

An Hon. Member: How many are there?

Shri R. K. Chaudhury: There are not many, of course.

I base this on three main grounds. First of all, I consider that it is unnecessary. It will defeat its own object, namely, that this Bill will not prevent the acceptance of dowry, but will rather prevent marriage for a long time.....

Shri Nand Lal Sharma: It will introduce black-marketing.

Shri R. K. Chaudhury: Certainly, it is likely to introduce black-marketing. I ask, Sir, of what utility will it be? Who is going to prove the contract? The Bill has been entirely misconceived. It will be difficult to punish or it will be futile to punish or it will be against the wishes of the members of the family concerned to see the man punished. It would be much better if it would be able to prevent the acceptance of dowry. Whenever it has come to the knowledge of the persons in authority that dowry is going to be paid in a particular marriage or that excessive dowry has been demanded by some party, then the law should be put in motion and that should be stopped. Because, after the marriage takes place, after the dowry is paid, it will be very difficult to prove a contract of this nature. What use it would be to have a legislation of this kind, I do not at all see.

I should like to say, Sir, that I am not taking it in a spirit of levity. I think, Sir, it will be injurious to society to have a legislation of this kind

An Hon. Member: Injurious?

Shri R. K. Chaudhury: Yes. You have education. Why don't you introduce courtship on a much larger scale than it is at present?

Sardar A. S. Saigal: Are you in favour of it?

Shri R. K. Chaudhury: Yes. I am in favour of courtship because that will save me payment of dowry. Have

courtship. If you have courtship, go to the court for special marriage; finished; all expenditure and burden is saved. Why are you having this measure which will only alienate the feelings of the people? Those who are willing to pay, will pay.

Sir, there are other points which I have to make in support of my opposition.

Mr. Chairman: The hon. Member has finished his speech?

Shri R. K. Chaudhury: I want to continue, if you will allow me. This particular point of view has not been put before the House,

Shri Nand Lal Sharma: He will continue.

Mr. Chairman: The hon. Member may continue on the next day.

The House then adjourned till Four of the Clock.

The House reassembled at Four of the Clock.

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

ESTATE DUTY BILL—contd.

Mr. Deputy-Speaker: Clause 52 was over. If any amendments have been tabled for clause 61, we can take them up later on. Let us now proceed to clause 63.

Clause 63—(Case to be heard by Benches of High Courts etc.)

Shri N. L. Joshi (Indore): I beg to move:

(i) In page 31, line 6, for "two" substitute "three".

(ii) In page 31, omit lines 9 to 14.

By my first amendment, I seek to substitute "three" in the place of "two" and consequently, by my second amendment, I seek to delete the proviso to sub-clause (1). The reason is quite obvious. If there are three Judges, the

number will be odd, and if the number is odd, then there can be a decision of the Bench by a majority, and there will be no necessity to refer the case, in a case of difference of opinion, to a third Judge. If we can avoid this, we should do this. This will save the time and energy of the court, and also of the litigant public.

Shri C. D. Deshmukh: We feel that what we have provided is sufficient. Really, only in very rare cases will the subject matter be important enough to be heard by three Judges. It may be heard by one Judge even.

Mr. Deputy-Speaker: The words are "not less than two",—that means two are necessary. The argument of the Finance Minister will be all right if the number two were not there, but "not less than two" means that there must of necessity be two Judges.

Shri C. D. Deshmukh: I understand the point. But I say that it is not in every case that you will want to have a reference to another bench of Judges. When you say "not less than two", even one Judge may hear it.

Mr. Deputy-Speaker: One Judge cannot hear. Two Judges are necessary. Not less than two does not mean two only; it may be three, in which case there is a majority of two against one in case of difference of opinion. But if there are only two, and they do not agree, then the matter is to be referred to a third Judge.

Shri C. D. Deshmukh: My point is that in many cases two Judges will be able to decide this matter.

Mr. Deputy-Speaker: If they agree and decide. If they do not agree?

Shri C. D. Deshmukh: Then it may be referred to a third Judge.

Mr. Deputy-Speaker: So the Finance Minister wants to avoid that contingency.

Shri C. D. Deshmukh: We are having excessive caution from the beginning.

Shri Pataskar: Clause 62 relates to statement of case by the Board to High Court. In certain cases, questions of law may arise and the Board may state its case to the High Court. I have tabled an amendment to clause 76. Clause 76 reads like this:

"76. *Jurisdiction of courts barred save as expressly provided.*—Save as provided in this Act, nothing done or in good faith purporting to be done by any estate duty authority under this Act shall be called in question in any court."

I have given notice of an amendment:

"Provided that the High Court, having jurisdiction over the area in which the property of the deceased is situated, may call for the record of any case determined by the Board under section 61, and if the Board appears.....etc."

It is exactly like section 115 of the Civil Procedure Code. I think I can move it at that stage.

Mr. Deputy-Speaker: That is another matter—jurisdiction of courts barred. We will take it up when we come to that.

The amendments are not accepted. Should I put them to vote?

Shri N. L. Joshi: I do not press, Sir.

Mr. Deputy-Speaker: The question is:

"That clause 63 stand part of the Bill."

The motion was adopted.

Clause 63 was added to the Bill.

Clause 64 was added to the Bill.

Clause 65.—(*Certificate of payment etc.*)

Shri G. D. Somani (Nagaur-pali): I beg to move:

In page 32, line 6, for "full duty payable in respect of the property" substitute "duty in proportion to the asset inherited".

Shri K. P. Gounder (Erode): Sir, I have given notice of an amendment this morning. It is only a drafting change. I hope the hon. Minister will accept it. I want to add the words 'or the Supreme Court'.

Mr. Deputy-Speaker: In what part of clause 65 do you want this? Where is the Supreme Court in this?

Shri K. P. Gounder: It is not there; I want to add it after 'High Court'.

Shri C. D. Deshmukh: Under clause 62 the Supreme Court is also given jurisdiction.

Shri S. S. More: In sub-clause (7) of clause 62, Sir. It should be brought in accord with that.

Shri C. D. Deshmukh: That is to say the decision on matter of valuation may go up to the Supreme Court also. They may also make a different valuation.

Shri Raghavachari (Penukonda): The word 'High' may be omitted instead of adding the words 'Supreme Court'.

The Deputy Minister of Finance (Shri M. C. Shah): Clause 62 (7) says:

"The High Court or the Supreme Court upon hearing any such case shall decide the question of law..."

Therefore, here also it ought to be so.

Mr. Deputy-Speaker: What Mr. Raghavachari says is, you need not refer to each and every one of these courts; you may omit the word 'High'.

Shri S. S. More: Why should it be only when enhanced by the High Court? Under clause 62(6) questions of law also 'the Court may require the Board.....'. Then why talk only of enhancement?

Mr. Deputy-Speaker: It is only in the case of enhancement the question of two months comes in.

Shri M. C. Shah: The word 'High' may be omitted, Sir; it will be all right.

Mr. Deputy-Speaker: The hon. Members must stand in their seats and talk. They cannot go on talking from one end of the Bench to the other end. There must be some decorum.

Shri M. C. Shah: The word 'High' may be omitted, Sir.

Mr. Deputy-Speaker: Is it the wish of the House that the word 'High' may be omitted?

Hon. Members: Yes.

Shri G. D. Somani: My submission in this connection is that several amendments were tabled by me and several other hon. Members about waiving the time-limit of six months that has been imposed even for charitable purposes under the previous clause. Appeals were made to the hon. Finance Minister in view of the difficulties that might be caused by this time-limit that this time restriction should be withdrawn. But, Sir, the hon. Finance Minister did not see his way to accept those amendments. I am now trying to draw his attention to the hardship that may be caused to the successors of the deceased who may be called upon to pay the estate duty not only upon the assets which they inherit but also upon any amount or property which the deceased might have contributed for any charitable purpose. Sir, the purpose of my amendment is that so far as liability arising from these gifts is concerned, the charitable institution or the trust concerned should alone be liable to meet this liability and the successors of the deceased should not be called upon to pay any difference between the duty which they may have to pay on the actual assets which they inherit and the additional amount on property which the deceased may have contributed within six months previous to his death. It is to mitigate this hardship that I put that the hon. the Finance Minister will be pleased to find a way out so that the successor should not be called upon to meet the liability of the property or the amount which may have gone to the charitable institutions. I,

therefore, suggest that any liability that may arise by these contributions should be borne by the trust or the charitable institutions which will be enjoying the benefit of the contributions and the successors of the deceased should not at all be liable for any such duties.

Shri C. D. Deshmukh: Sir, I have already observed in connection with previous clauses that one must make a difference in law and in practice. In law we say that the accountable person will be liable to pay the full duty but administratively we shall try to secure that only that part of the duty is paid by him which is not greater than the value of the assets received by him. So in another form we are going over the same ground. If a person who does not deliver an account is called upon to accept the account prepared by the Controller and if he is to pay only in proportion to the asset received by him, then there is a fear of every accountable person waiting till the Controller asks him to accept an account, whereas we have already provided in Clause 51 that "they shall be accountable for the whole of the estate duty on the property passing". Therefore, it seems to me that it is necessary to put this here although, as I said, it is subject to the assurance that in practice we are trying to secure to the extent to which assets are received by the accountable person.

Mr. Deputy-Speaker: I find that the word "High" has to be omitted in sub-clauses (1) and (2) of clause 65.

Shri C. D. Deshmukh: A reference lies to the High Court or the Supreme Court in various sub-clauses of clause 62. It must be either High Court or Supreme Court. Therefore, the word "Court" would do.

Mr. Deputy-Speaker: "High" is to be omitted both from sub-clause (1) and sub-clause (2) of clause 65.

The question is:

In page 31, lines 38 and 44, omit "High".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 32, line 6, for "full duty payable in respect of the property" substitute "duty in proportion to the asset inherited".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"Clause 65, as amended, stand part of the Bill."

The motion was adopted.

Clause 65, as amended, was added to the Bill.

• Clauses 66 to 69 were added to the Bill.

Clause 70.—(Forms).

Shri Tulsidas: I beg to move:

In page 33, lines 25 to 27, omit "and any person who wilfully fails to comply with the provisions of this section shall be liable to the penalty mentioned in section 54".

This is an amendment to clause 70, by which I want to remove the words mentioned above. Section 54 is only meant for filling in the forms. This Clause provides that a certain form should be followed and a statement should be delivered, both by production of books and documents. Failure to do so would be punishable with penalty of Rs. 1,000 or double the amount of estate duty as the Controller may direct. If a person does not observe the prescribed form or does not produce the required evidence his application is liable to be dismissed. Therefore, there is no reason why penalty of this kind should also be levied.

Further the expression "any person" is very wide. It is no doubt intended to apply to the person who makes an application or fails to deliver a statement and accounts but the Controller may prescribe that any other person

[Shri Tulsidas]

may be required to produce his books and documents. If such a person, who may be a stranger to the estate, fails to comply with the directions, there is no reason why he should be penalised for double the amount. That is the point that I have to make. This is merely a clause which only prescribes the question of filling in the forms. I feel that this is rather too hard. There is no reason why a penalty of this nature should be imposed upon him. He may be completely a stranger to the estate. He may not be able to know the forms that he has to fill in.

Shri S. S. More: But the word "wilfully" is there.

Shri Tulsidas: What is "wilfully"? In this particular clause I can understand a person not doing something but here there is nothing like that. What is the question of "wilfully" here? This is rather a difficult clause and I feel that this amendment should be accepted by the hon. the Finance Minister.

Shri Gadgil: Mere "non-compliance" is not penal. Wilful non-compliance is penal.

Shri Tulsidas: But what is "wilful"?

Mr. Deputy-Speaker: The hon. Member means that there may be wilful inability when one says deliberately he is unable to go and, therefore, he would not go.

Shri C. D. Deshmukh: He fails owing to reasons beyond his control. You cannot say that it is wilful.

Pandit Thakur Das Bhargava: Every person is presumed to know the law. Therefore, if any person does not comply it can be argued he is not wilfully complying. Inability to comply is quite different. When he knows the rule wilful compliance and non-compliance may in some cases become one and the same thing. But the fact "if a person does not put anything in duplicate" is also regarded as an offence. It is something unheard of in legislation. If he

does not put it in the prescribed form, it is again a serious offence. "What is in a form?", a visionary poet of England once cried. Of course, as a matter of fact, if any of his statements, accounts, etc., are not in the prescribed form, then, technically, the person is guilty. But it may be said that the Controllers may not be so harsh. But, if they choose to be harsh, what will happen? The Controllers will be of the rank of Income-tax Officers. We know what the Income-tax Officers are doing. A provision of this sort may be abused by dishonest Income-tax Officers and even by honest officers, if they are so minded to put pressure upon assesses. The provision may be abused and every person may make himself liable to the penalty without being motivated by anything which in penal law is called *mens rea*, which is the real basis of penal offences. In all offences, there is some criminal intention. Here is a mere compliance with a prescribed form, the non-compliance of which is made penal. I think it is too wantonly and unnecessarily hard. I may respectfully ask the hon. Finance Minister to consider whether the last two lines could be taken away. I can understand if a person is asked to do a particular thing to bring a certain document and if he does not bring that document, he may be liable to pay a penalty. There are many penalties provided in the law, if he does not obey the dictates of the officer. But the mere fact that the form is not filled in the prescribed manner and the failure to do so should expose him to a penalty is certainly one which we should consider twice before putting it on the statute book.

Shri C. D. Deshmukh: I do not know whether any other Member wishes to speak—so that I could reply at the end.

Mr. Deputy-Speaker: No.

Pandit C. N. Malviya (Raisen): Sir, I do not agree with the omission of these words.

Shri C. D. Deshmukh: He opposes the words.

Mr. Deputy-Speaker: No. The hon. Member wants that a lesser punishment may be imposed.

Pandit C. N. Malviya: It is perfectly all right. I oppose the amendment.

Shri C. D. Deshmukh: He opposes the amendment. What I say is that hon. Members who have supported this amendment have picked out one particular portion—"in duplicate"—as if the whole clause was in regard to the submission of forms in duplicate. Now, that is not what we are dealing with.

Pandit Thakur Das Bhargava: It is there.

Shri C. D. Deshmukh: I do not deny. It is there. If it was not there, the hon. Member would not have been able to pick it up. In order to embellish an argument, he has taken out one argument to reduce this *ad absurdum*. This clause relates to affidavits, accounts, statements and forms. It prescribes not only "in duplicate"; it says, "any person who wilfully fails to comply with the provisions of this Section....." etc. What are the provisions here? They are to be in the prescribed form. They shall be in duplicate. They have to be delivered and verified on oath. They have to be supported by the production of books and documents in the manner prescribed.

Mr. Deputy-Speaker: Such particulars as may be prescribed. Line three requires that particulars, as may be prescribed, should be given.

Shri C. D. Deshmukh: Therefore, there may be a very large number of very substantive things which are required to be done and which fail to be done. This is comparable to the provision in the Indian Penal Code. In the Penal Code, you define an offence. But there is another clause which says that if technically something amounts to offence but if it is so trifling, then, it shall not be regarded as an offence. If the hon. Member goes into the clause taking out the "duplicate forms", he will find that the penalty is imposed only in such cases when he "fails to comply with the provisions". Merely

because he objects to that particular thing, he says the whole clause is bad, and therefore, the penalty should be omitted. The justification urged for that is that a man places himself or is likely to place himself at a disadvantage, if he fails to comply with this provision. Without a very careful examination of the whole of this Act, it is not possible to say that only if he fails to do something he will place himself at a disadvantage. Apart from the penalty, from what I know, he will possibly place himself in an advantage. It is possible that he will escape some part of the duty which otherwise would have been assessed on his property, or the corpus of the property might have been held to be much larger than what it is. Therefore, we are dealing with very important matters, and there is no justification for imagining that failure will be met with a punishing act. A man will just pay for his own folly: but he might stand to gain.

Then, one ought to make reference to clause 54 which we have passed; there also it is said that penalty is equal to double the amount—"shall be liable to pay a penalty of one thousand rupees or a sum equal to double the amount of estate duty." The hon. Member who suggested this amendment has carefully avoided making any reference to the proviso which says that the Controller may reduce the penalty in any particular case. Further, Sir, if there should be such an atrocious case where the wilfulness is a marginal one, where only the double forms have been missed out and the Controller is officially informed and he says: "I now charge you the full penalty," then it would be open to the aggrieved person to go up in appeal, and I am sure that such appeals may not recur because the same thing will happen to the Controller. I think one ought to look at this in its proper perspective. No sufficient reason has been adduced for the deletion of this penalty.

An Hon. Member: Is there anything from English law on this point?

Shri N. C. Chatterjee: It is exactly a copy from the English law. Sub-ser-

[Shri N. C. Chatterjee]

tion (14) of Section 8 of the English Finance Act, 1894, says:

"All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned."

Mr. Deputy-Speaker: Now, that is conclusive.

Shri C. D. Deshmukh: In other words, it requires two forms—not one form.

Mr. Deputy-Speaker: The question is:

In page 33, lines 25 to 27, omit:

"and any person who wilfully fails to comply with the provisions of this section shall be liable to the penalty mentioned in section 54."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 70 stand part of the Bill."

The motion was adopted.

Clause 70 was added to the Bill.

Clause 71.—(Recovery of duty etc.)

Shri T.S.A. Chettiar (Tiruppur): Sir, I have not given any amendment to clause 71, but I would like to raise a point. Under the procedure for recovery of arrears, recovery could be made by various processes. It can be by arrest and imprisonment of the defaulter. I am reading from the Bombay Land Revenue Code, 1879. Recovery may be made:

"(a) by serving a written notice of demand on the defaulter under section 152; (b) by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 153; (c) by distraint and sale of the defaulter's moveable property under section 154; (d) by sale of the defaulter's immovable property under section 155; and"

as I said,—

"(e) by arrest and imprisonment of the defaulter under sections 157 and 158."

I would like to know, Sir, what the Government wants. What the Government wants, I think, is to get the tax out of the property of the deceased. I do not think it is the intention of the Government to arrest the man, because the tax is to be paid, virtually, by one who is dead, and the tax is to be collected from the property which he has left. I would like to know whether they have examined the words in this clause. The clause says: "Any estate duty.....be recovered from the person liable thereto as if it were an arrear of land revenue by any Collector in any State." I have read from the Bombay Land Revenue Code in this connection. The clause may be made clear to me.

Mr. Deputy-Speaker: So far as the Civil Procedure Code is concerned, I think for the recovery of debts from legal representatives, they are not personally liable for imprisonment, except in cases where they are not able to account for the money that has been received by them. That is the position. If it is the intention of the Government to make it more stringent.....

Shri S. S. More: I would ask one question. "As if it were an arrear of land revenue"—that is what the clause says.

Have they examined the different provisions for the recovery of land revenue in the States? Are they all uni-

form? Otherwise, this will lead to discrimination.

Mr. Deputy-Speaker: This is under Land Revenue Act.

Shri S. S. More: But is it applicable to the Bombay State?

Shri T. S. A. Chettiar: Clause 71 does not refer to any particular State.

Pandit Thakur Das Bhargava: There is nothing like a Central Land Revenue Act.

Shri S. S. More: Different States have different modes of recovery.

Shri T. S. A. Chettiar: What I read is from the Bombay Land.....

Mr. Deputy-Speaker: Mr. Chettiar wants to know if it is the intention of Government to really arrest a person for non-payment of duty and put him in the prison?

Shri C. D. Deshmukh: It is very difficult to give a categorical answer to this question, because there will be all kinds of accountable persons and all kinds of property, and if a property, for instance, has gone to a Company, then you will have to consider what arrest and imprisonment might mean in the case of a Company. It might be a temple to which certain estates have gone. Therefore, to consider that in every case we have in mind the black deed of arrest and imprisonment is wrong. This is part of the common law of the land. The hon. Member seems to have got this afterthought from Section 46 of the Income-tax Act. Obviously, in the administration of these Acts, a certain amount of commonsense must be presumed.

Shri S. S. More: Must be presumed.

Pandit Thakur Das Bhargava: So far as these arguments are concerned, let me examine them in detail a bit. The hon. Finance Minister says that in the Income Tax Act this provision has been there for a long time. I think he is fully aware that previously, so far as the civil debts are concerned, all persons were liable to imprisonment, but now the Civil Procedure Code has

been changed and persons can't be ordinarily sent to prison for civil debts in execution of decrees. The law has changed. We have been governed by previous Governments, but no estate duty was imposed then. When the law changes, the circumstances change and the trend of reforms in the country also changes. We must see that if it is the accepted principle in the civil law of the country that no person can be sent to prison for non-payment of dues, it must be followed here also.

Shri A. M. Thomas (Ernakulam): Only if he is unable to pay his debts. But if he is able to pay his debts, he will be sent to prison.

Pandit Thakur Das Bhargava: My submission is that this law or this Bill should be brought into line with the civil law of the country. If he is able to pay but does not pay, that is a different matter. But the hon. Finance Minister supposes that every income-tax officer shall be as soft, as good and as circumspect as he himself is.

Shri C. D. Deshmukh: What I meant was that it is always possible to issue administrative instructions in regard to these Acts and if there is any kind of reformist act in this matter—and I don't deny the existence of such because we are getting day by day a more civilised society—I say that pressure should be brought to bear upon the State Governments in order to reform the Land Revenue Acts but to take out something just for the purposes of this, regard this not as revenue but as civil debt. I am bound to oppose any kind of *ad hoc* reform on the general law merely on this ground.

The other point is answered also, because today whatever one has to collect, one has to go to the State for recovery according to its Land Revenue Act. Therefore, if a distinction does exist, it requires study to appreciate what kind of distinction exists in the laws of the different States and that will go on as we are going on today.

Mr. Deputy-Speaker: There is a Central Act also and I shall find it out.

Shri S. S. More: My submission is this. The Estate Duty Bill is a Central legislation and we must follow a uniform process for the recovery of this duty. Therefore, the penalty clauses, which are going to be imposed for failure to pay the estate duty, should be uniform, but we find different Land Revenue Codes in operation in the different States. Therefore it means we are giving a sort of sanction to all these different revenue codes and different process for recovery of revenue. This is a principle of our Constitution. In a Central measure, there should be no disparity between the modes of recovery in the different States and the Finance Minister cannot content himself by saying that they have been in operation for ages. In the light of the guarantee given in the Constitution for uniformity of treatment to all, it is our responsibility to apply that principle by providing a uniform process for the purpose of recovery. Otherwise, it might be going contrary to the Constitution.

Shri Gadgil: There are certain common features in all the Land Revenue Acts of the various States. The Government dues are normally recovered not through the process of Courts as execution of decrees, but the orders are directly sent to the Collector. One way is sale of the property. The second way is to take possession and manage it. The third is the distress warrant and last is arrest. These are the four ways and I do not think there is anything beyond this. We borrowed this for the Delhi State Land and Premises Act. For the purposes of recovery of Government dues, the provisions of the Punjab Land Revenue Act would apply and those provisions were also borrowed. Similarly, the inequality or equality that exists today exists so far as the purposes of recovering the dues of Income-tax are concerned. We are not changing it at all. If there is any inequality, Mr. More would be good enough to point out that there is anything different apart from the four categories which I have mentioned. Therefore it is a matter for consideration not here, but in some other Act.

Shri N. C. Chatterjee: It has got to be pointed out that the Bombay Land Revenue Act is archaic, mediaeval and, if I may say with respect, almost barbarous. Section 17 of the Bombay Land Revenue Act, 1876, prescribes the manner in which the land revenue may be collected. I am reading from Shri Jamshedji Kanga's book—he is spoken of as an authority on Income-tax Acts:

“That Section of the Bombay Land Revenue Act lays down that the defaulter may be confined in civil jail for a maximum of one day for each rupee of the amount recoverable from him as arrear of land revenue.

Kanga points out that it is within the power of the Collector of Bombay to detain any assessee in regard to the whole period of his life if the amount due from him is sufficiently large and the maximum limit of detention, that is, six months laid down in the Civil Procedure Code, does not apply.

Shri R. K. Chaudhury: Is it still in force?

Shri N. C. Chatterjee: Yes, I am reading from the 1952 edition of Sir Jamshedji Kanga's book. He has quoted the judgment in 49 I.T.R. 371.

This power of imprisoning defaulters is to be exercised reasonably and not capriciously or oppressively. What we are pointing out is something serious and steps should be taken by the Finance Minister to see that this kind of thing is not repeated. They have this power, which is a giant's power, and it should not be exercised like a giant. Even for technical offences like non-submission of forms in time or vouchers a person may be kept in jail for a number of years. Certainly I think the House can demand of the Finance Minister that he should give an assurance to the House that this kind of thing will never be

allowed and that in no case would a person be sent to jail until the properties of which he has taken possession are first of all sold.

That is the cardinal principle that has been recognised in all taxation measures and that should be made clear in this also by the hon. the Finance Minister.

Shri C. D. Deshmukh: There is one thing to which I wish to draw attention and that is that we are enacting this for the various States, at their request. It was open to them to have said : no, so far as agriculture is concerned certainly we would have our own Act. Had they their own Act they would have said that this would be recoverable as arrear of land revenue. It is not as if we are trying to relegate something to them. We are doing something for them. That is the material point for consideration, how it is to be recovered, because it is going to be recovered for the States as if on behalf of the States.

Shri S. S. More: But by your agency.

Shri C. D. Deshmukh: By their agency. When they fail to recover...

Shri S. S. More: Why not mention some particular Code, the Bombay Code for instance?

Mr. Deputy-Speaker: Unfortunately there is no amendment. It is only by administrative directions. It is the usual practice that the extreme penalty of law may not be imposed. But we have not got an amendment and it goes to the root of the matter.

Shri Vallatharas (Pudukkottai): Sir, I have given an amendment. You will kindly condone the notice and take up that amendment. I entirely oppose the clause and these are one or two of the principles on which I do so. It does not mean you should leave a debris after the amount is recovered. I will request you, Sir, to admit that amendment.

Mr. Deputy-Speaker: I shall see.

Shri Pataskar: This is primarily a duty which is going to be levied on an estate which a deceased person leaves. Therefore, primarily it is the estate out of which the duty ought to be recovered. Now, there are penalties going to be imposed for various reasons as was pointed out by the hon. Member Shri Chatterji. I think it would be wrong in practice that, for the recovery of an amount due under estate duty and for the alleged sin of omission or commission on the part of the man who unfortunately happens to be the heir and who is proceeded against by the authorities concerned, it would be wrong in practice that he should be put in jail, civil or otherwise. I therefore think that though there may be no amendment, nothing will be lost if the Finance Minister gives an assurance that in a case of this nature, instructions will be issued that the person will not be arrested.

Suppose, as my hon. friend Mr. Gadgil says, the man has squandered the estate. This is not a criminal legislation. This is a civil measure. My learned friend forgets that it is not as if we are going to punish a man for some criminal act. What we are going to do is that we are trying to recover the duty because he happens to have inherited the estate. Let us look to the primary nature and object of the Act. If there is a levy of a tax on a man who inherits, in the course of framing that legislation we come across so many things. Penalties have to be imposed. They are all of a civil nature. If the property has been squandered, probably in that mood of my hon. friend Mr. Gadgil the officer might get into and say "Doesn't matter whether the duty is recovered or not, I will put him in jail". That is not the correct attitude. It is not a criminal legislation. (*Interruption from Shri Gadgil*). I am not giving way. I am only urging upon the Finance Minister that nothing will be lost in this case so far as the revenues of the State are concerned if the Fin-

[Shri Pataskar]

ance Minister will give an assurance to the House that in this case they shall make provision in the Rules that it shall not be by the arrest of a person.

Shri R. K. Chaudhury: I wish to oppose this clause as it stands. By this clause Government has really shown its claws, spritely claws, and it amply proves the saying that the sting is in the tail.

Shri C. D. Deshmukh: It is in the claws!

Shri R. K. Chaudhury: In the interest of the Government itself I would like to point out that this clause is very confusing. If you say that these duties shall be recoverable as if they were land revenue there will be confusion. Fortunately we belong to a non-regulated province and in Assam there is no such provision, but in the Land Revenue Regulation which lays down the procedure for realising the arrears of land revenue there is no such provision for the arrest of a person who fails to pay arrears of land revenue.

Shri S. S. More: Then you have nothing to complain of.

Shri R. K. Chaudhury: I have nothing to complain against my revenue laws but everything to complain when a particular Minister, who is used to this kind of harsh laws in his own province, namely of arresting a person who does not pay land revenue, tries to impose that barbarous law on the rest of India.

An Hon. Member: How?

Shri R. K. Chaudhury: Because under this clause it will be possible for the authorities to realise estate duty by all the processes which are laid down by the ordinary law of recovering arrears of land revenue. They are going to proceed further and arrest the defaulter.

Mr. Deputy-Speaker: I am afraid the hon. Minister is trying to raise a

ghost and then trying to suppress it. Land revenue is a provincial subject. It is in the Constitution. Recovery of land revenue is governed by State laws. Each State law may be different from the other. Therefore Assam will never be touched. Even in a deluge it won't be touched so far as this arrest is concerned. Under the circumstances what is the good of saying that the Finance Minister wants to apply a barbarous law here? The hon. Member evidently wanted to use the word barbarous with respect to Bombay.

Shri R. K. Chaudhury: Sir, you will be astounded to learn that even in the matter of recovering loans from the refugees this provision is applied, and not only are their properties sold but they are liable to be sent to prison.

Mr. Deputy-Speaker: In Assam?

Shri R. K. Chaudhury: Here, in the Capital. In Delhi in the place where you preside over the Parliament of India.

Mr. Deputy-Speaker: We are going away from a dead person to a living person. The hon. Member is speaking about refugees. There is another new clause on which the hon. Member can speak.

Shri R. K. Chaudhury: I am sorry I have not made myself clear. My point is this.

Mr. Deputy-Speaker: I am afraid....

Shri R. K. Chaudhury: Please listen to me and you will see the point.

Mr. Deputy-Speaker: I have listened with both ears. This is absolutely irrelevant so far as Assam is concerned.

Shri R. K. Chaudhury: Assam is fortunate in this respect. It may be made unfortunate.

Mr. Deputy-Speaker: It can never be made.

Shri R. K. Chaudhury: The law will apply to the whole of India. Therefore, in order to realise the estate duty, it would be possible by virtue of this clause to put the person in prison when all other means of realising the arrears have become exhausted.

Mr. Deputy-Speaker: I shall give my ruling. I am afraid, the hon. Member will not be satisfied unless I say something. So far as arrears of land revenue are concerned, each State has got its own land revenue law. There is no question of applying the land revenue law of one State to another State. Therefore, if he generally says I am in sympathy with Madras or Bombay, and I want to save them against this, that is another matter. He started with Assam and ended with Assam. This does not apply to Assam. He need not pursue this matter. Now, Mr. Vallatharas. I am not allowing his amendment.

Pandit C. N. Malviya: May I say something in support....

Mr. Deputy-Speaker: I have called Mr. Vallatharas. The clause stands as it is. He may oppose if he wants.

Shri Vallatharas: Sir I am opposing this clause. Unfortunately, my amendment is not on file. Irrespective of that fact, I desire to draw the attention of the Finance Minister and those in charge of the Law Drafting Section to the serious consequences that would follow in having such a provision for the recovery of estate duty. In the course of the general discussion, I made a reference to the way in which the tax-payers and the tax-paying estates must be saved from utter ruin. This entire Bill is purely penal. Though it is in the form of a civil law, it is entirely penal. This clause 71 is the real index of the mind of the Government. I shall put it in a precise

form after stating some of the reasons for that. In the words of a very eminent author on death duties, the public power which is wielded under this Section is made to assume the role of a bandit, who does not care for the victims, but cares only for the spoils. The law is not only to enable the Government to be run; at the same time, there must also be the idea that the Government cannot run in the course of time if the nation or society and the national wealth are not kept intact. Now it is definitely known that there are three classes of society in this country, the capitalistic or the rich class,....

Mr. Deputy-Speaker: I won't allow this. It is all irrelevant.

Shri Vallatharas: This is highly relevant.

Mr. Deputy-Speaker: Order, order; the hon. Member will kindly resume his seat. There is no meaning in going into society and all that. We have passed all the other clauses. Only we have not got the rates. What estate duty should be levied in what circumstances, etc., all this has been passed. This clause is only procedural.

Shri Vallatharas: My point is....

Mr. Deputy-Speaker: There is no question of going back into society, and classes of society. All that is irrelevant. If the hon. Member says that this process ought not to be adopted for the recovery, but some other process, let him state that.

Shri Vallatharas: I submit to the ruling of the Chair.

Mr. Deputy-Speaker: The ruling is all right.

Shri Vallatharas: At the same time, I should have the liberty of expressing what I want to say.

Mr. Deputy-Speaker: He cannot say anything he likes; it must be relevant.

Shri Vallatharas: I am sorry, the Chair is making a decision without hearing my points. The people who are affected mostly are the upper middle classes. It is only that fact that I wanted to bring out. I am not hostile to the capitalistic class.

Mr. Deputy-Speaker: There is no difference between a capitalist and a non-capitalist so far as this clause is concerned. This clause relates to the mode of recovery. What is the mode of recovery?

Shri Vallatharas: How that would affect the major portion of the population, I will have to state. Or else, how could the Finance Minister be appraised of the effect for reconsidering the entire situation?

Mr. Deputy-Speaker: What is the alternative method?

Shri Vallatharas: I submitted an amendment. That would have enabled me to proceed on a substantial basis. You can exercise your powers and admit it.

Mr. Deputy-Speaker: No, no.

Shri Vallatharas: Of course, there is no other amendment. But, I am disputing the fundamental principle.

Mr. Deputy-Speaker: The hon. Member, evidently, was not here. I have looked into his amendment. He suggests that the lands may be taken or a portion sold. These matters were discussed at an earlier stage, and it was pressed also. He says that some portion of the land may be taken, and so on. Only that portion will be sold normally.

Pandit Thakur Das Bhargava: Not only lands; there are buildings in urban areas.

Mr. Deputy-Speaker: All that has been urged. The hon. Member must not repeat what all has already been said at any stage of the proceedings.

Shri Aitekar (North Satara): I have one suggestion to make.

Mr. Deputy-Speaker: The hon. Member has not yet finished. If he has anything more to say, he can go on.

Shri Vallatharas: It is a difficult position in which I find myself to choose the proper words to make myself at home and also the proper aspect to represent. I would request the Chair to excuse me if there is redundancy. I would avoid it. This is a very crucial section. We know what the collection of land revenue arrears means. The general trend of this Bill and this crucial clause is careful only about the tax collection and not about the evil effects caused by the mode of collection, which go to disturb society. It is only that point that I wanted to press. If the hon. Finance Minister is alive to that position, I am happy. In the course of the collection of arrears of land revenue by the Collectors, it is a known fact that there are vast areas of waste land throughout the country which are the subject of one anna sales because the economic position of society is not such that there are no bidders to purchase these lands. If the Government has looked into this aspect of the matter it should have prepared statistics to see how many acres of waste lands there are throughout the country by reason of this one anna sale on account of absence of bidders to purchase those lands in the course of the Collectors' sales. It is my personal experience that this sale is only a farce. Several big estates worth so much are sold for an insignificant price. If this policy is followed in regard to very big estates, valued at Rs. 50,000 and going into several lakhs, I will have to state specifically that thousands and thousands of acres will have to come under this one anna sale. If the Government is going to accumulate such waste lands in this country in addition to the already existing vast areas caused by the Collectors' sales, it will be a deplorable thing. The point stressed is this. You know, Sir, what the result will be. If you are mindful only about the collection,

certainly I shut my mouth. But, if it is a question of the interests of the society for which a law must be enunciated, then, my position becomes stronger. When the owner dies, who are the persons remaining? The widow, childless widow, young or old, minor children, and those people, *dayadis*, who want to loot the property whenever a chance occurs. These are the persons who are the inheritors of this property. If there is any doubt about this in anybody's mind, I am sure, he is not conversant with the position in the country. What are the safeguards that have been given in this clause against these conflicting interests of the persons? These properties are to be utilised for augmenting the national wealth with which the Government has to be run. There is a difference between this tax and the Income-tax which touches only the income of the person. If there is a loss of income by abuses in collection, that does not affect the national wealth of the country, the status of the families and the estates which go to build up the nation. In this case, it is truncating the entire estate: estate means the status of the families.

Shri S. S. More: What is the relevance of all this?

Mr. Deputy-Speaker: I am yet to see what the relevance is.

Shri S. S. More: He is reopening all the previous clauses.

Shri Vallatharas: I am not repeating anything that I have said; I am not re-opening anything. If my arguments are not pleasant, of course, that is a different matter.

Shri S. S. More: It is not a question of being pleasant; it is only not relevant.

Mr. Deputy-Speaker: This is not a general discussion in the second reading. That there ought to be no estate duty, that the estate duty must be very simple or nominal, and must have regard to the persons who inherit the property, all that may have been relevant at an earlier stage.

What is the method of collection: that is the simple point here. If the hon. Member has anything to say on this, he can say. Or, I will call upon another hon. Member or the Finance Minister to speak.

Shri Vallatharas: It must not be done by this method. I suggest that in the interests of the estates a different principle has to be thought of. There is one principle for collection; there is another principle in respect of national welfare. Therefore, when the tax is assessed and collected, care is taken to see that the tax should be ample or in consonance with the joint family, but when property is taken for arrears of estate duty, that principle is not followed. The law must be equitable. What is applied for one thing, the same must be applied to the other thing also. In this case, a generally progressive and improved outlook must be observed. Such part of the property according to the assessed or estimated value must be taken to meet the demand of the estate duty. Supposing an estate duty is for about Rs. 2,000, only land worth about Rs. 2,000 on the estimated value must be taken.

Shri A. M. Thomas: We have dealt with these clauses.

Shri Vallatharas: I am not going into other materials of the Bill, Sir. This is the relevant clause of the Bill in which all these things are relevant. I am not talking about other matters.

Mr. Deputy-Speaker: What is the good of referring to those matters which have already been disposed of?

Shri Vallatharas: So many Members have expressed their opinion, but this is the time we have to decide.

Mr. Deputy-Speaker: All the points which the hon. Member is trying to urge we have got in various clauses which have been discussed, and on which the decision of the House has been given. There is no good urging the same thing here.

Shri S. S. More: He is discussing clause 49.

Shri A. M. Thomas: He was absent for some days.

Mr. Deputy-Speaker: Any other hon. Member.

Shri Altekar: As regards clause 71 and the analogy of the income-tax and the Bombay Land Revenue Code which has been suggested here, I beg to point out that in connection with the recovery of arrears of land revenue under the Code and also under the Income-tax Act, it is primarily the person himself who is in possession of the property—and also, so far as the land is concerned, cultivating the land—that is being proceeded against. Here in this case, it is imposition of the duty on the estate to which the person who is being charged is proceeded against as an heir. According to clause 51 which we have passed, there is also a case wherein a person who, on account of his own neglect or default, has not come into possession of the property, is still being proceeded against. That case also is there. All such cases and the circumstances under which people are being proceeded against should be taken into account in recovering the estate duty from the person. The particular circumstances in which a person is proceeded against must be taken into consideration and extreme remedies should not be resorted to, and as far as possible the estate of the deceased should be proceeded against and the duty should be recovered from that estate.

Shri S. S. More: I have already stated that the effect of this provision will be discriminatory, and I hope, Sir, that you will be pleased to apply your mind to that because the fundamental principle of our Constitution is—I need not emphasize it again—that all subjects should be treated equally.

Mr. Deputy-Speaker: But if different States have different laws, would he say, because one law is different from the other law, that it goes against the Constitution?

Shri S. S. More: My submission is that if different States pass different estate duties referring to agricultural

land affected within their own territories, they may have different modes of collection, and even different penalty clauses, but when the Central Government is enacting any piece of legislation and providing for the recovery of dues, the mode of recovery as far as the Central legislation is concerned, ought to be one and uniform. If it is said that the recovery shall be made as arrears of land revenue, the effect of such a clause is that different land revenue codes operating in different States will come into operation without a single incidence or a single method of recovery more or less rigorous or not rigorous. The net result is it is discriminatory in its effect. And for us to say that we suggest a discriminatory result will conflict with the fundamental principles of the Constitution.

Then, Sir, Mr. Chatterjee was pleased to refer to the Bombay Code, but even under the Bombay Code what he has not quoted I will quote further because if estate duty is to be levied and some persons do not pay the estate duty, I am of the opinion that Government must be armed with all the means, with all the instruments, for the purpose of recovering that estate duty. It is no use saying: "Well, Government can recover a duty." Let us have some short method. As far as the Bombay Code is concerned, even by judicial decisions it has been settled that the last method of recovering by arrest should not be tried until the other methods available have failed, and for that purpose, I am again referring to Kanga's book which was quoted by Mr. Chatterjee.

Mr. Deputy-Speaker: Why all this? We are not going into details.

Shri S. S. More: No, Sir. The point is this. Some persons, and particularly Mr. Pataskar, were vigorous in arguing that the man should be arrested for failure to pay the estate duty.

Shri Pataskar: Not only that, but for failure to comply with the other provisions which impose the penalty upon him.

Shri S. S. More: We are now discussing clause 71. We are not discussing any other clause by which monetary penalty is to be imposed. My submission is that under the land revenue Code of the Bombay State which has been in operation for more than 60 years, for 75 years, a small tenant...

Shri Pataskar: May I point out to the hon. Member that under clause 71 it is also penalty payable under this Bill, not only estate duty.

Shri S. S. More: All along we have been pleading that the Bombay Land Revenue Code in its effect, in its operation, is not just, and particularly to the peasantry.

Shri Pataskar: Yes.

Shri S. S. More: But when that particular Code was there, those who were representatives of non-peasantry classes did not say anything about that code.

Shri Pataskar: I can say for myself, if he refers to me, that I had, in the Bombay Legislative Council, moved Resolutions, passed amendments and raised the question that it ought not to be recovered in this manner.

Shri S. S. More: I am not confining my remarks to Mr. Pataskar.

Mr. Deputy-Speaker: Are we getting into deciding of personalities here?

Shri Pataskar: Probably at that time he was not there.

Mr. Deputy-Speaker: Merely because Mr. Pataskar or Mr. More has said so...

Shri N. C. Chatterjee: It is a Bombay fight.

An Hon. Member: Triangular fight!

Shri S. S. More: It is not a Bombay fight. It is a fight between those who are champions of the vested interests and those who are not.

Shri Pataskar: I am championing no vested interest, if he refers to me

Mr. Deputy-Speaker: Order, order. There must be a limit to this. Hon. Member seems to be arguing for at one time and against at another time. I am not able to follow.

Shri S. S. More: I am sorry, Sir, you have got that impression. Can I not take two alternative positions? As far as we pleaders are concerned, we have the privilege of stating both the sides.

Mr. Deputy-Speaker: I am only stating what the hon. Member has stated. In a written statement it is open to place two absolutely inconsistent alternatives. That is all that I wanted to know.

Shri S. S. More: I am sorry, Sir, for the way in which you are putting it. I am particularly sorry, Sir, because I cannot retort. That is my position.

Mr. Deputy-Speaker: I wanted to know...

Shri S. S. More: My submission is this sort of satire or ridicule becomes a one-way traffic when you are in the Chair.

Mr. Deputy-Speaker: I cannot help it. Hon. Member referred to discrimination and then said that it is there in the one and not in the other. I am not saying that this arrest must be effected.

Shri S. S. More: If only you will have patience to hear me. Unfortunately, I am not given the time to develop my point and the way I am interrupted...

Pandit S. C. Mishra (Monghyr North-East): Notwithstanding the protests of Mr. More, I hope, Sir, the important ruling delivered by you just now shall stand, and shall be available to us in good time and stead.

Shri S. S. More: I say again for your information—I emphasize it—that in the first instance I argued that this particular Clause is discriminatory. Government should say: "Well

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the dues shall be recovered by a particular method." Let them mention the Bombay Land Revenue Code or the Assam Land Revenue Code or the Madras Land Revenue Code. Let them mention there a particular Land Revenue Code. Then it would be uniform in its application. But, if they are resorting to the different Codes, then my argument is that it will be discriminatory because of different methods of recovery. That is the first part of my argument.

But, supposing now the matter is left to the Bombay Code under this particular provision. It was argued that the Bombay Code goes to the barbarous extent of confining a man in the civil jail, and some people had addressed their arguments and emphasized this particular barbarous part of the Bombay Code. Therefore, I say, Sir, if the duty is to be recovered according to the Bombay Code, then I would say rather that if the defaulters make a default, even the extreme penalty provided by the Bombay Code should come into operation. That is my contention.

I think, Sir, it will not be as ridiculous as is supposed. As far as those who are champions of the vested interests, who support the defaulters, are concerned, I would say that if they are making a default, let the Bombay Code with all its worst effects come into operation against them. That is my submission, Sir. With these remarks I resume my seat.

Shri Tek Chand rose—

Mr. Deputy-Speaker: I am not going to have any more discussion. I am fully satisfied.

Shri Tek Chand: There are some aspects of this case...

Mr. Deputy-Speaker: There are many aspects.

Shri Tek Chand: I shall feel grateful if you will give me an opportunity. This is an important matter.

Mr. Deputy-Speaker: The hon. the Finance Minister.

Shri C. D. Deshmukh: Sir, as you pointed out, there is no amendment which is proposed to this clause. Therefore, either you have 71 or you do not have 71. Now, it seems to me that there is no alternative to having this clause, because something has to be provided for recovery, if it cannot be made.

Then an analogy has been cited that in the Civil Procedure Code for recovery of private debts, no imprisonment is permitted. Now that, I submit, Sir, is a false analogy because here we are dealing with duties due to the State.

As regards the next point of discrimination, I do not think I need deal with it, because, as I said, that proves that either the clause is wanted or is not wanted. A point of order should have been raised then that this goes against that particular article of the Constitution. That has not been urged. Therefore, I take it that it is in order for us to pass this clause if we are satisfied that on the merits it is necessary.

Then, Sir, reference was made to the Bombay City Land Revenue Act, 1875, and the hon. Member read out some portion which just taken out of its context is certainly ridiculous—maximum period of one day for each rupee of the amount recoverable. That may be so, but the hon. Member did not read what follows here.

Shri Gadgil: He left it for you to read.

Shri C. D. Deshmukh: It says here— I quote from the same book, Kanga's book on Income-tax, page 804:

"But this wide power of imprisoning defaulters is to be exercised reasonably and not capriciously or oppressively".

And that is precisely what I was asked to do by administrative instructions. Now, I say that this is a matter which has been taken care of

already by judicial rulings. Those rulings are quoted here. It says under section 13 that properties should in the first instance be sold before he is apprehended and confined in a civil jail. This is the condition precedent, i.e. the sale of the assessee's properties must be fulfilled even if the assessee has been adjudicated an insolvent. Then another case is quoted. If the property is not first sold, the detention of the assessee in prison would be invalid. Then there is another case quoted. Therefore, I think the citizen has all reasonable safeguards.

Then the only other point made was—what happens to a poor chap who squanders the estate before he knows that there is a charge of estate duty in respect of it. I say that after the passing of this Bill, no citizen who intermeddles with the property can profess ignorance that there is such a thing as an estate duty payable. And if, with his eyes open he does choose to squander the property, and if he has no property to sell and has therefore to suffer imprisonment. I do not see why we in this House should shed tears in respect of a matter which essentially concerns the interest of the State.

Mr. Deputy-Speaker: The question is...

Shri R. K. Chaudhury rose—

Shri Tek Chand: On a matter of clarification. Sir.

Mr. Deputy-Speaker: We have had enough of clarification. This is a simple point.

Shri Tek Chand: One more question.

Shri M. C. Shah: You have supported it.

Mr. Deputy-Speaker: All right. Mr. Tek Chand. Then one other question for Mr. Rohini Kumar Chaudhury.

Shri Tek Chand: What does the hon. Finance Minister intend to direct or do in a case where the deceased

left cash in a safe and all that he had was cash and the woman, the widow, was there alone? Does he intend to imprison the woman when the estate has disappeared because of theft or does he intend to confine recovery in all cases of contumacy or recusancy, that is to say, the person who is contumacious, that person has to be sent to jail or the person who has lost the entire property consisting of cash by theft?

Shri C. D. Deshmukh: This is a hypothetical question and I am not the collector.

Shri R. K. Chaudhury: Supposing a person is liable to pay estate duty to the extent of Rs. 50,000, and by sale of property Rs. 40,000 has been recovered, what will you do for the balance of Rs. 10,000? Will he be imprisoned? Rs. 50,000 was the estate duty payable out of which Rs. 40,000 was recovered by sale of all the properties that he inherited. Should he be liable to imprisonment in order to recover the balance of Rs. 10,000? I want to know whether any provision is made in this clause to protect him in such cases. The other thing is, as the hon. the Deputy-Speaker has said, whether the law in a particular State about recovery of arrears of land revenue would be applied or whether it would be a general law, or the procedure which is laid down in the Bombay Act can also be utilised. Sir, you have said clearly that the law prevailing in the State will apply. If in a State there is no provision for imprisonment, will that law apply in that State? That is what I want to know.

Shri C. D. Deshmukh: I do not know what reply is needed. The land revenue will be collected in accordance with the local law, so that if there is no provision for arrest and imprisonment, obviously no arrest or imprisonment will take place. As to hypothetical cases, one can spend all the evening in trying to answer all kinds of possible combinations of

[Shri C. D. Deshmukh]

circumstances. I cannot afford to give an answer on this. All I can say is that if there is some grievance that emerges out of the application of this section in the light of experience—and I am not aware of any similar grievance arising out of section 46 of the Income Tax Act—I shall apply my mind to it and see if anything could be done to avoid any avoidable grievance.

Mr. Deputy-Speaker: Undue hardship.

Shri C. D. Deshmukh: Yes.

Mr. Deputy-Speaker: The question is:

"That clause 71 stand part of the Bill."

The motion was adopted.

Clause 71 was added to the Bill.

New Clause 71A

Shri R. K. Chaudhury: I beg to move:

In page 33, after line 31, insert:

"71A.—Whenever any dwelling house belonging to a deceased person in which he lived and his heirs and dependents actually live after his death, is sold to realise the estate duty, such sale shall be set aside on payment of the estate duty together with such interest as may be prescribed within a year from the date of sale of the dwelling house in question and no delivery of possession will be given to the purchaser until the expiry of the period of one year from the date of sale".

Mr. Deputy-Speaker: Is this not barred by clause 71 which we have just passed? Is it now open to us to say that it shall not be given for a year more? That is number one. Then, if there is death, recovery of the estate duty shall be made under the revenue recovery Act. I am familiar with

Madras. I think there about 30 days or so are allowed. Here it is one year. When we have approved clause 71, I am afraid this amendment is out of order, unless the hon. Member satisfies me.

Shri R. K. Chaudhury: Let me explain the position.

Mr. Deputy-Speaker: This is barred by clause 71.

Shri R. K. Chaudhury: The House has already passed clause 71 which implies that the estate duty which falls due will be realisable as arrears of land revenue. Here, Sir, you have been pleased to state that the law prevailing in the particular State will apply. I want to bring to the notice of the Finance Minister and the House the provisions of law as they apply in West Bengal and Assam. There are three stages there after the sale. The first stage is that a person aggrieved by an order of sale for the realisation of land revenue has the remedy of depositing the amount due together with such interest as may be prescribed. It is something like 5 per cent. and the amount can be deposited within six months, and the sale will automatically be set aside. That is the first remedy. The second remedy is that if there was any irregularity or fraud in conducting the sale, then the sale can be set aside on the application of the person aggrieved. The third remedy—it is there in our law in Assam and also in West Bengal, I think—is that a sale can be set aside on the ground of hardship. It can be set aside within a year on that ground. My amendment follows the last of the three remedies, that is to say, a case of hardship can be made out within a year and then the sale can be set aside.

Mr. Deputy-Speaker: Those provisions are there in the Land Revenue Acts of Bengal and Assam. These are unnecessary and are barred. This is how it happens.

Shri R. K. Chaudhury: What I stated about West Bengal and Assam Acts

was only an argument in favour of my amendment. But I submit that the benefit of this kind of provision should be given throughout the country even in a place like Bombay. A person aggrieved by the sale ought to be able to have the sale set aside by paying the amount due to Government plus such interest as may be prescribed. The dwelling house has not been excluded from the aggregate of property on which estate duty is payable. Supposing there is no cash or any movable property from which the estate duty can be recovered, then if you take the extreme case, it will be this, that the dwelling house will have to be sold to pay the estate duty. This is a new imposition and the deceased may not have anticipated it. I submit, therefore, that one year's grace should be allowed and the person aggrieved should be enabled to set aside the sale by paying the amount due together with the interest. Yesterday, the hon. Minister refused to accept the amendment moved by my hon. friend Shri Chatterjee, namely, the aggrieved person may make an application to the Board on the question of over-valuation, but that has not been accepted. At least this remedy, I suggest, should be granted, so that without making the Government a loser in any way, the person concerned can get the sale set aside. As I said, take the extreme case of an heir who has no cash or movable property and he has only the dwelling house in which he is actually living. It will have to be sold for payment of estate duty. So, I think this one year's grace is not excessive. It is a mercy which should be granted by the hon. Minister.

Shri C. D. Deshmukh: I am not able to accept this amendment. I think that it is an unnecessary complication in view of the very liberal provisions in clause 68.

Mr. Deputy-Speaker: Yes, provision has been made there for payment in instalments spread over six years.

I shall now put the amendment of Mr. R. K. Chaudhury.

Shri S. S. Mors: You ruled it out, Sir.

Mr. Deputy-Speaker: No. I did not rule it out. I only expressed my doubts and difficulties.

The question is:

In page 33, after line 31, insert:

"71A.—Whenever any dwelling house belonging to a deceased person in which he lived and his heirs and dependents actually live after his death, is sold to realise the estate duty such sale shall be set aside on payment of the estate duty together with such interest as may be prescribed within a year from the date of sale of the dwelling house in question and no delivery of possession will be given to the purchaser until the expiry of the period of one year from the date of sale."

The motion was negatived.

Clause 72.—*(Estate duty a first charge etc.)*

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

In page 34, line 1, for "Board" substitute "Controller".

I also beg to move a consequential amendment—a grammatical amendment—viz.

In page 34, line 3, for "it" substitute "he".

We are now putting "Controller" instead of "Board". So, "as it thinks fit" will not be right; it should be "as he thinks fit" and for that purpose, I have to substitute "he" for "it". The only reason for my moving this amendment is that it has been urged that the release of the charge from estate duty on the whole or any part of the estate duty where such release may be necessary, if it has to be granted by the Board, may cause delay and hardship to the assessees. We do not feel that any particular purpose is served by retaining this power with the Board and that is why we are proposing this delegation to the Controller.

Mr. Deputy-Speaker: The question is:

In page 34,

(i) line 1, for "Board" substitute "Controller"; and

(ii) line 3, for "it" substitute "he".

The motion was adopted.

Pandit Thakur Das Bhargava: I would like to say a few words on this clause. In this particular clause, I find that estate duty is regarded as the first charge on the property liable thereto. Yesterday, we passed some provision by virtue of which the property was to be deemed as the property of the deceased for purposes of finding out his share. I wish to quote from Gour's *Hindu Code*, Fourth Edition, Page 651, where Article 191 reads thus:

"In every partition provision should first be made for—(a) the payment of all family debts; (b) the payments of the father's debts by his son; (c) the maintenance of members entitled to it; (d) the thread and the marriage expenses of members payable by the joint family; (e) and such religious and other ceremonies for which the joint property is liable."

The commentary below it is also worth perusal. Now, Sir, it appears that in a partition also certain members of the family are given maintenance as well as the right of residence.

I want to know, Sir, what would happen to the rights of maintenance and residence of the female relations who are entitled to them, I think, even before the partition is made. There are some matters according to Hindu law, even a provision for charity has to be made at the time of partition. I want to know whether in the view of the Government such a charge will be allowed, such charges and debts as are provided for in section 191 of the Hindu Code (Gour) will be paid before the estate duty will be levied and whether the rights of maintenance and residence etc. will be respected which, according to the law relating to partition of joint family properties are

made obligatory under the Hindu law. I am afraid that by passing this law, we were not to that extent be abrogating the rules of partition. I understand that this Bill relates to estate duty and to that extent it makes an inroad into Hindu law. I am anxious to find out from the hon. Finance Minister if he proposes to say good-bye to those principles of partition or whether he wants to respect them and the first charge stated in clause 72 will be only after provision is made for those things which the Hindu law stands for. That is my question and I want an answer to it.

Mr. Deputy-Speaker: 'After the debts and encumbrances allowable under Part VI' is there already. Encumbrances include charges also.

Pandit Thakur Das Bhargava: Even today the maintenance charges of female relations constitute a charge on the property. I want to know whether this first charge will abrogate those charges or will they be maintained, because, according to me, even in a notional partition all these charges should have precedence over the first charge of the Government.

Mr. Deputy-Speaker: The exception is made in favour of those charges. It will be a first charge on the immovable property in whomsoever it may vest.....

Pandit Thakur Das Bhargava: Encumbrance is in the nature of a mortgage charge.

Shri M. C. Shah: As far as the heirs of the deceased are concerned.

Pandit Thakur Das Bhargava: Am I to understand that all those maintenance charges etc. will all be respected and then the duty will be a first charge?

Shri M. C. Shah: Clause 42 is very clear. Whatever are the debts of the deceased.....

Pandit Thakur Das Bhargava: I am not asking of debts. How are we to consider them as debts so that the

maintenance charges of female relations will have precedence. This is a clear question and I want a clear answer to it.

Mr. Deputy-Speaker: If there is a maintenance charge, the property minus the maintenance charge alone becomes the property of the deceased. If the property is sold away to that extent it ceases to be property. Now, there are lesser than life estates or a lease. Lease is not the full property. In a lease the full property does not belong to the deceased but only the leasehold right or interest. Wherever there is a charge the property of the deceased is subject to that charge only. Then, on that property subject to that charge, this first charge will apply; thereafter it cannot be encumbered. That is my reading of it.

Pandit Thakur Das Bhargava: I think that is the right reading also. I wanted a categorical reply from the Government because even in notional partition all the principles and all the encumbrances and obligations which are enjoined by the Hindu law should be respected. It is my humble submission.

Mr. Deputy-Speaker: That is what the hon. Minister said yesterday

Shri C. D. Deshmukh: In a partition whatever has to be taken into consideration will be taken into consideration in arriving at a share. We cannot now proceed to discuss that here in the first charge.

Mr. Deputy-Speaker: He does not refer to partition only. In the case of individuals in whom the property vested, they might have had some other persons whom they were bound to maintain and whose maintenance had become a first charge on the property.

Shri C. D. Deshmukh: In each case we have first to determine what is the property on which the duty will be levied. That will be a legal issue and will have to be settled. Once we say that this is the property and this is the assessment on it, then the estate duty is the first charge and it will not

abrogate other charges but it will take precedence over them.

Pandit Thakur Das Bhargava: Which will take precedence?

Shri C. D. Deshmukh: Estate duty.

Mr. Deputy-Speaker: We will assume a valid encumbrance which could not be avoided. This first charge is only subject to that encumbrance. This first charge will become second charge so far as that property is concerned.

Shri C. D. Deshmukh: To the extent that any charge is not saved by clause 42, to that extent, my answer is that clause 72 creates a first charge. To the extent covered by this clause, I say it must remain a first charge. It does not abrogate other charges but it becomes the first charge. Mortgage must be paid out of the surplus after estate duty is paid.

Pandit Thakur Das Bhargava: My question does not relate to any encumbrances of that nature. It is an absolutely different question. According to Hindu law, at the time of partition provision must be made for certain matters which are indicated in section 191 of Gour's *Hindu Code*. My humble submission is that the rights of female relations of the deceased in respect of whom the rights are inherent, are a sort of charge on the entire property and at the time of partition they must be respected. Are you going to exclude them? They will constitute a first charge before the estate duty comes in. I am not questioning about clause 42 which I know all right. Because this clause speaks of encumbrances and charges. I ask about charges which are not mentioned there. According to what fell from the hon. Finance Minister yesterday I thought he said that at the time of the notional partition all these will be respected. I am asking him to make the position clear.

Shri Gadgil: The provisions of this Bill will be applicable as if the whole property belonged to the deceased. That is clear.

Pandit Thakur Das Bhargava: That is not very clear and is certainly ambiguous.

Shri N. C. Chatterjee: I wish to point out to Justice Chandrasekhara Aiyar's observations in the latest edition of Mayne's *Hindu Law*. He is the greatest Hindu jurist and Mayne is the standard authority. Mayne says:

"Before the division of any joint estate is made, it is necessary to make provision for the liability on the joint estate such as

(i) debts due or placed against the family,

(ii) charges on account of maintenance of disqualified heirs, charges on account of maintenance of female members and all those who are entitled to be maintained,

(iii) marriages and such other family ceremonies as have been provided for."

Therefore, Sir, it is very pertinent to know on what you are making a first charge. Are you taking into account only actual mortgages or encumbrances or is the first charge after these debts of the family or the charges for the maintenance of female members etc. who are to be maintained under the Hindu law and also other marriage and other ceremonies which are to be provided for under the Hindu law? This is very important to know. I do not think, Sir, there is any idea or object really to deprive these people who are really under the Hindu law the first charge holders. It may not be said to be a technical charge. Technically it is not a charge unless it is clothed with the authority of a decree of court. If you want to have a correct idea of the estate and a correct estimate of the duty you must give precedence to these prior charges. You cannot have a notion of partition or any kind of valuation of the share of the coparcener until and unless you make a provision for these things which are mandatory. Before a division of a joint estate is made it is necessary to make provision for the liability of the joint estate such as debts etc.

Until these provisions are made, you cannot partition or make a division of the estate. I submit, Sir, this should be made clear that the first charge should attach to the residue after the satisfaction of this.

Shri Raghavachari: You are probably aware that the language "first charge" used in respect of dues of the Government has been interpreted thus in Madras. Whatever mortgages and other charges might have been created the word "first charge" has been interpreted as having precedence over all charges. If such an interpretation is placed on this word "first charge" in the dues of the Government, it would really work great hardship. I only want that that kind of interpretation is not intended.

Ordinarily, as you will observe, it is the estate that passed after the death of the person. Therefore, certain charges that have been created, unless they are not *bona fide*, and the estate is subject to those charges and this becomes the first charge subject to other existing charges. Ordinarily the words "first charge" in relation to the Government dues under land improvement Act interpreted in Madras as being a charge enforceable first over all other charges.

Shri C. D. Deshmukh: So far as partition is concerned, it will be in accordance with the Hindu code or custom or whatever it is, that prevails in different parts of India. Therefore, if the conception is that provision has to be made for this and that before even a partition can take place, obviously even in a notional partition we have no wish to change it. What would it be like would be a matter of law. I am not familiar with suits arising out of this, that is to say, what the *ad hoc* provision for the marriage of female relative would possibly be in proportion to the value of the estate and the status of the family and so on. I do not know how the provision is made but whatever has to be done or falls to be done before an actual partition would have to be done. That is to say, it is not our intention to de-

part from that process in any manner. So, that question I have answered.

In regard to any other charge one should determine what the property is. Because that process will have to be gone through before we determine a share. We cannot make a partition till all these matters have been attended to. After we make a partition we know what a share is; what the property is. Then if to that share is hanging any kind of incumbrance, then I say that the estate duty will be the first charge and first charge in the sense that the last speaker referred to. It must take precedence over all the other charges. That is the scheme of this and no hon. Member has given any amendment to vary or modify this.

Shri R. K. Chaudhury: On a point of order, Sir. Can any hon. Member sit in the Marshal's chair?

Mr. Deputy-Speaker: He will presently sit in this chair.

Shri T. S. A. Chettiar: Sir, the very important points raised have been cleared but one other matter yet remains. If this mortgage shall be the first charge then the proviso to sub-clause (2) of clause 72 is contrary to that. The proviso says:

"That the property shall not be so chargeable as against a bona fide purchaser thereof for valuable consideration without notice".

There is no question of bona fide purchaser at all. So, Sir, the first charge is real. The proviso should not be there.

Shri K. K. Basu: That relates to immovable property.

Mr. Deputy-Speaker: Very well. Now the question is:

Shri Tek Chand: Well, Sir, I want to speak about a new aspect.

Mr. Deputy-Speaker: Hon. Member must have stood up before the hon. the Finance Minister stood up.

Shri Tek Chand: I tried to stand up every time. Then there is a new aspect.....

Mr. Deputy-Speaker: Why should you suggest now after the whole thing is

over? It must have been suggested at an earlier stage.

Shri Tek Chand: I thought of it naturally after the point was raised by Pandit Thakur Das Bhargava. The new aspect arises out of clause 72..

Mr. Deputy-Speaker: That is true. After Pandit Bhargava spoke I would have called the hon. Member but he did not rise.

Shri Tek Chand: I did rise but I did not catch the Deputy-Speaker's eye.

Mr. Deputy-Speaker: I am sorry my eye is becoming blind. I did not give particular attention because I thought there was sufficient discussion this time.

Shri Tek Chand: There was a divergence, a departure from the English law which I wanted to present to the hon. the Finance Minister.

Mr. Deputy-Speaker: No. I will not allow.

The question is:

"That Clause 72, as amended, stand part of the Bill."

The motion was adopted.

Clause 72, as amended, was added to the Bill.

Clauses 73 to 75 were added to the Bill.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

Clause 76.—(Jurisdiction of courts etc.)

Shri G. D. Soman: I beg to move:

In page 34, for clause 76, substitute:

"76. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act".

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

In page 34, for clause 76, substitute:

"76. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act and no prosecu-

[Shri N. C. Chatterjee]

tion, suit or other proceedings shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act."

Shri N. C. Chatterjee: I beg to move: In page 34, for clause 76, substitute:

"76. No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act and no prosecution, suit or other proceedings shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act."

Shri Pataskar: I beg to move: In page 34, after line 45, add:

"Provided that the High Court, having jurisdiction over the area in which the property of the deceased is situated, may call for the record of any case determined by the Board under section 61, and if the Board appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit."

Shri N. C. Chatterjee: I want this to be brought into conformity with the Indian Income tax Act. Under this Bill no prosecution, suit or other proceeding shall lie against any officer of the Government for anything in good faith done. This clause is meant to protect the officers of the Government. The clause, as framed, is too wide and the same may be construed to appear in the legitimate sense that the estate duty is being wrongly and improperly levied. Suppose in case of estate duty—because it is under their jurisdiction—so no mandamus or writ is asked for. It may appear an aspersion on the wording of the clause as it stands. I am, therefore, suggesting

that if the wording of the Indian Income-tax Act 64 is taken—it has afforded perfectly good protection to the Income-Tax Authorities—I submit, that is a good model which might be adopted. There is no necessity to go beyond that.

That section provides two things (a) "No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act" and (b) no prosecution, suit or other proceedings shall lie against any officer of the Government for anything in good faith done or intended to be done. I submit, Sir, that the immunity is conditional upon their having got good faith and that is perfectly a good reason. That is quite proper having regard to our Constitution to shut out the writs and prohibition of mandamus. Articles 226 and 32 provide that the High Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition quo warranto* and *certiorari*. So really nothing can be done to over-ride these Articles of the Constitution. So in proper cases orders under Articles 32 and 226 of the Constitution can be issued even in respect of something which was done or is intended to be done under the Act. But Sir, I submit the model which is there in the Indian Income Tax is a good model and should be accepted.

Shri Gadgil: Is it open for a High Court to give an injunction to the Estate duty authority not to proceed?

6 P.M.

Shri N. C. Chatterjee: Supreme Court has now laid down. If there is an illegal assumption of the jurisdiction or something—supposing the man is not the son of a person mentioned, but he claims to be the son, and he is sought to be assessed. Possibly action may lie, and an injunction may issue. But no suit will lie to set aside or modify an assessment. I know of a case in the Calcutta High Court. A suit was filed there, but the Federal Court set it aside, because it infringed section 67. It went to the Privy

Council, and the Privy Council confirmed the Federal Court's decision.

Shri Pataskar: My amendment is to point out that as was just pointed out by the hon. Member Mr. Chatterjee there might be cases in which jurisdiction is not properly exercised or any improper jurisdiction is exercised. In that case, my amendment seeks to confer power on the local High Court whenever any such jurisdiction is either improperly exercised or illegally exercised.

As I said in the morning, while speaking on another clause, as a matter of fact, the whole of clause 55 of the Bill which preceded this Bill gave very wide powers to the High Court from the very initial stage. Under the present Bill, as it stands, we have referred to the Controller's powers. After that, under section 61, there is an appeal to the Board. I want to provide, by this amendment, that there should be a body to revise orders in specific cases. This is not an appeal. As a matter of fact, I would myself have liked that there should have been a right approach, to a judicial authority, by way of appeal but that point has been discussed up to now so many times, and my amendment seeks only to give revisional jurisdiction to the High Court. What I say is, in the interests of justice, a provision should be made for conferring such jurisdiction on the High Court. I have taken this amendment, from Section 115 of the Civil Procedure Code. We have got Dr. Katju's Civil Procedure Code and the commentaries will make it clear that Section 115 is brought into use in special and rare cases. At least my lawyer friends will clearly appreciate that it is only in cases of illegal exercise of jurisdiction, non-exercise of jurisdiction which is vested or improper exercise of jurisdiction which is vested, section 115 is brought into use, and the High Court interferes.

Shri K. K. Basu: In certain circumstances, it would be restricted to the Board, even if the Controller likes.

Shri Pataskar: Up to the stage which

we have reached, there is only an appeal to the Board. There is no other appeal to any judicial authority. Therefore, ultimately, the final order, according to the provisions of the Act, is that of the Board. I want that there should be at least the power in the local High Court to superintend these matters, if it is found that jurisdiction, which is not provided by law, has been exercised. I do not think there will be any objection to this. It is not the intention of anybody that these authorities should exercise jurisdiction which is not vested in them.

Then, Sir, "to have failed to exercise a jurisdiction to vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity." At least the lawyer members know that the High Court very sparingly uses its powers. Therefore, there is nothing new in this—the clause I have suggested. In the first place, I have been consistent with what I have been saying: that there should have been powers given to the High Court itself in a matter of appeal. I find the temper of the House and the mood in which it finds itself at the present moment are not in favour of that. For whatever reasons, it may be, it is too late a stage now to go into that matter. But I would appeal to the Members to look at this question from this aspect; not because a particular class of society is going to be taxed or it is going to be applicable to that class. As I have been contending, we have to look at it not merely with a view to find out whether this applies to this or that class, but to stick to certain judicial principles which are the best safeguards in the Parliamentary democracy which we are trying to establish so firmly in our land. I think the only safeguard is that at some stage or other, the court will find out, and the Court will have to find out whether the jurisdiction has been properly exercised. I think this is the least that can be said on this sub-clause that I have moved as an amendment. What is the harm? The Board would decide a certain case, and the High Court would be vested with the power to make such.

[Shri Pataskar]

order in the case as it thinks fit only in a very limited manner. Even that charge that it will be dilatory cannot also hold good in this case.

Then, Sir, this is an enactment which bristles with so many difficulties, and I do not know if the Board, however good it may be, however well-intentioned it may be, is not likely to commit errors in the matter of exercising or non-exercising of jurisdiction and which authority can there be to correct them. It can only be the High Court and none else, Sir.

I do not want to interfere with the Controller. My hon. friend there said, and I say, that ultimately the matter should be decided by the Board, but there should be some judicial authority which would at least be in a position to give some relief if there is anything wrong in the exercise of the jurisdiction by the Board.

Then, Sir, the hon. Finance Minister himself said during the course of the discussion of this Bill, that there are several provisions which contain expressions and phrases which will have to be interpreted in the law courts. The rulings are there, given by English courts during the last 100 years and more, and we have borrowed many times from the law on private property and other matters from their enactments. In the circumstances, it is all the more necessary that even if for certain reasons it is not practicable at this stage—the hon. Finance Minister today said that if it is found it would not work properly, he would at a later stage deal with it again and see what can be done,—and I think he is in a very good mood so far as this is concerned—even if that is not practicable let the provision for the High Court be included now. Looking to the very nature of the Act, looking at the fact that it has been taken from an English Act, and where we ourselves or at least the Finance Minister realised that in respect of interpretation, we have to look to the English law, we will not be able to say what exactly certain provisions in the Bill mean. As has been argued up till now so many times,

even eminent lawyers will not be able to say what exactly a certain provision would mean. Under the circumstances, so far as the exercise, or improper exercise or illegal exercise of jurisdiction is concerned, there should be a chance for a man to go to the High Court. In this matter, there is no dilatoriness. After all, the Central Board of Revenue are not persons who will delay. They may be very good people. What I want is that though there may be delay in certain special cases, the provision must be made to give the High Court the power necessary. Once you leave the matter to the High Court, it is their duty to interpret and to interpret terms which are legal and technical. I know, Sir, we are anxious not to have any interference. What I am pleading for is the establishment of certain good principles. Not only in this, but in every case, whichever class there may be, there must be a remedy if at all we want parliamentary democracy in this country to function properly. As early as 1893, in the case of *Reg v. County of London Justices Bowen L. J.* expressed a strong view about the necessity for preserving the right of appeal against administrative action. In this case the Lord Justice said:

"Here is a broad scheme of metropolitan taxation and rating by which the parochial ministerial officers are empowered in the first instance to place values on hereditaments for the purpose of taxation in the broad sense. (It is exactly similar here). In a free country the very essence of such a system must be that there should be an appeal to some body who can say whether those officers are doing what is just, if no appeal were possible. I have no great hesitation in saying that this would not be a desirable country to live in where every parochial officer might do as he liked in this matter. It is quite true that there is enough difficulty in appealing as it is; but if there is to be no appeal at all possible, the system would be intolerable."

Those are the words of an eminent Lord Justice of England in 1883 and they have still force in them. Of course we are living in different conditions and during the last 150 years or so we were subject to several pieces of legislation. I don't want to charge this Government for that. I should like to appeal as humbly as I could to the hon. Finance Minister that for whatever reasons we may not have given the right of straight appeal against the Appellate Tribunal, there would be no harm at least in giving those powers of revision to the High Court to a person aggrieved by the so-called final order of the Board. Nothing is lost and that will not come in the way of realisation of the dues and I therefore think that there is absolutely no reason why such powers should not be given to the High Court. The High Court will only interfere in certain very harsh cases where the jurisdiction has been either not exercised or exercised improperly or illegally. In every piece of legislation, whenever you make a provision of this nature, we have to see that the subject has got the satisfaction that if there is a grievance which he has against the decision of the taxing authorities he can go to somebody else and complain, and where else could he go except to the High Court of the place?

There is another great passage which enunciates the principle which I would like to point out to the hon. Member, because the argument is "what is to the convenience of the people?" I find that many people are just carried away by the fact that we are not as quick as possible and any reference to the High Court is only to cause delay. According to Farewell, L. J.

"The convenience in the public interest is all in favour of providing a speedy and easy access to the Courts for any of His Majesty's subjects who have any real cause of complaint against the exercise of statutory power by Government Departments having regard to the growing tendency to claim the right to act without regard to the

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legal principles and without appeal to any Court."

What else are we going to do in this case? I would submit, Sir, that we should borrow this established principle from that land from which we have been borrowing for other provisions already. There is absolutely no reason why such a simple safeguard in extreme cases where the High Court should interfere has not been provided. I would like to say that in all matters of taxation, whether you want to levy it on a poor man or a rich man, if we want to establish this Parliamentary democracy, we must also accept this point and make some provision for a man who has a grievance to go to the Court of Law. This is the least that I can say on this and I hope the hon. Finance Minister will think it over and agree to it if he finds that this does not come in the way of carrying out what he has in view.

Shri Tek Chand: A Board of Members and the Estate Duty Authorities from the Controllers to the Valuers will be let loose to scour the estates of the deceased persons, armed with powers that know no bounds or restrictions, and this clause is going to give them a further impetus. They are not accountable or answerable and they have become beyond the pale of law; the proverbial long arm and the Strong arm of the law dare not touch them. In that process they can commit trivial irregularities, serious breaches, flagrant abuses of law, tortious acts, even criminal acts. All that they have to say is "I purported to do such and such a thing in a *bona fide* manner". This class, the number of which will run into legions, is given a *carte blanche* to do what they like without the High Court touching them or the Supreme Court touching them or any other Court touching them. What Shri Pataskar wants is something very modest. He says that if they have committed abuse of law, don't touch them, but if they have done something which was not within their jurisdiction, then and then alone let the party aggrieved be permitted to refer the

[Shri Tek Chand]

matter to the High Court in order to enable it to find out whether they did something which they were authorised to do or not authorised to do. What I respectfully submit is the restriction. What is the bar? What is the obstacle in the way of a valuer or a Controller doing something which he is not empowered to do. Unless the Government is willing to accept the amendment of my hon. friend Shri Pataskar, if abuse of jurisdiction cannot be questioned in a court of law or cannot be ascertained in a High Court, who is there to prevent an officer, a valuer or Controller or Member of the Central Board of Revenue and to point out that his conduct is outside the scope of his jurisdiction? May I give a simple illustration? 'A' dies and the question for the Controller is "what is the extent of the property left by 'A'?" and in his executive over-zeal, in order to please his employers with vim and vigour, he goes about and takes possession of the property not only belonging to 'A' but also takes possession of property belonging to 'B' stating that "I assume that the whole property belongs to 'A'". It can be out of sheer over-zeal and it can be out of deliberate design or it may also be out of mere clumsiness. Supposing the property of 'B' is taken possession by a Valuer as the property of 'A', what protection has 'B' with regard to his property? The Valuer or the Controller has no power really. Assuming that 'B' is absolutely unrelated to 'A', all that he has got to do is to give the property of 'B', the label that it is the property of 'A' the deceased, to take it into his calculations and to impose such estate duty as he considers proper according to his fancy, according to his whim or according to his caprice. What check is there for "B"? Are you going to bang the door against "B" and tell him "you cannot go to the High Court" and tell the High Court that this Controller gentleman attached property, of B, whereas the dead man was "A" and it was not A's property? He cannot even prove this. This unlimited, unhampered, unfettered power you are putting into the hands of those

who in their executive over-zeal will do as they like, as their fancy directs, or according to their notions of policy.

Roman lawyers—pardon me, Sir, but I have to go back to thousands of years when it comes to the protection of the liberty of the people—Roman lawyers had four words which contain the entire gist of justice:

Fiat Justitia Ruat Coelum.

Let justice be done even if the Heavens fall. Even if the Heavens fall justice must be done.

This was the notion. But here is an example. When there is a palpable, patent, open abuse and breach of your law, the person who happens to be the victim of that abuse, the person who happens to be the victim of that irregularity, he cannot knock at the door of a High Court or any other judicial tribunal in order to say that the power that was conferred by this Act has not only been not exercised properly but that the officer has arrogated to himself a power that was never vested in him, that was never intended to be given to him. Under these circumstances, Sir, whereas this Act (as it will soon be) has got great potentialities for abuse, this clause alone will give an absolutely unbridled licence to those who are out to abuse it. And all that is wanted is to suitably amend the clause. The High Courts are your highest tribunals in the land, which enjoy the greatest confidence of the people—is it too much to say, if you have an officer who by error or design does something which he was never empowered to do, that the High Court should.....

Mr. Chairman: I will ask the hon. Member not to repeat the very same arguments over and over again.

Shri S. S. More: He is repeating for emphasis.

Shri Tek Chand: My submission is this, Sir, that it should be the elementary right of a citizen when he feels

aggrieved to go to an appropriate forum, demonstrate to its conviction and satisfaction that he has been actually aggrieved, and that forum should be enabled to accord to him satisfactory relief. That is all that I ask.

Shri Gidgil: Sir, in the first place I am doubtful whether this amendment is in order. The House took the decision that there should be no appellate tribunal. In other words, the jurisdiction of the court is barred except to the extent to which it has been provided in clause 62. (*Some Hon. Members:* No, no). As I interpret it, the full implication of the decision taken by the House is that so far as the courts are concerned they have no power, whether appellate, original, revisional or inherent, except to the extent to which provisions have been made in this Bill.

But on the merits of this what I find is that all the circumstances in which the extraordinary jurisdiction of the High Court is invited are circumstances which relate to points of law. To have exercised jurisdiction not vested in law is a question of law. To have failed to exercise jurisdiction so vested in law is, according to my humble opinion, also a question of law. To have acted in the exercise of its jurisdiction illegally, obviously shows that it has something to deal with law or with material irregularity which we all generally understand to be something which is a point of law. The whole object of this is achieved by the provision under clause 62. Therefore there is no necessity for having an amendment of this character. But the object is not so innocent. The object is to open the whole question.

Shri Pataskar: Points of law are not as a matter of fact covered by this. There are rulings under the Civil Procedure Code.

Shri Gadgil: In a reference to the High Court as you said that no facts are involved then there is no necessity. Obviously this is a superfluous provision. Either it is superfluous or it is something more than what

you have said. My own feeling is that under the pretence of giving some jurisdiction to the High Court the entire scheme that had been adopted by the House is sought to be sabotaged. I oppose it.

Shri Pataskar: How will it be?

Shri A. M. Thomas: I support the amendment moved by Mr. N. C. Chatterjee and oppose the amendment moved by Mr. Pataskar. As was pointed out by Mr. Gadgil, the amendment that has been moved by Mr. Pataskar covers only questions of law and nothing else. He has borrowed this amendment from the wording of section 115 of the Civil Procedure Code. With regard to section 115 of the Civil Procedure Code he will find under the decisions relating to the revisional jurisdiction of the High Court, the High Court is not entitled to go into all questions of law. It is an extraordinary jurisdiction and the provision really limits the jurisdiction of the High Court which we have given under clause 62. In a Privy Council decision it has been pointed out, as extracted in the Civil Procedure Commentary by Dr. Katju, as follows:

“Section 115 applies to jurisdiction alone, to irregular exercise, or non-exercise of it, or the illegal assumption of it, and is not directed against conclusions of law or fact in which jurisdiction is not involved.”

Cases where jurisdiction is involved are questions of law. But certain questions of law are taken out of the jurisdiction which has been given, under section 115 of the Civil Procedure Code. So that, according to me, by the amendment moved by the hon. Member the jurisdiction that has been conferred by clause 62 which we have passed is taken away, and I therefore oppose this amendment.

At the same time, I may make my position clear. I pleaded for the setting up of an Appellate tribunal to decide questions of law and fact. I am not against the principle which

[Shri A. M. Thomas]

has been pointed out by the hon. Member. But, all the same according to me, if this amendment 205 is adopted by this House it will be really circumscribing the jurisdiction which we have conferred under clause 62 of this Bill. At the same time, as I have already submitted, the amendment moved by Shri N. C. Chatterjee is to be adopted. He has pointed out an identical provision in the Indian Income-tax Act. Where the Revenue Board has exercised a jurisdiction, if you can apply for a writ or some such remedy from the High Court or Supreme Court, according to me, such remedies should not be shut out by any provision that we make in this law. I support the amendment moved by Shri N. C. Chatterjee and oppose the amendment of Shri Pataskar.

Shri Raghavachari: I rise to point out one small defect that I find in the drafting of the clause as it is. I think it is in line 42.

The provision is:

"Save as provided in this Act, nothing done or in good faith purporting to be done..."

The words "in good faith" must either precede or come at the end, and not be applicable only to things purporting to be done. Otherwise, it means, everything done, even in bad faith is protected. There is absolutely no hope. If anything is purporting to be done, then only the question whether it is in good faith or not is relevant. Generally, in all legislative enactments, the words 'in good faith' are with reference to both things done and purporting to be done. *Mala fides* acts are always open to question. I would request that the words 'in good faith' may be in the beginning or in the end: that is: nothing in good faith done or purporting to be done or nothing done or purporting to be done in good faith. This will give some kind of safety in both class of cases. That is a very small thing. I suppose it is permissible to agree to alter it.

The other thing that I wish to submit is this. So far we have seen, in every fiscal enactment or in every case where protection for *bona fide* acts of public servants is provided, the language that is used in the section is a language in conformity with amendments 341 and 423. In this Bill, the words used abrogate the usual jurisdiction. It is not the usual language. Therefore, I am in favour of adopting clause 76 as it is proposed to be amended: otherwise the existing clause: is really going to take away the intended jurisdiction and bar the whole examination whether the protection is justifiable. Therefore, I submit that I am in favour of amendments 341 and 423.

Then, I wish to say one sentence about the amendment given notice of by Mr. Pataskar. I feel that the contention raised by Mr. Thomas that it will affect the jurisdiction that we have given in some other section by way of reference to the High Court on questions of law and fact is not correct. What is contemplated now is this. Whenever a jurisdiction not vested in the officers is exercised, the question is sought to be taken to the High Court for examination.

The Minister of Commerce and Industry Shri T. T. Krishnamachari): You have article 226 today.

Shri Raghavachari: Of course there is article 226. It is a remedy which is available. You cannot take it away. But, it would be better to specify that kind of safeguard when you are passing a law. I would content myself by saying that if that jurisdiction continues and is not intended to be taken away, if that is Government's attitude, there is no need to further elaborate that point. That is what I also thought. If it is put here, it will secure greater confidence.

Shri C. D. Deshmukh: Mr. Chairman, in regard to the amendments 205, 341 or 423, I think, they are an improvement on the clause as it stands here. I am prepared to accept

that provided a slight change is made: that is, set aside or modify, instead of "any assessment made", it should be "any estate duty determined". There is no assessment here.

Shri Raghavachari: You may also consider this: whether it should not be "No suit or proceeding". The word 'proceeding' is not there.

Shri N. C. Chatterjee: I am objecting to the word 'proceeding'. The word 'proceeding' would enlarge everything and would include article 226 also or article 32. You cannot do it; that would be repugnant to the Constitution.

Mr. Chairman: It would be abridging the jurisdiction of the Supreme Court.

Shri N. C. Chatterjee: That would be *ultra vires*.

Shri C. D. Deshmukh: I think 'suit' is sufficient for the purpose which we have in mind. I am not in any way prepared to enlarge that. If the hon. Member will accept this change.....

Shri N. C. Chatterjee: May I just suggest for the hon. Minister's consideration: is it 'any estate duty determined' or 'any determination of the estate duty'?

Shri C. D. Deshmukh: What is sought to be set aside or modified is not the determination, but the estate duty.

Shri N. C. Chatterjee: That is really determination.

Shri S. S. More: Supposing these words are introduced in the amendment as suggested, will it not mean that all other matters prior to the determination of the estate duty will be open for challenge in a court?

Shri C. D. Deshmukh: I am only concerned between 'assessment made' and 'estate duty determined'.

Mr. Chairman: Even today, the word assessment is there. Are any

matters leading to the assessment open to be decided by way of suit?

Shri S. S. More: I am asking a question for clarification. We have given under clause 61 very extensive powers of appeal. If this amendment is accepted by the Government with the proposed modification, a strict interpretation of that would open the door and mean that only these suits will be barred. That is to say, suits regarding other matters which do not directly pertain to the assessment or estate duty determined, will be allowable.

Mr. Chairman: What is the use of bringing a suit if it does not seek to modify?

Shri S. S. More: May I make a submission? In the process of coming to the final conclusion regarding the final levy, so many interlocutory orders, so many adjudications will have to be made and so many points determined. After the determination of a lot of points, the final act of fixing the liability or the final duty will come in. This particular amendment, by implication, would mean that no other suits are barred. I want to have it specifically clarified so that there should not be any doubt. If we visualise that and the Finance Minister is prepared to leave the door open, let us consciously do it and not in an unconscious manner.

Shri Tek Chand: May I submit, Sir, one thing? While the hon. Finance Minister is accepting any part of the amendment of Mr. Chatterjee, he should retain these three words in the clause 'estate duty authority' and should not accept the words as suggested by Mr. Chatterjee, 'any officer of Government'. In amendment No. 341 of Mr. Chatterjee, he says:

"..... no prosecution suit or other proceedings shall lie against any officer of Government.....".

Whereas in clause 76, the words are:

"..... purporting to be done by any estate duty authority".

[Shri Tek Chand]

I submit that the words 'estate duty authority' should be retained, and the words suggested by Mr. Chatterjee, 'any officer of Government' be not accepted.

Shri S. S. More: What would happen to the Collector, under clause 71.

Shri Tek Chand: The object is to grant protection to those persons who fall under the definition of estate duty authority, viz., members of the Central Board of Revenue, the Controllers and the valuers as defined in clause 4. This exemption should not extend to any and every kind of officer of the Government who happens to be engaged in doing all sorts of things forbidden by law and yet enjoying that protection.

Shri K. K. Basu: He is an officer for this particular Act.

Shri C. D. Deshmukh: May I draw attention to Section 67 of the Income-tax Act which reads as follows:

"No suit shall be brought in any civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceedings shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act."

So, all that we are doing is taking a Section which has been found good enough here and only trying to vary it so as to make it fit the estate duty in this context and not the assessment made under the Income-tax Act. Now, the next point is.....

Shri U. M. Trivedi: One question that I want to put to the hon. Finance Minister is about this. I would like to know what is the meaning of this proceeding. Is it limited to.....

Mr. Chairman: When the hon. Finance Minister has finished his speech, the question may be put.

Shri C. D. Deshmukh: This is the commentary on Section 67. This is Kanga's. On Page 900-901 it says:

"After the coming into force of the Constitution of India, the position regarding suits and petitions for writs, orders etc., relating to proceedings under this Act may be summed up as follows:

- (1) The bar imposed on the High Court's original jurisdiction in revenue matters by Section 226 of the Government of India Act, 1935, has been completely removed.
- (2) Section 67 of this Act still operates to bar suits in any civil Court to set aside or modify any assessment or proceedings in respect of anything....."

—may be issue of a certificate which is not an assessment—

"... in respect of anything in good faith done or intended to be done under this Act, and

- (3) Writs in the nature of certiorari, prohibition and mandamus and other suitable writs, directions and orders may be issued by the Supreme Court under article 32, and by the High Court under article 226 of the Constitution. These powers are not affected at all by Section 67 of this Act. But a Court, in the exercise of its discretion, will not normally exercise its powers under article 32 or 226 where an adequate and equally convenient remedy is open to the assessee under this Act or where there is a suppression of material facts."

Now, that is the situation in respect of this Section of the Income-tax Act, and after we accept this amendment. I think that situation

will obtain in regard to the determinations of estate duty under this Act. And I think in all conscience that ought to be sufficient.

It is my personal view, Sir, that Shri Pataskar has missed the bus. That is to say, if he had thought of suggesting something in Section 62 itself in order to widen the powers of revision or appeal or whatever it is, it might have been a different matter.

Shri Pataskar: It could not have fitted in there. That is my opinion, because it deals with points of law, and what I want is only to confine it to.....

Shri C. D. Deshmukh: So far as I am concerned, I say.

Shri Pataskar: But I could not do it.

Shri C. D. Deshmukh: That is so, I only stated it as my personal view. I dare not put it against the opinion of a seasoned lawyer. I can only place it before the House. And I am inclined to think that all these questions of jurisdiction, exceeding the jurisdiction, doing something illegally, unlawfully and so on, are essentially questions of law. And therefore, they ought to be governed by Section 62.

Shri A. M. Thomas: The only distinction is that every question of law need not be a question of jurisdiction, but every question of jurisdiction is a question of law.

Shri C. D. Deshmukh: That is right, Sir. We are only concerned with a misuse of jurisdiction.

Now, Sir, Shri Pataskar supported his amendment by reading out something from the book "Law and Order" but there he made references to parochial officers exercising jurisdiction and he said it was monstrous—I don't know whether the word "monstrous" occurred....

Shri Pataskar: I only read out the judgment.

Shri C. D. Deshmukh: I cannot quarrel with the judgment. I am saying that the facts referred to in the judgment do not fit this case. The Board is not a parochial officer, whatever it may be. They may be barbarous or they may be anything else, but they are certainly not parochial.

Shri Pataskar: That is used in the sense of non-judicial.

Shri C. D. Deshmukh: Then it says no appeal is provided. Now, we have provided for appeals. Then he went on to say how terrible it was to entrust these powers without appeal to any Court.

Shri Pataskar: Yes.

Shri C. D. Deshmukh: Now, I say this is a travesty of what we have actually provided.

Shri Pataskar: No.

Shri C. D. Deshmukh: If the hon. Member had said this is not sufficient, something more ought to have been provided, well, that is a point of view one ought to take into consideration. But, if he reinforces his argument by saying that there is no appeal whatsoever and we do not know what these obscure, parochial officers are going to do, then I say these arguments do not fit this case. I am inclined to agree with Mr. Gadgil that we shall open wide the doors of jurisdiction of the Courts which, in important cases, are already open as I pointed out under those articles of the Constitution, and we ought to be content with that situation. Therefore, I am sorry I am not able to accept amendment No. 705.

Mr. Chairman: May I just enquire what is the amendment which has been proposed? What words are going to be substituted for the word "assessment"?

Shri M. C. Shah: "Estate duty determination".

Mr. Chairman: Under this Bill?

Shri C. D. Deshmukh: It is exactly parallel to "assessment made".

Shri Tek Chand: Does the hon. Finance Minister intend.....

Shri C. D. Deshmukh: Can he speak from a place which is other than his usual seat?

Shri K. K. Basu: He is moving nearer to the Treasury Benches.

Mr. Chairman: The hon. Member, Mr. Trivedi, wanted to put a question?

Shri U. M. Trivedi: The hon. Finance Minister read out from the commentary of Kanga on the Income-tax Act. The whole difficulty is this, that what we discussed.....

Shri C. D. Deshmukh: Is the hon. Member making a speech after my speech?

Shri U. M. Trivedi: Yes.

Shri K. K. Basu: Is there any levy of duty on that? He wants clarification.

Shri U. M. Trivedi: I want a clarification. Mr. Chatterjee's amendment reads:

"No suit no prosecution, suit or other proceedings shall lie against any officer of Government for anything in good faith done or intended to be done under this Act."

Now, there are two modes of action, personal actions and official actions. If the proceeding under a writ is taken against any officer in his official capacity, that should not be barred by this. And to make that clear—if the anxiety of the Government is only to prevent its own officers being in any manner harassed—my suggestion is this, that the words "no personal action against such person shall lie" can be put in there.

Mr. Chairman: The hon. Member is not putting a question. He is proposing an amendment at this stage after the Finance Minister has spoken.

I thought he was asking some question for clarification.

Shri U. M. Trivedi: I came rather late, but I want to put it like that. If that is possible.....

Mr. Chairman: I cannot accept an amendment at this stage of which no notice has been given.

Shri Tek Chand: The question is...

Mr. Chairman: No questions are allowed. This is not a Question Hour. I do not know how questions can be put at any time. The hon. Member has spoken. The hon. Finance Minister has replied. Now there is no room for any other questions. If he wants to put any other question, I cannot allow it.

Shri Tek Chand: I only wanted to know for guidance whether it is not a mixed amendment of Shri Chatterjee which is being accepted in entirety.

Mr. Chairman: Order, order. Does he want to raise a point of order? In this House we have been dealing with amendments in this very way. If it is agreed to by all sides, we accept it. That is the proper procedure. I shall now put the amendment to the vote of the House.

The question is:

In page 34, for clause 76, substitute:

"76. No suit shall be brought in any Civil Court to set aside or modify any estate duty determined under this Act and no prosecution suit or other proceedings shall lie against any officer of Government for anything in good faith done or intended to be done under this Act".

The motion was adopted.

Shri G. D. Soman: In view of this I do not press my amendment.

Mr. Chairman: Shall I put Mr. Pataskar's amendment to the vote of the House?

Shri Pataskar: Yes, Sir.

Mr. Chairman: The question is:

In page 34, after line 45, add:

"Provided that the High Court, having jurisdiction over the area in which the property of the deceased is situated, may call for the record of any case determined by the Board under section 61, and if the Board appears—

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 76, as amended, stand part of the Bill."

The motion was adopted.

Clause 76, as amended, was added to the Bill.

New clause 76A

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

In page 34, after line 45, insert:

"76A. Power to take evidence on oath etc.—Every authority specified in sub-section (1) of section 4, other than valuers, shall for the purposes of this Act have the same powers as are vested in a court under the Code

of Civil Procedure, 1908 (Act V of 1908) when trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses;

and any proceeding before any such authority under this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860)".

This amendment is based on a similar provision contained in the Indian Income-tax Act, namely, section 37. We feel that such a provision is both useful and necessary in a revenue measure.

Mr. Chairman: The question is:

In page 34, after line 45, insert:

"76A. Power to take evidence on oath etc.—Every authority specified in sub-section (1) of section 4, other than valuers, shall for the purposes of this Act have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908) when trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;

[Mr. Chairman.]

- (d) issuing commissions for the examination of witnesses;

and any proceeding before any such authority under this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act, XLV of 1860)."

The motion was adopted.

New clause 76A was added to the Bill.

Clauses 77 to 79 were added to the Bill.

New clause 79A

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

In page 35, after line 17, insert:

"79A. *Appearance by authorised representatives.*—Any person accountable for estate duty who is entitled or required to attend before any authority specified in sub-section (1) of section 4 in connection with any proceeding under this Act, otherwise than when required under section 76A to attend in person, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by that person, or a legal practitioner or a chartered accountant.

Explanation.—In this section—

- (a) a person regularly employed by the accountable person shall include any officer of a Scheduled Bank with which the accountable person maintains a current account or has other regular dealings;
- (b) 'legal practitioner' means an advocate' vakil or attorney of any High Court in the territories to which this Act extends and includes a pleader practising in any part of the said territories;

- (c) 'chartered accountant' means a chartered accountant as defined in the Chartered Accountants Act, 1949 (XXXVIII of 1949)."

At one stage, it was felt that appearance before estate duty authorities could be regulated by rules, but it would be much more satisfactory if provision in this behalf was expressly included in the Bill itself, as has been done in the Income-tax Act, section 61. It is also advisable that appearance should be confined to the persons concerned or to the relatives or, in the alternative, to legal practitioners and chartered accountants. We feel that we should not allow Mukhtiarkars and revenue agents and people with such or lesser qualifications to appear before revenue authorities administering a complicated law like the present one.

Mr. Chairman: The question is:

In page 35, after line 17, insert:

"79A. *Appearance by authorised representatives.*—Any person accountable for estate duty who is entitled or required to attend before any authority specified in sub-section (1) of section 4 in connection with any proceeding under this Act, otherwise than when required under section 76A to attend in person, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by that person, or a legal practitioner or a chartered accountant.

Explanation.—In this section—

- (a) a person regularly employed by the accountable person shall include any officer of a Scheduled Bank with which the accountable person maintains a current account or has other regular dealings;

(b) 'legal practitioner' means an advocate, vakil or attorney of any High Court in the territories to which this Act extends and includes a pleader practising in any part of the said territories;

(c) 'chartered accountant' means a chartered accountant as defined in the Chartered Accountants Act, 1949 (XXXVIII of 1949)."

The motion was adopted.

New clause 79A was added to the Bill.

Clause 80.—(Company to furnish etc.)

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

(i) In page 35, for lines 33 to 39, substitute:

"(2) If any member of a company formed and registered under the Indian Companies Act, 1913 (VII of 1913) dies after the commencement of this Act and the company through any of its principal officers as defined in section 18, has knowledge of the death, it shall not be lawful for the company to register the transfer of any shares standing in the name of the deceased member unless there is produced before it a certificate from the controller that either the estate duty in respect thereof has been paid or will be paid or none is due as the case may be."

(ii) In page 35, lines, 27 and 28,

for "at such scale as may be fixed by the Act of Parliament in pursuance of section 34" substitute "at the rates mentioned in part III of the Second Schedule".

(iii) In the amendment proposed by me,

after "unless" insert "the company is satisfied that the transferee has acquired such shares for valuable consideration or".

Shri Tulsidas: I beg to move:

(i) In page 35, omit lines 33 to 39.

(ii) In the amendment proposed by Shri C. D. Deshmukh, to the proposed sub-clause (2), add:

"Provided that this sub-section shall not apply to transfers of shares held by a *bona fide* purchaser for value who purchased the shares prior to the death of the deceased."

Shri S. G. Parikh (Mehsana East): I beg to move:

(i) In the amendment proposed by Shri C. D. Deshmukh,

after "unless" insert "the company is satisfied that the transferee has acquired such shares for valuable consideration or".

(ii) In page 35, omit lines 33 to 39.

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

Shri C. D. Deshmukh: Under clause 20, moveable property situated in India is dutiable, even though the owner of the property is not domiciled in India. Thus, if a person not domiciled in India holds shares in a company incorporated in India, the property held by him in the form of shares comes within the scope of the Bill. Whether the moveable property is situated in India is to be determined by rules. Ordinarily speaking, the situs of the shares of a company is where the registered office of the company is located. There are, however, certain companies mainly in plantation and in mining and public utility companies like Electricity or Tramway which operate wholly or mainly in India but are registered abroad. The situs of the shares of such companies, by whomsoever held, would be outside India and therefore, property held in the form of shares in such companies would not be dutiable except in respect of those

[Shri C. D. Deshmukh.]

domiciled in India. Such companies, however, hold most of their assets in India and get all the advantages of an orderly government. There is, therefore, no reason why shareholders of such companies who derive the bulk of their profits from India should not be subject to estate duty. Clause 80(1) therefore, subjects the shareholders of companies which have been resident in India for two out of the three previous years, that is, to those companies which earn more than 50 per cent. of their profits in India. The clause makes the duty payable by the company and not by the shareholders.

7 P.M.

This is because in the case of foreigners it is not possible for us to recover our taxes from them as ordinarily such foreigners have no assets in India from which the duty can be recovered. The rate prescribed in the schedule is a flat rate of duty on the analogy of section 17 of the Income-tax Act. For income-tax purposes also we apply a flat rate of super-tax in those cases in which foreigners do not declare their total world income. A duty of this nature, Sir, is not unknown in other countries. In Ceylon a specific surcharge in lieu of estate duty is imposed on the income-tax payable by foreign companies. In New South Wales, all companies engaged in agriculture, mining and plantation are subject to estate duty by special legislation. There also the liability for the payment of the estate duty is on the company. The shareholders of such companies domiciled in India are not affected by this flat rate. In their cases assessments will be made in the ordinary way. That, Sir, is the justification.

Now, Sir, this clause 80(2) has been severely criticised on the ground that it will destroy free negotiability and marketability of shares with serious repercussions on stock exchange and development of joint-stock enterprise. It will be recalled that this sub-clause

was inserted by the Select Committee as, in their opinion, such a clause would ensure speedy realisation of estate duty in the case of the deceased share-holders of companies. It must, on the other hand, be conceded that this clause, unless suitably modified, might work to the disadvantage of companies and also might prevent the free negotiability of shares. Shares are freely transferable and in many cases the transferees may not know that the transferor is dead. And, consequently, if in such cases registration is refused by the Company the free negotiability of shares is unduly affected. And this, we fear, is likely to have its repercussions on the Stock Exchange and trade. It is for this reason that we seek to modify the clause. We have taken counsel with the various Stock Exchanges in the country and they generally approve of this amendment.

Mr. Chairman: I take it that all the three amendments in the name of the hon. Minister have been moved.

Shri C. D. Deshmukh: There is an amendment to the amendment of mine, Sir.

Mr. Chairman: That has been moved.

Shri C. D. Deshmukh: I moved it. Mine is 744 and the other one of Mr. Parikh is 745.

Shri S. G. Parikh: The Clause 80(b) was not originally intended to be added to the Act. Then, as the Finance Minister has pointed out, the Select Committee thought it fit to include it with a view that it will help to realise the estate duty earlier. As a matter of fact, if this clause is there or not, it is not going to help the recovery of the estate duty. On the contrary even as amended there is likely to be some difficulty.

Suppose shares are held in joint name of the share-holders and suppose a single person dies. Naturally the company has been informed that the

particular person is dead. So at the time of cess enormous difficulties would arise. They have to get the certificate from the Controller which will take some time. So I would urge that the whole clause may be omitted. But in case the Government does not accept the amended clause, it will serve the purpose for the time being.

Another fact is that as the clause is it will adversely affect the joint stock company working and the formation of capital. The negotiability of shares should be very flexible and people would like to go in for investment in shares when they can sell easily or buy easily. So I would urge the removal of this clause. Relevant paragraph regarding this I will read:

("Marketability and negotiability which are distinguished characteristics of stocks and shares and the principle of bargain as the most popular form of investment will be ruthlessly destroyed. The Stock Exchanges will cease to function effectively and free trading in shares will be paralysed. Normal investment of capital in stocks and shares on which the growth and the progress of the joint stock enterprise depends will be paralysed.")

In view of the Five Year Plan and the private sector the Joint Stock enterprise should come forward and in the modern industry vast capital is necessary; individually one cannot subscribe. To make it more attractive this clause may be omitted but in case they cannot, they may retain it. These observations they might see and look to that.

Shri Tulsidas: The amendment as moved by the Finance Minister provides that if it is within the knowledge of the officers of the company, it shall not be lawful for the company to register the transfer of any shares standing in the name of the deceased member unless he produces a certificate from the Controller to the effect that estate duty from the transferor has

been or will be paid or none is due. Sir, I find that the amendment says that if the company is satisfied with the transfer, he has acquired such shares for valuable consideration. I know that this includes the possession, but the fact is that though this amendment does improve the position, the whole clause becomes so restricted, that it will be very difficult for the normal business or normal negotiability of the shares to be conducted. Let us take that even in the normal course of business, if a person has sold his shares in, say, the Bombay market or in the Calcutta market or anywhere else, his transfer goes, his transfer is sent there and the transfer is sent back after the signature by the buyer, when the transferor is dead. According to amendment No. 745, they may be covered under the clause, but still, it will create a sort of difficulties. Because what will happen automatically when the share is sold? The company will have to be satisfied that this was a transfer for valuation received or whatever amount of money which the person has received. That is what the amendment says: "Unless the company is satisfied that the transferee..." etc. Therefore, the company will have to ascertain before the transfer of the shares that the money has been received by the transferor. Now, Sir, it will be very difficult for the normal transfers to take place. Every time the transfer comes, the company has to go into the facts, find out whether money has been received or not, etc. It will create a lot of difficulties in the normal transaction of business. I do not know why this amendment No. 592 was ever brought in. I understand from the hon. Finance Minister the reasons why this amendment has been brought in. When the Select Committee considered this point, the amendment was not there at the time. It was not discussed, and we felt that clause 80 would serve the purpose. Sub-clause (2), which is now amended by amendment No. 592, is there. I personally believe that the stock exchanges of

[Shri Tulsidas.]

different towns have represented and in their representation this amendment No. 592 has been brought in. I do not know what the reasons are. Now that the difficulties have been explained, the clause may be gone into. To my mind, it is bound to create a certain amount of difficulty because in the normal business, it will have to be looked into before any transfer is made. Every time the transfer will involve a lot of delay. Naturally, the company will say, and would want to know, whether the money has been received or not. I feel that this amendment No. 592, if the hon. Finance Minister would agree should not be put at all. I feel that it should not have been there. Even the Select Committee has not put in any amendment at all.

Shri C. D. Deshmukh: You want the clause to stand as it is?

Shri Tulsidas: Remove amendment No. 592.

Shri A. M. Thomas: Sub-clause (2) should be taken away.

Shri C. D. Deshmukh: There is no amendment. Your amendment is there. Not mine.

Mr. Chairman: May I know, whether, if this amendment is accepted, "it shall not be lawful for the company to register the transfer of any shares, unless..."? He says:

"Provided that this sub-section shall not apply to transfers of shares held by a *bona fide* purchaser for value."

Shri A. M. Thomas: He has got amendment No. 547 also.

Shri N. C. Chatterjee: He wants there to delete lines 33 to 39, which means the whole of sub-clause (2) of clause 80.

Shri Tulsidas: I accept the amendment of the Finance Minister which he has proposed in No. 744.

Mr. Chairman: If Finance Minister's amendment is carried, your amendment need not be put.

Shri A. M. Thomas: The amendment now moved by the Finance Minister is definitely an improvement. There is no doubt about it, but I would advise the deletion of the entire sub-clause (2) of clause 80. As the Finance Minister pointed out, the inclusion of this sub-clause has created a scare among the people dealing in stock exchanges and also shareholders in general. I do not understand with what idea or object this sub-clause has been included by the Select Committee and according to me, no useful purpose would be served. It does not at all serve the purpose of speedy collection of the estate duties. The two objections which have been pointed out by the various stock exchanges in the country have been met by the amendment of the hon. Finance Minister. I concede. For example, it has been pointed out by the stock exchanges that clause 80(2) places an embargo on the transfer of any shares standing in the name of a deceased member of the Company and also places the onerous responsibility of satisfying every time a transfer is presented for registration that the shareholder is alive. In this way, the transfer of shares will become difficult and perhaps dangerous. I admit that this objection has been met by the hon. Finance Minister in his amendment which has been moved today because it has been stated that only if the officer concerned informs the assessee, then he will be liable, so that the Stock Exchanges or the transferees of the shareholders need not go and satisfy the companies concerned for transfer of the shares that the person is alive. It has also been provided in this amendment that innocent purchasers also would be protected. I would submit that it will create needless difficulties, if sub-clause (2) were here, in the way of the smooth operation of the provisions of the Indian

Companies Act. For example, we have got section 34 of the Indian Companies Act, which relates to the transfer of shares; section 35 deals with transfer of shares by legal representatives and section 38 gives the same powers to the Court for interfering in proper cases and rectifying registers and having the transferee's shares included in their register or books. Sir, it will put difficulties in the way of the operation of these sections of the Indian Companies Act if this sub-clause is allowed to stand. The satisfaction of the Joint Stock Company concerned, according to me, would be a dangerous provision to put in. Whether it has been for consideration or not is a matter for satisfaction by the Joint Stock Company. The Managing Director or the Board may say that no consideration has been paid

Moreover, in table A, a sample of the transfer form is given. I am referring to table 'A' Article 19. It states that all shares in the Company shall be transferred in the following form or in any usual or common form which the Directors shall approve, and the form is this.

"AB.....is for consideration of the sum of.....paid to me by CDhereinafter called the said transferee do hereby transfer to the said transferee the share or shares numbered.....in the undertaking called..."

So, in the form itself it is provided that the transfer will be for consideration, so that the admission of the deceased person is there that he has received consideration. What more is necessary for the satisfaction of the joint stock company? And if any other standard is put in, my submission is that it will put difficulties in the way, as has been pointed out by Shri Tulsidas, and no useful purpose will be served.

Why should there be this sub-clause which will create complications? I believe that the Finance Minister will find his way to have the entire

sub-clause deleted and not retain his amendment also, which of course follows.

Shri U. M. Trivedi: Sir, on a point of order. This comes in conflict with the constitutional provision laid down in article 19(1)(f). It clearly restricts the power vested in any person who holds property, because it says that "it shall not be lawful for a company formed and registered under the Indian Companies Act to register the transfer of any shares standing in the name of a deceased member of the company who dies after the commencement of this Act unless there is produced before it a certificate from the Controller that either the estate duty in respect thereof has been paid or will be paid or that none is due, as the case may be".

Article 19(1)(f) says that "all citizens shall have the right to acquire, hold and dispose of property".

Along with this there is a provision in article 19(5) which says that "nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law"—mind you, Sir, the provision is only with reference to 'existing law', a law existing at the time of the making of the Constitution—"in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe."

This is not such a provision, and it is not a provision of any existing law at the time the Constitution came into force. This is a new provision. It is being brought forward by a provision in this law which is going to come into existence hereafter. Therefore my submission is that any restriction that is put there is in conflict with the constitutional provision. Because, under Hindu Law his survivor immediately gets his right. Any

[Shhri U. M. Trivedi.]

Hindu survivor gets that right. It is there all right and he gets the right immediately to operate upon it. That, he is prevented from doing by virtue of this Act. That is to say, he is not allowed to dispose of the property or to hold the property.

Mr. Chairman: Is the right of survivorship saved?

Shri U. M. Trivedi: It is there.

Mr. Chairman: By this Bill?

Shri U. M. Trivedi: Yes. There is no doubt about it. The right of survivorship remains. It does not go. The only point is that the right of survivorship is modified by the provisions of this Bill. The right of survivorship has not gone. It will remain. They have tried their level best to destroy it. For those who have not the good fortune to hold property worth Rs. 50,000, the right of survivorship still remains. A person who holds a hundred rupee share or a two-hundred rupee share in any company will be restricted. He is entitled to get that property in his hands which he would ordinarily get. No further certificate is necessary for him to be produced. This clause says: It would not be lawful for the company to do this. That means a barrier is put up by law on the company exercising that right and on the individual who holds that property exercising his right to dispose of the share. This is an unlawful restriction which comes into conflict with the provisions of article 19(1)(f).

Shri N. C. Chatterjee: Sir, I want to point out that this is illegal for another reason. This is outside the legislative competence of the Estate Duty Bill. You know, Sir, that we are legislating with reference to the Seventh Schedule, List I, item 87, estate duty. What is an estate duty is prescribed and defined by the Con-

stitution in article 366, para (9) which says:

“‘estate duty’ means a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament or the Legislature of a State relating to the duty, of all property passing upon death or deemed, under the provisions of the said laws, so to pass;”.

What right has Parliament to say that the limited company, whose shares have been transferred by A to B, after his death, will not register the shares unless some certificate is produced. They have no right. That would be repugnant to the Constitution

Mr. Chairman: The hon. Member was referring to some articles in the Constitution? What are they?

Shri N. C. Chatterjee: I am pointing out that you are legislating with reference to the Seventh Schedule, Union List, item 87 that is estate duty in respect of property other than agricultural land. Now, you have got the power in respect of agricultural land also by delegation from the States. But it is an estate duty. This is a Bill with regard to the levy of estate duty and the collection of estate duty. That is the preamble; that is the scope of the legislation. If you kindly turn to article 366, you find the definition of estate duty in para (9). That is a duty to be assessed on or by reference to the principal value, ascertained in accordance with such rules as may be prescribed by or under laws made by Parliament. The Parliament is entitled to make laws or frame rules with regard to the determination or assessment of the principal value with reference to which the duty shall be levied. What right has this Parliament to put an embargo on transfer of property? The property has been transferred. You know the Privy Council

has laid down clearly that shares are goods. Under the Sale of Goods Act, on transfer and delivery, the title is complete. Therefore the property has passed from A to B on the shares being properly endorsed and made over to the transferee. What right has Parliament to say that although the title has passed, I won't allow the company to recognise the transfer. You know, Sir, that the essential ingredient of the right which the transferee gets on the transfer of shares is to be put on the register. Unless he is put there, he cannot get the dividend; he cannot vote, he cannot participate in the annual meetings; he cannot exercise his rights as a member. What right has this Parliament to say: he has become the transferee, but I won't allow it and I will call upon the company not to allow him to be put on the register. It is a gross violation of the cardinal principle of the law of Sale of Goods and the Companies Act. You have no power to do so. We are legislating with reference to a particular item. That is the scope of the Bill.

Shri A. M. Thomas: Against public policy also.

Shri N. C. Chatterjee: Against public policy also. And against negotiability. That is a cardinal principle. Apart from that, is it within the scope of this Bill and Parliament's competence? We are legislating with reference to a particular item, merely estate duty.

Shri A. M. Thomas: What is the benefit?

Shri N. C. Chatterjee: It has been held that it is not very desirable. But, apart from that, I am raising this point that it is beyond the competence and it would not be *intra vires* of this Parliament. It will be completely *ultra vires* and it will be an illegal piece of law.

Some Hon. Members: It is now 7-30, Sir.

Shri C. D. Deshmukh: I can dispose of these two points. Dealing with the

last point, it seems to me that this is quite relevant to the ambit of the Bill. One must remember that under clause 72(2) a rateable part of the duty is charged on moveable property. Therefore, as soon as the death occurs, there is a charge on the share, whosoever property it may be. All that this clause seeks to do is to ensure that it will not be disposed of unless the estate duty is paid. It is one of the precautions that are taken, and especially it is a matter which leads to a great deal of difficulty where shares are transferred on a sort of blank transfer. And what one is concerned with, therefore, is the registered holder. That is the anchor from which one has to trace the title to the property. So, I think it is quite germane to the purposes of this Act.

Now, as regards this constitutional point, I do not see anything in it. Article 19(1)(f) of the Constitution says:

"to acquire, hold and dispose of property".

Then Clause (5) of the article says:

"Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or..."

Now, if any one says this is not in the interests of the general public, then I think he is against.....

Shri U. M. Trivedi: I am sorry the Finance Minister has not grasped the meaning of "existing law" which is defined in sub-clause (2).

Mr. Chairman: He is not referring to "existing law". He is referring to the latter portion.

Shri C. D. Deshmukh: Will the hon. Member read the whole of the sub-clause first? If he will grasp the

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words, then one can go to grasping the meaning. The words say: "also making any law in the general interest". And certainly it is common ground with all of us that it is in the general interest. Therefore, I do not think there is anything in this constitutional objection.

Mr. Chairman: If any other hon. Member wants to speak on this constitutional point, I am ready to hear him, because this is not a point which can be brushed aside very easily. To my mind the question arises: what will happen to those shares from which ultimately no estate duty is to be realised? Supposing a person who is very poor holds a share or two. In the case of that person also some restrictions are being placed, and his shares will not be negotiable. So the question is a rather difficult one and similarly about joint shares. It is not so easy. At the same time, so

far as this constitutional question is concerned, even there I find that only reasonable restrictions can be placed in respect of two matters: (1) in the interests of the general public, and (2) in the interests of any Scheduled Tribe. Now, the question for consideration will be whether in the meaning of the words "general interest" such restrictions for realisation of estate duty will be covered. So, these questions are open for discussion before the House. If any hon. Member wants to speak, I am ready to hear him. Otherwise, I will reserve judgment on this constitutional point.

Shri S. S. More: On this point we will have a lot to say.

Mr. Chairman: It is already 7-30. I will now adjourn the House.

The House then adjourned till a Quarter Past Eight of the Clock on Monday, the 14th September, 1953.