

[Secretary]

of the Forward Contracts (Regulation) Amendment Bill, 1953, which has been passed by the Council of States at its sitting held on the 2nd December, 1953."

COIR INDUSTRY BILL AND FORWARD CONTRACTS (REGULATION) AMENDMENT BILL.

Secretary: Sir, I lay on the Table of the House the Coir Industry Bill, 1953 which has been returned by the Council of States with an amendment. I also lay on the Table the Forward Contracts (Regulation) Amendment Bill, 1953 as passed by the Council of States.

BANKING COMPANIES (AMENDMENT) BILL

Clause 10.—(*Substitution of new Part for Part IIIA in Act X of 1949*)

Mr. Speaker: The House will now proceed with the further consideration of the Bill further to amend the Banking Companies Act, 1949. Clause 10, Part 45K is under discussion.

I believe the House has taken more than two days for discussion of this Bill, and in view of the legislative business before the House and the time table as recommended by the Business Advisory Committee I hope the House will now proceed more quickly with this. There was an extension of fortyfive minutes yesterday beyond the time fixed by the Business Advisory Committee. I think we might finish the clauses in half an hour and then for the remaining half an hour there might be the reply and the third reading.

The Deputy Minister of Finance (Shri A. C. Guha): I won't take much time. I have got three official amendments.

Mr. Speaker: In any case, we finish the Bill by 4 o'clock. So the time

will be up to 4 o'clock and at 4 o'clock we finish the Bill.

Clause 10 is under consideration, Part 45K.

Shri A. C. Guha: For Part 45K I have one amendment—amendment No. 3.

Some Hon. Members: We can't hear him.

Mr. Speaker: That is because people are going out and there is noise.

Shri K. K. Basu (Diamond Harbour): The House may then adjourn for three minutes to enable Members to go out.

Mr. Speaker: No, no. Members must go out quietly. The House cannot adjourn to allow Members to make noise.

Shri A. C. Guha: I beg to move:

In page 9, line 48, after "may" insert "also".

Sir, this is simply to clarify the meaning and the purpose of the clause.

Mr. Speaker: The question is:

In page 9, line 48, after "may" insert "also".

The motion was adopted.

Mr. Speaker: The next is amendment No. 28 by Shri T. K. Chaudhuri. He is not present. I will put it to the vote of the House.

The question is:

In page 10, line 9, after "director" insert a comma and "official".

The motion was negatived.

Mr. Speaker: The next is amendment No. 52 by Shri Tulsidas.

The question is:

In page 10,

- (i) line 40, omit "civil"; and
- (ii) omit lines 41 and 42.

The motion was negatived.

Mr. Speaker: The next is amendment No. 14, again by Shri Tulsidas.

The question is:

In page 11, lines 17 and 18, for "twelve years from the date of the accrual of such claims" substitute "as provided in the Indian Limitation Act, 1908 (IX of 1908)".

The motion was negatived.

Mr. Speaker: The next is amendment No. 4, Government amendment.

Shri A. C. Guha: Sir, this is also only to remove some doubts about the real purpose and meaning, and we want to clarify the meaning. This is also a verbal change.

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

Shri R. K. Chaudhuri (Gauhati): Sir, the hon. Minister in the course of his reply to the debate on the consideration of this Bill was pleased to say that so far as the limitation was concerned he would make certain modifications as regards the descendants or the heirs of the director himself.

Shri A. C. Guha: I have not said anything like that. What I have said is that as far as his personal liability is concerned, such as loans taken from the Bank, that surely will go down to his descendants. But, if there is any liability as a Director, that will cease; because that is his personal liability and perhaps no property is attached.

Shri R. K. Chaudhuri: Can this amendment help us?

Shri A. C. Guha: No, no. This amendment has nothing to do with that. This amendment makes the purpose of the clause clear beyond ambiguity so that there may not be any doubt about there being no limitation as regards his contractual liability to the bank.

Pandit Thakur Das Bhargava (Gurgaon): So far as the provisions

of this section go, they do not fully carry out the intention of the hon. Mover of this Bill. He has stated that so far as the personal liability of the director is concerned, the director alone and his property will be responsible whereas in regard to other contracts, etc., in case of his death, his descendants will also be responsible. That is not carried out by the provisions of this Bill.

Shri A. C. Guha: That is already implied and clear in the wording of the Bill. Very recently, after the promulgation of the Ordinance, there was a reference in the Calcutta High Court as to the real meaning of this clause. To make it clear beyond any doubt or ambiguity, that his contractual liability will have no limitation, that this provision is introduced.

Pandit Thakur Das Bhargava: But, the words are quite different. The words 'contract, express or implied'. There is no question of personal liability, etc., so far as the wording is concerned.

Shri R. K. Chaudhuri: That should be clear by an amendment.

Mr. Deputy-Speaker: I do not think that what has been said relates to this amendment.

Shri K. K. Basu: That is generally on the clauses.

Mr. Deputy-Speaker: The question is:

In page 11, line 19, for "shall, as far as may be," substitute "in so far as they relate to banking companies being wound up shall also".

The motion was adopted.

Mr. Deputy-Speaker: The next amendment is No. 5.

The question is:

In page 13, (i) after line 12, insert—

Shri U. M. Trivedi (Chittor): Yesterday we were going clause by clause. We were discussing 45J.

Mr. Deputy-Speaker: Of all the amendments that have been moved, only one has been left. I will put it to the vote of the House.

Shri Tulsidas (Mehsana West): May I move my amendment No. 14, Sir. That is to clause 45O.

Mr. Deputy-Speaker: That has been moved and lost.

Shri Tulsidas: Not put, Sir.

Mr. Deputy-Speaker: The hon. Member was not here when it was called. All amendments that the hon. Members wanted to move have been treated as moved when they gave the numbers of the amendments yesterday. One after the other, the Speaker called out. The hon. Member was not in his seat at that time. It was put to the House and declared lost. The only amendment that remains is amendment No. 5 moved by the Government. I shall place it before the House. Thereafter, on any other items with respect to which some hon. Members may like to speak, I shall allow them.

The question is:

In page 13,—

(i) after line 12, insert:

"45V. References to directors etc. shall be construed as including references to past directors etc.—For the removal of doubts it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the banking company."

(ii) In lines 13 and 16, for "45V" and "45W" substitute "45W" and "45X" respectively.

The motion was adopted.

Mr. Deputy-Speaker: What is the point on which any hon. Member wants to speak?

Shri Tulsidas: Are you on clause 45O or 45U, Sir?

Mr. Deputy-Speaker: All the amendments have been disposed of. If they have to speak on any particular point not placed before the House, they may speak. The amendments are not there. They have all been disposed of.

Shri Tulsidas: I want to know whether you are on clause 45O.

Mr. Deputy-Speaker: We have come to the end of clause 45X.

Shri Tulsidas: With regard to clause 45O sub-clause (2), it is based on proposal No. 69 of the Committee. It states that no length of time should operate as a bar to a claim by a banking company against a director if it arises out of contractual liability and as regards all other claims of banking companies against directors, a period of at least 12 years limitation should be fixed. According to this proposal, a banking company's claim against a director for a call or enforcement of any contractual liability, will not be barred even if it is after 20 or 30 years. Such a provision, in my opinion, is rather unjust, because, after a certain time, the person to whom the liability is attached may not have any evidence left, which he may produce to show whether there is any claim against him or not. There must be some time limit for the enforcement of any contractual liability. I do not understand why the Indian Limitation Act is not applied and no limitation is put on this particular clause. It is rather unfair and unjust that a person should have an unlimited liability, for any length of time. It may be that a person has no evidence left or he may die and his heirs may be inheriting certain claims that they do not know. I do not know how it will affect even the

Estate Duty Act. There should be some limitation. There is the Indian Limitation Act. If we are going to bypass the Limitation even in this sort of legislation, I think it would be unjust and unfair.

Section 45N deals with appeals and provides that no appeal can be filed from the decision in a civil proceeding under this Act when the value of the subject matter is Rs. 5,000 or less. There is no reason why this pecuniary limit should be fixed. Sub-section (2) provides that an appeal against an order under the penal section 45J would only lie if the High Court so provides. In any case, the person must be given a chance of appeal. Even if a man is convicted of murder, the man is given a chance to appeal. I do not see any reason why here no appeal should be allowed. Whether it is right or wrong, let him have a right of appeal. It is stated here that no appeal lies and only if the High Court allows, an appeal will be allowed. These are two points on which I feel that the provisions are unjust. We should allow an appeal and particularly add a provision for limitation.

पंडित ठाकुर दास भागंब : यह जो क्लॉज १० जिसको इस वक्त डिसकस किया जा रहा है इसकी चन्द बातें हाउस में डिसकस की जा चुकी हैं। उसी के बारे में मैं चन्द बातें प्रर्ज करना चाहता हूँ।

इस कानून में जो सिविल ला है और जो क्रिमिनल ला है उसकी और दूसरे कानूनों की बहुत सी ब्रांचेज आ गयी हैं। यह एक प्रजीब कानून है। मैं, जैसा कि कज फरमाया गया, यह मानने के लिये तैयार हूँ कि बहुत से दगाबाज लोगों ने दूसरे लोगों को तकलीफ पहुंचाई है और उन को सजा मिलनी चाहिये। मैं यह भी मानता हूँ, जैसा कि कहा गया है,

कि यह गैरमामूली हालात हैं इसलिये मामूली कानून से काम नहीं चल सकता। लेकिन मेरी यह गुजारिश है कि अब हम जो कानून बना रहे हैं बैंकिंग कम्पनीज के मुताल्लिक वह इस कदर सख्त है और इस कदर कानून के मुताल्लिक है कि इसको हमारे लिये हज्म करना मुश्किल है। कल सेक्शन जे (45J) में जो कानून बना वह यह था कि किसी भी मुकदमें में कहीं कोई हाईकोर्ट का जज तहकीकात करता हो और अगर वह इस नतीजे पर पहुंचे कि किसी घब्स ने कोई खराबी की है तो वह खुद ही उस खराबी को महसूस करता है और कहता है कि खराबी की गयी है और खुद ही जज बन जाता है और एक समरी तरीके से सजा दे देता है।

मैं अब से प्रर्ज करूंगा कि यह जस्टिस के फंडामेंटल प्रसूल जो किसी भी सिविल-लाइज्ज कंट्री में होते हैं उन के बरखिलाफ है। यह सारा का सारा कानून उन के बरप्रक्स है। जनाब वाला मुलाहजा फरमावेंगे कि क्रिमिनल प्रोसीज्योर कोड की दफात १६० सी, १६१ और ५५६ में दर्ज है कि अगर कोई अप्रसर खुद मुकदमा बनावे या उस के हुक्म से मुकदमा बने तो वह मुलजिम से पूछेगा, तुम मुझ से मुकदमा कराना चाहते हो या नहीं। ५५६ दफे के मूजिब एक्साइज कमिश्नर या कलेक्टर की प्रवालत में अगर एक्साइज का मुकदमा हो तो वह बड़े अप्रसर की इजाजत के बिना मुकदमा नहीं सुन सकता और वह मुलजिम से पूछता है कि तुम मुझ से मुकदमें का फंसला कराना चाहते हो या नहीं। क्योंकि कानून की निगाह में वह अप्रसर interested है। यह मामूली कानून में हक दिया गया है कि अगर जज का कोई इंटरस्ट हो तो वह उस मुकदमे को नहीं सुन सकता। यहां यह कहा गया है कि यह मुकदमा हाईकोर्ट के जज के सामने आवेगा।

[पंडित ठाकुर दास भार्गव]

में हाई कोर्ट के जज की इज्जत करता हूं, लेकिन उस को मैं कोई बेखता (infallible) खुदा नहीं समझता कि वह कोई गलती नहीं कर सकता। जैसे और कोई इनसान गलती कर सकता है उसी तरह हाई कोर्ट के जज से भी गलती हो सकती है। यहां इस कानून में यह रखा गया है कि हाई कोर्ट ही मुकदमा दायर करेगी और उस के सामने जब कोई शस्स बतौर मुलाजिम के पेश होगा तो उस का फ़ैसला हाई कोर्ट ही करेगी। फिर उस में गवाही देना, न देना यह भी हाई कोर्ट ही तय करेगी। अपील उस की करनी होगी या नहीं इस अमर का भी फ़ैसला हाई कोर्ट ही करेगी। यह इस तरह के अस्तियारात इस कानून में रखे गये हैं जो मेरे ब्याल में किसी भी कानून में नहीं मिल सकते। इस तरह के प्रावीजन्स किसी भी तरह के मुकदमें में लागू नहीं होते, माशियल ला में भी यह इस तरह की चीजे नहीं हैं। मैं अदब से अर्ज करूंगा कि हर चीज की हद होती है।

बेशक, गुहा साहब ने फरमाया कि पहले सन् १९४८ में ऐसा कानून पास कर दिया गया है। इसलिये कोई नयी बारबैरिज्म इंद्रोयूस नहीं हो रही है। लेकिन बारबैरिज्म के रिपीट करने से वह कोई अच्छी चीज नहीं हो जाती। अगर सन् १९४८ में गलती की तो कोई बजह नहीं है कि हम फिर उस तरह की गलती करें और इस तरह का कानून पास किया जाय। मैं अदब से पूछना चाहता हूं कि इस तरह के तमाम अस्तियारात एक शस्स को देने का कानून क्या किसी और जगह भी मौजूद है। एक ही शस्स दावा करे, वही उसके फ़ैसले के लिये जज बन जाय, खुद ही गवाह बन जाय, दूसरी गवाही आने की इजाजत न हो, अपील की इजाजत न हो, इस तरह का कानून न तो सुना गया और न

देखा गया। इसलिये बावजूद इस कदर गुस्से के और परेशानी के जो कि हर मैम्बर पार्लियामेंट को है, उन लोगों के खिलाफ़ जिन्होंने कि बेइमानी कर के लोगों का रुपया हड़प लिया है, जो छोटे लोगों का रुपया खा गये हैं, बावजूद इन सब बातों के कम अज कम यह इस में तय कर दिया जाय कि यह कानून हमेशा के लिये लागू नहीं होगा। अगर कानून की सख्त जरूरत है तो इस में टाइम दे दिया जाय और इस कानून को हमेशा के लिये न रखा जाय। गो मैं इस टाइम की भीमाद देने को भी गलत समझता हूं। सारी जायदाद घटेंच कर ली जाय, सिर्फ *prima facie* होने से यह इस तरह का कानून है जित की ताईब करना मुश्किल है। मैं समझता हूं कि इस कानून पर जितनी तबज्जह देनी चाहिये भी वह नहीं दी गयी और मैं नहीं चाहता कि हिन्दुस्तान में आने वाली नस्लें जब इस को पढ़ें तो कहें कि यह किस तरह का कानून है। इसलिये मैं अदब से अर्ज करना चाहता हूं कि अगर इस कानून को रखना ही है तो यह कर दीजिये कि इस को एक या दो साल के वास्ते रखा जायगा, जब तक कि यह खराबी है, जो बैंकों में खराबी आ गयी है उस के लिये जब तक वह खराबी रहेगी, तब तक यह कानून रहेगा। गो यह भी मैं समझता हूं कि एक्सप्रोप्रियेशन की तजबीज है, गलत तजबीज है। मैं नहीं चाहता कि एक दिन के वास्ते भी हमारे देश के किसी जज को हाई कोर्ट के जज को या किसी को भी इस कदर आरबिट्रेरी पावर्स दी जाय, और ऐसा कानून पास किया जाए। मैं निहायत जोर से और बड़े जोर से प्रोटैस्ट करता हूं कि ऐसा कानून हाउस में पेश किया जाए और पास किया जाए। यह सारा सैक्शन ऐसा है जिस को कि रीकास्ट करने की जरूरत है और रिमोल्ड करने की जरूरत है और हम इस को इस शक्ल में पार नही कर सकते।

Shri Kasliwal (Kota-Jhalawar):
Mr. Deputy-Speaker...

Shri R. K. Chaudhuri: May I ask—the hon. Law Minister is fortunately here today—whether it is in consonance with any civilised constitution to make a Court before whom an offence is committed the Court of trial and also allow that Court to lay down whether an appeal should lie or not? The High Court shall try the case, but we will say whether the appeal lies or not. The High Court will say whether the case can be tried summarily or not. In the ordinary Criminal procedure we find that the law lays down what cases can be tried summarily. It lays down to what Court an appeal should lie. Can the High Court, under the rules, prescribe that an appeal should lie in particular cases and should not lie in particular cases. That should be done by the legislator. The High Court cannot usurp the function of the legislator.

The Minister of Law and Minority Affairs (Shri Biswas): I do not know why I should be called upon to answer that question, but it has a very simple answer. It is the Legislature which is vesting the High Court with these powers and the High Court will only be exercising those powers which the Legislature gives it.

Shri Kasliwal: I will just take a minute, Sir.

Mr. Deputy-Speaker: He will have his turn. Mr. Trivedi.

Shri U. M. Trivedi (Chittor): I do not want to repeat what yesterday I had said.

Shri R. K. Chaudhuri: I want to raise a point of order in this matter. The point of order is that yesterday when we were discussing...

Shri A. C. Guha: Is this the third reading stage or Clause by Clause discussion?

Shri Jhunjhunwala (Bhagalpur Central): We are discussing Clause by Clause.

Mr. Deputy-Speaker: We are discussing Clause by Clause.

Shri A. C. Guha: 45J was over yesterday.

Mr. Deputy-Speaker: We are now on 45O

Shri R. K. Chaudhuri: I wanted to raise one point of order which will be relevant both for this and subsequent clauses. When there was discussion of 45J it was pointed out to us that the provision which we were complaining about was already in the old Banking Companies Act. In 45S and 45T also it has been stated that the same provisions have been reproduced here. What is the position if the same provision is reproduced now? Is this House competent to give an opinion or is it bound by the same provision which is already in the law. There cannot be two similar provisions in the same Act. In the Banking Companies Act there is a provision under 45J—I am giving an illustration to a certain effect, and now in the Banking Companies (Amendment) Bill, the same thing has been reproduced under another Clause.

Mr. Deputy-Speaker: This will prevail. It is said earlier that notwithstanding any other thing elsewhere which is inconsistent with this, this alone will prevail.

Pandit Thakur Das Bhargava: That is in 45A.

Shri S. S. More: Of this new Chapter.

Mr. Deputy-Speaker: Clause 45A reads:

"The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Indian Companies Act... or the Code of Civil Procedure... or the Code of Criminal Procedure or any other law for the time being..."

Therefore, if it is reproduced here...

Shri R. K. Chaudhuri: Supposing you reject this present Amendment, what will be its effect on the old provision which remains the same?

Mr. Deputy-Speaker: If it is rejected here, the other one will stand.

Shri A. C. Guha: May I submit one thing? The hon. Member ought to have read the Bill before he started his opposition. Clause 10 says:

"For Part IIIA of the principal Act, the following shall be substituted, namely:"

So, this is in substitution of Part IIIA, but certain provisions have been kept almost as they are, and certain other provisions have been added to Part IIIA of the Banking Companies Act. It is not duplication of what is there. It is only substitution and rearrangement of what is there already in the Act.

Shri R. K. Chaudhuri: Specifically what will be its effect?

Mr. Deputy-Speaker: For the old provision ceasing this is a substitute.

Shri Debewsar Sarmah (Golaghat-Jorhat): The new order takes the place of the old.

Shri U. M. Trivedi: The provision that has been made in 45O is one which is aiming at doing a mischief. In all civilised countries, wherever there is any semblance of rule of law, you have always got a law of limitation.

Mr. Deputy-Speaker: Does limitation apply to a trustee who has misappropriated funds?

Shri U. M. Trivedi: Yes.

Mr. Deputy-Speaker: It does not.

Shri U. M. Trivedi: After he gets a discharge, it is applied.

Mr. Deputy-Speaker: Leaving alone the question of discharge...

Shri U. M. Trivedi: If he submits an account and he gets a discharge, it is applied. You cannot go to him generation after generation.

Mr. Deputy-Speaker: You can go to him under the Limitation Act.

Shri S. S. Mose: The beneficiary can sue the trustee.

Shri U. M. Trivedi: Not always.
3 P.M.

Apart from this question, the position is this. Two words have been used which are of greater import than merely calling upon a director to pay moneys that are due for calls,—namely, the provision in the proposed Section 45O (2) is that there will be no period of limitation for the 'enforcement by the banking company against any of its directors of any claim based on a contract, express or implied'. By means of an amendment that has been proposed now, even those who had at one time been directors of such a banking company will also be roped in. In other words, it will be a sort of sin on the part of anybody to become a director of a banking company. If you want to say, that there should be an abolition of these banking institutions, as such, now that you are growing fond of some system of nationalisation, you shall nationalise everything at one stroke, and will not allow anybody to carry on the business of banking, then that is something understandable. But here when we are dealing with an ordinary commercial transaction, we should be making a provision of a civil nature for all banking companies, and not a provision of criminal law.

We are not relegating ourselves to the old days, when, because a particular man was bankrupt, he had to wear a particular type of apparel. In the year 1761, one John Perrot was hanged in England, because he was a bankrupt, and that was a pointer to the people that if any one became a bankrupt, he would be hanged. In 1832, a bankrupt had to wear a particular type of clothes, with a particular type of cap, so that every one could point to him, and say, here is a bankrupt, here is a bankrupt, and thus a bankrupt was

ridiculed in the eyes of the public, in those days. If we want to go back to those times,—those golden times, because the days that are gone are always golden—let us, by all means, make laws of this character, but if we are to live in these times, when we say we are progressing, and thinking in terms of commerce, we should not make such provisions. After all, persons who enter the banking business are merely commercial people. It is true that there are some swindlers. Swindlers you will find all over, for you cannot escape them, but simply because there is one swindler, every honest man who may try to do something useful for the public, should not be punished or made to have something hanging over his head, even in respect of claims based on implied contracts. It is not merely cases of misfeasance that will be covered by this provision, but all cases

There is one other difficulty also, in this connection. If you do not provide for any period of limitation, it becomes a very very serious affair. As my hon. friend Shri Tulaldas has pointed out, how will the estate duty be calculated on such a man's estate, and who will be ultimately made to pay the calls, and from whom will the arrears be collected? When the cases go to the High Courts, the records also have to go there. But generally the records are destroyed after about 12, 15 or 20 years, whatever be the matter to which they pertain. But under this provision, for the purpose of these bankrupts, records will have to be kept for all times, so that they could be poked into at every stage, and those who at some time or other had the misfortune of being bank directors, could be proceeded against. As my hon. friend Pandit Thakur Das Bhargava has so ably put it, we are now making here criminal provisions of a type unprecedented, and the particular processes that are envisaged look to be ridiculous, and are not in consonance with any principles of jurisprudence.

Apart from that, by not providing any period of limitation, in respect of the moneys to be collected from such people, we are trying to go back to the old days, which we had carefully avoided, after the law of limitation was brought into force. As far back as the year 1832, Lord Venley, in commenting on the then bankruptcy laws observed:

“There are few parts of our statute law, when viewed from our present state of refinement and vast mercantile prosperity, which seem so ill adapted to these objects, as our early bankruptcy acts. Everything in them was seizure, penalty and coercion. An act of bankruptcy was a crime, and the bankrupt a criminal, and instead of a system of legislation to provide for the equal distribution of the fund armed with penalties, to be inflicted in the event of fraud, it seemed as if punishment was the primary object and the distribution of the property merely secondary and consequential.”

This was the position in 1832, and that is what we are trying to put before the public today, by means of this provision. If our primary object is to get the money distributed to the people to whom it is due, we must have rapid methods for realising the money and distributing it to the proper persons, and not keep in abeyance the whole thing, by having the records for all times, by going through them year by year, by setting a machinery in motion for the purpose, by keeping a paid clerk for each banking company for years to come, for this purpose and so on, simply for the sake of collecting a few annas. If there is no period of limitation, all the time the sword of Damocles will be hanging on the head of a director, who might have become a director, simply by persuasive coercion—there are many people who are approached for this purpose, because they are called great persons

[Shri U. M. Trivedi]

or because they are leaders, and people come to them and ask them:

साहब आपका नाम हो जायगा और हमारा काम भी हो जायगा, आप डायरेक्टर बन जाइए।

Such people will be made to become directors, and have been made to become directors. (*Interruptions*).

My submission is that we should not make such a provision of law as this, and I hope Government will carefully consider the matter, before they come to a final conclusion.

Shri Kasliwal: I support my hon. friend Pandit Thakur Das Bhargava, in regard to the proposed Sections 45J and 45O. I maintain that these three sections are discriminatory and militate against Article 14 of the Constitution, which provides that every citizen shall have equality before law, and equal protection of law. Are you going to provide equal protection of the law for these directors and auditors or not? They are being deprived by this provision, of the equal protection of the law of limitation, and also the Criminal Procedure Code, and other important laws. I would like to ask whether a discrimination is not being done against these people.

Shri Tek Chand (Ambala-Simla): Mr. Deputy Speaker Sir, with regard to certain misgivings and fears expressed by my hon. friends to my right, I feel that they are without justification. Particularly, when you refer to the proposed Section 45O (2), you will find that there is no period of limitation. This provision needs a certain analysis. There is no period of limitation in respect of a particular matter, viz. the one relating to the recovery of arrears of calls, and that too is confined to directors. In other words, if a director has held shares on which he is called upon to pay certain calls, there is no period of limitation for that purpose, and he may be called upon to pay the unpaid calls at any time.

I do not see why there should be any period of limitation at all.

Mr. Deputy-Speaker: For the enforcement ...

Shri Tek Chand: For that there is 12 years. (*Interruptions*).

Mr. Deputy-Speaker: There is no period of limitation, even for that.

Shri Tek Chand: The Section 45O (2) reads:

"...there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up..."

That is one part of it. There can be no grievance against this, because anybody who buys part-paid shares must know that he has got a liability to meet the unpaid calls, if and when called upon to do so. Therefore, the question of limitation does not really arise. Even if the word 'shareholders' had been there, instead of the word 'directors', it would not have caused any hardship, because even a sharesolder who purchases partly paid shares is conscious of his liability, that he may be called upon to pay the balance at any time, during or before winding up. Then, in respect of 'enforcement by the banking company against any of its directors of any claim based on a contract, express or implied' also, there is no period of limitation. For that, I am *ad idem* with my learned friends that there should be a period of limitation, of 12 years.

At present where calls are made, there need not be any period of limitation, but in the case of contractual liability or other liabilities, a twelve years' period of limitation is desirable. To that extent, this provision does require a certain amount of re-modelling.

Regarding 45N(1), that an appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount

or value of the subject matter of the claim exceeds five thousand rupees, I am of the opinion that no appeal need be provided in a case of this kind. Ordinarily, under civil law for cases involving value below Rs 5,000, no right of appeal is provided on questions of fact. The special appeal is provided by the Code of Civil Procedure only with regard to questions of law. Therefore, where a matter involving value below Rs 5,000 is being adjudicated by a High Court Judge, there the question of not allowing appeal will not result in hardship.

So far as (2) is concerned the 'High Court may by rules provide for an appeal...',—this is an objectionable feature, firstly because you are conferring upon the High Court a legislative power which is not really the just function of the High Court. (Interruption).

Mr. Deputy-Speaker: Are we going back to it? We have already finished with it.

Shri Tek Chand: This matter was just being raised by my hon. friend, Pandit Thakur Das Bhargava, and I wanted to say a few words about it. The hon. the Law Minister also made a mention of it.

There is one point that I wish to make. In the first place, the power of legislation should be confined to this House and the appeal should be provided if this House considers just. The provision of law, as it stands, has got another unfortunate feature. It says, "The High Court may...". That is to say, it is permissive to the High Court. One High Court may decide to make such a provision; another High Court may not decide to make such a provision. Therefore, the position may be that in identical cases on identical facts, one High Court provides an appeal and another High Court does not provide an appeal. This rigour, to a certain extent, could be ameliorated if instead of 'the High Court may by rules...' you had the words 'the High Court shall by rules...'. Even there, the

difficulty again will be that the rule-making powers of a High Court are there; one High Court may provide one type of rules totally different from those rules provided by another High Court. Therefore, there will not be uniformity of legislation, but there will be a conflict of legislation, the conflict depending upon the rules made by one High Court in contradistinction to rules of a totally different character made by another High Court. The appropriate thing would have been for this House to provide for appeals to a Division Bench of two Judges from the orders of one Judge made under 45J. The provision of law, as it stands, is open to very serious objections, and one of those objections is that the procedure of the law is not going to be uniform in two High Courts and not going to be uniformly observed.

Shri Sarmah: Sir, it seems from the criticism of 45J, K and O offered by hon Members as if we are discussing ordinary general civil or criminal laws. When we frame legislation in respect of ordinary general laws, whether civil or criminal, these provisions would no doubt sound drastic. But, Sir, let us not forget the context in which these laws are being framed.

Now, Sir, I will particularly invite your attention to the enforcement clause in 45O (2), to which you were pleased to refer. It seems as if this enforcement is drastic, but let us look at facts—how they are shaping. After the war, so many scheduled banks failed, and in most cases the chief cause of the bank failures was that most of the directors misbehaved. They either lifted money for themselves by hook or crook or in collusion with their managers or secretaries or cashiers or with the other officers of the bank they misappropriated huge sums. Or they took commission issuing loans to undesirable persons or purchased worthless shares in the market or issued loans against such share scrips which were really not worth what they were

[Shri Sarmah]

secured for and these misdeeds were perpetrated because they were paid big discounts. In this context, we find that the directors are mostly responsible for these bank failures. Now, my learned friend, Mr. Trivedi, said that these provisions are punitive I submit, Sir...

Mr. Deputy-Speaker: Is there any limitation for the recovery of stolen property from the thief?

Shri S. S. More: No.

Shri Sarmah: Not that I know of.

Shri R. K. Chaudhuri: In civil law, there is.

Shri Sarmah: In coparcenary societies, at any rate in our State, there is no limitation. *(Interruption)*. These provisions, I would submit, are not punitive. They are very salutary and desirable in the present state of our country, because these provisions will deter directors from misbehaving. I submit, Sir, that if healthy banking is to grow up in India, then such provisions are necessary. Honest people need not be afraid of these provisions. These are meant only for dishonest persons. A bank is started with some capital. *(Interruption)*. Mr. Chaudhuri ought to know that almost all the primary school teachers in our part of the country deposited their small savings in these banks. And when these banks failed, they all began to cry. I am simply astounded that he...

Shri R. K. Chaudhuri: On a point of personal explanation.

Shri Sarmah: No. I am not yielding. He wants to inflict a speech.

Shri R. K. Chaudhuri: The Chair has permitted me. What I wanted to point out to him was this. It is not merely directors you are dealing with. A certain man has taken a loan from a bank. The thing is going to be settled. There is this question as between the bank and

an individual. A certain person has borrowed some money from the bank and he will be put under this law.

Shri Sarmah: No. You have not read it well. It applies to only the directors.

Mr. Deputy-Speaker: This refers exclusively to directors.

Shri Sarmah: Yes, that is so.

A bank is started. There is the board of directors. The public are called upon to deposit their money. The directors, truly and well, are the trustees for the public funds. Now, they dabble with the money in the bank as if it is their own property, and the bank fails.

I would tell my hon. friend Shri U. M. Trivedi that all these provisions are salutary so that Bank directors will not in future misbehave and those who misbehaved in the past should also be brought to book. If these provisions are properly followed—I hope the High Courts in different States will not be generous enough to these people—in that case, I submit, we shall have no clamours in passing this legislation.

Pandit Thakur Das Bhargava: May I put one question to my hon. friend who has just now spoken?

Mr. Deputy-Speaker: The hon. Member has put sufficient questions to the hon. Minister.

Pandit Thakur Das Bhargava: I will put questions to the hon. Minister when he finishes.

Shri A. C. Guha: I find, Sir, today that 45J is again being brought into discussion. I think I have pointed out on several occasions that the Members who become so indignant about this provision do not take care to read it carefully. I repeatedly pointed out some of their wrong assumptions and repeatedly I corrected them

and still this has started. Practically the whole of this 45J is in the Indian Banking Companies Act and I do not think any acts of barbarism have been committed by the High Courts so far. So, I do not know what is the purpose of all this seemingly righteous indignation.

Shri U. M. Trivedi: Because it is righteous.

Shri A. C. Guha: Then, Sir, I come to 45O. There again, most of the Members have not read the provisions of the Bill carefully. The second part of 45O (2) reads—

“and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims.”

So, as regards the contractual liabilities of the directors there shall be no limitation and as regards other liabilities there shall be a limitation after 12 years.

Sir, even if the provision as put in this Bill appears to be somewhat harsh and rigid, I think they should take care to read the report of the Banks Liquidation Proceedings Committee and some of the papers circulated to them. If we have in our society, some modern forms of anti-social activities, we shall have to take proper measures to meet that contingency. These directors, being elected by the shareholders were squandering the depositors' money and they should be made to suffer for that. If they had squandered the money entrusted to them by the depositors they should take the responsibility of making good as much as possible of the loss which they have caused to the depositors.

Sir, I think I have nothing more to say. I admit that this is an emergency measure to meet an emergency created by some modern form of anti-social elements in our society.

Pandit Thakur Das Bhargava: May I put a question, Sir?

Mr. Deputy-Speaker: Yes.

Pandit Thakur Das Bhargava: My friend has just stated that this is an emergency legislation for an emergency. But this law is law for all times and will apply to every person who at any time helped in the formation of a banking company.

Shri A. C. Guha: And, have been irresponsibly using the depositors' money.

Pandit Thakur Das Bhargava: I will come to that. 45J says,

“any offence alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or by any director, manager or officer thereof.”

and (2), it says—

“may also try any other offence not referred to in sub-section (1)...”

and similarly in (4)—

“all offences in relation to winding up alleged to have been committed by any person specified in sub-section (1)...”

Shri A. C. Guha: Sir, he is omitting the proviso—

“Provided that the offence is one punishable under this Act or under the Indian Companies Act, 1913 (VII of 1913).”

Pandit Thakur Das Bhargava: I am very sorry that my hon. friend has not quite followed my point. At the same time sub-clauses (2) and (4) are also there. Even in regard to these offences, it is not only those persons who are actually guilty but there may be innocent people also. You are making laws not only for those who commit offences but there will be many who will have to be clapped in. The Judge will be himself the accuser and the judge and no appeals will be allowed. As was

[Pandit Thakur Das Bhargava]

pointed out yesterday, no rules were made in the Calcutta High Court, for a long time. Now for a long time these rules may not be framed and there may not be any appeals provided in particular cases when punishment is not heavy or only on points of law. I ask the hon. Mover to kindly enlighten me on the point whether this will not apply to all kinds of people who will come within the mischief of 45J (1), (2) and (4).

Shri A. C. Guha: I can only say that this is practically a reproduction of the existing provision. (*Interruption.*) No harm has been committed under this provision so far.

Pandit Thakur Das Bhargava: Sir, child marriage and infanticide have also been there in the country for a long time. If we have committed any mistake in 1949, there is no reason why we should repeat that mistake.

Shri Sarmah: There are only 3 categories of persons, the director, manager or officer thereof, who are affected. Under the proviso, it is strictly limited.

Pandit Thakur Das Bhargava: My friend is again wrong. Under 45J those persons also will come in who have taken part in the promotion of the Company.

Shri S. S. More: May I seek some clarification? The hon. Minister was pleased to say... (*Interruption.*)

Mr. Deputy-Speaker: I find hon. Members who wanted to take part in the discussion have stood up and spoken. They have interrupted other hon. Members also. Now, I find they are sitting and speaking.

Shri S. S. More: Sir, the hon. Minister was pleased to say that the proviso restricts this to particular offences which are offences punishable under this Act or under the Indian Companies Act. May I bring to his notice sub-clause (2)?

"When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the Code of Criminal Procedure, 1898 (Act V of 1898), be charged at the same trial."

According to this sub-clause (2), there is only one condition, that is, that the offence is of such a nature that under the Code of Criminal Procedure the accused may be charged, at the same trial, along with the offence mentioned in this particular proviso. My submission is that his explanation that it is restricted to the offences under the Companies Act or this Act is not strictly correct and I should like to be enlightened on this point.

Shri A. C. Guha: There again, I point out that he has omitted to read the last few words, 'with which the accused may be charged at the same trial'. So, if in the course of the trial one of the directors of the bank or the manager or officer is found guilty of perjury, he may be tried for that because it is an offence connected with the same trial.

Shri K. K. Basu: Section 45N (2) gives the right of appeal if the respective High Court provides for it in such manner and such conditions as it thinks fit. Similar provisions were not there previously, in the parent Act. The danger I apprehend in giving such powers to the High Courts entirely is that different High Courts will lay down different rules and conditions for appeal. I do not know how far and in what manner the Government will be in a position to see that these rules are on a par with each other.

Mr. Deputy-Speaker: The same thing was referred to by some other hon. Member.

Shri K. K. Basu: Sir, we have the same Civil Procedure Code and the rules of procedure vary from High Court to High Court. Each High Court is allowed to make its own rules. Similarly, rules may vary from Court to Court with regard to whether an appeal may be granted or not and the conditions under which the appeal may be granted.

Shri Joachim Alva (Kanara): Sir, this is a very drastic provision and I want to say a few words.

Mr. Deputy-Speaker: I have allowed a number of hon. Members to speak.

Shri Joachim Alva: Sir, this is something very very drastic.

Mr. Deputy-Speaker: Why did the hon. Member take so much time to get up?

Shri Joachim Alva: Sir, there were other hon. Members in the field.

Mr. Deputy-Speaker: Then those hon. Members have sufficiently represented his views.

Shri Joachim Alva: Sir, please let me have two minutes.

Mr. Deputy Speaker: If others have spoken, then this is redundant. I will give the hon. Member another opportunity to say what he wanted to say.

Shri R. K. Chaudhuri: Sir, I want to speak.

Mr. Deputy-Speaker: No, no; I will not allow him, at this stage.

Shri R. K. Chaudhuri: Then you will allow me at the third-reading stage, Sir?

Mr. Deputy-Speaker: No, not on this Bill. I have allowed every hon. Member sufficient time on this matter even after the hon. Minister has replied.

Is it necessary for me now to put this too to the vote of the House?

Some Hon. Members: No.

Mr. Deputy-Speaker: Now, the question is:

"That clause 10, as amended stand part of the Bill."

The motion was adopted.

Clause 10, as amended, was added to the Bill.

Clauses 11, 12 and 13 were added to the Bill.

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

Shri A. C. Guha: I beg to move:

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

I have nothing more to say except one thing. When I proposed an amendment to Section 45I deleting the last two lines "if the director or other officer fails to do so, he shall be guilty of contempt of court," Mr. Basu asked me how is the director to be dealt with. I will refer him to section 46 of the present Banking Companies Act. That is an omnibus section, and the director or other officer will be dealt with under that section in such cases.

I hope, Sir, the House will now be pleased to pass the Bill.

Mr. Deputy-Speaker: Motion moved

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

डा० एन० बी० खरे (ग्वालियर) :
मैंने दो दिन तक बड़े गौर से इस हाउस में जो बहस मुवाहका हुआ, वह सुना।

Mr. Deputy-Speaker: This is the Banking Companies Bill. Not the Ancient Monuments Bill.

डा० एन० बी० खरे : मैं जानता हूँ। मैं कुछ कानूनदां नहीं हूँ, लेकिन व्यवहार बुद्धि खूब जानता हूँ। मुझे इस बहस मुवाहसे से मालूम हो गया कि यह बिल बिल्कुल अन्याय्य है लेकिन यह पास केवल इसलिये हो रहा है कि मैजारिटी की मस्ती है। इतना ही मुझे कहना है।

Shri Jhunjhunwala: Sir, a lot has been said on the Bill and if I speak anything more I do not think I shall be doing justice to the House in taking their time. Everything has been said on every clause. But there are two points which had been raised and which had been practically, impliedly or expressly, admitted, and that is this. My hon. friend, Mr. Trivedi while speaking on clause J said that this is a barbaric law and Mr. Guha said that this is a barbaric law, there is already such a barbaric clause.

Shri A. C. Guha: I never said so.

Shri Jhunjhunwala: You said it impliedly. I do not say 'expressly'. Impliedly, you admitted.

Shri A. C. Guha: Not impliedly also.

Shri Jhunjhunwala: You said that such a law exists for a long time past, and you did not say that it was a barbaric law, but impliedly it amounted to that. Therefore, I say that you impliedly agreed to the fact that it is barbaric law. Mr. Sarmah who is not here now, said that if we want in our country that the banking system should prosper and develop, this law is very necessary and very important. I am absolutely of the contrary view. He says that honest people should not be afraid of it, but unfortunately for whatever reasons it may be, it is the honest people who suffer these days in our country. Those who are swindlers, those who are scoundrels, will escape even under this law.

Sir, my hon. friend Mr. Guha, when he was sitting on this side, raised questions every day. There was not a day when the Finance Minister had not to answer questions of Mr. Guha, and Mr. Guha used to raise questions every day regarding one bank or the other. I could understand the anxiety with which he was doing those things.

At that time, it was so. And now, he says that this is an emergency measure. He has brought this as an emergency measure. If it is an emergency measure, have you shown any instance where other banks, banks other than those which have failed, have behaved like that? Other Banks and their directors have proceeded well and doing alright. There are respectable directors, there are good directors, who will be reluctant to come if such law is there. You have put in such provisions that honest, respectable and good directors will be reluctant to come. Not because they are afraid of the stringent provisions—they are not afraid of those provisions—but they are afraid of being entangled by unscrupulous officers and unscrupulous people. Sir, if it is an emergency provision, which, as my hon. friend says, he has brought in as an emergency Bill,—for a time when spurious banks had sprung up and there was a crash—then, this should not apply to all the directors. So many banks spring up, and swindlers and scoundrels, according to my hon. friend Mr. Sarmah, come in as directors, and then this Bill should not therefore apply to all the directors of other Banks. If you want the banking system to flourish, then the stringent provisions should apply only to such banks which have been wound up during that emergency period. Otherwise this measure will be a standing slur on all the respectable directors of other banks which have been serving the country so well.

Shri Tulsidas: Sir, I, for various reasons oppose this Bill. It is not because I feel that this measure is not required for the banking companies which are under liquidation. I fully appreciate, Sir, knowing as I do and with the experience that I have, that the banking companies do require supervision and vigilance from the higher authorities. I do appreciate that the depositors' money which has been lost, requires tremendous sympathy from the Government. But,

Sir, it is not merely the question of getting the depositors' money back from the banking companies which are under liquidation. There is also the question of developing our banking system on sound lines. Our banking system is not well developed. On the one hand, you want the banks in this country should flourish, go forward and open branches in other countries and on the other you want to put onerous conditions on bank directors. Sir, by having this type of legislation, you are creating in the minds of the people of this country, the impression that all banks or all the directors of banks are fraudulent, that they cannot be relied upon. This is a slur on the directors of the banks. What are we doing in this legislation? We are trying to bypass practically all the laws of the country. We are bypassing the Indian Companies Act; we are bypassing the Limitation Act; we are bypassing the Evidence Act; we are bypassing the Criminal Procedure Code. What for? And do you think, Sir, that by bypassing this, you are still going to have an expeditious way of liquidation? I do not believe so. However, I feel that we must think in terms of positive and constructive suggestions. What I feel is that the Reserve Bank has been given very wide powers. I may say enormous powers. I would like to cite a few examples of the Reserve Bank's powers. Sir, every bank is asked to supply information. What is the kind of information? A statement of the position of the bank as at the close of business every Friday. A statement of assets and liabilities at the end of every quarter. The names of the first grade officers of the bank with full particulars. Survey of debits to deposit accounts in the bank. A monthly statement of advances against commodities and bullion. Weekly statement of advances to directors, manager or officer of the bank and advances to companies or firms in which Directors are interested as directors, partners or managing agents. Statement of unsecured loans and advances including bills purchased

and discounts granted to public companies in which the directors are interested as directors or guarantors. Weekly returns of limits for credit facilities—Rs. 5 lakhs and over in the case of secured limits, and Rs. 1 lakh and over in the case of unsecured limits.

Besides this, the Reserve Bank takes statutory deposits—statutory deposits to the extent of Rs. 50 crores lie with the Reserve Bank. This amount does not carry any interest. Thus the banks finance the Reserve Bank to supervise them. In return what do they get? We get failure of banking institutions in this country. Why should there be failures of banks in our country if the Reserve Bank is vigilant, if the Reserve Bank is doing its duty efficiently? I am really surprised that even after the passage of the Act of 1949 there were a number of failures of banks. In 1949, 55 banks failed; in 1950, 45 banks failed; in 1951, sixty banks failed; there was an equal number of failures in 1952 and the latest figures which are available for this period is 31 banks failed.

Why should this happen in our country? I can certainly appreciate the anxiety of the Government that the depositors' money should not be squandered. I know how painful it is to the small depositors to lose all their lives' savings. But if the Reserve Bank is not vigilant, these failures are bound to take place, no matter what legislation you put through. Why should banks go into liquidation with all these powers in the hands of the Reserve Bank? Sir, I really do not understand it.

I am sure the House will appreciate the fact that banks work on the prestige of their directors; banks attract deposits according to the Board of Directors of the banks. If you are going to cast a slur on the Directors of the banks as a whole what is going to happen? Will people of this country have confidence in this; will people outside this country trade with those banks. And yet we ex-

[Shri Tulsidas]

pect banking institutions to flourish both at home and abroad. Sir, I really do not understand the logic of this.

Mr. Deputy-Speaker: This is only at the winding up stage.

Shri Tulsidas: I fully understand Government taking these powers for the liquidation of banks which have failed.

Mr. Deputy-Speaker: But where is the reputation to lose?

Shri Tulsidas: For the liquidation of banks which have failed I am prepared to give any power to Government to safeguard the interest of the depositors. But what do you want to put something on the statute book. The Reserve Bank is already armed with wide powers. Why can't the Reserve Bank be prosecuted for not doing their duty properly? The Directors of the Reserve Bank are free from the provisions of this measure.

Mr. Deputy-Speaker: Asking the Reserve Bank to be vigilant is one thing; if perchance a bank has to be wound up, to do it expeditiously is another thing. Why should there be a confusion between the two?

Shri Tulsidas: I am not in the least confused. What I am trying to point out is that you do not appreciate the onerous and difficult position of the Directors. Banking institution is a credit institution. When the directors go on the Board, nobody can imagine what will happen. There may be a calamity and a bank may go into liquidation.

Mr. Deputy-Speaker: It is only when they bring it to that calamity will these provisions come into operation.

Shri Tulsidas: Why should there be a distinction between the Director of the Reserve Bank and the Director of a private bank, in spite of the fact that the former institution possesses so many wide powers. They can recall a loan, they can give directive to the

Board of Directors of a scheduled bank about the appointment of a Manager or a Chief Accountant. The Reserve Bank gets all the information from the banks. But in spite of all this, why should a bank go into liquidation. By all means take all the powers for the speedy or expeditious liquidation of the bank which has gone into liquidation. But, please, do not put these powers on the statute book and create a difficult situation for the directors. That is what is more important.

Then, again, take the case of insurance companies.

Mr. Deputy-Speaker: Does not the hon. Member know that in banks the depositors are the shareholders, quite unlike joint stock companies, where they have a voice?

Shri Tulsidas: I fully appreciate that position. That is what exactly I am coming to. The position of policy holders is more or less like that of depositors. There are only a very few shareholders; there is more of policy holders' money. Of course, there are a couple of directors nominated from among policy holders. But you should realise at the same time that under the Insurance Act you have appointed a Controller. The Controller points out certain defects. If the Directors do not rectify matters, then they are responsible for the consequences. Here, even though the Reserve Bank is armed with wide powers it will not do anything; they fail in their duty. But if anything happens all the Directors are responsible. I can understand your taking action against the Director, if a directive of the Reserve Bank is not implemented. But the Reserve Bank is not doing its duty in spite of all the powers vested in it.

I have been observing a tendency on the part of Government to take all sorts of powers. But the powers are not utilised for positive purposes. My hon. friend Mr. B. Das the other day very rightly pointed out that the

Reserve Bank has not taken any positive action in developing or expanding banking and credit facilities in the rural areas. Here they have a positive duty to perform: but they do not perform it.

Mr. Deputy-Speaker: Are we entering into a general discussion on the function of banking?

Shri Tulsidas: This is a very important aspect. This measure may relate only to winding up procedure. But when it creates a difficult situation to the Directors of the Bank, I should bring it to the notice of Government and request them to ameliorate their position. My contention is that the Reserve Bank should be much more vigilant, much more active in its supervision of the banks.

Then, Sir, I would like to point out that in America thousands of banks failed, but there is no law of this nature. They have been able to wind up the banks, they are able to distribute depositors' money without taking recourse to such measures.

Mr. Deputy-Speaker: Why should we look to other countries? Let us be pioneers.

Shri Tulsidas: But why do you want to put it on the statute book? I am prepared to give all the powers to Government to wind up banks which are in liquidation. I can well appreciate the hon. Deputy Minister's concern, coming as he does from that part of the country which is afflicted by this malady. But it does not mean that because one part of the country is afflicted by this malady you should make the measure applicable to the whole country. You are creating an impression that the whole country consists of such people. If there is something wrong with that part of the country, by all means do take measures to meet it.

Mr. Deputy-Speaker: Is it the suggestion that this may be made applicable only to Calcutta and West Bengal and not to the other parts of the country?

Shri Tulsidas: My suggestion is very positive. By all means take these powers in regard to banks which are under liquidation. But in future let the Reserve Bank be more active, let it be more vigilant, to see that banking institutions function properly and on the right lines. But here you are trying to put something on the statute book which is a slur on the whole banking institutions in this country. Now supposing all the directors of a bank take keen interest and go into minute details taking a very conservative view to safeguard their position. Then what will happen? Then credit facilities in the country will be very much reduced and there will be complaints that banks do not give the facilities required of them. These are the difficulties. How a Board functions, I know. I have its experience. I therefore tell you with my own experience that if you create these onerous conditions for banking directors, it will be very difficult, it will be absolutely impossible for good citizens of this country to become directors of banks. It will not be possible for good people to remain as directors. I would still urge on the Government that because something has happened in one part of the country please do not make a legislation applicable to the whole country. If there is an emergency take powers for that particular period, any power you want, but not under a statute. I still plead with the Deputy Minister that he should take time before he puts this Act into force.

Shri R. K. Chaudhuri: Yesterday a point was raised by my hon. friend...

Mr. Deputy-Speaker: Shri Alva. I am going to apply closure at 4 o'clock.

Shri Joachim Alva: Sir, I support the main clauses of this Bill. In doing so I say that my hon. friend Shri Tulsidas Kilachand who is the Chairman of the Baroda Bank, one of the Big Five, wants to put on the cloak of American prosperity around himself while trying to retain the poverty-ridden conditions of India.

Shri Tulsidas: I am very sorry; the hon. Member has not understood my point.

Shri Joachim Alva: I would have liked him to tighten his belt with the characteristic of all British banking institutions, which is very hard. Security and integrity are their watchwords. I am glad, Sir, that the age of the guinea pig directors, referred to in the report of the Banks' Liquidation Proceedings Committee, is over. Guinea pig directors are a species well known in England and the Committee has referred to them.

Shri U. M. Trivedi: Is it parliamentary to refer to them as guinea pig directors?

Shri Joachim Alva: If my friend has not read the report of the Committee what can I do? I am glad that the age of such guinea pig directors is over—quiet, decent and respectable gentlemen to whom Shri Tulsidas Kilachand referred, men of big names who never took any part in the affairs of a bank or institution of which they were directors, who were very quiet and allowed the scoundrels to carry on the work of the bank—I am glad that their days are over. My friends are wondering as to what this species of guinea pig directors are. I shall therefore quote the relevant passage from the report of the Banks Liquidation Proceedings Committee. Here it is:

"The failure of banks for the most part can be ascribed to mismanagement or incompetence on the part of their directors. We find that it is not uncommon that the directorate of most of the banking companies which have gone into liquidation consisted of one or two dominating directors and a number of complaisant directors who, in England, have been aptly called guinea pig directors because they merely said "yes" at Board meetings and departed with the prescribed amount of guineas as fees after having been provided with a lunch. A similar unhealthy practice prevailed in some of the

banks in India which have failed, where the dominating directors practically controlled the affairs of the bank and were not subject to any check on the part of their colleagues. The latter were, as often as not, honest public men or prominent men in other walks of life who, owing to their other pre-occupations, had no time or aptitude for taking an intelligent interest in the affairs of the bank. The guinea pig directors are the ones whose names attract shareholders and depositors. When the crash comes they plead that the matters, in respect of which mismanagement is alleged, were handled by the dominating directors, to whom large powers were delegated. They have been described as directors who do not direct. Cases are on record in which directors pleaded that they did not know English and could not follow the proceedings at Board meetings."

I cast no reflection on the integrity of my friend Shri Tulsidas Kilachand whom I have known for twenty-five years as an upright man. But I wish to tell him that black-marketers who have made banks as foot-stools to pass on crores of rupees from one company to another, who have manipulated things at board meetings for their own personal benefit and stuffed their own store-houses with currency notes, which came out after the demonetisation Ordinance, they have to be hit on the knuckles, they have to be put in jails on behalf of the small investor, the ordinary depositor who deposits Rs. 250.

Shri R. K. Chaudhuri: Is my friend an honorary magistrate?

Shri Joachim Alva: Their number is very large. I am going very fast. Sir, because the guillotine will be applied. The day of reckoning, according to this very Report, between depositors and directors has also come. As some one has said, the company is a very large company and these directors come for a meeting once in a year and exchange greetings like lovers: How are you? Nice. Have a cup

of ten. These directors are now put on trial. They shall not just come once a year, get their allowance and go away. They are put on trial and in a very hard manner.

I feel, as an old practising lawyer but one who has not been at the bar for a long time but in whom the first principles of law are still embedded for ever, that a law which gives powers to the High Court by which the High Court becomes a prosecutor and judge is a very bad law.

Mr. Deputy-Speaker: Is it open to these guinea pig directors to call these lawyers guinea lawyers?

Dr. N. B. Khare: Penny lawyers!

Shri Joachim Alva: Lawyers all over the world are mercenaries. When they become patriots they leave the bar.

So I want to say that these drastic powers given to the High Court by which the High Court shall examine any director or any one put up as accused by it is altogether wrong. The High Court judge is a human being, after all. He cannot have two compartments. Chief Justice Chagla of the Bombay High Court has observed that it is not the business of the High Court to collect evidence; its duty is only to judge an accused guilty or not guilty. The collecting of evidence is not the business of the High Court. I can quote the exact section if you give me time—but by this section you are subverting all the principles of the Criminal Procedure Code and handing over to the High Court the duties of the ordinary magistrate, the ordinary police, head clerk and clerk and everybody. And there is no right of appeal. Perhaps it may go to the Supreme Court. That is altogether different. This provision should never have been embodied in the Bill. I have great respect for Shri D. N. Mitra who was Solicitor at the India Office and also my friend Shri Raghunath Mathalone who was the last Official Liquidator of the Bombay High Court. But it is the opinion of bureaucrats. They are

not right in sitting in their chambers and coming to a judgment over others.

I would really assure my friend Shri Tulsidas Kilachand, good and honest as he is, that he may have to stand a trial. It is altogether wrong. It is an infringement of the principles of law, nay it is unconstitutional to have that kind of process. I want to say with all the force at my command that this clause should be dropped altogether. Because, if the High Court or the court sits in liquidation and comes to the conclusion that the director is guilty, the case must then be sent at least to another High Court. If it goes to another High Court it might say that the judges were pre-judged.

Sir, there are two or three points. About America my friend was not able to quote the figures. There were 30,000 banks and out of them 14,000 crashed in the 1929 or 1930 disaster. It was due to a series of causes, of their being uneconomic, due to the fall of securities and due to slump. But he forgot to mention the ways adopted by which millions of depositors' dollars were protected. They did devise measures and the Federal Bank came in. Here the Reserve Bank of India is not doing its duty. They are great men, they sit in their chambers and are not vigilant. Otherwise how did they in the year of grace 1950 allow the Exchange Bank of India and Africa to run off with Rs. 80 lakhs belonging to the Reserve Bank? And when these officials are asked they say 'this is in the course of business'. If it were my own money or his own money we would have died of shock. They allowed this serious fraud of Rs. 80 lakhs. And when it goes to the High Court the man gets off on technical reasons. If the Reserve Bank allows this kind of thing, what are they doing?

The number of our bank failures is only 300 since 1926. In America it was 14,000. Then we have the case of the Travancore National and Quilon Bank.

Mr. Deputy-Speaker: I must apply guillotine now. Is it necessary for the hon. Minister to say anything?

Shri A. C. Guha: If you permit me, I would just say a few words.

Mr. Deputy-Speaker: I think the hon. Minister has said enough.

The question is:

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

The motion was adopted.

ANCIENT AND HISTORICAL
MONUMENTS AND ARCHAEOLOGICAL
SITES AND REMAINS (DECLARATION
OF NATIONAL IMPORTANCE) AMENDMENT BILL

4 P.M.

Mr. Deputy-Speaker: The House will now take up the Ancient and Historical Monuments Bill. Who was the Member in possession of the House? Shri V. G. Deshpande. He is not in the House. Dr. N. B. Khare.

Dr. N. B. Khare (Gwallor): Sir, I want to say something on this Archaeological Monuments Bill.

Some Hon. Members: Ancient and Historical Monuments Bill.

Dr. N. B. Khare: The meaning is the same.

Mr. Deputy-Speaker: Hon. Members will be short, sweet and brief.

Dr. N. B. Khare: I shall be very short and crisp. I won't take more than 6 or 7 minutes.

When the British conquered this country, in the first flush of their victory, they destroyed from political motives some of our monuments like the Peishwa's palace in Poona, Raigarh, the palace in Nagpur and some other things. After some time it was Lord Curzon, who, though he did so many bad things to this country

did one good thing when he focussed the attention of this country on this important branch of knowledge. Then, Sir, when this Congress Government came into power, it has now brought this Bill after 6 or 7 years. I have got full sympathy for this Bill. I am glad that the Congress Government has brought this Bill before the House.

Mr. Deputy-Speaker: It is only an Amending Bill.

Dr. N. B. Khare: I do not care whatever it is: whether it is an amending Bill or otherwise. I have got my sympathy for this Bill.

But, I must say that I am rather doubtful as to how far the Congress Government would be inspired to actively engage itself in promoting this branch of knowledge. When we, in our lectures or anywhere else, talk of our ancient past and the glory of India, they are rubbed in the wrong way and they tell us to bury the past and not refer to it and always look to the future. These are our mentors: all glory to them. These mentors are now bringing this Bill before the House to dig up our past buried in the ancient monuments. Sir, when we refer to our past subjectively by mere words they are upset and now they want by this Bill to dig it up and present it before us, objectively in a concrete shape or form. This is cynicism. How far they are sincerely behind this, I do not know. I am rather sceptical about it. If we realise and apply the theory of Einstein of relativity of space to time, all these tenses of past, present and future will vanish into nothingness, and we get a whole picture of history whether glorious or otherwise. When we refer to our ancient glory and wisdom, when we say this, we are called names; we are called revivalists and reactionaries. Why? If these people revive all these ancient glories by digging them up and exhuming them, I do not know what I should call them. Shall I call them exhumers or grave diggers? I do not know.