of the business world, one knows that ten may mean an insignificant number of companies or one may mean a very big company which is empowered to trade over half the industrial world. Nevertheless, it is an indication of our wish to keep this matter under observation, and this sword of Damocles, this approval and the notification will be hanging over all the business world. I have no doubt that this will be one of the background matters, which will have to be borne in mind when we consider whether we should decide that it is in the public interest to let a particular enterprise continue to have a managing agent.

Regarding actual figures, all statistics are apt to be misleading unless one has a very clear and elaborate analysis of it. But, for what it is worth, I shall give these figures: There are about 1330 managing agents for 1720 companies. That by itself, speaking purely on averages, does not seem to indicate as much concentration of power as was reflected in the figures of directors given the other day when 9 families were supposed to hold 600 directorships. One cannot say here that 9 managing agents are holding 600 companies, for instance. Out of these 1720, the number of one company managing agencies is 1245. Out of these 1720 companies, 1245 companies are managed by one managing agent each.

Shri C. C. Shah (Gohilwad-Sorath): Out of 1330 managing agents, 1245 manage only one company each.

Shri C. D. Deshmukh: I say these statistics relate to 1720 companies. The average is 1720 divided by 1330; or 17/13 which comes to 1 something.

Shri K. K. Basu: May I know to what type of industries these 1245 companies relate?

Shri C. D. Deshmukh: I cannot give that breakdown at short notice. Territorially, the figures are: Madras 278, Bombay 508, Bengal 2, Punjab 14 and so on. I have got the territorial distribution, but not distribution by industries.

There are 26 managing agents who hold two companies each, 36 managing agents who hold 3 to 5 companies each and 24 managing agents who hold 5 to 10 companies. It is these 24 managing agents who will be affected by the amendment which says that the limit should be reduced from 10 to 5.

Shri S. S. More (Sholapur): You said there are 1245 managing agents who hold one company each. Are there any figures about their share capital?

Shri C. D. Deshmukh: The total share-capital of all the 1720 companies is Rs. 215.2 crores. In regard to these 1245 companies, may be it is proportionate.

Shri Asoka Mehta (Bhandara): No, no.

Shri C. C. Shah: I suppose the hon. Finance Minister has the figures as to....

Dr. Krishnaswamy (Kancheepuram): Let us hear the Finance Minister.

Shri C. D. Deshmukh: Six managing agents manage between 10 and 20 companies, 2 managing agents manage between 20 and 30 companies and one very resplendent managing agent manages 30 to 40 companies. One is really concerned with these 33 companies, adding 24,

6, 2 and 1, out of these 1245 companies.

Shri Asoka Mehta: They will have more than the proportionate share capital.

Shri C. D. Deshmukh: It may be that they have more than the proportionate share-capital, but nevertheless, I do not think that we have sufficient evidence to rush to the conclusion that the managing agency system by itself leads to concentration of economic power.

Shri K. K. Basu: You have not given the economic aspect so far. What is the proportion of the economic power which these 33 companies have out of the total number of 1245 companies?

Shri C. D. Deshmukh: Perhaps by the time we get to the last stage of the Bill, I may be able to give further information. I am using the figures that I have at hand now. As I said the other day, this is extracted from returns which were invited from 1720 companies for purposes of the Joint Committee. The trouble is that all companies did not send the full information. They filled in the form, but they did not give the loan amount, guarantee or something else. We collected all that and compiled a table giving the summations and totals which I have circulated the other day.

I shall come to that point later on. These figures are not complete. They are not even a proper random sampling, because, in respect of these 1720 companies, in each case, we have not got complete information. But, if I can circulate a further note which embodies some of this information, I shall try to do so before we come to the final stage,—the last 4 hours so to speak, of this extended discussion.

Shri K. K. Basu: It should be within our punching limit.

Shri C. D. Deshmukh: Then, I come to the next point, that is, the negligible contribution to the financing of industries by the managing

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agents. An hon. Member—he has gone away—said that it was a chimera. The hon. Member from Bhandara said, after all, it could have been only 25 per cent., because 75 per cent of capital formation came from internal sources. It may be 75 per cent or something else for other years, because later on, in the same bulletin, the hon. Member will find that conditions differed in these three years 1950, 1951 and 1952. One year was a bad one and I think the capital formation was about 30. In another year it was 151. Allowing for these variations from year to year, let us accept the fact that 75 per cent came from internal resources. Nevertheless, 25 per cent, I submit, is a substantial proportion. It is one-fourth of the total financing. That undoubtedly comes from paid-up capital and borrowings in some of which it is claimed that the managing agents have played a part. In the figures that I gave the other day relating to 1720 companies, some of which undoubtedly big ones, accounting for a total paid-up capital of Rs. 215 crores, the total of loans and advances is shown as 10.5 crores and the loans guaranteed, Rs. 7.7 crores. The total is about Rs. 18 crores. One may take any figure: may be three times. It may be that the total may be Rs. 40 or 50 crores, because these statements are not complete. I should say that the finances found by the managing agents is of the order of Rs. 50 or 60 crores a year. I submit that that is not a trifling amount.

Shri G. D. Somani (Nagpur-Pali): I would like to seek a clarification. I pointed out yesterday that we had collected some figures about guarantees by the managing agents confined to the Bombay city textile mills alone, and their figure was about Rs. 18 crores, as loans from banks guaranteed by the managing agents managing the textile mills alone. I would like the hon. Finance Minister to see how far this sum of Rs. 18 crores, confined to the city textile mills of Bombay alone can be

taken into consideration against Rs. 7.7 crores which he has mentioned.

Shri C. D. Deshmukh: That is why I stated that the 1720 companies did not all send their returns. What has happened is that the totals communicated by those who replied have been added up in this figure of 18 crores. Therefore, I cannot say without further examination that Rs. 18 crores represents the full amount of loans given or bank loans guaranteed by managing agents in these 1720 companies. Suppose replies have been received from 900 companies only, accounting for Rs. 100 crores, of paid-up capital, this sum of Rs. 18 crores would be only for these companies. It is, I think, along these lines that one might, after a great deal of patient investigation, be able to reconcile figures such as those that hon. Member has put forward or the figures such as have been communicated to me by other managing agents. If I may say so, here, it was the business of the managing agents to have compiled full figures of what they have done in this respect and to have made them available either to the Government or to the Joint Committee at the proper time. That time has gone now. All that one has are individual instances such as the hon. Member has quoted or such as I have received or the imperfect returns such as I have in my possession compiled for the Joint Committee. But, I think we should not be far out if we come to the conclusion that the managing agents do account for between Rs. 60 crores to 100 crores. Sixty crores is the figure that I infer from the figures that I have given. If we cover the whole field, it may be more. Or, in some years, it may be more; in some years it may be less. It may be Rs. 50 to 100 crores: I do not know. I take the lower figure Rs. 50 or 60 crores and I proceed to argue that that is not a negligible amount per year. That will be far more than what is made available to industrial concerns by the Industrial Finance Corporation, the State Finance Corporations and

later the Industrial Credit and Investment Corporation.

Shri C. C. Shah: It may be relevant to find out if the hon. Minister proceeds with investigation further, as to in how many cases the managing agents were called upon to fulfil the guarantees.

Dr. Krishnaswami: How is that relevant?

Shri C. C. Shah: If you give a guarantee and if you are never called upon to fulfil, it means that the assets of the company are enough to pay up.

Dr. Krishnaswami: If you had not given the guarantee, you would not have got the amount. That is all.

Shri C. D. Deshmukh: That would depend upon on the reaction of the banks themselves. After all, the banks have to do business. It may be that the whole of this amount will not be withheld by the banks. Advances have to be made by them. They will have to pick and choose. All I can say is that in some cases, at any rate, the banks would be unhappy to advance loans to the same extent to a particular company if that advance was not backed by the guarantee of the managing agent.

[SHRI BARMAN in the Chair]

One may try to dissect all this. I say that finally the net fact remains that the managing agents have taken a risk. It is all very well for those who had not taken any risk to say that this risk was quite insignificant, and that in any case, the banks would have paid. I do not know enough about this. Certainly, this is one of the matters that will have to be investigated during the next four years. That is one reason why I say that we should not rush to conclusions today because there is such a foginess in regard to the main data.

There is another factor which involves treading on delicate grounds. At one time, very few of our countrymen were managing agents be-

cause the bulk of the business was in the hands of foreigners. In those days there were objections to managing agency. But, I doubt whether they were of the same character as they are today, although possibly the reward that was charged was perhaps higher than the circumstances warranted. But, circumstances keep changing from time to time and one should not be guided entirely by the historical perspective in this matter. Then, the same people or the same category of people show themselves capable of adaptation to changing circumstances. That is the hope on which this present Bill is based. We are hoping that businessmen will manifest their business acumen in this matter as in the matter of managing their business and take a cue so to speak, from the trend of this legislation and give a better account of themselves, while, at the same time, placing at the disposal of the community the ability, experience and whatever financial resources are at their command. That is all I have to say in regard to this general question of abolition or continuance or renewal of managing agents in addition to what I have said before.

Then there was this question again concerning clause 323, about the Houses of Parliament being consulted before the rules and notifications—notification principally—are acted upon. I think that is not a very practicable procedure. As I said, Government is bound to take all possible care in ascertaining the facts and also in arming itself with the advice of the advisory commission. But I think it would be a very difficult situation if each notification were to be debated on the floor of the House before it is given effect to. I think that will set up a great many strains and it is not always possible to take a legislative decision on matters which are essentially matters for the executive Government. A hundred and one factors will have to be taken into consideration, but, as in the whole of the executive sphere, the Government remains responsible

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to the legislature, and certainly the legislature has the power to call the Government to account. If it finds that a wrong decision has been taken, a debate may take place and of course Government may stand or fall upon the order that they have issued. No great harm will come of it because this notification is going to be acted on after a length of time. It is not as if the next day, immediately, all managing agents are abolished. There is time given, and if in the meanwhile there is criticism of the action of Government on the ground that it was not justified or that it was justified, whatever the view of Parliament may be, then I think it would be open to Government to take into account the criticism of the House. That is as regards clause 323.

I have already stated that we should be prepared to consult the advisory commission and would await a suitable amendment to clause 410. It goes without saying, therefore, that I do not accept the other pleas made as amendment No. 824 that this clause should be entirely deleted because it is causing a great deal of uncertainty in business circles. It is open to managing agents to take a view of the future, and if they are not capable of taking a view of the future, they are poor businessmen. They must take a view of their own fitness and their own responsibilities, their own understanding of the extent to which they are furthering the national interests by continuing their managing agencies. Before our eyes there have been two instances. In one case, a new company has been floated with a managing agency. In another case there is no uncertainty because the hon. Member who himself suggested that clause 323 causes uncertainty has taken a very definite view that managing agency perhaps is not a desirable thing to retain. In the company with which he is associated I see that there is no managing agency, because they have secured the bulk of their capital, I think

Rs. 1 crores out of Rs. 1,60,00,000. It has been underwritten by the Industrial Credit and Investment Corporation. Here is a case where we have good promoters. Whatever they want to, they have put into that business. But so far as the rest of the business is concerned, we say: "Well, you may look to an organised institution such as this Industrial Credit and Investment Corporation. If you get the finance that way or if it is underwritten that way, then perhaps the managing agent has less work to do." So, expect that this kind of trend will continue and that people will keep taking these decisions. In some cases they will be on this side, in some cases they will be on the other side, that is to say whether they would continue to be managing agents or have resort to some other system, and I expect that by 1960 the horizon would be very much clear indeed. It will be shorn of all the air of controversy which invests this question today, and what is more, our own department will have collected, I hope, a mass of statistics which will enable us unerringly to reach a conclusion as to whether in a particular industry or whether in a particular unit, it is necessary to continue a managing agent in the public interest, apart from the question of the fitness of the managing agent. That covers many other observations much as: the present scheme leads to bureaucratisation and so on and so forth. My answer is that these powers have been exercised by Government for the last three years under the Indian Companies Amendment Act of 1951. We had a very large number of cases, I think about 1,200 in three years,—the bulk of which were decided within the first six months. There was not any great delay, and that was when the officer in charge more or less worked single-handed plus the advisory commission. Now, with a strengthened department we hope to reduce the period of delay in which case I think the tinge of bureaucratisation would be paler still. There is also this assurance

that the Minister will be seized of all important matters that come up before this department, and whatever one might say, I do not think Ministers could be described as members of the bureaucratic frame, because, as I said, they are answerable to the House.

Then, I come to clause 329. That is covered by what I have said already. One hon. Member wanted that all managing agencies should be abolished after the 15th August, 1960. I have also dealt incidentally with this question of the mystic number ten.

Shri Kamath: Mystic? Nine is mystic, not ten. Seven, nine, five, three. Ten is not at all mystic.

Shri C. D. Deshmukh: In this particular context ten is mystic because it is supposed to have no logical basis. I have tried to explain its basis. Whether you have ten or whether you have five, really won't make very much difference. It will affect another 24 companies out of 1,330. I therefore consider that it is sufficient if we go on with this figure of ten and then keep the situation and the units under observation, because if one wanted to be logical, one would have to go into very much greater detail as to the kinds of companies, amount of capital and some kind of limit on the future expansion of the companies, because if one says ten companies with say Rs. 5 crores capital, if there was a question of the expansion of the business of a company, then every time there is a scheme for expansion, the managing agent would have to say: "Now, which of these do I draw?". I do not think that would be a state of affairs which would encourage generally the expansion of industry in the private sector to the extent to which we have decided to permit it for the next few years.

Then there is one question under clause 347 connected with this question of 197 about the tapering scale. I have incidentally referred to it and I said that we shall take note of the

sentiments expressed in regard to this, although not necessarily adopting the scale, when we consider the renewal or appointment or reappointment of managing agents in the exercise of the powers which are vested in us by clause 325.

Then there is this question of tax evaders to which Shri Sadhan Gupta referred. I had occasion to reply to it in the course of the debate on another Bill, and that is why I did not refer at any great length to it. Then, something which I said the other day was misunderstood as merely posing a drafting difficulty. I shall, therefore, try to explain what I mean. My first observation is that it is difficult to define a tax-evader. Ordinarily, a distinction is made between legal avoidance and evasion by a concealment of facts. As regards legal avoidance, in U.K., the House of Lords till lately took the view that it had to be recognised that the subject, whether poor and humble, or wealthy and noble, has the legal right so to dispose of his capital and income as to attract upon himself the least amount of tax. And on the other hand—there is undoubtedly a change in their attitude towards this question—in a latter case, i.e. somebody *versus* the Commissioners of Inland Revenue, it was held that:

"There is, of course, no doubt that they are within their legal right...."

Here, 'they' refers to tax-evaders.....

Pandit K. C. Sharma (Meerut Distt.—South): That means it is permissible to circumvent the law.

Shri C. D. Deshmukh: But they add:

"....but that is no reason why their efforts or those of the professional gentlemen who assist them in the matter should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship."

Dr. Krishnaswami: Let the Finance Minister re-read the quotation.

Shri Kamath: Quotation from?

Shri C. D. Deshmukh: This is a quotation from Viscount Simon in *Latilla vs. the Commissioners of Inland Revenue* (T.C. 25, 107). I shall read it again:

"There is, of course, no doubt that they are within their legal rights, but that is no reason why their efforts or those of the professional gentlemen who assist them in the matter should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship."

Shri Kamath: What is the date?

Shri C. D. Deshmukh: This is a recent one.

Shri C. C. Shah: This is the judgment of Lord Simon.

Shri C. D. Deshmukh: Yes.

Apart from legal avoidance, there are cases of evasion by suppressing or concealing facts or manipulating accounts. For all such offences, penalties are prescribed. But the point is that some of them are liable to prosecution in a criminal court of law, and there are some others which result in imposition of penalties under the Income-tax Act. Now, those which result in prosecution of individuals stand in a category by themselves. In respect of the persons therein concerned, it may be specifically said that they are guilty of moral turpitude, and are probably not worthy of holding a public office. In respect of others, however, i.e. those on whom penalties are imposed by the income-tax authorities, it should be remembered by a House, which is very careful in regard to legal matters, that the degree and the burden of proof required in tax cases is somewhat different in character from those required in criminal cases. The tax officer is not bound by the Evidence Act, and may well act upon material which may not be admissible under the Evidence Act. He is acting on behalf

of Government probably as a tax-gatherer. Further, even though the income-tax officer may discover cases of concealment in company accounts, it is not possible for him to locate the responsibility on individual directors. If concealment has been established by the income-tax officer, it should be possible for the authority regulating the Companies Act to discover some act of misfeasance or breach of trust on the part of the managing agents, to which the Companies Act itself will apply, as for instance, clause 202 (1) (b) (ii), which specifically gives this power.

Then there is the question of the secrecy provisions of section 54 of the Income-tax Act. As the law now stands, it is not possible for the income-tax authorities to disclose these matters of concealment. It will therefore be difficult to comply with the requirements of any amendment like the one suggested by Shri Sadhan Gupta.

Shri K. K. Basu: Why not change the Income-tax Law?

Shri C. D. Deshmukh: That raises various other difficulties. After all, it has not been put there for fun, nor has it been put there to safeguard a few evil-doers. It is considered, I suppose, that the work of the income-tax officer would be far more difficult if the names of all people who are assessed to income-tax, their incomes or their absence of incomes and so on were to be blazoned forth into the world; it will have very wide consequences on credit and so on and so forth.

So, whatever the final judgment may be, all I am arguing is that in these matters one should not take a snap-judgment affecting a particular Bill. If it is a question to be gone into, it should be gone into in connection with the Income-tax Act, and it should be gone into in connection with this general matter of tax evasion. In other words, if we were to strengthen the Income-tax Act, and if we were to try and put some

further limits on the capacity of people to make mischief in that direction, then one would expect some other addition to the Income-tax Act, as for instance, disqualifying a person under categories (a), (b), (c), (d) and so on and so forth; or one might even go to the length of saying that they shall not exercise a vote. These are all matters which should be considered in their proper perspective, and not in connection with any particular Bill.

Shri K. K. Basu: Here the whole point is only this, namely whether a person or a company who is adjudged by any competent authority as evader should be allowed to continue as managing director or managing directors. How it is to be done or under which law it is going to be done is not the point. Even under any law which is prevalent or which is applied in our country, if anybody is found to be a tax-evader, then what are you going to do with him? There is no point in saying there is difficulty in this law or that law to find out who is a tax-evader. Even under such difficulties, if under any law, it is found that a particular person or company is a tax evader or evaders, then are you going to accept our proposition? That is the short point you must reply to.

Mr. Chairman: I think he has replied already.

Shri K. K. Basu: He has not replied. He is trying to cloud the whole issue. We are not concerned here with where the difficulty lies or what the difficulty is, under X, Y or Z Act. The whole point is that if under any law, even under any difficulties, it is found that a particular person is found to be a tax-evader, then are you going to disqualify him? That is the short point. Let the Finance Minister say that even if they are found to be tax-evaders, in view of the balance of advantage, according to him, and in view of the need for industrialisation, they should be allowed to continue. Let him state that fact plainly.

Shri C. D. Deshmukh: I say that tax evasion is a term to be defined. Secondly, the conclusion is one that has to be arrived at by certain means largely departmental. Therefore, I am averse to having any provision to disqualify those who may have evaded taxes by one method or the other, including avoidance of taxes, by this measure. That is the answer. Whether it is a short point or a long point, I have stated what I have to say on this matter.

Then, there are various small amendments. I do not think I shall take the time of House by dealing with them in detail. Many of them relate to clause 323.

Then, there is a point urged by Shri Tulsidas in respect of clause 348 both in regard to losses and also in regard to deduction of certain taxes. The view taken by the Joint Committee is the view which is commonly accepted. It is not as if this point was not debated, it was debated very thoroughly in the Joint Committee, and although there might be room for difference of opinion, I am content to follow the verdict of the Joint Committee on this matter, as on this question of the deduction of taxes in the nature of EPT or BPT, the reason being that the business cannot be said to have earned a certain amount of profit unless these taxes are debited to the working account of the company.

Mr. Chairman: I shall now put clauses 323 to 367 to vote.

First, I shall take up the amendments to clause 323.

The question is:

Page 171, line 26, for "each House of Parliament" substitute "both Houses of Parliament."

The motion was adopted.

Mr. Chairman: There are a number of other amendments.

I shall now put amendment No. 895 to the vote of the House.

Shri K. K. Basu: We want to divide on this amendment.

Mr. Chairman: Then I shall defer it till 2-30 p.m.

What about amendment No. 111? Should that also be put off?

Shri C. D. Deshmukh: That will be opposed, because I have explained the principle and I suggested that we ought to deal with the subject-matter when we come to clause 409. This amendment has been moved. So it has to be disposed of

Mr. Chairman: So I shall now put all the other amendments to clause 323 to the vote of the House.

The question is:

Page 171—

for clause 323 substitutes:

"323. Every managing agent to cease functioning by 31st December, 1958.—Every managing agent shall cease to function as such on 31st December, 1958, unless he ceases so to function at an earlier date."

The motion was negatived.

Mr. Chairman: The question is:

In the amendment printed as No. 893, for "31st December, 1958" substitute "15th August, 1960."

The motion was negatived.

Mr. Chairman: The question is:

In the amendment printed as No. 895, for "31st December, 1958" substitute "15th August, 1960."

The motion was negatived.

Mr. Chairman: The question is:

Page 171, lines 6 and 7—

For "such rules as may be prescribed in this behalf" substitute "sub-section (3) below."

The motion was negatived.

Mr. Chairman: The question is:

Page 171, line 17—for "three years" substitute "one year."

The motion was negatived.

Mr. Chairman: Amendment No. 908 is the same as No. 930. It is barred.

Mr. Chairman: The question is:

Page 171, line 17—for "three years" substitute "two years."

The motion was negatived.

Mr. Chairman: The question is:

Page 171, line 19—for "later" substitute "earlier."

The motion was negatived.

Mr. Chairman: The question is:

Page 171—for lines 24 to 26 substitute:

"(3) Copies of all notifications issued under sub-section (1) shall as soon as may be after they have been issued, be laid before each House of Parliament;

(4) All rules made under sub-section (1) shall be laid before each House of Parliament for not less than fourteen days as soon as possible after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid."

The motion was negatived.

Mr. Chairman: The question is:

Page 171—for lines 24 to 26 substitute:

"(3) The notification under sub-section (1) shall not be made unless made by a Committee appointed for the purpose by the Central Government to make an investigation, and unless, further, such recommendation has been approved by both the Houses of Parliament."

The motion was negatived.

Mr. Chairman: The question is:

Page 171—after line 26, add:

"(4) This section shall not apply to companies where in the opinion of the Central Government or on enquiry at the demand of the managing agents of the companies

concerned, the Government finds that the managing agent has been working satisfactorily and is likely to achieve optimum conditions conformable to the provisions of the Act before his term of office expires or before the 15th August, 1960, as the case may be."

The motion was negatived.

Mr. Chairman: The question is:

Page 171, line 8—after "Gazette" insert:

"after consulting the Advisory Commission constituted under section 409 of this Act."

The motion was negatived.

Mr. Chairman: The question is:

Page 171, line 18—for "1960", substitute "1957".

The motion was negatived.

Mr. Chairman: New Clause 323 A.

Shri K. K. Basu: We want to divide on amendment No. 897.

Mr. Chairman: It will be held over. I will put amendment No. 898 to the vote of the House.

The question is:

In the amendment printed as No. 897, for "31st December, 1958" substitute "15th August, 1960".

The motion was negatived.

Shri K. K. Basu: Amendment No. 898 relates to amendment No. 897. It may be put along with No. 897.

Mr. Chairman: We will see later.

Mr. Chairman: Clause 324. There is Government amendment No. 470.

The question is:

Page 171—after line 36, add:

"(4) Where at the commencement of this Act a company having a managing agent is itself acting as a managing agent of any other company, the term of office of the company first men-

tioned as managing agent of the other company shall, if it does not expire earlier in accordance with the provisions applicable thereto immediately before such commencement including any provisions contained in the Indian Companies Act, 1913 (VII of 1913), expire on the 15th day of August 1956."

The motion was adopted.

Mr. Chairman: Now the amendments to clause 324. The question is:

Page 171, line 36—add at the end:

"and the liabilities incurred during the period of such contraventions shall not be enforceable in law."

The motion was negatived.

Mr. Chairman: The question is:

In the amendment proposed by Shri C. D. Deshmukh, printed as No. 470, for "the 15th day of August 1956" substitute "the day on which this Act comes into force."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 324, as amended, stand part of the Bill."

The motion was adopted

Clause 324, as amended, was added to the Bill.

Clause 325

Mr. Chairman: The question is:

Page 171—

- (i) line 39—after "managing agent" insert "or its directors"; and
(ii) line 42—after "managing agent" insert "or its directors."

The motion was negatived.

Mr. Chairman: The question is:

Page 171, line 40—

for "accorded" substitute "refused".

The motion was negatived.

Mr. Chairman: The question is:

Page 171, line 43—after “company” insert “by special resolution”.

The motion was negatived.

Mr. Chairman: The question is:

Page 172—Omit lines 1 to 12.

The motion was negatived.

Mr. Chairman: The question is:

Page 172—for lines 1 and 2 substitute:

“(b) unless the Central Government have not refused such appointment or reappointment under sub-section (2).”

The motion was negatived.

Mr. Chairman: The question is:

Page 172—for lines 1 and 2, substitute:

“(b) unless the Central Government have disapproved such appointment or reappointment for reasons mentioned in sections 266 and 273 relating to directors as if the partners of the managing agency were directors.”

The motion was negatived.

Mr. Chairman: The question is:

Page 172—

after line 2, add:

“(c) unless the approval of the Central Government is obtained as to the appointment of the directors on the ground that they conform to the qualifications as may be laid down by the Central Government for such directors provided however the Central Government may lay down different qualifications for the directors of the managing agent dealing in different types of industries.”

The motion was negatived.

Mr. Chairman: The question is:

Page 172—

omit lines 3 to 12.

The motion was negatived.

Mr. Chairman: The question is:

Page 172, line 3—

for “accord” substitute “refuse”.

The motion was negatived.

Mr. Chairman: The question is:

Page 172, line 5—

for “against” substitute “in”.

The motion was negatived.

Mr. Chairman: The question is:

Page 172, line 6—after “managing agent” add “and”.

The motion was negatived.

Mr. Chairman: The question is:

Page 172, line 7—after “proposed is” insert “not”.

The motion was negatived.

Mr. Chairman: The question is:

Page 172—omit lines 11 and 12.

The motion was negatived.

Mr. Chairman: The question is:

“That clause 325 stand part of the Bill.”

The motion was adopted.

Clause 325 was added to the Bill.

Shri M. C. Shah: We have accepted amendment No. 933 in a modified form. The modified version was read out to the House.

Mr. Chairman: I shall now put amendment No. 933 to clause 326 in the modified form.

~The question is:

Page 172—

(i) line 15, omit “and”,

(ii) Line 17, add at the end “and”,

(iii) after line 17, add:

“(c) a private company which is not a subsidiary of a public company, unless the Central Government, by general or special order, specifically exempt the private company.”

The motion was adopted.

Mr. Chairman: The question is:

"That clause 326, as amended stand part of the Bill."

The motion was adopted.

Clause 326, as amended, was added to the Bill

Mr. Chairman: Clause 327. Amendment No. 103. The question is:

Page 172, line 23—for "fifteen years" substitute "ten years".

The motion was negatived.

Mr. Chairman: Amendments Nos. 935 and 1001 are exactly the same as No. 103 just negatived. They are therefore barred. Now amendment No. 934.

The question is:

Page 172, line 23—for "fifteen years" substitute "five years."

The motion was negatived.

Mr. Chairman: The question is:

Page 172, line 25— for "ten years" substitute "five years."

The motion was negatived.

Mr. Chairman: Amendment No. 936 being the same as No. 104 is barred. Now amendment 1002.

The question is:

Page 172, line 25—

for "ten years" substitute "four years."

The motion was negatived.

Mr. Chairman: The question is:

Page 172, line 27—for "two years" substitute "one year".

The motion was negatived.

Mr. Chairman: The question is: Page 172, line 42—omit "entire".

The motion was negatived.

Mr. Chairman: The question is:

Page 172, line 43—for "is made" substitute:

"is in excess of the terms laid down in sub-section (1) above."

The motion was negatived.

Mr. Chairman: The question is:

Page 172, line 43—add at the end:

"and liabilities incurred during the entire term shall not be enforceable in law."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 327 stand part of the Bill."

The motion was adopted.

Clause 327 was added to the Bill.

Mr. Chairman: Clause 328. The question is:

Pages 172 and 173—

for clause 328, substitute:

"328. The terms of the managing agency agreement when once approved by the general meeting of the company while appointing or reappointing them and approved by the Central Government, shall not be varied during the term of the agreement unless by mutual consent of the managing agent and the company."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 328 stand part of the Bill."

The motion was adopted.

Clause 328 was added to the Bill.

Shri Kamath: There is an amendment, No. 973, for a new clause, clause 328A. We want to divide on that.

Mr. Chairman: Yes, it will be held over.

Shri M. C. Shah: There is a Government amendment No. 471 to clause 329 which we would like to withdraw with the permission of the House.

The amendment was, by leave, withdrawn.

Mr. Chairman: There is another amendment No. 234 which will be deferred. I shall now put the other amendments, Nos. 904 and 839 to the vote of the House.

The question is:

Page 173, lines 10 to 12—

omit "unless before that date he is re-appointed for a fresh term in accordance with any provision contained in this Act."

The motion was negatived.

Mr. Chairman: The question is:

Page 173—after line 12, add:

"(2) This section shall not apply to companies where, in the opinion of the Central Government or on enquiry at the demand of the managing agent of companies, the Government finds that the managing agent has been working satisfactorily and is likely to achieve optimum conditions conformable to the provisions of the Act before its term of office expires or before the 15th August, 1960, as the case may be."

The motion was negatived.

Mr. Chairman: Clause 330. The question is:

Page 173—

omit lines 19 to 24.

The motion was adopted.

Mr. Chairman: Amendment No. 906 is the same as amendment No. 472 which has been adopted.

The question is:

"That clause 330, as amended, Stand part of the Bill."

The motion was adopted.

Clause 330, as amended, was added to the Bill.

Mr. Chairman: Now clause 331. The question is:

Page 173, line 29—

for "1960" substitute "1958".

The motion was negatived.

Mr. Chairman: The question is:

Page 173, line 30—for "ten companies" substitute "five companies."

The motion was negatived.

Mr. Chairman: Amendment No. 1003 is the same as amendment No. 908. I shall therefore put to the vote of the House other amendments.

The question is:

Page 173—after line 30 insert:

"Provided that a person holding office as managing agent in more than 10 companies as on 15th August, 1965 shall not be required to reduce his managing agency to 10 companies."

The motion was negatived.

Mr. Chairman: The question is:

Page 173—after line 31 insert:

"Provided that if any person holds office at the same time as the managing agent of more than one company, the number of the companies shall be such that the block capital of such companies shall not in the aggregate exceed five crores of rupees."

The motion was negatived.

Mr. Chairman: The question is:

Page 173—after line 30 insert:

"Provided that if any person holds office at the same time as the managing agent of more than one company, the number of the companies shall be such that the block capital of such companies shall not in the aggregate exceed ten crores of rupees."

The motion was negatived.

Mr. Chairman: The question is: Page 173, line 35—for “ten” substitute “five”.

The motion was negatived.

Mr. Chairman: The question is: Page 173, line 35—after “number” insert:

“or, as the case may be, in respect of such number of those companies exceeding one but not exceeding five the block capital of which does in the aggregate exceed five crores of rupees”.

The motion was negatived.

Mr. Chairman: The question is:

In the amendment, printed as No. 912,—for “five crores” substitute “ten crores”.

The motion was negatived.

Mr. Chairman: The question is: Page 173—after line 35, add:

“(2A) In the case of the managing agents working at the commencement of this Act, number of companies managing will be calculated on the basis of the companies such managing agents were managing on the 1st April, 1953.”

The motion was negatived.

Mr. Chairman: The question is: Page 173—omit lines 39 and 40.

The motion was negatived.

Mr. Chairman: The question is:

Page 173, lines 39 and 40—for “which is neither a subsidiary nor a holding company of a public company” substitute “if it is exempted by the Central Government.”

The motion was negatived.

Mr. Chairman: The question is:

Page 174, line 8—for “one thousand rupees” substitute “one hundred rupees.”

The motion was negatived.

Mr. Chairman: The question is: “That clause 331 stand part of the Bill.”

The motion was adopted.

Clause 331 was added to the Bill.

Mr. Chairman: The question is:

“That clauses 332 and 333 stand part of the Bill.”

The motion was adopted.

Clauses 332 and 333 were added to the Bill.

Mr. Chairman: There is amendment No. 939 for a new clause.

Shri K. K. Basu: We want to divide on that.

Mr. Chairman: Yes, it is deferred.

Mr. Chairman: The question is: “That clause 334 stand part of the Bill”.

The motion was adopted.

Clause 334 was added to the Bill.

Mr. Chairman: Clause 335. I shall now put all the amendments to this clause to the vote of the House.

The question is:

Page 175—

for lines 15 to 17 substitute:

“is convicted by a court in India of any offence under this Act or under the Indian Companies Act of 1936 or of any offence involving moral turpitude”.

The motion was negatived.

Mr. Chairman: The question is:

Page 175, line 16—

after “offence” insert:

“involving moral turpitude and a non-bailable one”.

The motion was negatived.

Mr. Chairman: The question is:

Page 175, line 16—

after “offence” insert “involving moral turpitude”.

The motion was negatived.

Mr. Chairman: The question is:
Page 175, line 17—
for "six months" substitute "two
years".

The motion was negatived.

Mr. Chairman: The question is:
Page 175, line 17—
add at the end:

"for an offence which involves
moral turpitude".

The motion was negatived.

Mr. Chairman: The question is:
"That clause 335 stand part of the
Bill."

The motion was adopted.

Clause 335 was added to the Bill.

Mr. Chairman: Clause 336. The
question is:
Page 175—

omit lines 21 to 24.

The motion was negatived.

Mr. Chairman: The question is:
Page 175, line 24—
add at the end:

"if a court of law, whether in
or outside India, finds such fraud
or breach of trust to have been
duly established."

The motion was negatived.

Mr. Chairman: The question is:
Page 175, lines 26 and 27—
for "any other body corporate"
substitute:

"the company or of any subsidi-
ary or holding company there-
of or of any other body corpo-
rate".

The motion was negatived.

Mr. Chairman: The question is:
Page 175—

omit lines 30 to 34.

The motion was negatived.

Mr. Chairman: The question is:
Page 175, lines 33 and 34—

for "is guilty of any such fraud
or breach of trust as is referred to
in clause (i), substitute:

"has been proved in a Court of
law to be guilty of any such
fraud or breach of trust referred
to in clause (ii)".

The motion was negatived.

Mr. Chairman: The question is:
"That clause 336 stand part of the
Bill."

The motion was adopted.

Clause 336 was added to the Bill.

Mr. Chairman: Clause 337. The
question is:
Page 175—

for clause 337, substitute:

"337. Removal for gross negli-
gence or mismanagement.—(1) A
company in general meeting may
by special resolution refer, on the
basis of gross negligence in or
for gross mismanagement of the
affairs of the company or of any
subsidiary thereof, the case of the
managing agent to the court for
adjudication of the allegations on
which such gross negligence of
gross mismanagement is founded
and in case the court finds the
same established, may remove the
managing agent from office.

(2) Any such finding by the
court shall be open to appeal to
the Court to which appeals ordi-
narily lie from conviction by the
Court."

The motion was negatived.

Mr. Chairman: The question is:
Page 175, line 37—

for "Special resolution" substitute
"resolution".

The motion was negatived.

Mr. Chairman: Amendment No. 941
is the same as amendment No. 917
just negatived.

The question is:

"That clause 337 stand part of the
Bill."

The motion was adopted.

Clause 337 was added to the Bill.

Mr. Chairman: The question is:

"That clause 338 stand part of the
Bill."

The motion was negatived.

Clause 338 was added to the Bill.

Mr. Chairman: Clause 339. The
question is:

Page 176—

(i) line 21,
for "seven days" substitute "fifteen
days"

(ii) line 23,

for "seven days" substitute "fifteen
days".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 339 stand part of the
Bill."

The motion was adopted.

Clause 339 was added to the Bill.

Mr. Chairman: The question is:

"That clause 340 stand part of the
Bill."

The motion was adopted.

Clause 340 was added to the Bill.

Mr. Chairman: There is an amend-
ment to clause 341.

The question is:

Page 177, line 25—

after "mentioned above" insert;
"any representation made by the
managing agent".

The motion was negatived.

The question is:

"That clause 341 stand part of the
Bill."

The motion was adopted.

Clause 341 was added to the Bill.

Mr. Chairman: The question is:

"That clause 342 stand part of the
Bill."

The motion was adopted.

Clause 342 was added to the Bill.

Mr. Chairman: Clause 343. The
question is:

Page 177, line 38,

after "a company" insert:

"other than a private company
which is not a subsidiary of a
public company".

The motion was adopted.

Mr. Chairman: The question is:

"That clause 343, as amended, stand
part of the Bill."

The motion was adopted.

Clause 343, as amended, was added to
the Bill.

Mr. Chairman: Clause 344. The
question is:

Pages 177 and 178—

Renumber clause 344 as sub-clause
(1) of that clause and add the follow-
ing sub-clause as sub-clause (2) of
that clause:

"(2) The provisions of sub-sec-
tion (1) shall not apply to a pri-
vate company which is not a sub-
sidiary of a public company."

The motion was adopted.

Mr. Chairman: I now put the other
amendments to vote.

The question is:

Page 178, line 3—

for "accord" substitute "withhold".

The motion was negatived.

Mr. Chairman: The question is:
Page 178, lines 3 and 4—
after "such person is" insert "not".

The motion was negatived.

Mr. Chairman: The question is:
"That clause 344, as amended, stand part of the Bill."

The motion was adopted.

Clause 344, as amended, was added to the Bill

Mr. Chairman: Clause 345. The question is:

Page 178, line 14—

after "as the Central Government may" insert "(Whether before or after the expiry of the six months)".

The motion was adopted.

Mr. Chairman: The question is:
Page 178, lines 11 and 12—

after "firm or body corporate" insert:

"so that the original members of the firm or body corporate cease to hold a majority interest in the firm or body corporate."

The motion was negatived.

Mr. Chairman: The question is:
Page 178, line 13—

for "six months" substitute "three months".

The motion was negatived.

Mr. Chairman: The question is:
Page 178—

after line 17, insert:

"Provided that such approval shall not be accorded only in cases where change of such a nature has taken place which has affected or is likely to be affected prejudicially the affairs of the company which is being managed by the managing agency."

The motion was negatived.

Mr. Chairman: The question is:
Page 178—

omit lines 18 to 28.

The motion was negatived.

Mr. Chairman: The question is:
Page 178, line 26—
after "ownership of shares" insert:

"to the extent of twenty per cent of the shareholdings".

The motion was negatived.

Mr. Chairman: The question is:
Page 178, line 36—

for "Provided that no such notification" substitute "(3) No such notification".

The motion was negatived.

Mr. Chairman: The question is:
"That clause 345, as amended stand part of the Bill."

The motion was adopted.

Clause 345, as amended, was added to the Bill.

Mr. Chairman: The question is:
"That clause 346 stand part of the Bill."

The motion was adopted.

Clause 346 was added to the Bill.

Mr. Chairman: Clause 347: The question is:
Page 179, lines 28 and 29—

omit "Save as otherwise expressly provided in this Act."

The motion was negatived.

Mr. Chairman: The question is:
Page 179, line 33—
for "ten per cent" substitute "five per cent".

The motion was negatived.

Mr. Chairman: The question is:
Page 179, line 33—
for "ten per cent" substitute "six per cent".

The motion was negatived.

Mr. Chairman: Now Government

amendment No. 665. The question is:

Page 179, line 33,

for "annual net profits of the company" substitute "net profits of the company for that financial year".

The motion was adopted.

Mr. Chairman: The question is:

Page 179—

line 33, add at the end:

"upto 20 lakhs and for every 10 lakhs above that, the rate should come down by 1.5 per cent, till the final rate of remuneration comes to 5 per cent."

The motion was negatived.

Mr. Chairman: The question is:

To the amendment printed as No. 807, add the following proviso:

"Provided that the Central Government may enforce the scale of remuneration at the time of renewing the managing agency."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 347, as amended stand part of the Bill."

The motion was adopted.

Clause 347, as amended, was added to the Bill.

Mr. Chairman: Clause 348. The question is:

Page 179, lines 34 and 35—

for "the net profits of a company for the purpose of section 347" substitute:

"for the purpose of section 347, the net profits of a company in any financial years".

The motion was adopted.

Mr. Chairman: I will now put amendment No. 987.

Shri Kamath: Amendments 987 and 988 may be put together. We want to divide on them.

Mr. Chairman: Yes, they will be taken up later. I will now put other amendments to vote.

The question is:

Page 179—

for lines 36 to 38, substitute:

"(a) credit shall not be given for the sums specified in sub-section (2) and".

The motion was negatived.

Mr. Chairman: The question is:

Pages 179 and 180—

omit lines 41 to 44 and 1 and 2 respectively.

The motion was negatived.

Mr. Chairman: The question is:

Page 180, lines 1 and 2—

for "unless and except in so far as the Central Government otherwise directs" substitute:

"if it is sanctioned by a special resolution of the company and approved by the Central Government".

The motion was negatived.

Mr. Chairman: The question is:

Page 180—

after line 14, insert:

"(e) bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf by any Government, unless and except so far as the Central Government otherwise directs."

The motion was negatived.

Mr. Chairman: The question is:

Page 180—

omit lines 23 to 27.

The motion was negatived.

Mr. Chairman: The question is:

Page 180—

for lines 23 to 27, substitute:

"(d) any tax payable to the Central Government, State Government and any local authority".

The motion was negatived.

Mr. Chairman: The question is:
Page 180—

after line 42, add:

"Provided that no such loss shall be so taken into account in determining the remuneration of a managing agent, as has occurred during a period in which the company was not managed by the managing agent whose remuneration is under consideration."

The motion was negatived.

Mr. Chairman: The question is:
Page 181—

omit lines 6 to 9.

The motion was negatived.

Mr. Chairman: The question is:
Page 181, lines 8 and 9—

omit "not falling under clauses (d) and (e) of sub-section (4)".

The motion was negatived.

Mr. Chairman: The question is:
Page 181, line 12—

add at the end:

"except when such payments have to be made because of default or negligence of the managing agent."

The motion was negatived.

Mr. Chairman: Clause 349. The question is:

Page 181, line 17—

add at the end:

"for the financial year for which the net profits are to be computed".

The motion was adopted.

Mr. Chairman: The question is:
Page 181, line 18—

omit "not".

The motion was negatived.

Mr. Chairman: Now Government amendment No. 668. The question is:

Page 181, lines 18 and 19—

after "depreciation" insert "or any development rebate".

The motion was adopted.

Mr. Chairman: The question is:
Page 181, line 18—

omit "initial."

The motion was negatived.

Mr. Chairman: The question is:
Page 181, line 20—

omit "not".

The motion was negatived.

Mr. Chairman: The question is:
Page 181—

omit lines 21 to 25.

The motion was negatived.

Mr. Chairman: Amendment No. 951 is the same as 852 which has been negatived just now.

The question is:

"That clause 349, as amended, stand part of the Bill"

The motion was adopted.

Clause 349, as amended, was added to the Bill.

Mr. Chairman: The question is:

"That clause 350 stand part of the Bill."

The motion was adopted.

Clause 350 was added to the Bill.

Mr. Chairman: Clause 351. The question is:

Page 181, line 40—

for "the limit specified in section 347" substitute "the limits specified in sections 197 and 347".

The motion was adopted.

Mr. Chairman: I will now put all the other amendments.

The question is:

Page 181, line 42—

for "by a special resolution of the company" substitute:

"by a resolution passed by the company in general meeting with the assent of every member present,"

The motion was negatived.

Mr. Chairman: The question is:

Page 181, line 42—

after "company" insert:

"adopted with the consent of all the members present".

The motion was negatived.

Mr. Chairman: The question is:

Page 181, line 43—

omit "as being in the public interest".

The motion was negatived.

Mr. Chairman: The question is:

Page 181, line 43—

add at the end:

"after giving the shareholders an opportunity of being heard".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 351, as amended, stand part of the Bill."

The motion was adopted.

Clause 351, as amended, was added to the Bill.

Mr. Chairman: Clause 352.

Shri C. D. Deshmukh: The whole clause has to be deleted. So, the clause itself may be put to vote direct.

Mr. Chairman: The question is:

"That clause 352 stand part of the Bill."

The motion was negatived.

Mr. Chairman: Clause 353. The question is:

Page 182, line 13—

omit "shall not become due, and"

The motion was adopted.

Mr. Chairman: The question is:

Page 182, line 15—

add at the end "and shall be apportionable".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 353, as amended, stand part of the Bill."

The motion was adopted.

Clause 353 as amended,* was added to the Bill.

Mr. Chairman: Clause 354. The question is:

Page 182, line 26—

for "or" substitute "and".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 354 stand part of the Bill."

The motion was adopted.

Clause 354 was added to the Bill.

Mr. Chairman: Clause 355. The question is:

Page 182, line 30—

for "unless it is a subsidiary or a public company" substitute "if exempted by the Central Government for reasons recorded in writing".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 355 stand part of the Bill."

The motion was adopted.

Clause 355 was added to the Bill.

*In clause 353, line 17, the word and figures "Section 352", were substituted by the word and figures "Section 198", as patent error under the direction of the Speaker.

Mr. Chairman: clause 356. The question is:

Page 182, lines 35 to 37—

omit "if the sales are made from the premises at which they are produced or from the head office of the managing agent or from any other place in India".

The motion was negatived.

Mr. Chairman: The question is:

Page 182, line 37—

omit "other".

The motion was adopted.

Mr. Chairman: The question is:

Pages 182 and 183—

omit lines 38 to 48 and 1 to 15 respectively.

The motion was negatived.

Mr. Chairman: The question is:

Pages 182 and 183—

omit lines 38 to 48 and 1 to 2 respectively.

The motion was negatived.

Mr. Chairman: The question is:

Page 182, line 39—

after "any place outside India" insert "not being a place specified in sub-section (1)".

The motion was adopted.

Mr. Chairman: The question is:

Page 182—

omit lines 42 to 44.

The motion was negatived.

Mr. Chairman: The question is:

Page 183—

after line 3, add:

"Provided, however, the Central Government on the application of any member of the company

or of its own motion, may enquire into the justification of the payment of the whole or the remuneration paid or payable and may disallow any sum, in whole or in part, notwithstanding any agreement or resolution of the company thereon."

The motion was negatived.

Mr. Chairman: The question is:

Page 183—

(i) line 5,

for "five years" substitute "three years".

(ii) line 6,

for "five years" substitute "three years".

The motion was negatived.

Mr. Chairman: The question is:

Page 183—

for lines 8 and 9, substitute:

"Provided that such renewal shall not be effective earlier than one year from the date on which it is to come into force."

The motion was adopted.

Mr. Chairman: The question is:

"That clause 356, as amended, stand part of the Bill."

The motion was adopted.

Clause 356, as amended, was added to the Bill.

2 P.M.

Mr. Chairman: The question is:

"That clause 357 stand part of the Bill."

The motion was adopted.

Clause 357 was added to the Bill.

Mr. Chairman: Clause 358. The question is:

Page 183, lines 33 to 35—

omit "if the managing agent or associate maintains an office at such place for his own business, that is to say, for a business not connected with that of the company".

The motion was negatived.

Mr. Chairman: The question is:
Page 183, lines 33 and 34—

for "maintains an office at such place for his own business" substitute:

"maintains an office at such place not only for such purchase but also for his own business".

The motion was adopted.

Mr. Chairman: The question is:
Page 183—
omit lines 40 to 42.

The motion was negatived.

Mr. Chairman: The question is:
Page 184—

after line 2, add:

"Provided that the remuneration in no case exceeds five per cent of the purchase price of goods."

The motion was negatived.

Mr. Chairman: The question is:
Page 184—
omit lines 3 to 12.

The motion was negatived.

Mr. Chairman: The question is:
Page 184, lines 6 to 9—

omit "the amount of the purchases likely to be made by the office in each year on behalf of the company and the proportion which such amount will bear to the total amount of the purchases made by the office".

The motion was adopted.

Mr. Chairman: The question is:
Page 184—
after line 12, add:

"Provided that the details of the office maintained by the managing agent outside India including its nature, purpose, maintenance cost, the proportion of the expenses that may be reasonably attributed to the work done on behalf of the company and the

basis of the calculation thereof is submitted in writing and certified to be correct by the managing agent."

The motion was negatived.

Mr. Chairman: The question is:
Page 184—

(i) line 14,

for "three years" substitute "one year"

(ii) line 15,

for "three years" substitute "one year"

The motion was negatived.

Mr. Chairman: The question is:
"That clause 358, as amended, stand part of the Bill."

The motion was adopted.

Clause 358, as amended*, was added to the Bill.

Mr. Chairman: The question is:
"That clause 359 stand part of the Bill"

The motion was adopted.

Clause 359 was added to the Bill.

Mr. Chairman: I shall put amendment No. 677 to clause 360.

The question is:

Page 185—

after line 9, add:

"(4) Nothing contained in clause (a) of sub-section (1) shall affect any contract or contracts for the sale, purchase or supply of any property or services in which either the company or the managing agent or associate, as the case may be, regularly trades or does business, provided that the value of such property and the cost of such services do not exceed five thousand rupees in the aggregate in any calendar year comprised in the period of the contract or contracts."

The motion was adopted.

*In sub-clause (2) of clause 358, line 32, the words "the managing agent", were substituted by the words "its managing agent", as patent error under the direction of the Speaker.

Mr. Chairman: I will now put all the other amendments to clause 360.

The question is:

Page 184, lines 38 and 39—

for "any contract being" substitute "all contracts which may be"

The motion was negatived.

Mr. Chairman: The question is:

Page 184—

after line 46, add:

"(a) be valid for a period of three years;

(b) provided that each contract that may be entered into during the period of three years shall be made subject to the sanction of the Board of directors;"

The motion was negatived.

Mr. Chairman: The question is:

Page 185—

after line 6, insert:

"(2A) A contract as aforesaid shall not be made for a term not exceeding three years but may be renewed from time to time for a term not exceeding three years on each occasion, provided that such renewal shall be effected only in the last year of the exceeding term."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 360, as amended, stand part of the Bill."

The motion was adopted.

Clause 360, as amended, was added to the Bill.

Mr. Chairman: Clause 361. The question is:

Page 185—

(i) line 11,

for "1st March, 1958" substitute "1st March, 1956"

(ii) line 16,

for "1958" substitute "1956"

The motion was negatived.

Mr. Chairman: The question is:

Page 185—

(i) line 11,

for "1st March, 1958" substitute "1st March, 1957"

(ii) line 16,

for "1958" substitute "1957".

The motion was negatived.

Mr. Chairman: The question is:

Page 185, lines 15 and 16—

for "on the first day of March, 1958" substitute:

"on the day succeeding the date of such commencement".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 361 stand part of the Bill."

The motion was adopted.

Clause 361 was added to the Bill.

Mr. Chairman: The question is:

"That clause 362 stand part of the Bill."

The motion was adopted.

Clause 362 was added to the Bill.

✓ **Mr. Chairman:** I will now put amendment No. 992 to clause 363.

Shri Kamath: We want to divide on this amendment.

Mr. Chairman: So, this will be held over and, therefore, clause 363 is also held over.

The question is:

"That clause 364 stand part of the Bill."

The motion was adopted.

Clause 364 was added to the Bill.

Mr. Chairman: I will now put amendment No. 993 to clause 365.

Shri Kamath: We want to divide on this amendment also.

Mr. Chairman: This also will be held over. Clause 365 is therefore held over.

I will now put the amendments to clause 366.

Page 186, line 32—

for "three years" substitute
"one year".

The motion was negatived.

Mr. Chairman: The question is:

Page 186, line 32 and wherever it occurs in this clause,

for "three years" substitute
"one year".

The motion was negatived.

Mr. Chairman: The question is:

Page 186, line 32 and wherever it occurs in this clause,

for "three years" substitute
"two years".

The motion was negatived.

Mr. Chairman: The question is:

"That clause 366 stand part of the Bill."

The motion was adopted.

Clause 366 was added to the Bill.

Mr. Chairman: I will now put amendment No. 859 for insertion of a new clause 366A.

The question is:

Page 186—

after line 44, insert:

"366A. Damages for wrongful termination of office.—

(1) Nothing contained in sections 365 and 366 shall prejudice or restrict the right of a managing agent who has been wrongfully dismissed or whose office has been wrongfully terminated, to claim damages from the company in a Court of Law.

(2) No payment shall be made by a company, by a way of damages, to its managing agent for wrongful dismissal or wrongful termination of office, unless a Court of Law has held either that the dismissal or termination was wrongful or that the payment proposed and the amount thereof are reasonable in all the circumstances of the case."

Mr. Chairman: The question is:

"That clause 367 stand part of the Bill."

The motion was adopted.

Clause 367 was added to the Bill.

Shri C. C. Shah: Clause 197 stood over. It can now be voted upon. It stood over until clause 347 was decided upon.

Shri K. K. Basu: Let us have it at 2-30 along with the others.

Clauses 368 to 388

Mr. Chairman: The House will now take up clauses 368 to 388 for which 3½ hours have been allocated. This would mean that these clauses will be disposed of by 5-36 p.m. today.

Shri Tulsidas: I think it will go up to 6 o'clock.

Mr. Chairman: Let us provisionally put it at 5-36 now. 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 fifteen minutes.

Shri C. D. Deshmukh: The amendments which stand against my name are in respect of clauses 372, 386 and 388.

The first amendment is No. 678 to clause 372. This is intended to make the meaning quite clear. If a director by reason of his being interested in the subject matter of a resolution

[Shri C. D. Deshmukh]

cannot vote on it, his consent cannot obviously be necessary because he was present at the meeting. The amendment thus merely removes a discrepancy which might create a certain amount of confusion.

The next amendment is No. 679 to the same clause. Clause 285 (1), as amended by the Select Committee, provides for the service of notice of every meeting of the board of directors to every director. In the case of a director's absence from India, the notice has to be given at his usual address. There is, therefore, no need to provide again in clause 372 (4) for giving notice of a meeting to every director if it is made clear that notice of the resolution to be moved at the meeting must be given to every director. To avoid discrepancy between the two clauses, one of which refers to the registered address and the other to the usual address of an absent director, it is desirable to provide for the giving of the notice or the resolution in the manner specified in section 285.

As regards clause 386, there are two amendments. One is amendment No. 865. This addition is for the same addition made earlier to clause 315. Under clause 315, Government propose to take power to permit a common managing director when the companies are functioning as a single unit as it would be desirable that the companies should have a common managing director. Likewise, this amendment makes a similar relaxation in the case of companies functioning as a single unit and permits of Government appointing a common manager for such companies although they may be more than two in number.

The other amendment is No. 680 and it gives effect merely to the intention. The omission of the provision such as is contained in the new sub-clause (4) makes an error. In this connection, a comparison is invited to clauses 314 and 315.

Then I go to clause 388 which is sought to be amended by amendment No. 681. The increase in the remuneration of directors requires the prior approval of the Government according to clauses 309 and 310. It is considered necessary there should be similar provisions in respect of the remuneration of the manager also as defined in clause 224; that is to say that the consent of the Central Government should be obtained before the remuneration of the manager is increased. This will prevent subterfuges to defeat the provisions of the Bill. The object of the amendment is to make it obligatory for a company to obtain the prior sanction of the Government before the manager's remuneration is increased by a company.

Shri N. C. Chatterjee (Hooghly): I have got an amendment to the amendment moved by the hon. Finance Minister—No 1105 to clause 388. I have moved that in the amendment proposed by the hon. Finance Minister which is printed as No. 681 in List No. 39, the words "sections 309 and 310" be deleted. For sections 309, 310, 311 and 316, I want to substitute sections 311 and 316 and for sections 309, 310 and 311, I want to substitute section 316.

Mr. Chairman: You want to eliminate two clauses.

Shri N. C. Chatterjee: Yes Sir. If you look at page 194, the clause as it stands says that the provisions of section 311 shall apply in relation to a manager of a company as they apply in relation to a director thereof. He wants to enlarge the ambit of this clause by putting in clauses 309 and 311. If you look at them clause 309 says that increase in any remuneration would require Government sanction. In the case of a public company or a private company which is a subsidiary of a public company, an amendment of any provision relating to the remuneration of a managing director or any other director must require the sanction of the Government. If you look at 310, increase in remuneration

of a managing director on re-appointment or appointment after the Act must get Government sanction. Is this really necessary? You have got clause 387 which fixes a maximum. The manager of a company may receive remuneration either by way of monthly payment or by way of a specified percentage not exceeding five per cent. of the net profits of the company. We have fixed a ceiling. Is this amendment necessary? You have got a manager getting Rs. 500 and you transfer him to another place; the business of a Bombay company may expand and you transfer the manager to Calcutta. He has to go away to Calcutta and live there for some time. Supposing for that purpose an additional allowance of Rs. 100 or even Rs. 50 is given, they have got to apply to the Government for sanction. I do not think that it will be really proper and this may hamper too much the working. I do not like the Government or the department concerned to be bothered too much by this kind of applications for sanction even when there is an increase of Rs. 50 or when there is any increase, especially when the Parliament has fixed a ceiling that it shall not exceed five per cent of the net profits.

Mr. Chairman: The other ceiling also applies.

Shri N. C. Chatterjee: That is right. The other ceiling also applies. I would therefore submit to the Finance Minister's consideration this point. Is it really feasible that every time when there is to be an increase of Rs. 10 or Rs. 15 in the remuneration of an employee they should be compelled to approach the Government for the purpose of getting sanction. The word 'remuneration' is used here. Even if there is an allowance given for a particular type of work that means an addition to the remuneration. A man is getting Rs. 700 and you are giving Rs. 100 extra allowance for going out of his State and for supervising certain parts outside the particular zone where the registered office is situated. Even then would you ask them to come

to the Government for prior sanction? I think it is not really necessary. What was originally done by the Joint Committee was quite fair and the ceilings have been fixed. I doubt the necessity of driving them to the Government for sanction and dancing in Delhi coming up to the department and trying to get the approval. Most probably some Under Secretary or some Superintendent will do it; you cannot expect a Minister to be bothered with all these little things. It really means that somebody else will have to do it and it is not proper or feasible to drive them to do it.

Shri K. K. Basu: In this group, quite a number of amendments have been moved. So far as Government are concerned, they have already got them. The most important part is the one relating to the loans to managing agents. We have tabled an amendment—No. 962—to clause 369 for the omission of lines 34 to 39. This sub-clause which we seek to delete says:

"Nothing contained in sub-section (1) or section 294 shall apply to any credit given by the company to its managing agent for the purposes of facilitating the company's business and held by such agent in his own name in one or more current accounts, subject to limits previously approved by the directors of the company and on no account exceeding twenty thousand rupees in the aggregate."

We have already given the arguments quite elaborately when we discussed about the loans given by the managing agents. We do not want to repeat the arguments. This is to serve as a check on the action of the managing agent which we think will improve the behaviour of the managing agents even if they are allowed to function.

In clause 370 we have moved an amendment—No. 963. Clause 370 says "No company.....shall make any loan or give any guarantee

[Shri K. K. Basu]

or provide any security....."It goes on and then it says:

"unless the making of such loan, the giving of such guarantee or the provision of such security has been previously authorised by a special resolution of the lending company."

We want to delete this provision because by this method the managing funds can utilise the funds of one managed company for the other managed company. They may utilise that fund for some other purpose. This of course is there in the evidence and I need not repeat it. A good deal has been said about this in the documents placed before the House and those who are interested in the Company Law must have either read the evidences tendered before the Bhabha Committee or the numerous voluminous documents that have been supplied to us. Therefore, to put a stop to such practices we want the abolition of that particular provision. This special resolution has no meaning. We know very well and it has been said a number of times over and over again that it is the managing agents who usually control the block shares and it is not very difficult for them on many occasions to get the resolution passed.

With regard to clause 372, our general proposition is that we want to reduce the figures from 10 per cent. to 5 per cent. and from 20 per cent. to 10 per cent. From the general discussion we could gather that the majority party is of the view as given in this clause with regard to the purchase of shares by the company or companies in the same group, and the provision in this Bill is going to be accepted. Naturally, they have the majority and so their decision or will will prevail. Therefore, by this amendment we have tried to put a check on it to whatever extent we can by reducing the figures from 10 per cent. to 5 per cent. and from 20 per cent. to 10 per cent.

Now, I come to clause 375—managing agent not to engage in business competing with business of managed company. It says:

"A managing agent shall not engage on his own account in any business which is of the same nature as, and directly competes with, the business carried on by a company of which he is the managing agent or by a subsidiary of such company, unless such company by special resolution permits him to do so."

Then it goes on to say:

"(b) a private company at any general meeting of which not less than twenty per cent. of the total voting power may be exercised or controlled.....".

We have known of very big industrial houses or managing agency firms; in private companies or even in public companies that the persons mentioned here may belong to a particular family or group of people. They have quite an influential position in the economic set-up of our country, and, therefore, it is necessary that even in the case of private companies this provision of 20 per cent. must be reduced. We want to reduce it so that we may be able to bring in a larger section of private companies within the provision of this particular clause. Figures have been given yesterday and a number of Members have said that nearly 25 to 30 per cent. of our business organisations are still under the influence of private companies and, naturally, they play a very important part in the economic set up of our country.

Then, the next important provision is with regard to clause 377 which deals with restrictions on right of managing agent to appoint directors. We have given certain amendments to this clause to justify the grounds for appointment of directors. It has often been said as to who are the champions of managing agents and

to which, to some extent—I should say, to a large extent—the Finance Minister has also contributed. It has been said that those managing agents have a skill by which they—about 10 families or say 200 or 300 people in the whole country—have a monopoly over managing agency. I made the same point yesterday when I was referring to the provision with regard to managing agents. If you scan the list that has been supplied to us or go through some of the books where we get the names of directors of managing agency firms you will find that there are persons, who, I do not know for what reasons, are considered to be qualified to be directors. Yesterday I said about an Indian Civil Service Member all of a sudden becoming a director of a managing agency firm and controlling 20 to 60 firms. There may be persons who do not have a good practice in the bar and they become Ministers and after retiring from ministership they are considered to be experts in business affairs. They also become directors of managing agency firms controlling 25 to 30 firms. I know, Sir, landed aristocrats of Bengal all of a sudden become directors of managing agency firms controlling about 30 firms. They are also considered to be great business experts with whatever skill. I do not know.

Pandit K. C. Sharma: There may be flashes of genius over-night.

Shri K. K. Basu: As people become professors of genius over-night. Similarly, these people who are all duds all of a sudden get intelligence; I do not know. They were landed aristocrats and big zamindars. All of a sudden they become great experts possessing great skill. I do not want to scan the nine or ten families because, as has been said on a number of occasions, it is not always that a big man's son is also a big man. I do not want to bring personalities here. There may be one or two directors who may, possibly possess some skill. Some are experts in changing books and some may be experts to influence Ministers by giving them

khana peena. This is the way these business houses work. They divide themselves into groups and these directors go to office only for 5 to 10 minutes. They are absent for weeks and they either rush up to Delhi or do something by which they make friendship with officials or the Ministers. You can find them in the Gymkhana Club or the Chelmsford Club.

Shri Kamath: *Khana peena* is part of their daily business.

Shri K. K. Basu: I have moved this amendment conceding for the moment—which I do not do—that these directors have some skill and they are supposed to be experts. I concede for the moment that without their help business cannot be run. Therefore, when the State Bank was organised by the Government I do not know why a member of the Civil Service—because they only had business experience—was made managing director. If we accept this logic we should have gone over with folded hands to these nine or ten families, who have brought forth so many experts, to give their sons, who are experts, to rule over the State Bank or the steel plants that we are going to erect; or the Sindri Fertiliser Factory. I do not know whether the Government is agreeable to accept this proposition because, according to what has been said, business skill is only restricted to these people.

As I said, earlier, my amendment is a very simple amendment. Conceding for the moment that these directors have some skill to own managing agency firms, and managing agency organisation being a body corporate majority of the shareholders can get a managing agent's son elected to the board of directors and thus there is continuity of the managing agency company—it is not like a partnership firm which is dissolved when one partner goes—my amendment only says that the Government should also have a right to declare what should be the qualifications for a director of a managing agency firm

[Shri K. K. Basu]

who has to run several companies. Now, take the case of Tatas—I do not mean anything—they are managing agents for a steel plant, for an electric supply concern, of a heavy chemical concern and what not. Therefore, it is expected that a managing agency firm like Tatas should have persons as directors who have some experience in all these fields. If there are four directors, there should be one or two with technical experience and one or two with financial experience. Therefore, I have moved an amendment that,—if the Government moves logically about which, of course, I have no illusion that they won't—they should have the right to declare that the directors of managing agency firms should have these qualifications and otherwise they cannot be directors. Thus it is only to guard against the evils and to see that the managing agency—to whom an appeal has been made that they should behave properly—really represents the business skill of our country, that this amendment has been moved. It is only after taking into consideration their logic that I have moved this amendment and I hope they will accept it so far as clause 377 is concerned. The other amendments are not of a major character: it is only a question of reducing the period from one year to three months and to some extent tightening up of the provision.

I come next to the most important Chapter which has been incorporated in the Bill by the Joint Committee. My hon. friend Shri N. C. Chatterjee said the other day that the most constructive approach that has been made in the matter of the managing agency system is the introduction of the system of treasurers and secretaries. Of course when we discussed this subject during the consideration of the 'Definitions' clause, the Finance Minister came forward with his exposition of the situation: why he wanted to keep secretaries and treasurers and the benefit that the country and the industrial world is expected

to drive out of it. He was not agreeable to accept our suggestion. I may in this connection state categorically that we are definitely of the opinion that they are none but *binamidars* of the managing agents with certain changes. In our country there are ever so many *binami* transactions and this is only one of them. It is now a matter of common knowledge that no section of our community has benefited from the managing agency system; therefore, let us have another system with some modifications to replace this managing agency.

Pandit K. C. Sharma: What other alternative do you suggest?

Shri K. K. Basu: Have patience and hear me fully. Please do not behave as you behave at party meetings. We are here to discuss.

What perceptible improvement is the new system of treasurers and secretaries likely to bring about? If at all it is necessary to have a system of corporate management in the industrial field, then, let us evolve a system without the abuses of the managing agency system. Of course, I for one am not in a position to accept the proposition that without corporate management, industrialisation of the country cannot be brought about. We only know fully well that in the case of banks and insurance companies, the very same argument was mooted out. We were threatened with the possible collapse of the whole machinery of banking and insurance. We know the history of banking and insurance in our country. In some places they may have gone into liquidation. That is not because of the merits of the previous managing agents, or the faults of the present managers. There is no denying the fact that Indian banking and Indian insurance have expanded considerably and have been a great force in the economic life of our country. So, I for one do not accept the theory that without a corporate form of management there is very little

chance of the development of industrial activity. Even today—it may not be in great numbers—in our country we have board-managed organisations and they are running quite well.

The next question we have to take into consideration is the influence of the managing agency system on the social and economic life of the country. The managing agents have unduly influence—quite disproportionately to the service they have rendered to the community—the economic life of our country. To do away with it, Government is trying to put some restrictions. Similarly in the case of secretaries and treasurers, if you want to ensure that they do not have any of the potential vices similar to that of managing agents, then the first requisite is that they should be debarred from holding any shares in the managed companies. Often it is said that secretaries and treasurers have no right to appoint directors of the managed companies, as the managing agents have. Naturally the managing agents have invested some capital; therefore, they have the right to nominate their men. Immediately you allow under the law secretaries and treasurers to hold some shares in the managed companies, the same process will again begin to operate. When there is no restriction on anybody joining a body corporate, they can buy some shares, if they have the money, in the concern of which they are appointed secretaries and treasurers. Subsequently with block shares they can surely control the managed companies, and the same process of the managing agency system will again manifest itself in the proposed set-up of secretaries and treasurers. Therefore, I have moved an amendment to categorically debar by statute secretaries and treasurers from holding any share in the managed companies.

I am only trying to answer some of the points that have been put on the lines of constructive approach. In the case of the managing agencies, we have imposed a limit of ten companies. Without going into the merits

of the question, I fail to understand why Government has come forward and made a provision here which says that so far as secretaries and treasurers are concerned there should be no limit on the number of managed companies. When they have been allowed to hold shares in managed companies, as the managing agents have been doing till now, they can acquire shares of all the managed companies of which they are appointed secretaries and treasurers. I have, therefore, moved an amendment to the effect that the clause which restricts managing agents from being appointed managing agents of not more than ten companies should also be operative in the case of secretaries and treasurers.

The most vital point on which a similar amendment was accepted on an earlier occasion relates to appointment of managers. I have moved an amendment that no insolvent should be appointed to such posts.

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

Shri K. K. Basu: I shall give you later. I have not got three secretaries to go to the official galleries and get information.

Shri C. D. Deshmukh: To clause 384 you mean?

Shri K. K. Basu: Yes.

The most important amendment which I hope the Finance Minister will accept and the House will accept is regarding secretaries and treasurers. If you are keen on establishing a new set up of industrial management in the country, if you have to give up the idea that a couple of families are the repository of all skill in our country. I have therefore suggested that Government should prescribe qualifications for treasurers and secretaries. In a body corporate, once I control 51 per cent. of the shares in a concern, for all time to come my nominees, my heirs, continue to have a dominant share in the affairs of the company. Therefore, I say it emphatically and

[Shri K. K. Basu]

categorically that it should be a firm, just as we have for solicitors, auditors, or even in some cases as in Europe, for doctors, valuers and the engineers. Immediately, if one person dies, the secretary and treasurer system is dissolved and a new secretary and treasurer company comes into being. In that case the Government can have a say on the matter as to the qualifications needed to run the particular organisation of secretaries and treasurers. Having said that it should be a firm, the qualification of the persons, whoever they are, composing it may be laid down by the Government. For a steel plant, we require men with particular qualifications; for chemicals, we require men with different qualifications. So, I insist that if the Government is sincere and honest in its proposition that new types of industries and a new type of industrial management are necessary, and that the secretary and treasurer companies may be started, which, according to them, will be a substitute for the managing agencies, it is absolutely necessary that the secretary and treasurer companies should be restricted only to the partnership firms, and the qualifications of the persons, whoever they are, should be laid down. I hope the Government will give its sincere consideration to this particular clause which, while we were in the definitions, was put off for fuller discussion. Government have already quoted many figures about the managing agencies and how they are to be controlled. I do not want to go into the details, but I only say that the secretary and treasurer system should be restricted to the persons who are really skilled in the management of the firm, and for that the necessary qualifications should be laid down for being a partner of the firm.

Shri Kamath: It is time for the quorum bell. The division on the amendments was also held over.

Mr. Chairman: The amendments may be taken up at the end of the discussion now going on.

Shri Kamath: Let us know when you will take them up.

Mr. Chairman: I think at the end. The bell is being rung.—Now there is quorum. The hon. Member, Shri Asoka Mehta, may start.

Shri Asoka Mehta: I am grateful to the Finance Minister for the clarification he offered this morning. While I am happy that clarification was offered, I am afraid I cannot say that I am satisfied with the clarification that has been given. But I have no desire to further analyse what he said and if I try to analyse it I would be able to point out once again the contradictions and the knots that continue to exist in his thoughts and therefore in his expressions. But I shall not labour that point any further.

He gave us this morning a set of figures, and in the set of figures he suggested that there are just six managing agency companies that control between ten and fifteen companies, one between 20 and 30 and one between 30 and 40 companies. That means, in all, according to him, there are nine managing agencies that control more than ten companies.

Shri C. D. Deshmukh: So far as the 1,720 companies are concerned,

Shri Asoka Mehta: I do not know what those 1,720 companies were and on what basis they were selected, but he also told us that massive statistical data has been collected. I cannot claim to have collected statistical data on that scale but in 1949 I had made a study of concentration in our industries and these are the figures that I found. Andrew Yule & Co., control 78 companies, Balmer Lawrie, 31; British India Corporation, 16; Martin Burns and Co., 20; Jardine Henderson 26; Gillanders Arbuthnot & Co., 70; McNeil, 18; McLeod, 55; Octairus Steel, 57; Tata Industries, 25; Birla, 17; Dalmia Jain, 25; Walchand, 15; Karamchand Thapar, 24; J. and K. Industries, 14; peirce Leslie, 12; and A. V. Thomas, 11.

You will find that the concentration is far greater than was indicated by

the figures given by the Finance Minister. I also find that a group of managing agents control about 400 companies with capital resources nearing Rs. 200 crores and covering every field of industrial activity. In jute, 65 per cent. of the capital invested and 64 per cent. of the companies are controlled by only eight managing agents. Three of them control 27 companies. The coal industry is virtually controlled by managing agents six of whom control 62 per cent. of the capital and 56 per cent. of the companies engaged in the industry.

[MR. DEPUTY-SPEAKER in the Chair]

My figures are not exhaustive, but I feel that this question deserves a fuller attention and a more thorough investigation than has been made by the Finance Minister so far. I contend once again that there is a tremendous amount of concentration in the industrial life of our country. Whether we take note of it while we are legislating about the companies or we take note of it on a later occasion is a different matter, but it is absolutely necessary that this particular evil is thoroughly looked into and is set right.

The Finance Minister referred to the development of concentration in the United States of America. I agree that there is a great amount of concentration there and that is the reason why anti-trust laws had to be enacted there, and that a thorough enquiry was made, I believe, by the temporary National Economic Commission. If I am wrong, Dr. Krishnaswami will correct me as far as the name is concerned.

Dr. Krishnaswami: Why only the name? I can correct the hon. Member on matters of substance and facts.

Shri Asoka Mehta: As far as the Temporary National Economic Commission was concerned, it accumulated a vast amount of data and it pointed out that there are two types of concentration—plant concentration and company concentration. In India, we are witnessing the phenomenon of company concentration. In the Unit-

ed States of America the concentration may be called plant concentration. I believe the plant concentration is to a considerable extent due to the technological developments that have taken place there. Perhaps it is easier to fight concentration of companies than it is to combat the plant concentration. But this is a matter which will have to be gone into more thoroughly if not on this occasion, on some other occasion. Just now, I would like to confine my remarks to the various clauses dealing with secretaries and treasurers. We have defined the managing agents and the secretaries and treasurers in clause 2 (25) and 2 (44) respectively. If we compare the two definitions, we find that there is one thing common, namely, whether we deal with the managing agents or secretaries and treasurers, both must be responsible for the management of the whole or substantially the whole of the affairs of that company. It is true that a distinction is sought to be made between the managing agents and the secretaries and treasurers. There are certain limitations on secretaries and treasurers and there are also certain facilities offered to them. If we balance the two, we shall find that the facilities far outweigh the limitations that are imposed.

Under clause 379, all the provisions of the Act applicable to managing agents shall also apply to secretaries and treasurers, subject to the exceptions mentioned in clauses 380 to 383. If you will look into them, you will find that the remuneration of secretaries and treasurers will be 7½ per cent, as against the 10 per cent that will be permitted to managing agents. But, as the Finance Minister has pointed over and over again, that 10 per cent. is the ceiling. He has told us more than once that he expects that the average is likely to be somewhere near 8 per cent. The difference between 7½ and 8 per cent. is not very much. Then again it must be realised that even in companies that are managed by secretaries and treasurers, the maximum managerial remuneration will still be 11 per cent. and it will be possi-

[Shri Asoka Mehta]

ble for secretaries and treasurers to have additional remuneration for auxiliary managerial talents that they may be having. It is true that secretaries and treasurers will not be permitted to appoint any directors of the company, while the managing agents can appoint two directors or one-third of the Board, whichever is less. But the secretaries and treasurers may have financial interest. They may be able, by giving loans etc., to enter into arrangements whereby their nominees may be on the Board.

The third distinction that is sought to be made is that the secretaries and treasurers cannot buy or sell goods, except to the extent to which they are authorised by the Board. While these limitations are there as against that, there are outstanding advantages. When it is notified that there shall be no managing agents in a particular industry in future secretaries and treasurers can continue there. Secondly, the limitation of 10 companies which is going to be applied to managing agents will not apply to secretaries and treasurers. Also, while all agreements of managing agency will come to an end on the 15th of August, 1960, unless previously renewed in accordance with the provisions of this Act, there will be no such limitation as far as secretaries and treasurers are concerned. Therefore, all the objections that we have against managing agents will be circumvented by the managing agents becoming secretaries and treasurers; or, they might continue to be managing agents of 10 companies and become secretaries and treasurers of any number of other companies. The intention of the Finance Minister was—at least that is what I understood it to be and that is how my friend Shri Basu also understood it to be as revealed by the observations that he made—that secretaries and treasurers should start a completely new chapter and should be a new model or a new pattern of company management. He said that “we are going to have young men coming out of the business schools; there will be

technicians who have qualified themselves in business management; they will come and undertake the responsibility of developing companies. They would go to the shareholders and say “here we are men with technical talent and know-how, we are prepared to undertake certain responsibilities, provided certain facilities are given to us.” But, if “secretaries and treasurers” is merely another name for managing agency, then the present concentration will continue. It has been argued by the Finance Minister that the managing agency plays an important part, because the managing agents bring financial resources. Therefore, in future there is always the possibility that only those people will be asked to manage companies, who will bring financial resources. Surely, these young men and technicians coming out of the schools of business administration will never have the financial resources with them.

Again, if the idea is to have a new pattern of management, I cannot understand how it can be of a corporate character. My friend, Shri Basu, who preceded me, has dwelt fully on this subject. He has pointed out how, if the intention is to have a new kind of managerial talent coming up, it is absolutely necessary that not only the secretaries and treasurers should be a firm or partnership, but also the number of companies which such a firm can be permitted to manage should be limited. Otherwise, there is no point in fighting against managing agency. The Finance Minister has said that the bias is against managing agency, in the light of the historical evidence before us. But by introducing secretaries and treasurers like this, you are asking the managing agents to come forward under another name. It is only a change of nomenclature, because fundamentally there will be no material difference. If it is going to be merely a change in name, then I do not think we need introduce too many clauses in this Bill. If, on the other hand, through secretaries and treasurers we want to create a new

pattern of management, then care should be taken to see that the new pattern is enabled to develop along the right line. The only way to do it is to observe certain precautions. The precautions will be as follows. Firstly, secretaries and treasurers should be a firm and not a limited company. Also, we should fix the number of companies which may be managed by secretaries and treasurers. Then, we should provide that managing agent shall not act as secretaries and treasurers. We must also provide proper safeguards against secretaries combining their managerial functions with any significant economic control of the company. It is also necessary that the definition should make it clear that in secretaries and treasurers, we are thinking of persons who have technical competence. Unless these precautions are taken and unless these safeguards are provided, I see no useful purpose being served by introducing this clause about secretaries and treasurers.

3 P.M.

The Joint Committee has introduced in the course of its deliberations, two major innovations. Two important changes have been made in the Bill, which are not to be found in the recommendations of the Bhabha Committee namely, that the Government can notify certain industries in which there shall be no managing agents and secondly, the number of companies that a managing agent can manage is also to be limited. Both these changes which are of a far-reaching character are negatived completely by the introduction of the chapter on secretaries and treasurers, as it stands. Because all that is needed is that the managing agents should transform themselves into secretaries and treasurers. As a matter of fact, as the Finance Minister himself pointed out, really farsighted industrialists are even prepared not only to do without a managing agency, but even without secretaries and treasurers. Our friend Shri G. D. Somani has today launched a company which will be director-controlled, where the remuneration will be only 3 per cent. Shri G. D. Somani has

done it probably because he is one of those rare exceptions who have been able to come up in the industrial world against the serried might of old and established houses. But, this shows that the newer and the more enterprising, enlightened and farsighted industrialists are prepared to move in the direction of director-controlled companies. That tendency would be furthered and facilitated if we define secretaries and treasurers in the way in which my hon. friend Shri K. K. Basu has suggested. He has tried to make his suggestions precise by tabling a number of amendments. If we allow the provisions about secretaries and treasurers to remain as they are, the result will be that we shall only be permitting the managing agents to continue under a new name with almost all the powers and almost all the advantages that they have been enjoying so far I have been trying to place before you a balance sheet of the advantages and disadvantages, the handicaps and facilities and it is my opinion, and I am sure, you will also agree with me, that on the whole, the balance tips in favour of secretaries and treasurers. It would be to the advantage of managing agents to become secretaries and treasurers. They will not only lose nothing, but gain something. The purposes that we have in view, in having some kind of ceiling on management and eliminating the managing agency completely industry-wise will be completely frustrated. Therefore, I would request the Finance Minister and the House to seriously consider how far we are fulfilling the objectives that we have in view, even in the limited way in which the Finance Minister has tried to place before the House this morning, by permitting the clauses on secretaries and treasurers to remain as they are in the Bill that is before us.

Mr. Deputy-Speaker: The hon. Minister.

Shri Tulsidas: I have an amendment.

Mr. Deputy-Speaker: I looked round; nobody rose. So, I called the Minister.

Shri Tulsidas: I have got only one amendment, No. 860 to clause 372. The effect of the present clause is to prevent a company from investing in any company in the same group beyond certain limits except with the sanction of a special resolution. The clause is now applied also to investments by an investment company, that is to say, a company whose principal business is acquisition of shares, stock, debentures of other securities. Though the present Act exempts such companies, the Bhabha Committee had recommended the withdrawal of the exemption. In para. 139 where this recommendation is made, I do not find any reason made out for the recommendation. The Committee had not referred to any abuses arising out of the present exemption. Nor did it oppose the exemption on principle. I believe that it is an investment company's job to invest and it should be allowed to do so with reasonable freedom. In its manifold transactions, purchases, sales, such a company may exceed the limits provided by the clause and it will be difficult for it to carry on its business efficiently if it is required to obtain prior approval for each such transaction by an ordinary resolution plus approval of the Central Government. This will involve considerable delay during which time profitable opportunities will be lost to investment companies. There is little distinction in principle between their business and the business of banking and insurance companies, which have been exempted from the operation of this clause. I therefore urge that investment companies be exempted from the operation of this clause.

I would also like to say something on the amendment of the Finance Minister, No. 681 to clause 388. Shri N. C. Chatterjee has moved an amendment and he wants to keep the *status quo*, that is, to retain the clause as it is in the bill, instead of adding clauses 309 and 310 in clause 388, as regards the question of engaging managers. This will not only apply to those companies which are managed by manag-

ing agents, but also to other companies which are not managed by this particular institution. Clause 388, as it is, says.

"The provisions of section 311 shall apply in relation to a manager of a company as they apply in relation to a director thereof."

Clause 311 is with regard to prohibition of assignment of office by director. No manager can assign his office. I can understand that. That is what the Joint Committee has done. Similarly, clause 316 which relates to managing director not being appointed for more than five years at a time, is applicable to a manager. If clauses 309 and 310 are added to the clause relating to the manager, what will be the result? A public company with a manager, a small company with a capital of Rs. 2 or 3 lakhs or 5 lakhs or a company which is not managed by managing agents or secretaries and transurers, cannot even increase the remuneration of a manager, even the normal annual increment of Rs. 50 or 100, without the approval of the Central Government. Out of the 30,000 companies, about 12,000 or 13,000 are public companies. Every company will have to come to the Government for approving the remuneration fixed for the manager. This will entail a lot of difficulty and will harm the smooth working of the companies where managers are employed. I believe the Joint Committee has gone into this and has taken into consideration all the aspects and has only applied clauses 311 and 316. That is quite proper. The Finance Minister has brought forward amendment 681 which will create a very difficult position. I would like him to take this matter into consideration and not create a situation in every company where it will have to come to the Government for approving the remuneration of or appointment of a manager. This will create a healthy atmosphere. Let the company manage its own affairs. A manager is paid according to the work that he is doing. There should be no necessity for com-

ing to the Central Government for its approval.

It was pointed out by the Finance Minister that the definition of a manager will be as it is in clause 384. That is not the real definition. The real definition is in the definition clause. The manager, according to clause 384, cannot be a corporate body or a company and so on. The definition of manager is:

“‘manager’ means an individual (not being the managing agent) who, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company, and.....”

Here, the manager will be an individual who will be looking after the company either in whole or substantially in whole. As pointed out, a banking company or an insurance company will be looked after by a manager. The Reserve Bank is looking into the question of the remuneration of the managers. The banking company will have to go to the Reserve Bank first and then come to the Central Government for approval because of this particular amendment. I think it is going to create great difficulty. I would like the Finance Minister to withdraw his amendment No. 681, which is not necessary in this respect. That is all that I have to say with regard to that amendment.

The only other point I would like to mention is in respect of secretaries and treasurers. I feel that the suggestion of the Finance Minister to have an alternative system of management in the form of secretaries and treasurers is something which is now being experimented in order to try and see whether the new system can evolve. I think we should not put any further shackles on this new type of management. I think the hon. Finance Minister is quite right in allowing only one or two exemptions with regard to secretaries and treasurers in order to evolve this new type of system. I do not see any valid reasons in what Shri Asoka Mehta has 310 L.S.D.

said with regard to a number of other restrictions which he would like to apply to secretaries and treasurers.

Pandit K. C. Sharma: My amendment No. 1102 to clause 377 is a very short one and it reads:

“377. *No right of managing agent to appoint directors.*—An agreement authorising the managing agent to appoint directors is void to the extent or that authority.”

My argument is that the managing business of a big industry is shared by three bodies, that is shareholders, directors and the executive which in India has transformed itself into the managing agency. It is admitted that the shareholder is the final repository of all power. Then come the directors who have always occupied a pivotal position in the scheme of managing joint stock companies. And the theoretical position has never been much in doubt that though the power of management goes to the managing agent the directors have to control the managing agency. Now, in this the natural order is reversed, that is, the managing agent will appoint directors. Suppose there are six directors, two of the managing agents' people go by direct election through shareholders' meeting and two are appointed again, **then they are always** in a majority. What is the fun of getting the directors elected? So, this right being given to managing agents to elect directors is rather unnatural and is not adjustable to the scheme of management of the joint stock companies. Therefore, I respectfully submit that there should be no right to the managing agents to choose any directors whatsoever, and it is the right—and rightly the right—of the shareholders to elect their directors and the directors are expected to guide and control the activities of the managing agency.

Shri C. C. Shah: I should like to make a few observations regarding the provisions regarding secretaries and treasurers. I understand these provisions have been incorporated out of an anxiety to provide an alternative form of management to managing

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agents. I appreciate that the hon. Finance Minister, carrying as he does a heavy responsibility, would naturally be cautious in his approach to this problem, and would not desire that any vacuum or any chaos should be created by any action that we take regarding the managing agency system.

I have said in this House and elsewhere that the alternative form of management which I envisage is that of a managing director or of a company managed by a board of directors, and I have also said that it will not be difficult to attract either finance or enlightened industrialists to undertake the industrial development of the country even if there are no managing agents and even if the companies are managed by a board of directors. Fortunately, I came across only this morning an instance which the hon. Finance Minister briefly referred to in his reply today, but I should like greater attention to be paid to that instance, because it illustrates in every way the view which I have taken and the reasons which I advanced for saying that the alternative form of management should be that of a company managed by a board of directors.

Dr. Krishnaswami: That is by a successful managing agent.

Shri C. C. Shah: My hon. friend will advocate his own views in proper time.

We have a floatation of a company with a capital of Rs. 160 lakhs and that company has no managing agents, but only a board of directors. Out of that capital of Rs. 160 lakhs, Rs. 60 lakhs have been subscribed by the directors, promoters and their friends and the remaining Rs. 1 crore has been underwritten by the Industrial Credit and Investment Corporation of India, and therefore, the entire capital of Rs. 160 lakhs is assured in a company where there are no managing agents. It illustrates two things in my opinion. Firstly, that capital is not attracted only when there is a managing agency house to back it, but that it is attracted when the board of directors itself is

one which will inspire confidence in the public. If the same great men who are today the leaders of the great industrial houses, were to float any company and were themselves to become directors or managing directors, I am quite sure it will attract capital in the same manner in which it will do if they are managing agents. For example—I do not want to give names unnecessarily—it may be Tatas, Birlas or any other big name in the industrial world today, and if it is known that they are or any of them are on the board of directors or are the managing directors, the public will subscribe for the capital of that company as much as it does if they are managing agents.

The second thing which this instance proves, and so quickly even when this Bill is on the anvil of this House, is that it is not a fact that the industrialists will put in their finance only when they are appointed managing agents and not otherwise. In this case when there is finance to the tune of Rs. 160 lakhs, the directors and promoters themselves have put in Rs. 60 lakhs and they have not cared to see that they will put their finance only if they are managing agents and not otherwise.

Thirdly this shows that even when there is no big managing agency house to back this industrial enterprise, the entire capital of Rs. 1 crore has been underwritten by the Industrial Credit and Investment Corporation. It shows that the one argument which my hon. friend, Shri Chatterjee, advanced yesterday.....

Mr. Deputy-Speaker: What is that company, and who are the directors?

Shri C. C. Shah: The West Coast Paper Mills Limited in which my hon. friend Shri Somani is one of the directors. This instance supports, I submit, every argument which I advanced yesterday, and what my hon. friend Shri Chatterjee said yesterday, namely, that we want the managing agency houses in this country because there are no issue houses or there are no investment corporations in this country and so on, does not survive any

longer. But I say further that if we allow the alternative system to grow, it will grow quickly and rapidly. Even when we are considering this, we have the instance.....

Shri Gadgil: Rather because of this.

Shri C. C. Shah: Rather because of this, as Shri Gadgil has rightly pointed out, we have an instance in which the Industrial Credit and Investment Corporation has thought it fit to underwrite the entire capital of Rs. 1 crore even in the conditions of the market which we have today, where it is not easy to attract capital. Therefore, I submit that the alternative form of management need not necessarily be either a corporate form of management or in the form of secretaries and treasurers, but can be—and ought to be, in my opinion—that of a company managed by a board of directors in which there may be managing directors. The reason why I say so is this.

Before the Bhabha Committee were appointed, Government appointed a senior solicitor from Bombay having large company law practice to examine the company law. And he made his report. Thereafter, Government appointed another senior lawyer from the south again to examine the company law and to make recommendations for amendment of the company law. After Government received the reports of both these special officers, the Ministry of Industries and Commerce formulated certain tentative proposals and circulated them amongst the various bodies and the public to invite their views upon the tentative proposals formulated by Government on the reports of the two special officers. One of the proposal which was formulated by Government was that a managing agent shall be a firm but not a limited company. I submit that there were very good reasons for that proposal. I do not want to take the time of the House in elaborating that argument, but if it were necessary, I can satisfy the House that that was a sound proposal to make.

On that proposal, voluminous evidence came before the Bhabha Com-

mittee. If we examine the three volume of evidence which were led before the Bhabha Committee, we shall find that there is overwhelming support for the proposal made by Government arising out of the report of those two special officers. The reason is obvious. In the early days, when the managing agency system started, as the Bombay Shareholders' Association have pointed out in their evidence before the Joint Committee, a managing agent used to be an individual. Thereafter, he used to be a firm. The idea of a limited company acting as a managing agent came in much later. And the idea of a public limited company acting as a managing agent is a new one.

I hold the view firmly that it is the shareholder who entrusts his money to particular individuals whom he knows, and it is because of the confidence which he reposes in those individuals that he subscribes for the share capital. Therefore, it is because of this confidence in the individuals who are at the helm of affairs or who say that they will be at the helm of affairs, that the shareholder entrusts his money to them, and not to anybody or everybody. It is because of the personal touch of that individual or that group of individuals by way of a firm which is a guarantee, that the shareholder entrusts his money. The shareholder entrusts his money with those promoters who call upon the public to repose confidence in them and entrust their money to them, because of the confidence that he has in them and not in anybody else. It is not intended that these rights should be freely transferable or freely heritable.

In a limited company, the shares which an individual holds may be both transferable and heritable. No doubt, in this Bill, under clause 345, we have put that transfer subject to Government approval. But we have been driven to do that, because there is a limited company which acts as the managing agent. It is not a healthy thing to do. But it is inevitable that

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we should do so. We cannot help doing it. But if we could avoid having to do so, and avoid it rightly, then there is no reason why we should invite an evil and then say we will provide a remedy for it. It is better to avoid the evil altogether. And when we want to create a new institution in the form of secretaries and treasurers, we can provide for that. Of course, in the case of managing agents, where there are so many limited companies acting as managing agents, it may be very difficult to ask them to dissolve or liquidate those limited companies and to revert to the individual form or the form of partnerships.

I was submitting that if I have correctly understood the idea of the Finance Minister, he envisages the alternative form of this institution as consisting of persons with talent, who have no financial stake or backing, who will not undertake any financial responsibility either promotional or otherwise, but who have their talent to offer, and who want to pool the resources of that talent and place them at the service of the community. I entirely appreciate that idea. I may be pardoned if I give any expression to my fears that the clauses as they stand may not lead to that result. Probably they may result in something contrary to what we expect or what we wish.

I am not unaware that as a new experiment it will be entirely under the control of Government. I am also not unaware that Government are anxious that the evils which are associated with the managing agency system should not be repeated under the guise of secretaries and treasurers. Therefore, while I give expression to my fears, if the Finance Minister feels that these provisions ought to remain there as an experimental measure, that he would like to watch the experiment and that in the light of his experience.....

Shri Gadgil: He has promised a revising Bill if necessary.

Shri T. S. A. Chettiar (Triuppur): Not so soon.

Shri C. C. Shah: I am not so hopeful of these things being revised soon. We first had a major revision of this Act in 1936. It is only twenty years thereafter, that we have come here for revision. So, it is not easy to revise, though we may talk that we may revise it.

If that institution has come into being with limited companies acting as secretaries and treasurers, it will be as difficult for us to deal with it as is today to deal with managing agents. My submission was that even if we must keep these provisions, I would be happy if the Finance Minister can see his way to restrict secretaries and treasurers to a firm and not to a limited company. That would meet, or would go a very long way in meeting, some of the objections which have been raised by the Members of the Opposition and others. But if it cannot be done, I have my fears that probably what we have done regarding managing agents, and particularly the two clauses which we have introduced, namely clauses 323 and 331 may be to a large extent ineffective.

It is not without some hesitation that I have given some expression to these views in this House, because I know that the Finance Minister has given most anxious thought to this problem. I am also aware that he has gone a very long way to meet conflicting interests on both sides and conflicting views. And if I may with utmost respect say, the great ability with which he has piloted this Bill amidst various conflicting interests would be any day a tribute to anyone who has to do such a difficult job. Therefore, it is with very great hesitation that I oppose, or even give expression to views contrary to the views which he holds on any of the provisions in this Bill. In fact, as I said, I stand by every provision made by the Joint Committee, and were it not that I feel that these provisions are somewhat inconsistent with the

other provisions made by the Joint Committee themselves, I would not have given expression to these views.

Shri C. D. Deshmukh: Has the hon. Member given any minute of dissent?

Shri C. C. Shah: I have not. Since the hon. Finance Minister has put this question to me whether I have put in any minute of dissent, I owe it to the House to say a few words as to why I have not. Were it not for that question, I would not have given this personal explanation.

I attended almost all the meetings of the Joint Committee, about 52 meetings, as the Finance Minister knows by which time, when we had practically completed the consideration of the whole Bill. Till then, no mention was made of any provisions of secretaries and treasurers. Thereafter, I was very ill and I left Delhi. And I went to a very remote village where I was not permitted to read papers.

It was not until I saw the Bill in this form that I saw the provisions regarding secretaries and treasurers. I am offering this explanation not as any excuse for any member of the Joint Committee to say that he ought not to have attended up to the last. I am only saying this because a question was put to me, and because I had no opportunity to see either the Bill in its final form before presentation to the House or the Report of the Joint Committee.

Shri Gadgil: In other words, he is entitled to second thoughts.

Shri C. C. Shah: That is a different matter. But it was legitimate that I should answer the question that was put to me.

Mr. Deputy-Speaker: Is there any provision here saying that no person, no company or firm shall be secretaries and treasurers for more than ten companies?

Shri C. C. Shah: There is no such provision. On the contrary, it is expressly provided that they can be

secretaries and treasurers of any number of companies.

Mr. Deputy-Speaker: Managing agents ought not to manage more than ten companies. Now, there is a changeover from managing agents to secretaries and treasurers. Directors cannot be appointed by secretaries....

Shri C. D. Deshmukh: That is right.

Mr. Deputy-Speaker: The Managing agents have less commission, they have no power to appoint directors. These are the differences. The power being managing agents for more than ten companies is restricted. In the changeover, the same managing agents, losing the other powers, can be secretaries and treasurers of a hundred companies. Is that the contemplation?

Shri C. D. Deshmukh: Yes. That is right.

Shri U. M. Trivedi: Clause 379 is there.

Mr. Deputy-Speaker: The provision is applicable to managing agents.

Shri C. D. Deshmukh: The limitation does not apply to secretaries and treasurers.

Shri Morarka: There is exemption provided in clause 380. Clause 331 does not apply to secretaries and treasurers.

Mr. Deputy-Speaker: Apart from other things, there is a specific clause exempting them from clause 331—clause 380.

Shri C. D. Deshmukh: Yes.

Dr. Krishnaswami: I find that on this proposal of secretaries and treasurers, we are having an unnecessary controversy. I should like, at the outset, to make a few observations on the speech delivered by my friend, Mr. Asoka Mehta. In his speech, he said that he was not going to deal with the ambiguities that were to be found in the Finance Minister's speech. I wish that we would not

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deal with the ambiguities that are to be found in the Finance Minister's speech, but consider the ambiguities that fill our minds when we get up to speak on this complicated subject.

Speaking for myself, I can truthfully point out that I have found company law to be a difficult subject. I am willing to learn from senior and experienced Members of this House, like my hon. friend, Shri Gadgil, who know more about concentration of economic power than many others. I would be only too willing to be corrected by them. But I would like to make, at the outset, an observation which, I hope, he will not take amiss. Where is there concentration of economic power in this country. There is concentration of wealth, I agree. But concentration of economic power means that the managers must have control over some industry which occupies a strategic place in our economy. The industrial policy resolution of 1948, in the formulation of which my hon. friend Mr. Gadgil, had a notable part to play, made it clear that many industries did not fall within the purview of the private sector, industries which could be said to be of strategic importance. I, therefore, find it difficult to believe that if an industrialist has ten or fifteen or twenty units, he becomes economically powerful, that he can hold the community to ransom. But there may be certain difficulties which we might have to face in the future. Only the other day, the Finance Minister pointed out that tycoons might come into being, tycoons may make their appearance even in an environment where there is equalisation of economic opportunity. However, in order to guard against this contingency, the obvious remedy is not to use the instrument of company law, which would fall in a general and harsh manner on all types of companies, but to employ a monopolies commission for the purpose of investigating restrictive practices and suggesting certain limitations on monopoly power.

I find myself in complete disagreement with the Joint Committee when it puts a ceiling of ten companies to be managed by a managing agent. I found myself in disagreement with it for two reasons. In the first place, the approach is not right; in the second place, it is impractical. I know that if a man were prevented from being managing agent for more than ten companies, he might become secretary and treasurer for twenty or thirty companies; he might become something in director-controlled companies. No one can possibly lay down a limit so long as there are liquid resources in the hands of some of our companies. Furthermore, we cannot control the memorandum of objects of association of a company. A company might have 250 to 500 objects of association. My hon. friend, Shri C. C. Shah, who has drawn up many memoranda, who has advised company managers, knows quite well that the memorandum of objects of association is drawn up in as long and as vague a form as possible so that any enterprise might be embarked upon at any moment. Indeed, the Company Law Committee which went into this question, did not wish to curtail the power to draw up memoranda of association, because it felt it would be impractical to think of curtailing the investment activity. Therefore, it might happen that a company which has been running a textile mill, might be authorised by its memorandum of objects of association to run an aluminium factory, for instance, or a sewing machine factory and many other industries. All that I am saying is that if we put an artificial limit, and if there are enough funds within the enterprises, some outlet would be found, and a giant company would be formed, a giant company without any of the economies of size and management which are associated with the more diffused type of company management. I feel that if we are to tackle the problem of concentration of wealth, there are other methods which are open to us, and it

is basic from the point of view of our economy that it should be tackled. I think a capital gains tax might be considered; I think various other taxes on property might be considered. But we certainly should not have this sort of artificial restriction which is put in the way of.....

Shri Gadgil: They were all there on the statute-book but from 1947 to 1950—excess profits tax, limitation on dividends etc. all are removed.

Dr. Krishnaswami: I am very grateful to my friend for his interruption. But I should like to point out to him in all humility that this problem of a capital gains tax has to be approached from an entirely different angle. Capital gains tax which was put in there in a moment of emergency is different from a capital gains tax which might have to be imposed from the point of view of development, from the point of view of capitalising the 'external economies' that accrue from an enterprise in a process of development. This is a different matter and today I need not go into it because it does not form the subject of company law legislation.

Shri Gadgil: But other capitalists don't seem to approve of this.

Dr. Krishnaswami: I am not a capitalist. Sir, my only capital is a little bit of intelligence that I possess for tackling these problems. I, therefore, do not need to have the co-operation of capitalists.

Shri Gadgil: Tax that.

Dr. Krishnaswami: I do not know whether if my hon. friend had his way, there might not be even a ceiling on intelligence—a ceiling on enquiry, a ceiling on the search for truth.

Shri Gadgil: No.

Dr. Krishnaswami: But that, I hope, will not happen, because being.....

Shri Gadgil: I want to assure a minimum.

Dr. Krishnaswami: A senior and experienced member of the Congress

Party and being well disposed to us young men he will not debar me from pursuing enquiries into the validity of propositions.

Shri Gadgil: No.

Dr. Krishnaswami: I would only like to deal with an argument of my hon. friend, Mr. C. C. Shah. He pointed out in his speech that the Industrial Credit and Investment Corporation had underwritten a particular company to the tune of Rs. 1 crore. The company which has today published its prospectus consists of eminent managing agents who had established themselves as successful men. They were men who had established themselves in such a successful way that any bank or any financial institution would have been prepared to advance them credit. But, how many of the newer entrants are going to have the assistance of Industrial Credit and Finance Corporation, how many will be fortunate enough to have their enterprises underwritten. Indeed the function of the managing agency in the backward areas and in areas which require more development is to bring about conditions in which capital, which is shy, is coaxed into investment. That is one reason why we have pointed out that managing agents should find a place. Of course, managing agencies have their abuses. Many of the salutary provisions we have made for dealing with selling commissions and other kindred matters are meant to get rid of those abuses. What I want to point out to my hon. friends is that a corporate form of managing agency enterprise for running companies is not altogether an innovation. It may, in certain respects, be an advantage. Often a corporate form of enterprise tends to play safe and it may be wise in certain cases to encourage safety element in our commercial life.

So far as director-controlled companies are concerned, as any one who knows something of these director-controlled companies realises, a 15 per cent. holding of block shares by

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an individual is quite sufficient to obtain control over a company. One cannot help it, because the remaining 85 per cent. generally do not know their minds. Besides the eighty-five per cent. may take the view that if a man who has got 15 per cent. of the shares takes risks they can afford to trust him. What is essential from their standpoint is the dividend which may be assured. I refuse to believe that shareholders are as gullible as they are painted to be. The man who invests his money in an enterprise surely knows that he must have some return and if he thinks that certain enterprises would fetch him a good return he invests. This is what has happened in many of these enterprises.

I entirely agree with my hon. friends when they suggest that new talent must come to the fore. But how can new talent come to the fore if all the while we are talking of restrictions and putting a ceiling on managerial incomes? One must face basic issues instead of avoiding them. We must understand that after all in the society as it is today salaries are paid and to a certain extent are determined on a conventional basis. This means that the appreciation which society has for a particular vocation, to a certain extent, depends upon the salary which an individual draws.

Mr. Deputy-Speaker: Is there no other social value?

Dr. Krishnaswami: There are of course other laudable social values. But I am dealing with it from the point of view of expectation of those who enter a business or a profession. Other laudable values have undoubtedly acted as a salutary check on acquisitive propensities in our country. In fact, in the United States of America while status is directly related only to income, in India it has been different because of so many other social factors which have operated. But it is not right on this account to ignore altogether basic economic incentives and then suggest

that managerial talent must be expected to make its appearance somehow or other. I only hope that in the coming years we might relax many of the restrictions on the various types of new enterprises that we expect to come into being.

Now, one of my grievances against the Government is that as a result of the various restrictions and controls that they have imposed, the small man will go to the wall and it is difficult for him to start enterprises. Apart from our talking of the big man and his giant monopolies crushing the small man we must also consider the giant bureaucracy which is crushing the small man. Concentration of political power seems to be a greater evil today than concentration of economic power in India. If only senior members like Mr. Gadgil who have played a notable part in educating the Congress party can be interested in seeing this aspect of the matter there would be some ground for hope. I am now talking of the private sector. But, I think, even within the public sector we have to revise our approach to many aspects of this question of salaries.

One thing about secretaries and treasurers is that it is a relatively new experiment. I am glad that too many shackles have not been put on this system. If we start with the idea of putting shackles, intelligent lawyers and solicitors would start advising clients to get out of such shackles by a process of circumvention. The fact of our not putting too many shackles helps to prove that ultimately we have some faith in the goodness of human nature, in the goodness of even those who enter business enterprise. I would like to point out that the remuneration and other kindred matters that we have fixed, though they represent the ceiling, would certainly not be availed of in the case of an enterprise which becomes more and more prosperous. Only yesterday I pointed out that when an enterprise becomes more

and more prosperous the men in charge feel that it is not worth their while taking increased income. Why should a person take the maximum income when he finds that he has to pay about 80 per cent. of it in the shape of income-tax and super-tax. Therefore, what he will do is to take a lesser proportion of the profits and plough the rest of the profits back into the enterprise. After all, this might be a good thing and this might also be a very valuable thing considering the limited amount of capital resources that we have in our country. I am, therefore, of the opinion that these provisions relating to secretaries and treasurers may be allowed to stand. But, it has been said that it may not work. If it does work well, it is something to feel thankful for because we would have some way of filling the gap which would be created by the removal of the managing agency system which is what most hon. Members disapprove of.

There is only one other provision to which I should like to refer and that is to amendment No. 681 moved by the Finance Minister to clause 388. In this case, I feel that the Government should not consider having the power of even approving the appointment of managers. It would cause a great deal of inconvenience to many small businesses and certainly it would cause a great deal of delay. We talk of law's delays but official delays are much worse and may cause a great deal of handicap and hardship to the smaller men. It is detrimental to the interests of the small men and I would invite the Finance Minister to withdraw the amendment that he has sponsored.

Shri G. D. Somani: Mr. Deputy-Speaker, so far as my amendment is concerned, in regard to this group of clauses, my friend Shri Tulsidas has explained it. But I would confine myself to making a few observations about the points that were made by my hon. friend Shri Asoka Mehta and Shri C. C. Shah.

At the outset while I am thankful to the references that were made to

the project which has been launched by us without the managing agency system, I should like to submit in all humility that I do not subscribe to the inferences that have been drawn as if there is no longer any need for the managing agency system or for the system of secretaries and treasurers to develop our industrial resources. I would like to point out in this connection that this over-emphasis on concentration is being made without facing the real facts and the real position as it exists today. Everybody would admit that while, on the one hand, we have got serious lack both of finance as well as managerial resources, on the other hand, we have got to face the very urgent problem of fighting unemployment and poverty. I would like, therefore, in this context of over-emphasis on this concentration of economic power to put a straight question to some of my friends who have been emphasising day in and day out the undesirability of this concentration of economic power which some of these big business houses command. I can understand that if today some new project has to be launched by the big business house, given to a new comer, but to stretch the point to an extent as to advocate that the project may not be launched at all, that it should not be allowed to be launched by the big business house, is detrimental to our national economy. So long as any system functions in promoting the country's industrial resources, we have to see to its utility in its proper perspective. We have got the Ministry of Commerce and Industry which issues the licences for any new industrial project and at the same time the Ministry of Finance issues the necessary permission for capital issue. I can understand the policy under which any application for launching a project may be reviewed in a manner which will give better opportunities to new entrants than to old business houses. I subscribe to that view and I think Government themselves realise the desirability of encouraging as far as possible new entrants in the field. But if the suggestion is that the project concerned

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may not be launched at all if the proposal comes from a big business house, then it means that the period in which we want to create more jobs and more prosperity may be lengthened and those who advocate that even at the risk of lengthening the period of industrialising the country, the big houses should be starved of any such projects, are really advocating a policy which is definitely detrimental to our national interests. Therefore, I say in all humility that this point is rather being over-stretched and that the implications of the policy are not being understood. Our economy is expanding and naturally in a few years it will be possible to find many new entrants, many new talents and many new houses springing up, and whenever any project has to be launched, perhaps Government will be flooded with, not one applicant, but quite a number. But the position today is that many of the State Governments—I have myself the experience of a few State Governments who are struggling hard to interest parties into the implementation of their projects—are doing their best to approach so many parties to interest them in launching on their projects. We, on the other hand, in this House are advocating a policy which will come in the way of those State Governments getting those houses interested in taking up any scheme. If this over-emphasis on the elimination of concentration of power is persisted in, that can only mean one thing and that is that those big houses who may have the resources at their command should remain idle and those resources should not be allowed to be utilised for the country's interest. It is quite obvious that we have got a very heavy taxation on incomes of high income groups and it is only the companies which can build up certain resources to be utilised for the development of new industries or for the expansion of existing ones. If those companies also are not to be allowed to utilise their surplus resources for the country's development, then I do not know how the goal, which we have set for the

Second Five Year Plan, is going to be reached. Therefore, I say that so far as the system is concerned, whether it is the system of managing agency or of secretaries and treasurers, we should give the utmost possible latitude subject to such regulations and restrictions as may be necessary to regulate them on healthy and sound lines, but nothing should be done precipitately to discourage something which might lead to the elimination of efforts that are being made to expand our resources.

Coming to the particular question of secretaries and treasurers, I definitely feel that this stands absolutely on a different footing from the managing agency system. I have heard with great attention to the speeches of our friends Shri Asoka Mehta and Shri C. C. Shah, who have laboured to point out how under the guise of another name, the same managing agency system is going to be allowed to function. Here is a system under which it is possible for a group of individuals possessing administrative or technical experience to join together and to offer their services for the promotion and management of a concern. There is no reason why this question of managing agency system is being brought into the picture. We have got several examples where there are several small concerns functioning under one common managing agent or under the management of one house. These small companies cannot afford to employ technicians or managers of the highest possible calibre in view of the cost involved. If this policy of allowing secretaries and treasurers will remain, then it might enable those business houses which control these small concerns, to employ first-class personnel for the efficient management of those small companies, and thereby this group of small companies functioning under one managing agency house—I do not mean in the exact sense of the term but from the management point of view—is placed under the control, for administration and technical pooling, of one house, then it is definitely in the interest of

those small companies that they should be allowed, irrespective of the number of companies involved, to have common management personnel. Instances have been given in the memorandum that was submitted by the Associated Chambers of Calcutta in which they have illustrated how very small tea gardens, a dozen or twenty in number, under one management—they have got one single superintendent or one single manager or one single accountant to look after the ten or twenty small gardens—have made remarkable progress. What will be the result if we will not allow even the secretaries and treasurers to act as managers or be in charge of the management of these small companies? The result will be obvious; there will be a disintegration of those small companies; those small companies will have to find some other management personnel. I say with a full sense of responsibility that complete chaos might follow in the field of certain groups of companies which are functioning at present quite nicely.

Shri Gadgil: What if a limit of twenty is put.

Shri G. D. Somani: My submission is that already there are restrictions so far as the managing agency system is concerned, and so far as the system of secretaries and treasurers is concerned, it is no use trying to imagine some fears which do not exist. The entire idea of secretaries and treasurers is to encourage this pooling of managerial, technical and administrative resources, and there is no reason why any adverse inferences should be drawn before the system has been allowed to be developed and before we have got any actual experience of abuses having crept in. I, therefore, submit that these clauses relating to secretaries and treasurers will go a long way in ensuring that there will be no sudden dislocation in the management of certain groups of companies which are already existing, and at the same

time it will also encourage many smaller persons of experience with administrative and technical knowledge, to get together and to form themselves into a limited company. I do not follow the argument why this corporate sector is being banned in this system. I do not see the slightest reason why a group of individuals with the necessary knowledge cannot form themselves into a limited company and work as secretaries and treasurers. I have listened carefully to all the arguments and definitely feel and it will really be a retrograde step if there will be any changes about the secretaries and treasurers, regarding which provisions have been made in the Bill. I am, therefore, in full support with all these facilities which will be made available to the various managements to keep the smaller companies under proper management.

श्री बंसल (झज्जर—रेवाड़ी) : मैं आज इस अवसर पर श्री अशोक मेहता...

Shri C. D. Pande (Naini Tal Distt. cum Almora Distt.—South-West cum Bareilly Distt.—North): **Shri Chettiar** is anxious to hear you in English.

श्री बंसल : क्या जनाब, मुझे इस बात की आज्ञा मिलेगी कि मैं कुछ हिन्दी में ही कहूँ ?

श्री अशोक मेहता ने कल और आज इस विल के विषय में जो तर्क दिये कि हमारे देश में कान्सेन्ट्रेशन आफ वैल्यू होता जा रहा है, उनके बारे में मैं अपने कुछ विचार आपके सामने रखना चाहता हूँ ।

श्रीमती शिवराजवती नेहरू (जिला लखनऊ—मध्य) : कान्सेन्ट्रेशन आफ वैल्यू तो बहुत हो रहा है ।

श्री बंसल : बहिन जी यहां से कहती हैं कि कान्सेन्ट्रेशन बहुत हो रहा है, मगर मैं जवाब देना चाहता हूँ श्री अशोक मेहता को, जिन्होंने यहां की कान्सेन्ट्रेशन का

[श्री बंसल]

वैल्य का मुकाबला किया अमरीका से और वहाँ की एक किताब का हवाला दिया। उस किताब को मैं ने भी देखा है और वहाँ जो कान्सेन्ट्रेशन है, उसके बारे में मैं ने भी कुछ पढ़ा है। मगर मुझे ताज्जुब होता है कि श्री अशोक मेहता यहाँ के कान्सेन्ट्रेशन आफ वैल्य की बात करते हैं और उसका मुकाबला करते हैं अमरीका से। उन्होंने यह बताया कि हमारी कम्पनियों में, जिनकी अभी गणना की गई है, ५०० करोड़ रुपये की पूंजी लगी हुई है और उन कम्पनियों का २२ प्रतिशत काम सिर्फ ५२ कम्पनियां करती हैं, यानी इसका मतलब यह हुआ कि करीब १०० करोड़ रुपये की मलकियत की कम्पनियां सिर्फ ५२ कम्पनियों के हाथों में हैं। इस तरह एक कम्पनी के हिस्से दो करोड़ रुपये पड़े। यह कान्सेन्ट्रेशन आफ वैल्य कितना बढ़ा हो गया? अगर मैं इसका मुकाबला करूँ अमरीका के कान्सेन्ट्रेशन आफ वैल्य से, तो आपको जरा अन्दाज़ हो जायेगा कि हम किस चीज़ का मुकाबला कर रहे हैं,—हम एक पहाड़ का मुकाबला कर रहे हैं एक चीटी के घरोद से।

अमरीका में छः या सात मोटर कार बनाने वाली कम्पनियां हैं और वे कम्पनियां— मैं ने अभी बैठे बैठे हिसाब लगाया—छः या सात हजार करोड़ रुपये की मोटरें एक साल में बनाती हैं। अमरीका में मोटर-कारों का जो प्राइवशन है, वह करीब करीब ७ मिलियन यानी ७० लाख प्रति वर्ष है और उनकी कीमत आ कर पड़ती है छः या सात हजार करोड़ रुपये। उसके मुकाबले में हमारे यहाँ तीस हजार कम्पनियां हैं। हमारे देश की वार्षिक आमदनी में उन तीस हजार कम्पनियों का हिस्सा डेढ़ हजार करोड़ रुपये है। मैं ने अभी हिसाब लगाया है कि अमरीका में सिर्फ मोटर-कार के छः या सात कारखाने इससे ज्यादा घन पैदा करते हैं। यह है हमारे दोनों मुल्कों

का मुकाबला ! इस के बावजूद यहाँ इस बात की चर्चा की जाती है, तर्क दिये जाते हैं, और आंकड़े पेश किये जाते हैं यह दिखाने के लिये कि हमारे देश में घन का उसी तरह से कान्सेन्ट्रेशन हो रहा है, जिस तरह कि अमरीका में हो रहा है।

4 P.M.

इसके बाद, यहाँ पर लोग बार बार मानोपली की बातें करते हैं— मैं आप से यह पूछना चाहता हूँ कि क्या वे मानोपली का अर्थ समझते हैं—क्या वे मानोपली के माने समझते हैं? हमारे देश में लोहे के दो बड़े बड़े कारखाने हैं—और मैसूर के कारखाने को मिला कर तीन हैं। उन दो कारखानों को अलग अलग कम्पनियां चलाती हैं। उसमें कोई मानोपली नहीं है, कोई ट्रस्ट नहीं है। वे कम्पनियां बिल्कुल अलग अलग हैं और उन दोनों में खूब कम्पीटीशन होता है। हमारे देश में ४००-४५० कपड़े के कारखाने हैं। पता नहीं उनके कितने मालिक हैं। अन्दाज़न २०० मालिक होंगे। आप देखिये कि कपड़े की इंडस्ट्री में कोई मानोपली नहीं है। यहाँ पर चीनी के कारखाने करीब करीब १५० या १७५ होंगे। मैं समझता हूँ कि पचास या साठ या शायद उस से ज्यादा ही उनके मालिक होंगे। उनमें किसी की कोई मानोपली नहीं है। आखिर मानोपली कहते किसको हैं? जब किसी एक चीज़ पर, किसी एक व्यवसाय पर एक आदमी या कुछ आदिमियों का एक गिरोह जो कि आपस में बिल्कुल मिला जुला हो, हावी हो, तब उसको मानोपली कहते हैं। हमारे देश की यह बड़ी खुशकिस्मती है— हमारे देश को इस बात पर बड़ा मान होना चाहिये कि हमारे देश के औद्योगिक क्षेत्र में मानोपली का बिल्कुल कोई स्थान नहीं है और न ही किसी तरह की मानोपली है। यह होते

हुये भी तर्क दिये जाते हैं और आकड़े दिये जाते हैं यह दिखाने के लिये कि यहां पर कान्सेन्ट्रेशन आफ वैल्य हो रहा है और एक एक मैनेजिंग एजेंट कितनी कितनी कम्पनियों को चला रहा है। अभी मेरे भाई डा० कृष्ण-स्वामी ने बड़े अच्छे तर्क दे कर कहा कि हम मान सकते हैं कि कुछ लोगों के हाथों में—कुछ मैनेजिंग एजेंट्स के हाथों में—थोड़ा बहुत कान्सेन्ट्रेशन आफ वैल्य हो और वह भी अमरीका के मुकाबले में—उसके साथ मुकाबला मैं नहीं करता, श्री अशोक मेहता करते हैं—कुछ भी नहीं है। उसके साथ हमारा बिल्कुल मुकाबला नहीं हो सकता है। मैं यह भी कहना चाहता हूँ कि आर्थिक क्षेत्र में शायद कुछ न कुछ कान्सेन्ट्रेशन हो, लेकिन औद्योगिक क्षेत्र में तो वह बिल्कुल नहीं है। और फिर हमारे यहां तो कानून बने हुये हैं—इंडस्ट्रियल डेवेलपमेंट एंड रेगुलेशन एक्ट है, जिसके मुताबिक गवर्नमेंट के पास सर्वांग शक्तियां हैं। मैं समझता हूँ कि हमारे देश में जितनी भी ताकत हो सकती थी, वह ताकत और हर प्रकार के अकुश लगाने की शक्ति इस विधान सभा ने हमारी सरकार को दे रखी है। फिर भी यहां पर बात की जाती है कान्सेन्ट्रेशन आफ वैल्य की और तर्क दिया जाता है कि ये सेनेटरीज और ट्रेडरजं सिर्फ रूपान्तर हैं मैनेजिंग एजेंसी के। पहले तो मैं यह कहना चाहता हूँ कि जिस फार्म में हम मैनेजिंग एजेंसी को रख रहे हैं, उस में और जिस रूप में वह अब तक काम करती आई है, कोई समानता नहीं है। मैं चाहूंगा कि मेरे भाई श्री सी० सी० शाह जरा इस बात को देखें। उन्होंने इस विषय में बड़ा अध्ययन किया है और इस बिल के बनाने में उनका बड़ा हाथ है। वह देखें कि उन दोनों में जमीन आसमान का अन्तर कर दिया गया है। मैं तो उन लोगों में से था, जो यह चाहते थे कि अगर इस नाम को बदल दिया जाये, तो भी कोई हर्ज नहीं होगा। अगर “मैनेजिंग एजेंसी”

हमारे कुछ भाइयों की नाक में इस तरह फंसती है, तो उसको निकाल दिया जाये और उसकी जगह पर कोई “प्रमोटर्ज” रख दिये जायें।

श्री भागवत झा आबाद (पूर्निया व संथाल परगना) : उनके नाम में नहीं, काम में दुर्गंध है।

श्री बंसल : उनके जो काम ठीक नहीं हैं, उनको अब नहीं होने देंगे। आप ने इस विषय को समझा है नहीं, देखा नहीं है। आप जरा इसको समझने की कोशिश कीजिये।

श्री भागवत झा आबाद : क्या आप ने समझ का ठेका लिया हुआ है ?

श्री बंसल : जी हां, मैं ने ठेका लिया हुआ है। (interruption) यहां पर पूंजी-पतियों की बात कही जाती है। उनको चंदा अधिक देने की मांग करते हैं। आप के पास बहस करने के लिये कोई तर्क नहीं है।

Mr. Deputy-Speaker: Order, order. Hon. Members may kindly address the Chair. There is no good carrying on conversation like this from bench to bench. Hon. Member, whoever wants to speak, will kindly address the Chair.

श्री बंसल : उपाध्यक्ष महोदय, मैं तो आपको ही लक्ष्य करके कह रहा हूँ। मैं तो सिर्फ यही कहना चाहता हूँ कि इस बिल के बनने के बाद मैनेजिंग एजेंसी का जो रूप होगा, वह उस मैनेजिंग एजेंसी से बिल्कुल भिन्न होगा, जिसको कि हम अब तक जानते आ रहे हैं, जिसका काम हम ने देखा है। उन दोनों में बहुत अन्तर है। उन में अब कोई समानता नहीं रही है। अब उसका एक बिल्कुल बदला हुआ रूप हमारे सम्मुख आयेगा। हमें देखना है कि वह किस तरह काम करेगी। कोई लम्बी चौड़ी बात नहीं है। पांच सात बरस के बाद उसके काम हमारे सामने

[श्री बंसल]

आयेंगे। और फिर यह विधान सभा मित नहीं जायेगी—वह मौजूद रहेगी और अगर हम देखेंगे कि वह ठीक काम नहीं कर रही है और जिस तरह हम ने सोचा था, वह उस तरह काम नहीं कर रही है, तो हम उसको जरूर बदल देंगे। जिस तरह कि आज बदल रहे हैं, उसी तरह आगे भी बदल देंगे। और जब हमने मैनेजिंग एजेंसी सिस्टम को इतना बदल दिया है, इस तरह से उसमें रद्दोबदल ला दी है, तो मैं बताना चाहता हूँ कि जो सेक्रेटरी और ट्रेजरर हैं उनको हमने और भी बदल दिया है। यह कहना कि इस तरह से आपने दूसरी तरह से मैनेजिंग एजेंसी सिस्टम को जारी रखा है, या एक हाथ से जो दिया है उसको दूसरे हाथ से ले लिया है, बिल्कुल गलत है। सेक्रेटरी और ट्रेजरर की स्थिति मैनेजिंग एजेंट से बिल्कुल भिन्न है। हमें यह देखना है कि किस तरह से नया मैनेजिंग एजेंसी सिस्टम और यह सेक्रेटरी और ट्रेजरर की पद्धति काम करने वाली है।

बार बार श्री अशोक महता यह कहते हैं कि हमारा नस्बुलएन, हमारा आदर्श तो यह है कि कन्सेन्ट्रेशन आफ वैल्यू और कन्सेन्ट्रेशन आफ पावर न रहे। उनके स्थाल में यह बड़ी खतरनाक बात हो रही है। शायद यह खतरनाक हो। मगर हमारे सामने, हमारी पार्टी के सामने यह आदर्श है कि हमें देश को आगे ले जाना है, हमें ऐसे अनजाने काम नहीं करने हैं जिनसे हमारी तरक्की में रुकावट हो। अगर हमारे अशोक मेहता साहब यह दावा करें कि मैनेजिंग एजेंसी सिस्टम को और सेक्रेटरी और ट्रेजरर की पद्धति को हटा दिया जायेगा तो उत्पादन में कमी नहीं होगी और न हमारी प्रगति में धीमापन आवेगा तो मैं उनके साथ हूँगा। लेकिन जिस दावे के साथ वे यह कहते हैं कि हम कन्सेन्ट्रेशन आफ पावर नहीं होने देना चाहते, कन्सेन्ट्रेशन आफ वैल्यू नहीं होने देना चाहते, उसी दावे

से वे यह नहीं कहते कि अगर प्रोडक्शन में कमी होगी तो उसको वह नहीं होने देंगे। इसकी जिम्मेदारी वह नहीं लेते हैं। लेकिन इसकी जिम्मेदारी इस पार्टी की है। इसी लिये जो इस पार्टी ने मैनेजिंग एजेंसी सिस्टम में तब-दीलियां की हैं और जो सेक्रेटरी और ट्रेजरर की पद्धति बनायी है वह इसी स्थाल से कि हमारा जो कम्पनियों का मैनेजमेंट चल रहा है उसमें रुकावट न आ जाये। हमें तो यह देखना है कि अगर इसमें रुकावट आ जायेगी तो देश की क्या हालत होगी। आखिर हम इस बात के लिये कटिबद्ध हैं कि हमें देश को आगे ले जाना है। हम रोज वायदे करते हैं कि हर साल हम अपनी राष्ट्रीय आय में ५ प्रतिशत बढ़ाती करेंगे। और जब हमारे सामने यह ध्येय है तो कैसे हम एक दम उस पद्धति को बदल सकते हैं जो आज तक किसी न किसी रूप में हमारे लिये लाभदायक सिद्ध हुई है। मैं ने अपने पिछले भाषण में बतलाया था कि पिछले सात वर्षों में देश के औद्योगिक उत्पादन में कितनी उन्नति हुई है। अगर सन् १९४९ में हम सौ पैदा करते थे तो आज करीब सात साल के बाद हम डेढ़ सौ पैदा कर रहे हैं। सात बरस में ५० फीसदी तरक्की करना कोई आसान बात नहीं है, और यह दुआ है इसी मैनेजिंग एजेंसी पद्धति के नीचे जिसे आज हम बदल रहे हैं। लेकिन जिस वक्त हम इसमें जकड़ लगाते हैं और तबदीली करते हैं तो हमें यह देखना होता है कि कहीं ऐसा तो नहीं हो कि हमारी प्रगति ही रुक जाये। अगर अपोजीशन के मेम्बर भी इस मामले में हमारे साथ हों और वह कहें कि वे भी देश को आगे ले जाने के लिये बाध्य हैं और हमारी ही तरह उनका भी उद्देश्य देश का उत्पादन बढ़ाना है, तो मैं उनके साथ हूँगा और जिस तरह की पद्धति वे चाहेंगे उसको मैं मानने को तैयार हूँ। लेकिन उनका तो केवल कहना यह है कि वे कन्सेन्ट्रेशन आफ

वैल्य नहीं होने देना चाहते। उनका काम तो देश की प्रगति में रोक लगाने का है। वे इस बात का दावा नहीं करते कि हमें देश को आगे ले जाना है। ठीक है, देश को आगे ले जाने का काम तो इस पार्टी का है। इसी लिये जो चीजें की गयी हैं, जो सेक्रेटरी और ट्रेज़रर को रखा गया है, वह इसी विचार से कि जो हमारा काम चल रहा है इसमें कहीं रुकावट न आ जाये। साथ ही यह बात भी नहीं है कि अगर हम आगे देखेंगे कि इस पद्धति में खराबियां हैं तो हम इसको बदलेंगे नहीं। यह बात नहीं है कि हमने इस पर अंगूठा लगा दिया है कि जन्म जन्मान्तर तक हम इसको बदलेंगे नहीं। हम इस पद्धति को एक मौका देना चाहते हैं और देखना चाहते हैं कि इस पद्धति के रहते किस प्रकार हमारे औद्योगिक क्षेत्र में उन्नति होती है।

उपाध्यक्ष महोदय: इतना कहने के बाद मैं सिर्फ यह अपील करना चाहता हूँ कि अपने भाइयों से, कि सेक्रेटरी और ट्रेज़रर के सिलसिले में जिन धाराओं पर हम आज विचार कर रहे हैं उनको पास कर दें।

Shri Morarka (Ganganagar-Jhunjhunu): I just heard the speech made by Shri C. C. Shah very carefully as I always do and I could not understand his argument that secretaries and treasurers can be a firm but they should not be a corporate body. In support of his argument he said that before the Bhabha Committee voluminous records were produced and voluminous evidence was given to the effect that secretaries and treasurers or managing agents should not be a corporate body but should only be a firm. I agree, but what was the reason for leading that evidence? What was the circumstance in which that evidence was led? The reason was that before 1951, at the time when the evidence was led, there was no provision in the Company Law requiring Government sanction for transfer of or any change in the constitution of

managing agency. Clause 87BB was not in existence then and at that time there was trafficking going on in the managing agency. Without consultation, without any reference to the shareholders, the management passed on from one hand to the other and the shareholders were unaware of what was happening. They did not know what was happening, they did not know the persons in actual management. All of a sudden some people became the managers of the company. An ordinance was therefore issued which was later on passed into an Act requiring that any change of hands should not only be brought to the notice of the Government but must be approved by it. It was provided that they must come before the Government for permission and the Government examined the case, before giving permission, in great detail. Though there is no provision in law, yet invariably, the Government required that before it gave such sanction there must be a special resolution passed by the shareholders. Whether the managing agency is a corporate body or whether it is a private firm or an individual, before it is allowed to change hands, the shareholders of the managed company have to approve it, not only by an ordinary resolution, not only by 51 per cent. majority, but by a special resolution. When that provision is there, and such safeguard is made, then there is no point at all whether you have a firm or an individual or a corporate body because the shareholders are bound to know of any change in the managing agency company. With great respect I would say that on the contrary it is a great advantage to have a corporate body as a managing agent. If there is a firm, only 20 persons can become partner of the firm. If it is an individual only one person takes the benefit. If it is a corporate body, whether public or private, it is different. If it is a private body, then up to 50 members, the benefit of the managing agency can be extended. If, on the other hand, it is a public company, an innumerable number of

[Shri Morarka]

shareholders can be the member of the company, and they can take the advantage or disadvantage of the managing agency system.

My second point is that—and it has been said here—the system of secretaries and treasurers has been criticised on the ground that all the restrictions which are applicable to the managing agency system are not applicable to the secretaries and treasurers. If you kindly examine the provisions you would find that there are only three clauses which are not applicable to the secretaries and treasurers. Those three clauses are 323, 329 and 331. If you kindly examine these clauses you would ultimately come to the conclusion that even though the provisions of these clauses are not applicable to the secretaries and treasurers, the net effect is that the same purpose is achieved for regulating the secretaries and treasurers, as is necessary in the case of managing agents. For example, take clause 323. Under clause 323, the Government can name an industry and once the Government names the industry, there cannot be any managing agency in that industry. It is true that clause 323 is not applicable to secretaries and treasurers, but then clause 325 is applicable to secretaries and treasurers also. Clause 325 regulates the appointment of secretaries and treasurers or managing agents un-til-wise and through the Government policy, if you like, you can apply to the entire industry also. When you have got these wide, detailed and finer powers of controlling the unit, the purpose is served. It would be perfectly open for the Government at any time to say that they do not approve of so and so to be appointed as secretary and treasurer for such and such a company, and there is nothing to prevent Government from exercising that power. As a matter of fact, the Government has taken that power under clause 325 which is applicable to secretaries and treasurers as much as it is applicable to the managing agents.

Then, clause 329 says that all the existing managing agency agreements should come to an end on the 15th August, 1960. Now, there are very few companies today in existence which have got only secretaries and treasurers. There are companies which have got managing agents, secretaries and treasurers but there are very few companies today which have only secretaries and treasurers. So, even if you would apply this clause, in practice, the effect would be very little. At least I am not aware of any company which has got only secretaries and treasurers, as its managers. So, the practical effect of not applying clause 329 is not much.

Then I come to clause 331. Clause 331 says that a managing agent should not have more than ten companies under his management. Here again, the duty rests with the Government. It is the ultimate Government policy which should decide whether they allow a particular firm or a person to have more than ten companies or not. Whether you have these provisions in terms of the Company Law or not, is not going to make any difference, because the Government can always regulate it by powers vested in them under clause 325.

There is one point to which the attention of the Finance Minister should be drawn. It has been said that one of the main difference between secretaries and treasurers and managing agencies is that while the managing agents would have the right to nominate two directors on the Board, the secretaries and treasurers would not have that right. In this connection, I would like to invite the attention of the Finance Minister to clause 382, which says:

“Secretaries and treasurers shall have no right to appoint any director of the company; and sections 377 and 260 shall not apply to secretaries and treasurers.....”

If this clause provides for only this, namely, that secretaries and treasurers shall have no right to appoint any director, our intention would be fulfilled *in toto*. But we go a step further and say that clause 260 shall not apply to them; this nullifies the effect to some extent. Clause 260 says that for appointing persons who are associated with the managing agents, a special resolution would be required, whereas for all other persons, only an ordinary resolution is required. If this clause is not to be applied to secretaries and treasurers, the effect would be that for the appointment of associates of secretaries and treasuries, on the Board of Directors, only an ordinary resolution, or in other words, a bare majority is required, whereas in the case of managing agents, you require a special resolution. I do not know whether the Finance Minister has given his consideration to this point. If he has done so, well and good; otherwise I do request him to have it examined and if he feels that any change is necessary, the same may be incorporated.

Another point I would like to mention is this. In the case of secretaries and treasurers, the maximum remuneration provided is 7½ per cent, whereas managing agents would be entitled to a remuneration up to 10 per cent. It is true that the overall remuneration which you have provided is up to 11 per cent; but, if secretaries and treasurers are going to discharge the same function of the managing agents—this is the contention of many hon. Members of this House,—in effect what you are doing is this. You are reducing the remuneration of managing agents from 10 to 7½ per cent. It is a very healthy sign and to a great extent it will meet the point of the hon. Members who have been persistently demanding that the remuneration of managing agents should be substantially reduced.

Mr. Deputy-Speaker: The following are the amendments to clauses 368 to 388 of the Companies Bill which the hon. Members have indicated to be

moved subject to their being otherwise admissible:

Clause No.	Amendments Nos.
369	962, 983 (same as 962)
370	963
371	964
372	965, 678 (Govt.), 679* (Govt.), 860, 1006
373	966
375	967, 968.
377	1102, 984, 985.
378	1007, 1008.
378A (New)	1009, 1010, 1011
380	1012
381	1013
384	1014
385	1015
386	1016, 986, 1017, 965 (Govt.), 680 (Govt.).
387	1018, 1019
388	681 (Govt.), 1105
388A and 388B (New)	1020

Clause 369.—(Loans to managing agent)

Shri Sadhan Gupta: I beg to move: Page 187—omit lines 34 to 39.

Shri K. K. Basu: I beg to move: Page 187—omit lines 34 to 39.

Clause 370.—(Loans etc. to companies etc.)

Shri Sadhan Gupta: I beg to move: Pages 187 and 188—line 48 and lines 1 and 2 respectively,

omit "unless the making of such loan, the giving of such guarantee or the provision of such security has been previously authorised by a special resolution of the lending company".

Clause 371. (Penalty for contravention etc.)

Shri Sadhan Gupta: I beg to move: Page 188—for lines 30 to 36, substitute:

"Provided that if the loan has been repaid in full or in part, the court may take into consideration such repayment in passing any sentence of imprisonment."

[Shri Sadhan Gupta]

Clause 372.— (Purchase by company of shares etc.)

Shri Sadhan Gupta: I beg to move:

Page 189—

(i) line 3,

for "ten per cent." substitute "5 per cent."

(ii) line 7,

for "twenty per cent." substitute "ten per cent."

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

(1) Page 189, line 18—

after "at the meeting" insert "except those not entitled to vote thereon".

(2) Page 189, lines 18 to 21—

for "unless further notice of the meeting and of the resolution proposed to be moved thereat has been given to all the directors then in India, add also to other directors at their registered addresses in India" substitute:

"unless further notice of the resolution to be moved at the meeting has been given to every director in the manner specified in section 285".

Shri Tulsidas: I beg to move:

Page 190—

omit lines 8 to 11.

Shri Kamath: I beg to move:

Pages 188, 189 and 190—

for lines 42 to 48, 1 to 47 and 1 to 11, respectively, substitute:

"372. Permissible investment by company.—(1) A company shall invest its surplus funds in Government securities or in the issue of bonus shares to members or partly in the one and partly in the other."

Clause 373.— (Investments made etc.)

Shri Sadhan Gupta: I beg to move:

Page 190, line 32—

for "two years" substitute "one year".

Clause 375.— (Managing agent not to engage in business etc.)

Shri Sadhan Gupta: I beg to move:

(1) Page 191, line 2—

for "twenty per cent." substitute "fifteen per cent."

(2) Page 191, line 9—

for "seventy per cent." substitute "thirty per cent."

Clause 377.— (Restrictions on right etc.)

Pandit K. C. Sharma: I beg to move:

Pages 191, and 192—

for clause 377, substitute:

"377. No right of managing agent to appoint directors.—An agreement authorising the managing agent to appoint directors is void to the extent of that authority."

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

(1) Page 191, line 44—

for "five" substitute "seven".

(2) Page 191—

after line 45, add:

"Provided that the director appointed by the managing agent must be either a managerial expert or a technical expert."

Clause 378.— (Appointment of secretaries and treasurers)

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

(1) Page 192, lines 20 and 21—

omit "or body corporate".

(2) Page 192—

after line 23, add:

"(2) The Central Government shall lay down qualifications of the persons eligible to constitute such firm.

(3) any firm appointed as secretary and treasurer having a partner not qualified to act as

such, shall cease to operate as secretary or treasurer from the date that partner joins the firm of secretary and treasurer.

(4) Every partner of the firm working as secretary and treasurer, when one of the partners is not qualified to join or act as partner of such firm shall be liable to a fine of Rs. 20,000 or three years imprisonment or both."

New Clause 378A

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

(1) Page 192—

after line 23, insert:

"378A. Term of office of secretaries and treasurers.—(1) After the commencement of this Act, no company shall—

(a) in case it appoints secretaries and treasurers for the first time (that is to say, in case the company had no secretaries and treasurers at any time since its formation), make the appointment for a term exceeding five years;

(b) in any other case, re-appoint or appoint secretaries and treasurers for a term exceeding three years at a time;

(c) re-appoint secretaries and treasurers for a fresh term, when the existing term of the secretaries and treasurers has one year more to run.

(2) For the purpose of sub-section (1) re-appointment includes—

(a) the renewal, or the extension of the term, of a previous appointment; or

(b) the appointment of any person or persons having an interest in the previous secretaries and treasurers.

(3) Any appointment or re-appointment of secretaries and treasurers made in contravention

of sub-sections (1) and (2) shall be void, in respect of the entire term for which the appointment or re-appointment is made."

(2) In the amendment proposed by me, printed as No. 1009,

in part (a) of sub-clause (1), for "five years" substitute "ten years".

(3) In the amendment proposed by me, printed as No. 1009,

in part (b) of sub-clause (1), for "three years" substitute "five years".

Clause 380.—(Sections 323, 329 and 331 not to apply).

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

Page 192—

(i) line 41,

for "329 and 331" substitute "and 329"; and

(ii) lines 41 and 42,

for "329 and 331" substitute "and 329".

Clause 381.—(Section 347 to apply etc.)

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

Page 193, line 4—

for "seven and a half per cent" substitute "five per cent".

Clause 384.—(Firm or body corporate not to be appointed manager)

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

Page 193—

after line 26, add:

"(2) No person shall be appointed a manager unless he is qualified to do so as per qualifications laid down by the Central Government which may vary from industry to industry and unless approval of the Central Government is obtained. Such qualifications shall be laid down by notification."

[Shri K. K. Basu]

Clause 385.—(Certain persons not to be appointed managers)

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

Page 194—

omit lines 5 and 6

Clause 386.—(Number of companies etc.)

✓ Shri Kamath: I beg to move:

Page 194, line 19—

for "members" substitute "directors".

✓ Shri K. K. Basu: I beg to move:

(1) Page 194, line 22—

for "one year" substitute "three months".

(2) Page 194, line 22—

for "one year" substitute "six months".

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

(1) Page 194—

after line 28, add:

"(4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a manager of more than two companies, if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common manager."

(2) Page 194—

after line 28, add:

"(4) This section shall not apply to a private company unless it is a subsidiary of a public company."

Clause 387.—(Remuneration of manager)

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

(1) Page 194, line 32—

for "five" substitute "two".

(2) Page 194, line 32—

for "five" substitute "three".

Clause 388.—(Application of sections etc.)

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

Page 194—

for clause 388, substitute:

"388. Application of sections 309, 310, 311 and 316 to managers—The provisions of sections 309, 310 and 316 shall apply in relation to the manager of a company as they apply in relation to a managing director thereof, and those of section 311 shall apply in relation to the manager of a company as they apply to a director thereof."

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

In the amendment proposed by Shri C. D. Deshmukh, printed as No. 681,

(i) for "section 309, 310, 311 and 316" substitute "sections 311 and 316"

(ii) for "sections 309, 310, and 316" substitute "section 316".

New Clauses 388A and 388B

Shri Kamath: I beg to move:

Page 194—

after line 41, insert:

"CHAPTER IV—A

General Provisions regarding Directors, Managing Agents etc.

"388A. Panel of Directors, Managing Agents etc.—(1) The Central Government shall appoint a Commission under the Commissions of Inquiry Act, 1952 for the purpose of drawing up a panel of persons having special qualifications in economics, science, industry, business, trade, finance, administration, agriculture, co-operation suitable for company management.

(2) It shall be the duty of the company to employ, on a reasonable remuneration and reasonable conditions of service, a person whose name has been included in such panel, except for sufficient cause shown by such persons.

(3) A company which wilfully fails to employ persons whose names have been included in such panel shall be punishable with fine which may extend to two thousand rupees.

388B. Managerial Employment Exchange.—The Central Government shall constitute a Managerial Employment Exchange in which persons with suitable qualifications for appointment as director, managing agent, manager, secretary, shall be enrolled and the Central Government shall offer the facilities of the Exchange to companies desiring them."

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

Shall I call upon the hon. Minister now? 3½ hours have been allotted for this group and we started at 1-30.

Shri U. M. Trivedi: No, we began at 2.

Mr. Deputy-Speaker: Very well; we will carry on with this group till 5-30. How much time would the hon. Minister like to have?

Shri C. D. Deshmukh: About half an hour, Sir.

Mr. Deputy-Speaker: There are three more hon. Members who want to speak. Shri Chettiar:

Shri T. S. A. Chettiar: I shall not take much time. One of the Members in the Opposition Bench asked whether I was a managing agent. Evidently my speech yesterday must have inspired him to put this question. I may make it very clear that I have nothing to do with managing agency and I have had nothing to do with it, I will have nothing to do with it in future also. The question is not whether anybody is a managing agent

or not; the question is about the industrial future of this great country. If I have been advocating the managing agency system knowing fully well the evils and abuses of it in the past, it is because I have an eye to the industrial advancement of this country and not merely to ideological differences.

I would like to say a few words as to what the secretaries and treasurers are expected to do. I have seen many managing agents and secretaries and treasurers in South India. In South India we see no difference between secretaries and treasurers and managing agents. To my mind, the only difference that I see between the managing agents and secretaries and treasurers consists of the two points which have been mentioned by the previous speakers, that the commission will be limited to 7½ per cent, and they will not be allowed to appoint two directors to the Board, etc. The advantages are that clause 323 does not apply to them and there is no limit to the number of secretary and treasurerships which they can have. I am sure the business community will take advantage of these privileges.

I would here like to say a few words as to how it is possible for them to develop. The Government's idea about secretaries and treasurers has been expressed by the Finance Minister. It is said that there will be a group of technicians who do not have money, but who have individual or collective ability to manage companies, they will give that technical skill for the management of companies without any financial stake and that the entire financial stake will be borne by the board of directors. If this is so, this scheme is well worth trying. Much will depend on how the finance market will develop in the future in this country. If we develop a finance market, a capital market and a share market, if we can have investment corporations which will take shares, as we have seen recently, it will work. Till recently, these were absent. Everybody will accept that. In the last few years, especially after Swaraj, we have been think-

[Shri T. S. A. Chettiar]

ing on these lines. Finance Corporations have grown; there is the Central Finance Corporation; there are Finance Corporations in the States. We are having an investment corporation with the help of international organisations. Therefore, I think there is some possibility of these secretaries and treasurers developing in the way in which the Finance Minister contemplates. The point is this. In the industrial development of the country that we contemplate, we expect that Rs. 750 crores will be invested in the private sector. Till now, in the 30,000 and odd companies, according to the statistics given to us, up to 31st March, 1952, the amount invested was Rs. 849 crores. Now, in the next five years, we would like the private sector to invest a capital of an almost equal amount, namely, Rs. 750 crores. The question is whether we will find Investment corporations to finance this amount, whether the share market and the capital market is so developed that with merely intelligent men, with technical knowledge of management and the industry concerned, the directors will come forward with the requisite confidence to finance all this amount of Rs. 750 crores. To my mind, while it is possible that secretaries and treasurers may develop as contemplated by the Finance Minister, to develop this to this large extent is something well nigh impossible. To that extent, to my mind, the managing agents will continue and many of the companies that will come will continue to come under the managing agency system.

Suggestions were made by Shri Gadgil and others that an amending Bill must be brought forward very soon. If the capital market is developed, no amendment of this Act would be necessary at all. Though there is managing agency at the start, after 5 years, the managements have to go to the Government for so many things: for renewal, for confirmation, etc. If the capital market is sufficiently developed, Government have full power even under the present Bill as it is,

without any amending Bill, to change the pattern of company administration, so that in course of time, there will not be many managing agencies. I expect that in the future, the capital market will be so developed, and the share market will be so developed, that technicians will have the capacity to attract the directors and with the help of the capital market, will be able to establish companies. That would be a better day for the industrial world than today. With so much power that has already been given to the Government, no amending Act will be necessary. To do it by any amendment of the Act will mean a revolution. Without any revolution, without, as it were, cutting things with scissors, even by the administration of the company law as stated in this Bill, I expect that it will be possible for the new pattern in company law administration to be set up. But how it is going to be it is beyond me or anybody to say. It depends on the national development on the whole.

Now, I would only like to refer to one or two clauses. Clauses 386, 387 and 388 refer to appointment of managers etc. I have found an amendment by Government to one of these clauses. Under these clauses as they are in the Bill, the appointment of a manager every year after five years must again come up before the Government for confirmation. I have just one doubt in this connection. Managers generally work under the supervision of directors, managing agents or managing director or secretaries and treasurers. They are simply technical servants of the company. I wonder whether it should be made necessary that their appointment every five years or increase in their remuneration should come up before Government.

I have nothing more to suggest, but I do hope, though I have no evidence of it till now, that the secretaries and treasurers contemplated under the Bill will fashion themselves after the pattern suggested by the Finance Minister.

Shri K. P. Tripathi (Darrang): Let me, at the outset, join my voice with that of Shri C. C. Shah in welcoming this new company which has been floated, namely the West Coast Paper Mills, with a huge capital, with directors rather than managing directors, and I take this opportunity also to congratulate one of the directors present here, Shri Somani. Let me also hope that the amount of criticism which has prevailed all over the country against the managing agency system will promote some change so that people who are concerned with business management and promotion of companies will, of themselves, give up the habit of starting managing agencies for the purpose of managing companies, and will come forward to float new companies under managing directorships.

With regard to the statement which Shri Somani made, I understand he directly and clearly says: why bother about concentration of capital? We are in a developing stage. Be satisfied with development and when we are fully developed, there will be enough time for you to come forward and say whether you want to reduce concentration or not. From Shri Somani such a statement is clearly understandable to me, but if people who have accepted the Socialistic pattern of society come forward and say that they do not bother about concentration, it seems to me to be very surprising.

Shri Bansal was taking pains to point out by comparing America with India, that there was no concentration of capital in India. He was quoting Shri Mehta and saying that Shri Mehta had made a mistake by quoting America because in America one company itself earns so much profits that the combined profits of all the companies there was less. Now, Shri Bansal in trying to criticise Shri Mehta has fallen into the same wrong logic as Shri Mehta himself had adopted. What is the fallacy? The concentration of power arises here also. How? Because, the purchasing power is determined by the difference in the per capita

income as compared to the total amount of capital in a single hand here as also in America, and if you compare that, you will find that the proportion would be the same. Therefore, in spite of the fact that the profit here earned by these big industrialists who control our industries is 22 per cent., their power over our economy is almost the same as the power of such people in America. Now, what have the Americans done? In America, they have tried to develop these cartels and tycoons.

My hon. friend has said that there is no monopoly in this country. Again he has made a mistake. After all, monopoly does not come into existence all of a sudden. It is a process which takes time to grow. When big business finds that there is competition which they cannot control, then in order to avoid that competition and to have maximum profits, they develop monopolies. Although at this stage India has not developed that type of monopoly which my hon. friend Shri Bansal or Dr. Krishna-swami was saying, yet monopoly is in the process of developing, just as we found in the case of our newspapers that there was an attempt to buy up the newspapers, so that there might be a monopoly. As soon as Government decided that the Press Commission should be set up, they stopped buying newspapers and for the time being they are lying low waiting to see what the result may be; and again they may start it. Similarly, in our present state of economy, although there may not be concentration of that type which may be called a monopoly, yet there is a possibility of its developing, because it is absolutely necessary for capital to move in that way so as to develop or tend to develop monopoly.

When we have taken the decision that we are going to have a socialistic pattern of society, we have also decided that we should prevent concentration. Therefore, we have to begin preventing it from now. Further, what have we done? We have not decided that suddenly we shall wipe

[Shri K. P. Tripathi]

out all these managing agencies. We have given them power to continue up to 1960, and only after that period, we have taken power to permit some which are good to continue and to discontinue some which are bad. So, it is a very pragmatic way of dealing with the situation. It is not like a mad-cap suddenly coming and destroying everything, and saying, on, we do not want progress, we do not want to have a high standard of life at all, we want only equality. That is not what we are doing. We do want equality, but we want also progress, and that is why we have gone in this way.

But we do not want to take a foolish step namely that we permit concentration, for then a time will come when we shall find that we cannot prevent it at all. Shri Bansal has said, we can prevent it in future. But it is possible that the concentration may become so great that we may not be able to prevent it at all in future. What is to happen then? The power of capitalists is so tremendous that we have seen how they are behaving in a certain fashion in the South American countries. I think therefore that we have taken this step in a very pragmatic way, rightly, slowly and surely. We do not want to be rash, but we want also to be cautious. From that point of view, I think the step which we have taken in this Bill is correct. I only hope that the intended steps will bear fruit.

With regard to the example given by Shri G. D. Somani, I would like to clarify the position a little. My hon. friend seemed to suggest that there were small tea gardens somewhere, and there was just one superintendent or manager who was going about and giving them technical advice. May I point out that that is wrong? The uneconomic gardens which are to be found today are in areas bigger than that of many of the smaller tea gardens. You will be surprised to know that there are tea gardens which are known as uneconomic, and which

are in areas of 1,000 acres, 2,000 acres, 3,000 acres and so on, whereas there are tea gardens which are having an area of only 150 acres or 300 acres and which are still economic. What is the reason for this? The reason why these large tea gardens became uneconomic was that for a long time all the profits were taken away without being ploughed back.

There are also many tea gardens that had no superintendents visiting them, and nobody advising them; the people there learnt things on the spot, by planting the tea gardens, and now they are very prosperous. In fact, one of the Indian tea planters is such an expert that today even the European firms call him to advise them. He started from the very bottom, and by learning things on the spot he became an expert.

So, I think that this theory of the concentration of wisdom in managing agencies having been of great help is a fallacy. I would say rather that the managing agents have been drawing away all the profits in such a way that they have left the tea gardens high and dry.

Coming to secretaries and treasurers, I really admire Shri C. C. Shah for the restrained way in which he has spoken. I had given notice of certain amendments but I have not moved them. With distress in my mind I have ultimately decided not to move them. I have also tried to find out, in spite of the eloquent speech of Shri Morarka, what the distinction is between managing agents, and secretaries and treasurers.

To me, the difference has not been very much perceptible. It is said that if a managing agent manages 70 companies, on the appointed day, it will be open to him to be managing agent of only ten companies and for the rest, he can convert himself into secretary and treasurer. When this question was mooted, we were told that it was intended that new, young men should come forward, combine their talents, and form themselves into

companies and be in management. It is now said that to such people, nobody would entrust the management, because they would not have any trust. In India yet, finance goes by trust and, therefore, such a company would not be able to function. Therefore, although in explanation it is said that the system of secretaries and treasurers is meant for new entrants and new talent, in practice the existing managing agents will be allowed to convert themselves into secretaries and treasurers for companies in excess of ten of which they are managing agents.

The second point, I am told, is that although the remuneration is limited to 7½ per cent, yet clause 197 will apply so that the total remuneration for management even in concerns managed by secretaries and treasurers would be 11 per cent. Therefore, it would be possible for the managing agents to so use the balance that the total cost would be the same. So I am at a loss to find out rather what is the distinction meant to be. After all, when we tell the country that we are going to abolish the managing agency system, the country expects that it is going to be abolished, if not today, gradually. When we say we are going to have another system, namely, secretaries and treasurers, the country naturally expects it to be a different system. But in actual implementation when the country finds that it will not be a different system, but it will be practically the same, and all those restrictions which are applicable to the managing agents would not be applicable to the secretaries and treasurers—because they would be able to manage as many concerns as they like; the limitation of ten will not apply to them—the country will ask, 'What have you done? What did you promise? Have you carried it out? Why did you hold out this promise?' To these questions, it will be very difficult to give an answer. It is from this point of view that I have also felt intensely about this matter. It has been said that it would be like the phoenix of mythology which dies, but out of its

ashes a new bird is born. Similarly, out of the ashes of managing agency, secretaries and treasurers will rise, under a new name, but in the old form all the same. To this question, it would be very hard for us to give an answer.

Therefore, I would request the Finance Minister to take this point seriously into consideration so that when he is administering this law, he will scrutinise and see how far these managing agents should be permitted to be converted into secretaries and treasurers. They should not as of right claim to be converted into secretaries and treasurers. Rather some tests should be applied so that it might not be said that we made this provision only for the purpose of permitting all managing agents to be converted into secretaries and treasurers. I therefore again request the Finance Minister to take this aspect into consideration so that at the implementation stage, when he is called upon to exercise his discretion, he would so exercise it to see that total conversion would not occur, but judicious conversion would occur.

श्री भागवत झा आज़ाद : यह जो परिभाषा, अधिकार इत्यादि मैनेजिंग एजेंट्स के और सेक्रेटरीज और ट्रेज़रर्स के इस बिल में रखे गये हैं और जो अधिकार सुरक्षित रखने की बात कही गई है इस का मैं विरोध करता हूँ। यह बात निर्विरोध और निर्विवाद कही जा सकती है कि आज देश के अन्दर हर व्यक्ति चाहे वह विधान सभा का सदस्य हो या पार्लियामेंट का सदस्य हो और चाहे वह एक साधारण व्यक्ति हो सब की एक ही राय है कि मैनेजिंग एजेंसी का बना रहना इस देश के लिये एक दुर्भाग्य की बात है। इस पर कोई भी किसी किस्म का विवाद नहीं हो सकता है। अगर कोई आदमी अब भी मैनेजिंग एजेंसी को रखने के पक्ष में अपना तर्क पेश करता है तो मेरे खयाल में वह उस

[श्री भागवत झा आज़ाद]

बूढ़े घोड़े को जिस में कि अपनी शक्ति नहीं रह गई है और उसको केवल चाबुक मार कर ही आगे बढ़ाया जाता है, की सी बात करता है। इस में कोई आश्चर्य की बात नहीं है. . .

Shri C. D. Deshmukh: This has already been passed by the House. Does the hon. Member apply all the remarks to the House now?

Shri K. K. Basu: It has not yet been passed.

Shri Bhagwat Jha Azad: What objection is there? Probably the hon. Minister has not understood me.

Mr. Deputy-Speaker: The House has already approved the continuance of the managing agency. The main question now is of secretaries and treasurers.

श्री भागवत झा आज़ाद : मैं ने तो केवल इतना ही कहा है कि यदि आज कोई व्यक्ति मैनेजिंग एजेंसी के पक्ष में तर्क रखना चाहता है तो उसकी हालत यही है कि वह उस घोड़े को आगे ले जाना चाहता है जिसमें अपनी शक्ति तो रह नहीं गई है और उसको अब केवल चाबुक मार कर और उसका भय दिखा कर आगे बढ़ाया जाता है। इस में न इस हाउस का ही प्रश्न है और न ही किसी मੈम्बर का प्रश्न है.

श्री कामत : सिर्फ घोड़े का प्रश्न है।

श्री भागवत झा आज़ाद : न इस हाउस ने और न ही सिलैक्ट कमेटी ने यह कहा है कि हम मैनेजिंग एजेंसी को रखना चाहते हैं। उन्होंने सिर्फ यह कहा है कि मैनेजिंग एजेंसी को खत्म करने में एक बीच का रास्ता अस्तित्कार किया जाना चाहिये। यह सबों की राय है कि इसके स्थान पर एक नई व्यवस्था जारी की जाये और इन के स्थान पर सेक्रेटरीज और ट्रेजरर्स को रख लिया जाये और उनसे

इनका काम लिया जाये। मेरे ह्याल में यह बिल्कुल गलत है और हमारे माननीय सदस्य श्री शाह ने इस हाउस में जो तर्क पेश किये हैं मैं उनका समर्थन करता हूँ। और मैं समझता हूँ कि जो विचार इस पद्धति को कायम न रखने के बारे में प्रकट किये गये हैं उन में काफी सत्यता है, काफी जोर है। यदि हम उन के अधिकारों को दखें तो हमें साफ साफ मालूम पड़ता है कि मैनेजिंग एजेंट्स और सेक्रेटरीज एवं ट्रेजरर्स को नफे का ११ प्रतिशत तो मिल जाया करता है परन्तु यदि आप देखें तो और जो आगे उन को अधिकार दिये गये हैं उन में कोई भी कमी नहीं की गई है। मैं समझता हूँ कि मैनेजिंग एजेंट्स को आज समाप्त करने के बाद भी सेक्रेटरीज और ट्रेजरर्स के लिये बहुत सारे अधिकार रह जाते हैं और मैनेजिंग एजेंटों के खत्म हो जाने के बाद भी ये लोग अपने आप को मंत्रियों, सेक्रेटरियों और ट्रेजरर्स में परिणत कर सकते हैं और इस बिल में कोई भी बात ऐसी नहीं है जो उन को ऐसा करने से रोके और वह बगैर किसी नुकसान उठाये अपने आप को जिंदा रख सकते हैं। उनके रास्ते में ऐसा करने में न तो कोई कठिनाई ही पैदा होती है, न कोई विवाद ही उठता है और न ही कोई मुसीबत ही खड़ी होती है। इस बिल में कोई भी धारा, कोई भी प्रोविजन ऐसा नहीं है जो उन को ऐसा करने से रोक सके। अगर गवर्नमेंट इस बात को साफ नहीं करती है तो मैं समझता हूँ कि मैनेजिंग एजेंट्स अपने आप को इस नाम से तो नहीं परन्तु और किसी नाम से जिन्दा रख सकेंगे और वे अपने आप को सेक्रेटरीज और ट्रेजरर्स के रूप में परिणत कर लेंगे और आप उनको ऐसा करने से रोकने में बिल्कुल असमर्थ रहेंगे। इससे न तो उन के रिम्युनेशन में ही कोई फर्क पड़ेगा और न किसी और किस्म का फर्क पड़ता है सिवाय

इसके कि उन का नाम बदल जायगा। आप कहते हैं कि मैनेजिंग एजेंसी दस कम्पनियों से ज्यादा का प्रबन्ध नहीं कर सकती। मेरे विचार में जब मैनेजिंग एजेंसी का सिस्टम खत्म हो जायगा और वे अपने आप को सेक्रेटरीज और ट्रेजरर्स के रूप में परिणत कर लेंगे तो १० कम्पनियों का तो क्या कहना वे ३०, ४० और ५० कम्पनियों का प्रबन्ध कर लेंगे और आप उनको ऐसा करने से रोक नहीं सकते हैं। उनके ऐसा करने के अधिकार पर आप ने कोई भी रोक नहीं लगाई है। इस तरह से यदि हम देखें तो मैनेजिंग एजेंसी के बाद सेक्रेटरीज इत्यादि के तमाम अधिकारों के रोकने के बाद भी वे अपने अधिकारों को सुरक्षित रख सकेंगे। आप ने अभी अमरीका का हवाला दिया कि साहब अमरीका में जो कान्स्ट्रेशन आफ वेलथ है वह हिन्दुस्तान में नहीं है। मैं नहीं समझता कि इसका क्या मतलब है। क्या हम यह चाहते हैं कि जो अनुभव प्राप्त हो चुके हैं उन अनुभवों के प्राप्त होने के बावजूद भी हम जब तक उस स्थिति में न पहुंचे तब तक हम कोई भी कानून या कोई भी लैजिस्लेशन न बनायें।

परन्तु वास्तव में बुद्धिमान मनुष्य तो वही है, जो कि अपने और दूसरों के अनुभव से कुछ सीखता है और उस के अनुसार कार्य करता है। अभी एक माननीय सदस्य ने, जो कि अपने को अक्ल का ठेकेदार बनाये हुए है, श्री अशोक मेहता का नाम ले ले कर अमरीका के बारे में बहुत सी बातें कहीं। लेकिन अक्ल के ठेकेदार उन महाशय को यह समझना चाहिये कि हम ने इस विषय में अमरीका की नकल नहीं करनी है, बल्कि गत अनुभव के आधार पर अपनी भावी कार्य-प्रणाली निर्धारित करनी है।

मैं जानता हूँ कि हमारे वित्त मंत्री महोदय की व्यग्रता यह है कि कोई ऐसी

व्यवस्था कायम की जाय, जो मैनेजिंग एजेंसी का स्थान ले सके। उन्होंने अपने भाषण में कहा कि जितना बिखरा हुआ टेक्निकल पर्सनल है, उसको एक जगह लाया जाय। मैं उनकी इस व्यग्रता को समझता हूँ, लेकिन उनकी इस इच्छा का समावेश इस बिल में कहां पर हुआ है? ऐसी कौन सी धारा है, ऐसे कौन से अधिकार हैं, ऐसी कौन सी व्यवस्था है, जिसमें उस टेक्निकल पर्सनल को किसी कम्पनी का सेक्रेटरी या ट्रेजरर बनाया जा सके? आप कान्स्ट्रेशन आफ इकॉनॉमिक पावर या पूंजी के केन्द्रीकरण को कैसे रोक सकते हैं? कोई व्यक्ति कितना भी काबिल क्यों न हो, वह कम्पनी का मंत्री या ट्रेजरर नहीं बन सकता है। मैं वित्त मंत्री जी से जानना चाहता हूँ कि वह इन मंत्रियों और ट्रेजरर्स के रहते हुए पूंजी के केन्द्रीकरण को और शक्ति के केन्द्रीकरण को किस तरह रोक सकेंगे? मेरे स्थान में इस बिल में ऐसी कोई धारा नहीं है। रुग्णशय्या पर पड़े हुए मैनेजिंग एजेंसी सिस्टम की जब लाश निकलेगी, तो उस समय सेक्रेटरी और ट्रेजरर बजाय ग्रॉस बहाने के अट्टहास करेंगे और उसको आप रोक नहीं सकेंगे। इस लिये इसमें कोई ऐसा सुधार होना चाहिये जिससे हम उन बुराइयों को रोक सकें, जिनके कारण हम मैनेजिंग एजेंसीज को हटाना चाहते हैं। लेकिन अगर आप उनको नहीं हटाना चाहते हैं, तो फिर "ग्रोल्ड वाइन इन न्यू बाटल" वाली बात होगी।

Shri Kamath: For a change, let us have quorum.

Mr. Deputy-Speaker: Shri Kamath may speak now.

Shri Kamath: I have pointed out that there is no quorum now.

Mr. Deputy-Speaker: But there will be an exception in his favour. I wanted to give five minutes each to both these hon. Members.

Shri U. M. Trivedi: But we have to continue up to six minutes past five.

Mr. Deputy-Speaker: The bell is being rung. Shri Trivedi may speak.

Shri Kamath: don't you mind the question of quorum if Shri Trivedi is going to speak?

Mr. Deputy-Speaker: Shri Trivedi may begin.

Shri U. M. Trivedi: I thank Shri Kamath and you, Mr. Deputy-Speaker; let Shri Kamath take a long time.

Today's arguments appeared to be inconsistent so far as Shri C. C. Shah and Shri Asoka Metha were concerned. Shri Shah was a Member of the Select Committee and he gave the excuse that he was very seriously ill. I have sympathies for all those who fall seriously ill, but I find that when this clause was being discussed, he attended the Joint Committee.

Shri C. C. Shah: That is not correct. These provisions were brought forward at the last meeting of the Committee.

Shri U. M. Trivedi: The hon. Member never sent in any amendment then.

Shri C. C. Shah: I was not present at the meeting.

Shri U. M. Trivedi: Paragraph 141 of the Joint Committee Report says on the question of new clauses:

"The Committee have no wish to make changes in the system of 'secretaries and treasurers' who ordinarily exercise much the same functions as 'managing agents' or 'managers' but with this vital difference, namely, that 'secretaries and treasurers' have no right to appoint any of their nominees to the directorate."

If there were other members of the Congress Party who wanted to raise objection to it, Shri Nathwani and Shri Morarka did submit their note of dissent on the Bill.

I was surprised by what Shri Asoka Metha said about this managing agency system. At page xxxiv of this Report, they have said....

Shri K. K. Basu: But Shri Asoka Metha was not a Member of the Joint Committee.

Shri U. M. Trivedi: He represents a Party and Shri Gurupadaswamy, Shri Dhage, Shri B. C. Ghose and Shri Amjad Ali have signed it, and they belong to the same Party.

Shri K. K. Basu: But Shri Asoka Metha may not be of the same view.

Shri U. M. Trivedi: Let me be allowed to speak. They said in that note of dissent:—

"We may also add that secretaries and treasurers for whom provision has been made in chapter IV could easily fulfil such useful functions as the managing agents are at present considered to be performing."

Today there was a different strain. I do not know whether it was an afterthought or new wisdom born. It is quite true as Shri Bhagwat Jha Azad has said that the difference between secretaries and treasurers and managing agents is the difference between tweedledum and tweedledee. There is absolutely no difference between the two.

I am reminded of a small incident in my life. A child was playing with his father and his father was carrying him on his shoulders. The child saw that another boy was being carried on a pony. So, the child said to his father that he also wanted to ride on a pony. The father knelt down and said: 'here, I am a ghoda.' That is the only thing that had happened here. Managing agency has been taken away but secretaries and treasurers have been put in with all their powers except that the board of directors will guide them as to what they will do. Not only that. We have been clamouring all along in this House

from the beginning and it appeared to me that the whole House agreed that we should prevent concentration of wealth and concentration of power in the managing agents. We have got out of that also as was very aptly pointed by my hon. friend. There is absolutely no control unless provided for under clause 331. He can manage not only ten but any number of firms. The secretaries and treasurers could have any number of companies under them. A greater concentration of wealth would be there. I am very sorry and I do not want to read between the lines but it appears to me to be so.

At the time when clause 292 was being discussed, it was urged that some check upon contributions to be made to political parties should be there—some check upon contributions by managing agents or by the companies. Then they clamoured that they must allow. It means that the secretaries and treasurers are by backdoor being provided with such powers whereby they may be able to contribute more to the funds of the political parties. If that has been the desire then we shall be very clear about it. Shri Bhagwat Jha Azad himself ought to have talked about that but when that question arose, he also joined hands.

Mr. Deputy-Speaker: I would only suggest that motives need not be attributed to Members of Parliament here. Hon Member could certainly say that consideration to this party or that party will be shown. But to say that hon Members vote for or against or taking particular sides merely indicates money for the Party is not correct. (*Interruptions*)

Shri C. D. Pande: There are more important things.

Mr. Deputy-Speaker: The hon. Member is a good lawyer; he can find many arguments to oppose this. Why should he take shelter under this? Let us not attribute motives on Members; all of us are honourable.

Shri U. M. Trivedi: There are many arguments but the main argument is this. It is not that I am imputing any impure motives to any particular individual; far from it.

Mr. Deputy-Speaker: Those hon. Members here voting—that is a reflection on them.

Shri U. M. Trivedi: We are guided by super-men. The difficulty is that we all are led and so it becomes difficult to separate the individual from the group. The whole confusion is created by this, as we have got to vote according to party directions. The wisdom of this debate dawns later on. Anyhow, I am not going to pursue that argument further.

5 P.M.

What I wish to point out is this. One argument that has been advanced was about these secretaries and treasurers not being a body corporate. I cannot understand that argument. One amendment has been moved that they should not be body corporate: If they can be a firm, why should they not be a body corporate? I do not see any logic behind such a thing. On the contrary it should be a body corporate. The whole conception of secretaries and treasurers from the definition stage is that they must not be individuals but must be more than one individual; they must be firms. If they could be firms, it is better and it is of greater advantage if they could be a body corporate. In a body corporate, we can immediately catch hold of some defaulter; otherwise it becomes extremely difficult to locate even the proper persons. It so many times happens that when there are insolvency proceedings against an ordinary firm it is very difficult to catch hold of the partners and locate the proper persons with whom to deal with, but in the case of a body corporate these difficulties do not arise due to its being a registered body. We can always get hold of them in the case of a body corporate.

[Shri U. M. Trivedi]

I am neither for managing agencies nor against secretaries and treasurers; for me it makes little difference. Whether there is managing agency system or whether there is secretary and treasurer system the concentration of wealth which we want to abolish is going to take place and concentration of power is the ultimate aim of secretaries and treasurers. Under these circumstances I see no reason whatsoever for limiting this power to a firm only. I should, therefore, say that the amendment with regard to body corporate should be thrown out.

Shri Kamath: It is very refreshing indeed to find such a yawning gulf between my friends Shri T. S. A. Chettiar and Shri Bansal on the one hand and Shri K. P. Tripathi and Shri Bhagwat Jha Azad on the other. It is very delightful indeed that there is a yawning gulf between these two groups, both belonging to the benches opposite.

I do not want to labour the argument that the distinction between the managing agents and secretaries and treasurers—the new class of people who will be invoked or will be created in the near future—is only a distinction without a difference. That has been amply stressed by my friends here.

I wish to place three amendments before the House and in doing so I would wish to briefly make some observations in regard to the last one—amendment No. 1020 to new clause 388A and 388B. I have got three amendments of which this is the last one which I would like to take up first. I was glad to find Shri Bhagwat Jha Azad saying that it is very difficult, or it is impossible to find real men of merit getting entry into these companies. My amendment—this particular one—is aimed at the destruction of the prevalent, rampant nepotism and in-lawism—I will put in that way what you have spoken about so often. This in-lawism is prevalent in many companies. "Nepotism" is etymologically derived from "nephew"

and not "in-law." But in-law is different from nephew; everybody knows that. A nephew can be, perhaps, a son-in-law in the south, but not everywhere.

Mr. Deputy-Speaker: The hon. Member is not personally aware of these things.

Shri Kamath: No, Sir; I have only heard about it from wise elders like you. I would, therefore, commend this particular amendment of mine to the acceptance of the House. It has got a two-fold objective; that is to end this nepotism and in-lawism prevalent in companies and also to help relieve unemployment, especially educated unemployment, in our country today. But, I have taken care to see that they have special qualifications. Those who have special qualifications will only get in—special qualifications in economics, science, industry, business, trade, finance, administration, agriculture and co-operation suitable for company management. The Central Government shall appoint a commission for the purpose of drawing up a panel of personnel having special qualifications. It casts a duty on the company to employ these persons on reasonable remuneration and on other reasonable conditions of service, and the company must give sufficient cause as to why it does not appoint such persons, or, sufficient cause must be shown by such persons why they are not willing to take up employment in that company.

Mr. Deputy-Speaker: Your amendment is that rules must be framed stating the qualifications, etc., of persons suitable for employment, inasmuch as joint stock companies deal with public funds, and so, the persons in charge must have particular qualifications under the rules.

Shri Kamath: My amendment is that Government should appoint a Commission for drawing up a panel and these companies will have to employ these persons compulsorily

unless the persons concerned decline the employment offered for adequate reason.

A company which wilfully fails to employ persons whose names have been included in such panel shall be punishable with fine which may extend to two thousand rupees.

Then, I have provided for a managerial employment exchange in clause 388B.

Shri S. S. More: What will happen if a person, who is appointed on merits, subsequently weds the daughter of the managing agent?

Mr. Deputy-Speaker: There are provisions for divorce in the Hindu law.

Shri Kamath: That is a subsequent development which may not affect the provisions. Of course you can insert a new amendment. I want more and more of More but there is nowadays less and less of him. That is unfortunate.

Another amendment of mine is 1006 relating to clause 372, where I have said that a company shall invest its surplus funds in Government securities or in the issue of bonus shares to members or partly in the one and partly in the other. That does not need much amplification. It is clear.

The last one is amendment No. 1016 to clause 386.

Shri S. S. More: Let us have some Opposition securities instead of Government securities!

Shri Kamath: Are you going to continue in the Opposition?

Mr. Deputy-Speaker: The hon. Member need not pursue that matter.

Shri Kamath: I thought you allowed that interruption.

Mr. Deputy-Speaker: No interruptions are allowed at all.

Shri Kamath: They are quite lively sometimes and they give us a pause—a little rest.

My last amendment is No. 1016 to clause 386. I think the specific notice is given to all directors and not to all members. I personally think that that is what the Government means. The Minister will please look it up. Either it is a misprint or a mis-draft—the draftsman's devil. The proviso to sub-clause (2) says that members should be given notice. I think they have to give notice to the directors and not the members who are shareholders.

Mr. Deputy-Speaker: I think 'members' here means members of the board.

Shri Kamath: Then it is all right. Anyway, it ought to be made clear.

Shri C. D. Deshmukh: I am going to accept amendment No. 1015 to clause 385 by Shri K. K. Basu, and that is similar to an amendment which I had accepted earlier. I also have great pleasure in accepting amendment No. 1016 of Shri Kamath, because he is right in saying that where we put in 'members', we meant only directors. I have equal pleasure in opposing the rest of those amendments, because I think they are very impractical. Then, his amendment No. 1020 mentions a kind of a scheme which is not suitable.

Mr. Deputy-Speaker: I think it speaks of some Commission or a panel.

Shri C. D. Deshmukh: It may not fit in with the whole scheme here, in the industrial world. Perhaps it may fit in either with Utopia or some kind of country like EREHWON of Samuel Butler which, as the hon. Member knows, leads the reverse way to the land of nowhere.

Shri Kamath: Won't it fit in with Avadi?

Shri C. D. Deshmukh: I think he is a little ahead of his time. He seems to have a touchy belief in qualifications, scientific, technical and otherwise and in commissions. I think that will destroy the primary character of the private sector, namely, that it is a question of competition, choice and private enterprise.

Shri Kamath: I want a commission for drawing up a panel of qualified persons.

Shri C. D. Deshmukh: The Commission is supposed to do some useful work and if they do not do it, there are some penalties prescribed. I think the scheme is not feasible under the present circumstances. Coming now to the general debate, it seems to me that we are over influenced by a sense of defeatism. I have noticed from time to time, that is to say, while we are passing this Bill, after such deliberations we are not quite sure as to whether we shall be able to control the matters that we set out to control. And therefore, every time there is a feeling that there will be some loopholes and some circumventions, either conscious or unconscious. I suggest that we ought to take a more optimistic view of this and should be confident that we have succeeded in plugging the major loopholes. If matters are looked at from this point of view, then I think hon. Members will probably come round to the views advocated by the Joint Committee.

Reference was made to what I said in regard to secretaries and treasurers. Hon. Members have quoted the concluding portion of my remarks on this part of the subject. "It is my hope and I believe it is shared by others that in course of time we shall have a body of secretaries and treasurers who will not arise from the traditional class..." and then I went on to say how it might arise. That implies that for the moment till this evolution takes place, I contemplate that we may have a class of secretaries and treasurers even from the traditional classes. I began by saying that in spite of the three or four disabilities "here is a way out for those who have no finance or who do not wish to engage their funds on what they regard as unsatisfactory terms, because they might merely say that "all that we are out to do is to hire out the services of ourselves for the management of companies" etc. There-

fore, it is not correct to say that the scheme of secretaries and treasurers is meant entirely for bright young men in the future. It is also intended to be a way out of the present complex, so to speak, that attends managing agents.

Now, statements have been made again and again that there is very little difference between secretaries and treasurers and managing agents. This is again one way of corporate management and in the same speech I said that "secretary and treasurer is a corporate manager." I can understand hon. Members having views as to whether a joint-stock company should be managed by an individual or a firm partnership or by a body corporate and if they hold those views very strongly, then I should have expected them to object to many other sections, such as those dealing with holding companies, because in the case of a holding company, the relationship between the holding company and the company held is analogous to the relationship between a company and its managing agent except that the power to control the affairs of the subsidiary company arises from either the volume of investment or the physical fact of control which may not amount to that particular volume like 51 per cent. It may be less, but customarily it may be proved that the affairs of the subsidiary company are managed by the holding company. It is nowhere stated that the holding company will not be a body corporate. Indeed, in this country as well as in other countries all over the world, body corporates do manage other companies. One can argue for and against such a course. There is something to be said for personal relationship between a company and those who manage its affairs; on the other hand, there is also something to be said for a body corporate which can collect together amounts and resources for an integrated and coordinated system of management of a number of companies. They are, so to speak, specialists in management. Our managing agents

should be described as specialists in management, especially when they are body corporates, in two respects: (i) they bring together a certain amount of capital; (ii) they bring together a certain amount of talent. Then, their affairs are organised as in any other joint stock company. That is to say, there are boards of directors and in order that they may be able to manage their affairs well, they usually have a few executive directors, whole-time directors who specialise in different branches of the businesses looked after by the managing agents. The House has already passed.

Mr. Deputy-Speaker: Are the secretaries expected to get any money?

Shri C. D. Deshmukh: That is what I am coming to.

So far as the managing agencies are concerned, that is the position.

Now, I would like to give you a few statistics just as an illustration of the difficulty that one comes across. I am not now referring to the new secretaries and treasurers. I hope that system will evolve in the way in which many hon. Members have wished in the right lines. I have nothing to say about it. The only thing for me to do or for any one in my place to do, is to keep his eyes open in the Central administration and see that it evolves on proper lines. One can certainly bear in mind all the observations made by hon. Members and the fears and apprehensions expressed by them.

Shri Kamath: What is the significance of 'me or somebody in my place'? Will he not continue in that place?

Shri C. D. Deshmukh: What I meant was, 5 years or 10 years hence; at any time. That also is possible.

Shri K. K. Basu: You will be here for 5 years.

Shri C. D. Deshmukh: There is a company here. I will not give the name of the company. Its net paid up capital is Rs. 180 lakhs. It manages 40 companies. They are in jute, coal,

cotton, tea, sugar, plantations, and so on and so forth. The total paid up capital of these managed companies is about Rs. 21 crores. Therefore, the percentage of its own capital on the capital of the managed companies is 9 per cent. There is another company which manages 19 companies, again in jute, miscellaneous, coal, cotton.

Shri K. K. Basu: The hon. Minister referred to the case of a company with a capital of Rs. 180 lakhs managing companies with a capital of Rs. 21 crores. My point is this. The managed company may be X. I want to know whether that managed company X has any interest in another managed company Y.

Shri C. D. Deshmukh: It may be. This is only the capital of the managing agency company. How it is employed, I cannot say. Part of it must be in the managed company. Part of it may be available to them as amount to be loaned out in case of need to the managed company. I am trying to establish a relationship by way of investment between a managed company and this. But, it is a fact that managing agents have some investment in most of the companies that they manage. It is also a fact that they have some means at their disposal to be able to lend money, or back their guarantee where there is a guarantee to the managed company, and it is for this purpose that they float a company. In other words, it is a combination of an investment company and a managing company. Now, as I said, that is 9 per cent. Then, in another case, it is 19 companies managed, again jute, cotton, coal etc. and the total capital is Rs. 18 crores. That gives a higher percentage, about 23 per cent. Obviously, some of the capital must be in the managed companies and all of it cannot be for giving out as loans in emergencies or even as working capital or whatever it may be. Then there is a third company where 18 companies are managed—again jute, miscellaneous, coal, tea, there is no cotton. The total

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paid up capital of the companies managed is Rs. 3,60,00,000. Therefore, it forms 25 per cent. on the capital. The paid-up capital of the managing agency company is Rs. 90 lakhs, which gives a percentage of 25 of the capital of the managing agency company to the paid-up capital of the managed company. Lastly, there is one more example I will give, the paid-up capital of the managing agency company is Rs. 135 lakhs, the number of managed companies is 26, the total of the paid-up capital of managed companies is Rs. 190 lakhs, which gives a percentage of 70 of one to the other. Now, I have been making enquiries as to what would happen as a result of our imposing a limit of ten on the number of companies managed.

Mr. Deputy-Speaker: They will become secretaries.

Shri C. D. Deshmukh: What I say is there have been no complaints that either their conduct has been unconscionable or that their affairs have been badly managed. Now, the House will have to accept the statement because I have not given the names, but I am quite satisfied that they are very respectable companies and I for one am not aware of any charges of mismanagement or unconscionable remuneration in regard to these companies, and I am quite certain that they are making a contribution to the development of the economy of the country. Now, I have been given a reply that what they would like to do is to concentrate their holding in companies which they would choose out of these. For instance, in the case of this last company....

Mr. Deputy-Speaker: Is there anything in this Bill to prohibit the Secretaries also investing money?

Shri C. D. Deshmukh: Nothing. Nothing at all.

Mr. Deputy-Speaker: And therefore restrict the number of managing agencies to ten. Wherever they have got 30, 40 managing agencies, the rest of it will be converted into secretaries and treasurers.

Shri C. D. Deshmukh: If you would allow me to finish my argument, that is what I am tending to. I say that in some cases like this 70 per cent, this last case, it does not seem to me to matter very much. They are not bothered about it because they have a very large percentage of holding and whether you call them managing agents, whether you call them secretaries and treasurers, or whether they are all turned into boards of directors, I do not believe they would bother a bit. All these companies are really held by them. Unless they choose to get out of their shareholding, that company, I do not suppose, will be faced with any difficulty, but there is this other capital with 9 per cent. It may be that they will wish to concentrate whatever they have—that is, the paid up capital of Rs. 1,80,00,000 or whatever it is that is invested in these companies—may be in some companies of their choice, so that they would say that these are good companies in which we wish to have a good financial stake so as to make sure that we have the control. And as I have said frequently, I cannot see anything wrong in a person contributing substantially to investment in a joint stock company and wishing to have some voice in the management of that company. As I say Government does it, other nations do it wherever they give large monies, and international bodies do it, and I do not see why an investor should not do it, either by boards of directors or by any other means that are from time to time open to them. Now, what would happen if they withdraw their financial stake which is thinly spread at the moment through all these managed companies? What would happen to those companies in which they do not choose to have a financial stake? They choose their ten companies which they would be managing agents of, as long as they are permitted to be managing agents. As for the rest, I cannot say any reason why the present system of management should be interfered with, because they will get out of control,

and they will have no financial control. Indeed, there is a section which prevents them from nominating directors. But it may suit the managed company to say, now we understand that you have no responsibility to finance our affairs, because you would not have the funds and your funds are now engaged in a more intensive way in the other companies, nevertheless we would like your management, we have been used to your people, you have specialised in our problems, so, we would like you to continue as secretaries and treasurers. And I cannot see that any public interest is injured by this. Indeed, I am of the opinion that public interest will be advanced by this, because if they drop these companies, then those companies will have to form boards of directors and since secretaries and treasurers will *ex hypothesi* have no financial interest in these companies, and will not have the means with which to acquire financial interest in these companies, they will be at the mercy of, may be, people who have command over resources, there might be competitions and struggles for power in the way I mentioned the other day, and I think it will interfere with the smooth management of these companies. Now, I suggest that that is an experiment which is worth watching.

My next point is that no one can turn himself into a secretary and treasurer without the approval of the Central Government, because as Shri Morarka has pointed out, the basis of the thing is that there are at the moment very few secretaries and treasurers. I shall presently give a few details about what they are. And they happen to be in the south, as was stated by Shri T. S. A. Chettiar. Now, in the rest of the country, there are no secretaries and treasurers. Therefore, no one can become a secretary and treasurer without the approval of the Central Government. If in spite of these presumptions which I have raised, it appears that management has not been satisfactory or there is some other reason why a

particular management should not continue, it is open to us to say to the body corporate, you shall not convert yourself into the secretaries and treasurers of this managed company. So, here again, as under clause 325, public interest will be the sole guide, and I suggest that the House should agree to leaving this way open in regard to these cases. Whether they are nine cases or sixteen or twenty-seven, I am not joining issue with the hon. Member. I gave only figures arising out of the 1720 cases that were with me, where there were 1330 managing agents. Undoubtedly we know that there are many more managing agents, and therefore the number of companies where there is a holding of more than ten companies would be larger. I do not quite know the number. Probably, the hon. Member's investigation is right, although it took place in 1948.

Shri Asoka Mehta: 1949.

Shri C. D. Deshmukh: It may be that things have changed a bit because the Act of 1951 came for this very reason that there was a tendency for a struggle developing in regard to managing agencies, and there was a danger of unworthy people, people with not too good a record acquiring some managing agencies; and as our attention was drawn to it, we first passed an ordinance and then took powers to regulate this.

Now, I shall give some facts in regard to the existence of secretaries and treasurers. The important point I wish to make is that 'secretaries and treasurers' is not a term unknown to the law, nor is that arrangement unknown to the law.

It is true that the present Companies Act does not contain any definition of 'secretaries and treasurers'. There are two sections in it, namely sections 34 and 119 which refer to a secretary. A secretary is conceived—but that is different—as on who is

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entrusted only with office and secretariat duties. So, we need not bother about secretary. But the point is that there is no definition of 'secretaries and treasurers'. Nevertheless, there is nothing in the Act to prevent any individual, partnership, or body corporate, from setting itself up as secretaries and treasurers with somewhat limited powers and functions over the affairs of the company than what a managing agent usually possesses.

Obviously, if any body corporate set themselves as secretaries and treasurers, they would not have powers which are given to the managing agents corresponding to powers under clause 377 to nominate directors and so on. Now, therefore, there was a lacuna in the present Act which was prominently brought to our notice sometime ago, when we had to consider an application from a company which wished to appoint another well known managing agency house in Calcutta as its secretaries and treasurers. Therefore, what I am suggesting is that if I had not brought these provisions for inclusion in the Bill, the situation would have continued unregulated. And there was nothing in the law to prevent any body corporate from offering themselves as secretaries and treasurers. Therefore, I think I have done a certain amount of public good in bringing it within the compass of our law and in trying to regulate it. It is not an invention to find a circumvention of the law, so to speak, to find a way out. This particular company claimed that the powers it proposed to confer on its secretaries and treasurers were considerably less than those which a managing agent usually exercised, and therefore, the company was not bound to obtain the prior approval of the Government to the appointment of this managing agency house as its secretaries and treasurers. The case has not yet been finally disposed of, although in view of this controversy, the current controversy, the company is not pressing its application.

Therefore, it seems to me that it was always open to an individual or a firm or a body corporate to offer itself as secretary and treasurer, provided it modified the terms and conditions of appointment suitably so as to avoid being caught by the definition of managing agent, within the meaning of section 2 (1) (9A) of the Act. This is the present position. This position was obviously unsatisfactory and we considered it desirable to recognise the system of secretaries and treasurers formally and to regulate their activities under the new Act. It will be recalled that it was a similar consideration which induced the then Government of India in 1936 to recognise the institution of managing agents formally for the first time in the amendment of 1936—many hon. Members do not know that. But it was formally recognised for the first time in 1936, and a decision was made to incorporate the provisions relating to managing agents in that Act. It is, therefore, reasonable to claim that the provisions relating to secretaries and treasurers attempt to regulate the activities of an institution which, if left outside the scope of the new Act, would have enabled company promoters and managements to continue to carry on the activities of managing agents but with lower powers and under a different name. And that is the real distinction.

Now, we have defined secretaries and treasurers almost in the same way as a manager, and the definition is materially different from the definition of managing agent. This, again, conforms to our intention of treating secretaries and treasurers more as managers, that is to say, as corporate managers and not as quasi-managing agents. The difference lies in this. The first portion is about remuneration. Some hon. Members have said that since there is a total ceiling of 11 per cent under clause 197, there is nothing preventing secretaries and treasurers from exceeding 7½ per cent. Well, I say that the central administration is there which will prevent

such things from happening because, as I have pointed out, barring a few secretaries and treasurers who are existing today, no one can become secretary and treasurer without the positive approval of the central administration. Therefore, it is quite impossible for secretaries and treasurers to get away with any remuneration in excess of 7½ per cent.

Secondly, as I have already pointed out, they will have no right to appoint any director. I might as well deal with one small observation made in this regard by Shri Morarka. As far as I can see, the omission or exclusion of clause 260 is simply a matter of drafting. That is to say, the other clause only refers to managing agents who are authorised by the articles and by their agreement to appoint a director to the Board. In other words, clause 260 is a kind of adjective provision and not a substantive provision and that is why the exclusion applies both to 377 and 260. It is not as if it is intended to give secretaries and treasurers a power which they do not possess by their articles of agreement. And, if the articles of agreement do give such a power, then we shall not recognise them as secretaries and treasurers. Indeed, clause 260 does not also apply to managing agents who have no power under their agreement to appoint a director under clause 377. Therefore, clauses 377 and 260 go together. I do not think there is any danger of the secretaries and treasurers appointing people merely by virtue of clause 260.

Then there is the third limitation, which is well known, about purchasing and selling goods and so on. In practice, most secretaries and treasurers, as I said, would have to come to us for the approval of their terms and conditions. I have examined various model agreements between a company and its secretaries and treasurers. I have noticed that in a large number of cases those agreements differ quite substantially from the agreements with managing agents.

Here I have about 16 cases which I have examined of secretaries and treasurers; in other words, there are 16 secretaries and treasurers in existence today, whose operations went unnoticed and unmentioned. Here are hon. Members rising and saying that this has been introduced in order to enable the managing agents to get away under some new name. That I consider is a very unjust kind of remark especially in the circumstances in which an earnest effort is made to find a way out of the existing difficulties; and to introduce a minimum disturbance in the management of companies where there is no evidence of abuse.

Shri K. K. Basu: The existing difficulties of managing agents?

Mr. Deputy-Speaker: The hon. Member feels that it is only a step to remove the existing difficulties of managing agents.

Shri C. D. Deshmukh: Whatever it may be, whether it is from the companies' point of view or from the managing agents' point of view, certainly there is a difficulty. What I have been told is that they will be willing to give them up. I must regard this thing from the point of view of the managed companies. Would it be good for the managed companies in their case to shed those who have been managing their affairs for the last 25 or 30 years? I suggest that it is at least a matter worth looking at by the Central Administration. Then we can make up our mind. We may say that nothing will happen to this company if it is managed by a board of directors but it is just possible that the Central Administration may come to a decision that there is no reason why this company should not continue to be managed by the managing agents as secretaries and treasurers provided, as under the law, they will have no representation on the board of directors and they will have no financial stake and that their schedule of powers is properly

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scrutinised by the Central Administration. A perusal of these agreements shows that in some cases the powers are similar to those of the managing agents and in other cases they stand on a different footing. It will be our purpose to secure that they do not have the same powers as the managing agents. Responsibility and power must go together and if there is less responsibility there should be less of power. It is in this spirit that it is intended to administer this particular portion of the Companies Act if it is passed by the House.

Now I come to the question of concentration of wealth and of power. Whether secretaries and treasurers will have economic power or not is a matter of opinion. In the same sense a body corporate may with a lower range of powers be called a manager. Much power is synonymous with patronage. Certainly, I suppose they will have a certain amount of power but they won't have purchasing and selling powers except under special conditions and they won't be certainly able to influence the affairs of the company which they are managing. So far as concentration of wealth is concerned, that is an entirely different matter. It arises in this field, and it may arise in various other fields and there are other means which are open to the Government to ensure that the concentration of wealth does not occur.

Even in the industrial field there are various methods which are open to Government, as I mentioned the other day, to take at the proper time. In appropriate circumstances one could consider a limitation of dividends, a tax on capital gains, an excess profits tax which I think is still in existence, a business profits tax and a few other methods are there by which one could stop this concentration of wealth going forward, and finally there is the Estate Duty Act. So I do not think that one need be deterred by the thought of excessive concentration of wealth

and power merely by reason of our allowing body corporates to manage a number of companies. That is my view and I submit it respectfully to the House for its earnest consideration.

I think I have covered most of the points that had been raised by hon. Members in regard to secretaries and treasurers.

Dr. Krishnaswami: What about amendment No. 681 relating to managers? Is the hon. Minister withdrawing it?

Shri C. D. Deshmukh: In regard to clause 388, one has to go again to the definition of 'managers'. The examples given by the hon. Member were examples of men receiving Rs. 500 or so. I cannot imagine a man of Rs. 500 being put in substantial charge of the affairs of a company. He might be some other kind of manager but I do not know where power exists, but I shall certainly....

Dr. Krishnaswami: Small companies with a capital of Rs. 5,00,000 or Rs. 6,00,000 have such managers.

Shri C. D. Deshmukh: I should think that the power delegated to the manager there would be small; in other words, one would have to decide the case on its merits, and power should reside with the board of directors. But I would ask a question of hon. Members. What should I do where there is a deliberate attempt to swell the emoluments of the manager in companies with a capital, not of Rs. 5,00,000 but of Rs. 5 crores?

Dr. Krishnaswami: Then he should have an upper limit or say anything above Rs. 3,000 or so.

Shri C. D. Deshmukh: No such amendment has been brought forward here. Therefore, it is a matter which has to be borne in mind, so to speak. If hon. Members had said or someone had said that provided the rate of remuneration per month does not exceed Rs. 1,000 or Rs. 1,200,

I would not have minded, but no hon. Member has thought it fit to bring forward an amendment of that kind. We have got to keep our eyes always on the possibilities of circumvention at the higher levels in most of these things. It is recognised that at the lower levels many people will be put to inconvenience. We shall have to deal with and clear their cases as quickly as possible.

Dr. Krishnaswami: But you have got clause 197—the overall limit of managerial remuneration.

Shri C. D. Deshmukh: It is a minimum remuneration. I shall not develop the other points and they are very small points. There must be at least a few matters in which we have to accept the advice of the expert committee because a lot of people have given consideration to those matters. That is my only reply to some of the points raised by Shri Tulsidas.

Mr. Deputy-Speaker: We will take the earlier group of clauses with respect to some of which the amendments have been allowed to stand over. Amendment No. 895 to clause 323.

The question is:

Page 171—for clause 323 substitute:

“323. Every managing agent to cease functioning by 31st December, 1958.—Every managing agent shall cease to function as such on the 31st December, 1958 unless he ceases so to function at an earlier date:

Provided, however, that the Central Government may, by notification in the Official Gazette, permit the continuation of managing agents, wholly or in part, in such class or description of industry or business as may be specified in the notification:

Provided further that the reasons for the granting of such permission shall be recorded in writing in the said notification.”

Those in favour will say ‘Aye’.

Some Hon. Members: Aye.

Mr. Deputy-Speaker: Those against will say ‘No’.

Several Hon. Members: No.

Mr. Deputy-Speaker: The Noes have it.

Some Hon. Members: No, Sir; the Ayes have it.

Mr. Deputy-Speaker: Hon. Members in favour will rise in their seats.

There are eleven hon. Members in favour of it.

Those who are against will rise in their seats.

There is a large number. So, the amendment is lost.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

“That clause 323 as amended, stand part of the Bill.”

The motion was adopted.

Clause 323, as amended, was added to the Bill.

Mr. Deputy-Speaker: There is a new clause 323A sought to be introduced by amendment No 897. I shall put it to the vote of the House.

The question is:

Page 171—

after line 26, insert:

“323 A. Companies engaged in certain classes of industry not to have managing agents.—Notwithstanding anything contained in section 323, no company engaged in the manufacture or sale of any cotton or jute textile, electrical goods or equipments, or the generation or supply of electricity, or the extracting or sale of any mineral, or in any plantation industry shall be managed by a managing agent after the 31st December, 1958, or the expiry

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of the term of the existing managing agent, whichever is earlier."

Those in favour of the amendment will say 'Aye.'

Some Hon. Members: Aye.

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

Several Hon. Members: No.

Mr. Deputy-Speaker: The Noes have it.

Some Hon. Members: The Ayes have it.

Mr. Deputy-Speaker: Those hon. Members who are in favour may kindly rise in their seats.

There are eleven hon. Members. Those against may kindly rise in their seats.

There is a large number. So, the amendment is lost.

The motion was negatived.

Mr. Deputy-Speaker: There is an amendment No. 973 seeking to introduce new clause 328A.

The question is:

Page 173—

after line 3, insert: .

"28A. From the decision of the Central Government under clause (b) of sub-section (1) of section 325 or under section 328, an appeal shall lie to a bench of three Judges of the High Court at the instance of the Company or a member or creditor or debenture holder thereof."

The motion was negatived.

Mr. Deputy-Speaker: Now we will take up clause 329. There is an amendment—No 234.

The question is:

Page 173, lines 10 to 12—

omit "unless before that date he is re-appointed for a fresh term in

accordance with any provision contained in this Act."

Those in favour of this amendment will say 'Aye'.

Some Hon. Members: Aye.

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

Several Hon. Members: No.

Mr. Deputy-Speaker: The Noes have it.

Some Hon. Members: The Ayes have it.

Mr. Deputy-Speaker: Those who are in favour may kindly rise in their seats.

There are eleven hon. Members. Those against may kindly rise in their seats.

There is an overwhelming majority against the amendment...

Shri Kamath: We want a division.

Mr. Deputy-Speaker: Even if we unnecessarily exercise hon. Members' legs the same situation will arise. The amendment is lost by an overwhelming majority.

The motion was negatived.

Shri A. M. Thomas: Shri More says that he is standing without understanding.

Mr. Deputy-Speaker: I will now put clause 329.

The question is:

"That clause 329 stand part of the Bill".

The motion was adopted.

Clause 329 was added to the Bill.

Mr. Deputy-Speaker: There is an amendment No. 939 which seeks to introduce a new clause 333A.

Shri K. K. Basu: Shri More wants to know.

Shri S. S. More: I am prepared to stand without understanding.

Mr. Deputy-Speaker: Hon. Members have got their papers with them.

Shri Raghavachari (Penukonda): May I respectfully submit that the clauses were discussed very early and it was understood that they would be put to vote at 2.50; then they had been kept over till 5.30. That meant that the debate would go on and the voting would take place at any time. People naturally have the difficulty of not being able to follow. We do not understand.

Mr. Deputy-Speaker: I am not criticising the hon. Member. On the other hand I wanted to refer to it so that hon. Members may refresh themselves. I am looking into it myself. I shall now put amendment No. 939 seeking to introduce new clause 333A moved by Shri Sadhan Gupta suggesting that tax-evaders should not act as managing agent. Hon. Members have heard the arguments of Shri Sadhan Gupta.

The question is:

Page 174—

after line 36, insert:

"333A. Tax-evader not to act to managing agent.—(1) If in respect of

- (a) any person,
- (b) any firm or any partner thereof,
- (c) any public company or any director thereof,
- (d) any private company or any member or director thereof,

any court or tribunal or other authority arrives at a finding that such person, firm or partner thereof, body corporate, director or member thereof, as the case may be, has concealed the particulars or has deliberately furnished inaccurate particulars of such income or if such person, firm or partner, body corporate or director or member thereof has evaded payment of taxes under any law or has been convicted for

any offence under any such law, then in cases referred to in clause (a), the individual, in clause (b), the firm as well as each partner thereof, in clause (c), the company or every director thereof, in clause (d), the company, each director and each member thereof, shall be disqualified for appointment or for acting as managing agent of any company.

(2) This section shall apply notwithstanding any want of jurisdiction in the court or the tribunal or the other authority on account of any technical defects in its constitution or composition."

Those in favour will kindly say "Aye".

Some hon. Members: Aye.

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

Several hon. Members: No.

Mr. Deputy-Speaker: The Noes have it.

Shri Kamath: The "Ayes" have it.

Mr. Deputy-Speaker: Hon. Members who are in favour of this amendment will kindly rise in their seats.

There are 9 Members who are in favour.

Now, I will ask those who are against this amendment to stand in their seats.

Shri K. K. Basu: Let us know the number who are in favour of tax-evaders.

Mr. Deputy-Speaker: There is a large number against the amendment and it is lost.

The motion was negatived.

Mr. Deputy-Speaker: Now I will put amendments 987 and 988 to clause 348 to the vote of the House.

[Mr. Deputy-Speaker]

The question is:

(i) Pages 179 and 180—

omit lines 41 to 44 and lines 1 and 2
(ii) Page 181—

after line 2, add:

“(o) bounties and subsidies received from any Government, or any public authority constituted or authorised in this behalf by any Government.”

Those in favour of these amendments will kindly say “Aye”.

Some hon. Members: Aye.

Mr. Deputy-Speaker: Those against will say “No”.

Several Hon. Members: No.

Mr. Deputy-Speaker: The Noes have it.

Shri Kamath: The Ayes have it.

Mr. Deputy-Speaker: Hon. Members in favour of the amendments will kindly rise in their seats.

There are 9 Members in favour. (interruption).

Both sides are rising. One side at a time.

Shri K. K. Basu: The Finance Minister is canvassing votes in the House.

Mr. Deputy-Speaker: Now, those against these amendments will kindly rise in their seats. There is a very large number and so the amendments are lost.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

“That clause 348, as amended, stand part of the Bill.”

The motion was adopted.

Clause 348, as amended, was added to the Bill.

Mr. Deputy-Speaker: Now, I will put amendment No. 992 to clause 363 to the vote of the House.

The question is:

Page 185, line 35,—

add at the end:

“and such sum may be deducted by the company from any sums due from it to the managing agent”.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

“That clause 363 stand part of the Bill.”

The motion was adopted.

Clause 363 was added to the Bill.

Mr. Deputy-Speaker: I will now put amendment No. 993 to clause 365 to the vote of the House.

The question is:

Page 186,—

after line 27, add:

“(i) where payment of such compensation to the managing agent would be otherwise inequitable or improper”.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

“That clause 365 stand part of the Bill”.

The motion was negatived.

Clause 365 was added to the Bill.

Mr. Deputy-Speaker: Now, I will dispose of clause 197 which was held over. There are two Government amendments and I will put them to the vote of the House.

The question is:

Page 99, sub-clause (4), line 3,—

to sub-clause (4), add the following proviso:

“Provided that where a monthly payment is being made to any managing or whole-time director or directors and the manager

or to any one or more of them and the Central Government is satisfied that for the efficient conduct of the business of the company, the minimum remuneration of fifty thousand rupees per annum is insufficient, the Central Government may, by order, sanction an increase in the minimum remuneration to such sum, for such period, if any, and subject to such conditions, if any, as may be specified in the order."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In the amendment, printed as No. 281,—

(i) after "is being made" insert "or proposed to be made";

(ii) after "fifty thousand rupees per annum is" insert "or will be"; and

(iii) after "for such period" omit "if any"

The motion was adopted.

Mr. Deputy-Speaker: Are there any other amendments to this clause?

Shri Tulsidas: There are my amendments—I do not remember the numbers now.

Dr. Krishnaswami: There is my amendment also.

Mr. Deputy-Speaker: The question is:

Page 98, line 21,—

after "managerial remuneration" insert "by way of commission"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, lines 21 and 22—

omit "and minimum managerial remuneration in the absence of inadequacy of profits."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, line 25—

after "by the company" insert "by way of commission"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, line 27—

after "if any" insert:

"in respect of their services as directors, managing agents or secretaries and treasurers, and managers."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, line 27—

for "eleven per cent" substitute "six per cent"

The motion was negatived.

Mr. Deputy-Speaker: Amendment No. 615 is the same as No. 76. It is barred.

The question is:

Page 98, line 27—

after "eleven per cent." insert:

"up to 20 lakhs and for every 10 lakhs above that, the rate should come down by 1.5 per cent till the final rate of remuneration comes to 5 per cent."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, lines 29 and 30—

omit "except that the remuneration of the directors shall not be deducted from the gross profits".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, after line 30 **add:**

"Notwithstanding anything contained in sub-section (1) the total remuneration so payable shall not exceed six per cent of the net profits of the company when it is paying only minimum wages to its lowest paid workers, eight per cent when it is paying fair wages to them, and eleven percent when it is paying living wages to them.

Explanation: For the above purpose minimum, fair and living wages shall be understood to mean as follows:—

(a) The 'living wage' represents a standard of living which provides not merely for a bare physical subsistence but for the maintenance of health and decency, a measure of frugal comfort and some insurance against the more important misfortunes:

(b) The 'minimum wage' must provide not merely for the bare sustenance of life but for the preservation of efficiency of the worker by providing for some measure of education, medical requirements and amenities.

(c) While the lower limit of the 'fair wage' must obviously be the minimum wage, the upper limit is set by the capacity of industry to pay. Between these two limits the actual wages will depend on—

- (i) the productivity of labour;
- (ii) the prevailing rates of wages;
- (iii) the level of the national income and its distribution; and
- (iv) the place of the industry in the economy of the country."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98,—

for lines 33 to 40, substitute:

"(3) Nothing contained in sub-sections (1) and (2) shall—

(a) apply to a director or a manager unless he is either an associate of the managing agent or shares in the profits of the company;

(b) apply to a company the effective capital of which is not more than fifteen lakhs of rupees unless the Central Government so—directs and giving such directions, may order that it shall apply, subject to modifications as it may deem fit for the efficient conduct of the business of the company;

(c) affect the operation of sections 351, 352, 453, 354, 357, 358, 359 or 360."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Pages 98 and 99—

omit lines 41 to 46 and 1 to 3 respectively.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 99, line 2—

for "fifty thousand ruppees" substitute "forty eight thousand ruppees"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 99, line 2—

for "fifty thousand rupees" substitute "twenty-five thousand rupees"

The motion was negatived.

Mr. Deputy-Speaker: Amendment 620 is the same as No. 77. It is barred.

The question is:

In the amendment proposed by Shri C. D. Deshmukh printed as No. 281.

after "to any managing or whole-time" insert "or part-time".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98—

omit lines 35 to 38

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, line 39—

omi: "351"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, line 40—

omit "359".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 99, line 2—

for "fifty thousand" substitute "twenty thousand"

The motion was negatived.

Mr. Deputy-Speaker: Amendment No. 648 being the same as No. 619, is barred.

The question is:

Page 99, line 2—

for "fifty thousand" substitute "thirty thousand"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 98, line 27—

for "eleven per cent." substitute "eight per cent"

The motion was adopted. ✓

Mr. Deputy-Speaker: The question is:

Page 98, line 27—

after "its manager" insert:

"and persons in effective management of the company"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 99,—

after line 3 add:

"Provided that the Central Government may authorise a higher amount for reasons recorded in writing"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In the amendment proposed by Shri C. D. Deshmukh printed as No. 281,

for "fifty thousand rupees" substitute "twenty-five thousand rupees"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 197, as amended, stand part of the Bill"

The motion was adopted.

Clause 197, as amended, was added to the Bill.

Mr. Deputy-Speaker: Now clause 368. The question is:

"That clause 368 stand part of the Bill"

The motion was adopted.

Clause 368 was added to the Bill.

Mr. Deputy-Speaker: Clause 369.

The question is:

Page 187—

omit lines 34 to 39.

The motion was negatived.

Mr. Deputy-Speaker: Amendment No. 983 is the same as amendment No. 962. It is barred.

Mr. Deputy-Speaker: The question is:

"That clause 369 stand part of the Bill"

The motion was adopted.

Clause 369* was added to the Bill.

*In sub-clause (2) of clause 369, line 36, the word "purposes", was substituted by the word "purpose", as patent error under the direction of the Speaker.

Mr. Deputy-Speaker: Clause 370.

The question is:

Pages 187 and 188—

line 48 and lines 1 and 2 respectively,

omit "unless the making of such loan, the giving of such guarantee or the provision of such security has been previously authorised by a special resolution of the lending company".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 370 stand part of the Bill".

The motion was adopted.

Clause 370 was added to the Bill.

Mr. Deputy-Speaker: Clause 371.

The question is:

Page 188—

for lines 30 to 36, substitute:

"Provided that if the loan has been repaid in full or in part, the court may take into consideration such repayment in passing any sentence of imprisonment".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 371 stand part of the Bill"

The motion was adopted.

Clause 371 was added to the Bill.

Mr. Deputy-Speaker: Clause 372. I shall put Government amendments first.

The question is:

Page 189, line 18,—

after "at the meeting" insert "except those not entitled to vote thereon"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 189, lines 18 to 21—

for "unless further notice of the meeting and of the resolution proposed to be moved thereat has been given to all the directors then in India, and also to other directors at their registered addresses in India" substitute:

"unless further notice of the resolution to be moved at the meeting has been given to every director in the manner specified in section 285"

The motion was adopted.

Mr. Deputy-Speaker: I shall now put other amendment. The question is:

Page 189—

(i) line 3,

for "ten per cent." substitute "five per cent."

(ii) line 7,

for "twenty per cent." substitute "ten per cent."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Pages 188, 189 and 190—

for lines 42 to 48, 1 to 47 and 1 to 11, respectively substitute:

"372. Permissible investment by company.—(1) A company shall invest its surplus funds in Government securities or in the issue of bonus shares to members or partly in the one and partly in the other."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 190—

omit lines 8 to 11.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"that clause 372, as amended stand part of the Bill."

The motion was adopted.

Clause 372, as amended, was added to the Bill.

Mr. Deputy-Speaker: Clause 373. The question is:

Page 190, line 32—

for "two years" substitute "one year"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 373 stand part of the Bill."

The motion was adopted.

Clause 373 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That Clause 374 stand part of the Bill."

The motion was adopted.

Clause 374 was added to the Bill.

Mr. Deputy-Speaker: Clause 375. The question is:

Page 191, line 2—

for "twenty per cent" substitute "fifteen per cent."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 191, line 9—

for "seventy per cent." substitute "thirty per cent."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That Clause 375 stand part of the Bill."

The motion was adopted.

Clause 375 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That Clause 376 stand part of the Bill."

The motion was adopted.

Clause 376 was added to the Bill.

Mr. Deputy-Speaker: Clause 377. The question is:

Pages 191 and 192—

for clause 377 substitute:

"377. No right of managing agent to appoint directors.—An agreement authorising the managing agent to appoint directors is void to the extent or that authority."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 191, line 44—

for "five" substitute "seven".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 191,—

after line 45, add:

"Provided that the director-appointed by the managing agent must be either a managerial expert or a technical expert."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That Clause 377 stand part of the Bill."

The motion was adopted.

Clause 377 was added to the Bill.

Mr. Deputy-Speaker: Clause 378. The question is:

Page 192, lines 20 and 21—

omit "or body corporate."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 192—

after line 23, add:

"(2) The Central Government shall lay down qualifications of the persons eligible to constitute such firm.

(3) Any firm appointed as secretary and treasurer having a partner not qualified to act as such, shall cease to operate as secretary or treasurer from the date that partner joins the firm of secretary and treasurer.

(4) Every partner of the firm working as secretary and treasurer, when one of the partners is not qualified to joint or act as partner of such firm, shall be liable to a fine of Rs. 20,000 or three years imprisonment or both."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 378 stand part of the Bill".

Those in favour will say "Aye".

Several Hon. Members: Aye.

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

Some Hon. Members: No.

Mr. Deputy-Speaker: Let the Ayes have it, let the Ayes have it.

Some Hon. Members: Let the Noes have it.

Mr. Deputy-Speaker: Those in favour will kindly stand in their seats. There are 36 hon. Members in favour. Those against will kindly stand in the spats. I see none. Hon. Members are so kind to me that they want to give me some respite.

The motion was adopted.

Clause 378 was added to the Bill.

Mr. Deputy-Speaker: There are certain amendments seeking to introduce Clause 378A. I am putting them to vote.

The question is:

In the amendment printed as No. 1009, in part (a) of sub-clause (i),

for "five years" substitute "ten years."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In the amendment printed as No. 1009, in part (b) of sub-clause (1).

for "three years".

substitute "five years"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 192,—

after line 23, insert:

"378A. Term of office of secretaries and treasurers.—(1) After the commencement of this Act, no company shall—

(a) in case it appoints secretaries and treasurers for the first time (that is to say, in case the company had no secretaries and treasurers at any time since its formation), make the appointment for a term exceeding five years;

(b) in any other case, re-appoint or appoint secretaries and treasurers for a term exceeding three years at a time;

(c) re-appoint secretaries and treasurers for a fresh term, when the existing term of the secretaries and treasurers has one year more to run.

(2) For the purpose of sub-section (1) re-appointment includes—

(a) the renewal, or the extension of the term, of a **previous** appointment; or

(b) the appointment of any person or persons having an interest in the previous secretaries and treasurers.

(3) Any appointment or re-appointment of secretaries and treasurers made in contravention of sub-sections (1) and (2) shall be void, in respect of the entire term for which the appointment or re-appointment is made."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 379 stand part of the Bill."

The motion was adopted.

Cause 379 was added to the Bill.

Mr. Deputy-Speaker: Now Clause 380. The question is:

Page 192,—

(i) line 41,

for "329 and 331" substitute

"and 329"; and

(ii) lines 41 and 42,

for "329 and 331" substitute
"and 329".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 380 stand part of the Bill."

The motion was adopted.

Clause 380 was added to the Bill.

Mr. Deputy-Speaker: Clause 381. The question is:

Page 193, line 4—

for "seven and a half per cent" substitute

310 L.S.D.

"five per cent".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 381 stand part of the Bill."

The motion was adopted.

Clause 381 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 282 and 283 stand part of the Bill."

The motion was adopted.

Clauses 282 and 283 were added to the Bill.

Mr. Deputy-Speaker: Clause 384. Amendment No. 1014.

The question is:

Page 193, after line 26, add:

"(2) No person shall be appointed a manager unless he is qualified to do so as per qualifications laid down by the Central Government which may vary from industry to industry and unless approval of the Central Government is obtained. Such qualifications shall be laid down by notification.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 384 stand part of the Bill."

The motion was adopted.

Clause 384 was added to the Bill.

6 P.M.

Mr. Deputy-Speaker: Clause 385 Amendment 1015; accepted by the Government.

The question is:

Page 194, omit lines 5 and 6.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 385, as amended, stand part of the Bill."

The motion was adopted.

Clause 385, as amended, was added to the Bill.

Mr. Deputy-Speaker: Clause 386. There are two Government amendments: 680 and 865.

Shri Kamath: There is my amendment also; that has been accepted by the Government.

Mr. Deputy-Speaker: I am coming to that.

The question is:

Page 194, after line 28, add:

"(4) This section shall not apply to a private company, unless it is a subsidiary of a public company."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 194, after line 28, add:

"(4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a manager of more than two companies, if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common manager."

The motion was adopted.

Mr. Deputy-Speaker: Now other amendments.

The question is:

Page 197, line 19—for "numbers" substitute "directors".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 194, line 22—

for "one year" substitute "six months"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 194, line 22—

for "one year" substitute "three months."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 386, as amended, stand part of the Bill."

The motion was adopted.

Clause 386, as amended,* was added to the Bill.

Mr. Deputy-Speaker: Clause 387. Amendments 1018 and 1019.

The question is:

Page 194, line 32—

for "five" substitute "two"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 194, line 32—

for "five" substitute "three".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 387 stand part of the Bill."

The motion was adopted.

Clause 387 was added to the Bill.

*In sub-clause (3) of clause 386, line 28, the words "clause (b) and (c)", were substituted by the words "clauses (b) and (c)" as patent error under the direction of the Speaker.

Mr. Deputy-Speaker: Clause 388. Government amendment No. 681.

The question is:

Page 194, for clause 388, substitute:

"388. Application of sections 309, 310, 311 and 316 to managers.—The provisions of sections 309, 310 and 316 shall apply in relation to the manager of a company as they apply in relation to a managing director thereof, and those of section 311 shall apply in relation to the manager of a company, as they apply to a director thereof."

The motion was adopted.

Mr. Deputy-Speaker: Amendment 1105. The question is:

In the amendment proposed by Shri C. D. Deshmukh, printed as No. 681,

(i) for "sections 309, 310, 311 and 316" substitute "sections 311 and 316".

(ii) for "sections 309, 310 and 316" substitute "section 316".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 388, as amended, stand part of the Bill."

The motion was adopted.

Clause 388, as amended, was added to the Bill.

Shri M. C. Shah: There is sub-clause (44) of clause 2 which was held over.

Mr. Deputy-Speaker: I am coming to that. There is another amendment to add new clauses 388A and 388B: No. 1020.

The question is:

Page 194, after line 41, insert:

"CHAPTER IV—A.

General Provisions regarding Directors, Managing Agents, etc.

388A. Panel of Directors, Managing Agents etc.

(1) The Central Government shall appoint a Commission

under the Commissions of Inquiry Act, 1952, for the purpose of drawing up a panel of persons having special qualifications in economics, science, industry, business, trade, finance administration, agriculture, co-operation suitable for company management.

(2) It shall be the duty of the company to employ, on a reasonable remuneration and reasonable conditions of service, a person whose name has been included in such panel, except for sufficient cause shown by such persons.

(3) A company which willfully fails to employ persons whose names have been included in such panel shall be punishable with fine which may extend to two thousand rupees.

388B. *Managerial Employment Exchange.*—The Central Government shall constitute a Managerial Employment Exchange in which persons with suitable qualifications for appointment as director, managing agent, manager, secretary shall be enrolled and the Central Government shall offer the facilities of the Exchange to companies desiring them."

The motion was negatived.

Mr. Deputy-Speaker: The House will now take up voting on clause 2, sub-clause (44) of which was held over, until clause 378 was disposed of. There are two amendments 343 and 344. I will put them together.

The question is:

(i) Page 7, lines 4 and 5, omit "or body corporate (not being the managing agent)"

(ii) Page 7, lines 8 and 9, omit "or body corporate"

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 K. K. Basu: The 'Ayes' have it.

Mr. Deputy-Speaker: Hon. Members for will kindly rise in their seats. Then Hon. Members against will kindly rise in their seats. A large majority. The amendments are lost.

The motion was negatived.

Mr. Deputy-Speaker: I shall put sub-clause (44) of clause 2 first.

The question is:

"That sub-clause (44) of clause 2 stand part of the Bill."

The motion was adopted.

Sub-clause (44) of clause 2 was added to the Bill.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

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

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, the 7th September, 1955.
