had agreed to this proposal? What is the price at which the M.P. Government is fixing for the sale of rice and wheat?

Mr. Speaker: Is the price also part of the agreement?

Shri S. K. Patil: The price is part of the agreement. These licensed dealers cannot pay greater; nor can they pay less than the price fixed so that we have protected the farmers. Nor will the Government sell at a price higher than what the Maharashtra and the Gujarat Governments fix in that connection.

Shri Vidya Charan Shukla (Baloda Bazar): I want to know whether any precautions have been taken so that the farmers in the rice-growing districts do not get less than what they are getting and if any provision has been made so that they can get a little more? The M.P. Government has been requesting the Central Government to take measures so that the rice growers get a little more than what they are getting. I want to know also whether the Government have devised any means of keeping the prices in check because the prices are likely to rise because of the bigger food zone.

Shri S. K. Patil: This step has been taken in order to protect the farmer, particularly because the prices were falling to an extent where we thought that it would be a disincentive to the farmers. Therefore, what we have done is this. The licensed dealers cannot pay to the farmer anything less than the procurement price that has been fixed. In fact the farmers will get more than what they are getting today.

Shri Birendra Bahadur Singhji (Raipur): What is the procurement price for Madhya Pradesh here *vis-a-vis* Bombay and Maharashtra?

Shri S. K. Patil: That is a question of detail and if the hon. Member gives me notice, I will answer.

12·29 hrs.

COMPANIES (AMENDMENT) BILL —*contd.*

Mr. Speaker: The House will now take up clause-by-clause consideration of the Bill further to amend the Companies Act, 1956, as reported by the Joint Committee.

The other day the Business Advisory Committee appointed a sub-committee to group the various clauses and allot the time for them. I thought that this matter should be put in the Bullettin and I think it must have appeared. We shall proceed on that basis, making here and there some small adjustments. A few minutes this way or that way does not matter.

The House will now take up clauses 2 to 16. Hon. Members will pass on to the Table in about 15 minutes the numbers of amendments which they would like to move to these clauses. I am only suggesting that this is the method we have been adopting with respect to such Bills and we shall adopt it here also subject to any other representation that may be made.

Some hon. Members rose—

Mr. Speaker: Let them first hear me. So far as clauses 2 to 16 are concerned they would be taken up together. If there is any objection or if they want any particular clause to be taken up separately they may inform me. So far as the different groups of clauses are concerned, hon. Members may immediately send chits to the Table giving the numbers of amendments which they want to press. After their chits are received here I shall declare in a concise manner the list of amendments that hon. Members want to move so that the House may know what exactly are the amendments that are being pressed.

So far as discussion on these different groups of clauses is concerned, each hon. Member who want to participate in the discussion will have only one opportunity to speak on all or any

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one of the matters included in a particular group of clauses. He will not be allowed to speak again on the same matter subject to the conditions that I have already mentioned.

Shri M. R. Masani (Ranchi-East): May I just make an observation? I think this idea of grouping clauses for the purpose of allocation of time is a good one and I hope it will work satisfactorily. I do not think it would however follow that all the clauses can be discussed together. I think the clauses should be discussed one by one, otherwise it will be very difficult. It was never contemplated that the right to discuss one clause at a time would thus be abrogated. Therefore, Sir, I would request you to follow the normal procedure of putting each clause separately because they deserve separate consideration.

Mr. Speaker: He has not understood me properly. It does not mean that I will put all the clauses from 2 to 16 together for vote of the House. So far as the discussion is concerned, I even said that I shall allow the group of 2 to 16 to be split up into as many groups as is necessary. If any hon. Member says that clause 2 may be taken up separately I have no objection; otherwise I will treat clauses 2 to 16 together. For the purpose of putting to the vote of the House I will call clause by clause and whichever amendment hon. Members want to press at that stage I will put that also separately to the vote of the House.

Shri Naushir Bharucha (East Khandesh): That will be all right.

Shri Tangamani (Madurai): Sir, in this group of clauses from 2 to 16 I find that amendments have been tabled only to four clauses—clauses 5A, 9, 11 and 14. So my submission is that on these clauses a speaker may be allowed to speak even twice.

Shri M. R. Masani: Clause 13 also.

Shri Tangamani: There is no amendment to clause 13.

Shri M. R. Masani: I am going to oppose it.

Mr. Speaker: I shall include clause 13 also. Does any other hon. Member want to lay stress on any other clause in this group? Shri Masani has mentioned clause 13. I take it that the other clauses are non-controversial. I will put them to the vote of the House immediately and then concentrate upon clauses 5A, 9, 11, 13 and 14. Is it all right?

Shri M. R. Masani: Yes, Sir.

Mr. Speaker: The question is:

"That clauses 2, 3, 4, 5, 6, 7, 8, 10, 12, 15 and 16 stand part of the Bill."

The motion was adopted.

Clauses 2, 3, 4, 5, 6, 7, 8, 10, 12, 15 and 16 were added to the Bill.

Mr. Speaker: We shall now proceed with the discussion on clauses 5A, 9, 11, 13 and 14.

Shri M. R. Masani: Sir, I want to move my amendment No. 1 to clause 5A, but I understand that the hon. Minister would like to make a suggestion with a regard to the time when this clause should be taken up.

The Minister of Commerce (Shri Kanungo): Sir, I suggest that this clause may be taken up along with clause 98.

Shri M. R. Masani: I have no objection, Sir, because the subject matter is common.

Shri Kanungo: All that I am suggesting is that the substantial matter will be discussed in clause 98 and, therefore, there is no point in moving it now.

Mr. Speaker: Clause 5A is a new clause. I shall treat it as a clause coming after clause 98.

Shri M. R. Masani: It should be taken along with clause 98, Sir, because the subject matter is common.

Mr. Speaker: Very well. We will put off clause 5A for discussion along with clause 98. Clause 5A will stand over. Let us proceed with the other clauses.

Shri Tangamani: Sir, I beg to move:

Page 6, lines 12 to 16,—

omit "and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the direction, be exempt from such of the provisions of this Act as may be specified therein." (103).

Mr. Speaker: That is to clause 9. There are no amendments to clause 13. What are the amendments to clause 14?

Shri M. R. Masani: Sir, I beg to move:

Page 7, line 35,—

for "twenty-five per cent". *substitute* "forty per cent". (2).

Page 9, lines 22,—

for "or" *substitute* "and/or". (3).

Shri Naushir Bharucha: Sir, I beg to move:

Page 9,—

after line 39, *add*—

"(c) to any private company the paid-up share capital of which is five lakhs of rupees or less". (58).

Shri Tangamani: Sir, I beg to move:

Page 9,—

omit lines 20 to 39. (40).

104. Page 8,—

omit lines 9 to 36. (104).

Shri Nathwani (Sorath): Sir, I would like to move amendment No. 108 which stands in the name of Shri Morarka and myself.

Shri Tangamani: It has not been circulated to us.

Mr. Speaker: The hon. Member may read it out.

Shri Nathwani: Sir, I beg to move:

108. Page 7, line 35,—

after "share capital" *insert*—

"or debentures". (108).

Mr. Speaker: I take it that the other amendments are not moved. We shall now proceed with the discussion.

Shri Tangamani: Sir, my amendment No. 103 is for the deletion of the lines 12 to 16 on page 6. They read like this:

"and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs and to the extent specified in the direction, be exempt from such of the provisions of this Act as may be specified therein."

Sir, this clause deals with amendment to section 25 of the principal Act, where some powers are now sought to be taken by the Government to exempt certain companies from the provisions of this Act. Originally when the amending Bill was placed before this House that amending Bill stated that certain sections of the original Act need not be applied whenever exemption is granted. These sections were also specified. They are: sections 53, 147, 159, 160, 161, 166, 171, 173, 176, 188, 190, 259, 269, 280, 282, 285, 287 and 303. In the course of the discussions, certain other sections also were sought to be included like sections 296 and 257. As the House is aware, in

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the principal Act, the original section that has been exempted is section 303. I can very well understand the powers that are being taken by the Government under sub-section (5) of section 25, when companies for promoting culture and other things are given exemption from certain procedural liabilities. The main point that is made is that the name 'limited' may be taken away. This amending clause as it has emerged from the Joint Committee goes much further. I would like to submit that if the original section, namely, section 25(6), alone is retained, it will meet the ends of justice.

I would now refer to the note on which this particular clause was brought in at the beginning. The Sastri Committee report deals with it exhaustively in paragraph 32 which is contained in pages 27 to 29. I shall not read the entire paragraph, but the essence of it is, even where an exemption has been given by the Government under the original section 25, it is likely to be abused, and if such an abuse takes place, immediately the licence will have to be revoked. That is the first part of the Sastri Committee report. In the second part, of course, they do say that some exemption is necessary for such companies and that the exemption is contemplated in the principal Act itself, namely, exemption from the operation of sections like section 303. They also go further and say that certain procedural restrictions may be taken away in the case of such companies which are meant for promoting commerce or science or religion or which run schools or art galleries or sports clubs and which may run as limited liability companies.

Ultimately, they also specified certain sections from which the companies may be given the exemption. Even in the original Bill, when it came before the House, I believe certain more sections were included. But as it has emerged from the Joint Committee, it goes much further than what has been contemplated in the Sastri Committee report, and that is why I submit that the Government has got the powers under sub-section (5) for issuing a licence. When they actually take this power for issuing a licence, they can also specify that certain procedural liabilities will not lie. If we include sub-section (6), that will go much further, and it is likely to be abused. I am not criticising the company law administration, because the company law administration, in future, may consider this, because, it is not specified as to the form of the companies which are to be exempted so that it is likely to be abused. So, I submit that along with sub-section (5) which authorises the giving of licence, sub-section (6), without blanket powers, may be included, and if that is done, it will meet the ends of justice. This is the limited purpose for which I have brought in this amendment to the clause which gives so much power to the company law administration or to the Government to exempt certain companies from the operation of any section in this Act.

I can understand the position where some sections are specified. We can even say that, as and when it is necessary, they can even extend it, but instead, to give such blanket powers is really to abuse the powers. That is the purpose of my amendment.

Mr. Speaker: I may remind hon. Members that they will have the opportunity to speak on all these clauses which have now been mentioned. They would not have another opportunity to speak on individual clauses again.

Shri Tangamani: Clause 14 may be taken up separately.

Shri M. R. Masani: That is what I was trying to bring to your notice. If you ask us to speak on disconnected topics at one stretch. it may be difficult. So, I recommend that the Minister may reply now to the particular

amendment that has been moved, and then we may take up the next item, clause by clause, and so on.

Mr. Speaker: Hon. Members have not understood me. I do not want them to take up a thing which is absolutely disconnected with the other. If the hon. Member Shri Masani wants a separate discussion on clause 13, it is open to him to say so, many, that he wants a separate discussion on clause 13.

Shri M. R. Masani: I had said so.

Shri Tangamani: I want to say a few words on clause 14 to which I have tabled an amendment.

Mr. Speaker: Clause 5A stands over. We are taking up clauses 9, 11, 13 and 14.

Shri M. R. Masani: They may be discussed one by one.

Mr. Speaker: I never objected to that procedure, in which case I would have taken up only clause 5A in the first instance. We have allowed 2 hours for this group of clauses. Otherwise, I can ask hon. Members regarding the time for each clause.

Shri M. R. Masani: You will find that we shall finish long before two hours.

Mr. Speaker: I thought we could proceed in this particular manner: that we assume there are, say, 15 clauses, in the first instance. Then, we will apportion time and we will ask the hon. Members what time they would like to have for each clause,—clause 9, 11, and so on.

Shri Tangamani: I am not speaking on clause 11.

Shri M. R. Masani: We would like to speak on clauses 9, 11, 13 and 14 separately.

Shri Tangamani: I am may be permitted to speak on clause 14 when it comes.

Mr. Speaker: So, clauses 9, 11, 13 and 14 are taken separately, one after the other.

Dr. M. S. Aney (Nagpur): Are we going by the serial numbers of the amendments?

Mr. Speaker: I mentioned the clauses.

Shri Kanungo: The amendment moved by Shri Tangamani relates to clause 9, to the original section 25. As Shri Tangamani has mentioned, this matter was discussed in the Joint Committee exhaustively. In fact, the Bill, as it was introduced, made mention of a number of sections and the clause in question, as was introduced, was as recommended by the Sastri Committee. But, after discussion, it was found that there might be contingencies, because these groups of companies who form themselves into companies, will have various objectives, various methods of election and various methods of control and also various methods of membership. Therefore, unless all possible contingencies can be foreseen and enumerated, in which case it will be almost like writing up most of the sections of the Act again, it will be impossible to draft, as it has also been originally considered by the Sastri Committee.

I may also mention that the original sub-section (5) has been there and it is still there. In spite of that, this operative clause, sub-clause 6, has been amended, and for a breach of these conditions under this section, the penalty has been described later on. Therefore, I am not prepared to accept the amendment, and I request that the clause, as reported by the Joint Committee, be accepted.

Mr. Speaker: The question is:

Page 6, lines 12 to 16, *omit*

"and, unless its articles otherwise provide, such body shall, if the Central Government by general or special order so directs

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and to the extent specified in the direction, be exempt from such of the provisions of this Act as may be specified therein." (103).

The motion was negatived.

Mr. Speaker: The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Mr. Speaker: We take up clause 11.

Shri Kanungo: What about clause 10, Sir?

Mr. Speaker: It has been carried. We proceed to clause 11.

Clause 11– (*Amendment of section 31*).

Mr. Speaker: There are no amendments to clause 11.

12 hrs.

Shri M. R. Masani: No. Clause 11 of the Bill seeks to make an alteration of section 31 of the Companies Act. I am opposing the clause. This clause stipulates that no alteration can be made in the articles of a company, which has the effect of converting a public company into a private company, without that alteration getting the approval of the Government. This amendment is altogether objectionable. Already the law has made very difficult the conditions under which a private company remains a private company. All kinds of limitations and restrictions have been placed to see that any company that can possibly be squeezed out of the category of private companies does not get the benefit of being a private company.

One should have thought that Shylock having got his pound of flesh would be satisfied. But now Government want to go one step further and they say, "Even if you satisfy all the tests and demands to quality as a private company, you must not become a private company. You must come to us and say, 'May we have your permission to become a private company?'" This seems to me to be highly inequitable.

Mr. Speaker: The hon. Member wants that if a public company is to be converted into a private company, this must be done by themselves, without the intervention of the Government. Is it so?

Shri M. R. Masani: Yes, because they can satisfy the requirements under the present law, which says that no company shall be a private company unless it satisfies certain tests; if it violates any of the conditions, whether it is called a public company or a private company, we shall deem it to be a public company. That is the tenor of the present law. For various reasons of policy, we have made it difficult for a private company to remain or become a private company. Therefore, if a public company is prepared to satisfy all the tests, difficult as they are as laid down by law, then it must be allowed to become a private company without the permission of Government being sought.

Mr. Speaker: If the share-holders make up their mind to convert it into a private company from a public company....

Shri M. R. Masani: It is their business.

Mr. Speaker: The hon. Member does not want the interference of the Government. If, however, when they make their resolve and try to convert it, thereafter Government can interfere under the law, is it not desirable that Government should be asked in advance, so that after it is settled, the Government may not disturb it?

Shri M. R. Masani: With all respect, Sir, it is a very ingenious argument you have provided to my hon. friend.

Mr. Speaker: No; I am here holding the scales even.

Shri M. R. Masani: There is this difference that Government can interfere afterwards if they find that the company is violating any provisions of the law.

Mr. Speaker: And then say, "I am not going to treat you as a private company, but just as a public company."

Shri M. R. Masani: I do not think the Government will be able by their *obiter dictum* to convert it into a public company. They have to point out where the law demands that it should be treated as a public company.

Mr. Speaker: Why don't you commit them in advance?

Shri M. R. Masani: You may commit them in advance; nobody stops anyone from showing the memorandum to the company law administration and getting their blessings. My point is, that the law does not say that Government shall give that permission if the company satisfies the requirements of the law. As the clause stands at present, it means that if Government does not approve of the change, notwithstanding your satisfying all the requirements of law, they may exercise a Veto and say "We don't like the idea of your becoming a private company". Then there is no remedy, no court of law to which you can go and say, "This is *zulum*. We have every quality of a private company, but Government for reasons best known to itself does not agree."

I am told that Government would not be unreasonable. But that is not the basis on which laws are made. If we give to a department of Government a discretion, they would like to use that discretion and we cannot assume that that discretion will always be used in a fair and commonsense manner.

Since the law has prescribed what is a private company and what is a public company, the law must stand. To add a further veto is objectionable. The clause says the alteration is subject to the approval of the Government. This means that it is a completely unfettered discretion.

Mr. Speaker: There is no right of appeal.

Shri M. R. Masani: No; there is no right of appeal. This clause is altogether unnecessary and redundant. Having now got the definition accepted as to what is a private company and what is a public company, the law must be allowed to take its course. There should be no arbitrary discretion with the Government to say 'yes' or 'no' according to its whims and fancies. So I oppose the whole of this clause as being unnecessary and objectionable.

Shri Morarka (Jhunjhunu): On a point of clarification, Sir, may I know what would happen if the number falls below the requisite number? The requisite of a public company is that there should be a minimum of 7 shareholders. For a private company, the minimum is 2 shareholders. Suppose in a company, the membership falls below 7. Then, if Government does not approve its conversion into a private company, what will happen?

I can understand where the management deliberately want to convert a public company into a private company, then it must come before Government. But supposing by sale or transfer of shares, the total number of shareholders in a company falls below 7 which is the minimum required for a public company, what is the safeguard?

Mr. Speaker: Does it automatically become a private company?

Shri Morarka: Yes; the moment it falls below 7, it ceases to be a public company; it becomes a private company.

Mr. Speaker: So, this clause is only subject to the other.

Shri Morarka: Is it so? That is the clarification I want.

Mr. Speaker: Otherwise, how can they re-establish? It ceases to be a public company. I think it may be made clear.

Shri M. R. Masani: As the clause stands, Government may force a private company to behave as if it is a public company and thereby violate the law. The company will be committing an offence.

Shri C. R. Pattabhi Raman (Kumbakonam): Where the number falls below 7, the department cannot say, "we will not recognise", so far as the legal status is concerned. Even if they say so, the courts would not keep quiet in a matter of that kind.

Mr. Speaker: This is a later clause in the Bill. An earlier clause states that if the number of shareholders is below 7, it ceases to be a public company and it becomes a private company. This clause says, no alteration made in the articles shall have effect unless such alteration has been approved by the Central Government. Possibly on account of the fall in number, an alteration will have to be made in the articles. If for some reason the officer refuses to recognise that alteration, what is the effect? We may assume that in 99 per cent. of cases, the officer would not refuse. But suppose, he says 'no'?

Shri C. R. Pattabhi Raman: He is not acting judicially; he is acting contrary to the statute.

Mr. Speaker: If everybody acts judicially, why should there be all these courts? There are courts because people do not act judicially.

Shri Kanungo: There are provisions in the Act as it is by which by the operation of law, a public company can be reduced to a private company. But there is also a provision that a public company can by resolution convert itself into a private company.

Mr. Speaker: Does this clause apply only to such cases and not to cases where by operation of law, a company becomes a private company?

Shri Kanungo: No; if it becomes a private company by operation of law, none can stop it. But apart from the operation of law, by the volition of the shareholders, a public company can convert itself into a private company.

Mr. Speaker: If the minimum number required for a public company goes down does it become a private company automatically? Or, is it necessary that the shareholders should convert it into a private company by a resolution?

Shri Kanungo: I am not able to answer that question categorically now, but I believe a company has to alter its articles of association and also its memorandum to convert itself into a private company. The mere reduction of the number at a given time may make it illegal for it to function as a public company, but it does not necessarily convert itself into a private company.

Mr. Speaker: There may be the other contingency. Notwithstanding the fall in number, if they continue to act as a public company, they are liable to a penalty. That is a deterrent against the shareholders and directors. So, in pursuance of that, to avoid that contingency, they modify the articles, because automatically it does not become a private company. Take the other case. Notwithstanding their efforts to modify it and avoid illegality, if the officer sits tight and refuses to recognise it, because it does not automatically become a private company, what happens?

Shri Kanungo: Take the imaginary case where the number of shareholders in a public company has been reduced to less than 7. The company comes before the Government to convert itself into a private company. It has got to come if this clause 11 is passed. Therefore, at that stage, Government will have to decide what attitude they

should take. But that is an extreme case which is not likely to occur. The mere reduction in the number of shareholders will not automatically make a public company a private company; it has got to go through other processes.

Mr. Speaker: Therefore, it is neces- to make a provision to avoid that contingency in case an officer, for various reasons, refuses to do so.

Shri C. R. Pattabhi Raman: There is a provision in the Act itself, section 45, with the heading "Members severally liable for debts where business carried on with fewer than seven, or in the case of a private company, two members".

Mr. Speaker: What is the object of it?

Shri C. R. Pattabhi Raman: Shri Morarka asked: if the number of shareholders in a public company is less than seven, or less than two in the case of a private company, what happens? Section 45 of the Act deals with that situation. Then there is section 433, which deals with the winding up of a company.

Shri M. R. Masani: But it supports his point.

Shri C. R. Pattabhi Raman: When an officer is acting in this matter, he is acting judicially. If he is not acting judicially, his decision will be struck down by the courts.

Mr. Speaker: Here the consequences will fall upon the head of the shareholders who still continue in that company....

Shri M. R. Masani: And not upon the officer.

Shri C. R. Pattabhi Raman: Suppose by the death of a shareholder, the company has only less than seven members.

Mr. Speaker: There are two parties to this. Stringent provisions have been made, so far as the shareholders are concerned. Therefore, the shareholders are alert and they pass a resolution and bring it up before the Government. One officer of the Government, for various reasons, may say, "I am not going to recognize it". Now whatever he says, unless the Minister or some superior officer interferes, is binding on the company, because there is no appeal.

Shri C. R. Pattabhi Raman: The Supreme Court has ruled in many cases....

Mr. Speaker: All the same, he is liable for punishment if he carries on the business in the same manner. If he has not modified it, he cannot carry on and he has to close down. It all depends upon the sweet will of the officer and there is no appeal. Then what happens?

Shri C. R. Pattabhi Raman: The Supreme Court has held on more than three occasions that in all these matters where a penalty or disability is involved, the officer is acting judicially and he must give his reasons. His decision will be struck down by the judiciary if the reasons are not given or are not convincing.

Shri Kanungo: Apart from what the courts have said, this clause provides that the Central Government has....

Mr. Speaker: If you want to stick to this, why don't you say "except where the number has gone down to less than seven"?

Shri Kanungo: The officers are bound to follow the law everywhere. In the case mentioned by Shri Morarka, where the number has been reduced below the limit, obviously, the officer has got to agree to it. If he does not, then he is violating the law.

Mr. Speaker: If the director of a company violates a provision you impose a penalty. You make him liable

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for all that happens to the company. But suppose an officer does not act, then his increment does not stop, unless the party goes to the court of law. Why should there be a one-sided traffic like that?

Shri Kanungo: If I have to argue with you....

Mr. Speaker: It is not arguing with me. I am speaking on behalf of the whole House, and I am entitled to say that this will lead to unnecessary consequences. It cannot be passed by a snap vote.

Shri Kanungo: No, it is not a snap vote.

Mr. Speaker: There is no meaning in making this remark. I am always entitled to ask questions.

Shri Kanungo: I am sorry, if I have been misunderstood. I never meant it.

Mr. Speaker: Order, order. Hon. Members must know what I am a member of this House as any other member and in case of voting I can exercise my right one way or the other. Therefore, as an ordinary member I am entitled to know thoroughly and satisfactorily any proposition that is placed before this House. That is No. 1. I am also entitled, under the rules, to explain an amendment before it is placed before the House, so that hon. Members may understand what exactly is happening. On that ground also, I am entitled to ask the Minister to carify these issues until I am thoroughly satisfied, and no Minister should get impatient so far as this matter is concerned and say "you may do this or that". It is wrong.

Shri Kanungo: I am very sorry if I have been misunderstood. What I meant was that it is very embrassing to reply to the remarks from the Chair. It is easier for me, as you will understand, to meet the point of Shri Masani and hit him back.

Mr. Speaker: I am also only trying to get clarification on some points. There is no question of embarrassment. The hon. Minister can very well meet my arguments.

Shri Kanungo: If you will give me that privilege....

Mr. Speaker: Absolutely. When I put him a question I ought not to be thick-skinned. I am bound to hear it, when an argument is made or my argument is met with another argument. One should not take it amiss.

Shri Kanungo: It is very generous of you.

Mr. Speaker: I hope that is all that he has got to say.

Shri Kanungo: All those factors were considered in that Joint Committee and we came to the conclusion that there are certain tendencies among public companies to convert themselves into private companies to avoid the penal provisions of the law. There have been instances where, because the managing agency was not permitted in the case of some companies, they converted themselves linto private companies.

Mr. Speaker: What is the harm if you, without prejudice to the power that is being vested in the Government, make it impossible for any officer to refuse to recognize a company in case the number goes down?

Shri Kanungo: The officer has got to follow the Act and act legally. He cannot act illegally. When he is asked to consider, under clause 11, any proposition, then he has to observe all the provisions of law.

Shri C. R. Pattabhi Raman: Section 45 of the Act is very clear. I should have read it earlier. It refers to a situation where the number goes below seven in the case of a public company and below two in the case of a private company. It says:

"If at any time the number of members of a company is reduced, in the case of a public company, below seven, or in the case of a private company, below two, and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the Company contracted during that time, and may be severally sued therefor."

Then section 433 refers to winding up of a company.

Mr. Speaker: Then the position is worse. Under this clause, if the number is reduced, the company cannot carry on. It it does, it is liable to penalties. So, it has to close down. To avoid that, it wants to convert itself into a private company. If the company passes a resolution to that effect and the Government does not accept it, it cannot carry on the business. It has to close down.

Shri C. R. Pattabhi Raman: Section 433 refers to the winding up of a company, where also the number of members or shareholders have been mentioned. So, if an application is made by the company to the Government, there is no discretionary power to the officer. The officer has no discretion where the number goes down, because there is a specific clause about the reduction in number. Actually, a shareholder may die and there may be trouble about his heirs. Till the question of his successor is decided, the number may be six.

Mr. Speaker: The hon. Member is a good advocate. He knows that the Privy Council has said that judges can decide rightly and wrongly—more so the executive. If they decide wrongly and refuse to give, there is no penalty imposed upon them under the law.

Shri Kanungo: It is imposed on the Government. If the Government violates the law, it is liable to be pulled up by the courts.

Mr. Speaker: I have heard enough. Shall I put the clause to the vote of the House or is there anything more to say for the hon. Minister?

Shri Kanungo: No, Sir. I was only mentioning that there have been cases where there have been deliberate attempts at converting public companies into private companies.

Mr. Speaker: I shall put clause 11 to the vote of the House.... There is no amendment to it.

The question is:

"That clause 11 stand part of the Bill."

The motion was adopted.

Clause 11 *was added to the Bill.*

Clause 13 –(*Amendment of section* 41).

Shri M. R. Masani: I do not oppose the clause but I think it is a defective one, like clause 11, which has been hastily passed just now. I hope a little more attention will be given to the difficulties that are pointed out.

The proposed amendment to section 41 requires that a person must agree in writing to become a member of a company, but the amendment does not say what form that writing should take. An alteration of section 110, sub-section (1), appears to be necessary because an application for transfer of shares may be made either by a transferor or a transferee under that sub-section. The point I want to ask the hon. Minister is this. Suppose this option is exercised by an application being made by the transferor. In that case, how will there be any agreement or contract between the transferee and the company which

[Shri M. R. Masani]

establishes his membership? I suggest, therefore, that this clause is defective and it should specify what the form of agreement in writing should be and by whom; otherwise, there is a lacuna which you will leave uncovered.

Shri Kanungo: The types of these associations will be varied and it is presumed that their articles of association will provide for the forms of transfer and all that. At the time of registration when a man comes to become a member, he looks into the articles of association where these things are provided for. If they are not provided for there, you have got the omnibus power whereby under the rules prescriptions can be made.

Mr. Speaker: Here the words are "agrees in writing".

Shri Kanungo: What will be the form of writing and what will be the type? That is what Shri Masani says. I say that it must be provided for normally in the articles of association. If it is not done, it can be provided for under the rules.

Mr. Speaker: Certainly. The question is:

"That clause 13 stand part of the Bill."

The motion was adopted.

Clause 13 was added to the Bill.

Clause 14 —*(Insertion of new section 43A.)*

Shri M. R. Masani: I have amendments Nos. 2 and 3 which I would like to place before the House. Amendment No. 2 to clause 14 suggests that in place of 25 per cent in line 35 on page 7, 40 per cent be substituted. The clause as at present reads like this:

"Save as otherwise provided in this section, where not less than twenty-five per cent of the paid-up share capital of a private company having a share capital, is held by one or more bodies corporate, the private company shall,—"

Now the point is this. The purpose of this whole clause is to assure that where substantial public money is invested in a company directly or indirectly, that company should not be allowed to behave as a private company or get the benefits of being a private company, because the moneys, according to the Shastri Committee, are public moneys. The clause as at present, however, would allow the mischief of the section to apply to a company in which another private company owns 25 per cent of the share capital. By no stretch of language or imagination, can it be argued that where one *private* company owns 25 per cent of the share capital of another private company, public monies are involved to a considerable extent! This is a travesty of language to try and smuggle into this clause something which never formed part of the intention with which we started, which was that wherever considerable public monies are involved in a private company it should not be allowed to function as a private company. The clause as at present says that if any public company has only one-fourth of the share capital of another private company, even then the second company cannot become a private company. Therefore, if this is to stand, I suggest that 40 per cent would be a slightly more substantial proportion than 25 per cent. If you must have this limitation then let it be a little more reasonable.

So far as the other amendment is concerned, it is a small one. It arises in sub-clause (6). I think it would make the position easier where companies incorporated abroad are participating in joint stock enterprise in this country.

Shri Morarka: I do not think your amendment fits in very well. Will you kindly read your amendment?

Shri M. R. Masani: It says that in place of "or", the words "and/or" be substituted.

Shri Morarka: Kindly read the clause after putting "and/or" in place of "or".

Shri M. R. Masani: "to a private company of which the entire paid-up share capital is held by another single private company and/or by one or more bodies corporate incorporated outside India;"

Shri Morarka: If the entire paid-up capital is held by a single company, where is the question of putting 'and'? There can only be 'or'. There cannot be 'and/or'.

Mr. Speaker: He is willing to omit 'and'.

Shri M. R. Masani: Sir, I do not press it.

Mr. Speaker: Hereafter, I shall ask the hon. Minister immediately an amendment is moved whether he agrees or does not agree to it.

Shri Kanungo: I do not agree to this.

Mr. Speaker: If he agrees, no more discussion is necessary.

Shri Tangamani: My amendments are Nos. 40 and 104. By amendment No. 40, I want lines 20 to 39 on page 9 to be deleted and by my amendment No. 104 I want lines 9 to 36 on page 8 to be deleted, that is, in the first portion I want this proviso to the original clause which has come in to be deleted as also sub-clause (6) which is really the exemption clause.

My hon. friend, Shri Masani, has explained to us the reason why the Shastri Committee went into the question of treating certain so-called private companies as public companies. He has rightly pointed out, as was explained when the original Bill was before the House, that the intention that was stated is as follows:

> "This amendment is for those companies which employ public money to an appreciable extent and that they should be submitted to restrictions and limitations as to the disclosure or otherwise as will apply to public companies. It is proposed to exempt a private company which is wholly owned either by another private company registered in India or by one or more foreign companies from the operation of the new requirement."

This is how the intention of bringing in this new section 43A was mentioned. But I would like to correct my hon. friend, Shri Masani. The Shastri Committee, when they dealt with it in great detail, have also suggested that the proper amendment to this would be defining when a private company is to be treated as a public company. In my opinion that is a very good way of amending it. They took the definition clause, namely section 3 and said that section 3(1)(iv) may be recast as follows. Original section 3(1)(iv) says:

> " 'Public company' means a company which is not a private company."

They define what a private company is in the earlier portion and then say "Public company means a company which is not a private company". The amendment which has been suggested by the Shastri Committee is this:

> "Provided, however, that any private company in which shares to the extent of twenty-five per cent. or more of the paid-up capital are held by one or more companies, public or private, shall be deemed to be a public company."

Here, what the Shastri Committee suggests in a concise manner is a new type of public companies which will arise. They do not mention anything about dealing with public funds.

Shri M. R. Masani: They were absent minded.

Shri Tangamani: You said that the intention which was mentioned to this House was for public monies, but the Shastri Committee have suggested that. So it will not be correct to say that the Shastri Committee did not want to apply this.

I believe when the Government brought forward this Bill here, they did not want to adopt the Shastri Committee's recommendation as it is by merely incorporating it in the definition clause, because they felt that there may also be other companies which may be patently private companies but which may come as public companies and there may be public companies which will come as private companies. That is why this new original clause 15 had to be introduced. That was section 43A. As Members of the Joint Committee are aware, this is a clause on which there has been discussion for several days. As a result of all this, the new clause 14 has emerged.

My submission, as I have already mentioned in the note of dissent is, if we had been left with the original clause, namely clause 15, it would have substantially met the ends of justice. But, with these provisos and with these exemptions which have been given—I do not want to take the time of the House by reading the provisos and exemptions—it has been watered down to a considerable extent. While speaking on the First reading of the Bill, I have already read in extenso the original clause 15. I shall now briefly mention the reason why the original clause would have been the proper thing. The original clause, as the amendment puts it, will read as follows:

> "Save as otherwise provided in this section where not less than twenty-five percent of the paid-up share capital of a private company having a share capital, is held by one or more bodies corporate, the private company shall,—

These are exactly the words which have been suggested by the Shastri Committee report.

> "(a) on and from the date on which the aforesaid prcentage is first held by such body or bodies corporate, or
>
> (b) where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1960, on and from the expiry of the period of three months from the date of such commencement unless within that period, the aforesaid percentage is reduced below twenty-five percent of the paid-up share capital of the private company,"

become, by virtue of this section a public company. This is really elaborating and expanding what the Shastri Committee has said. The intention of the Shastri Committee has been made abundantly clear if we stopped with this. The proviso, without any reflection on the Government or the Administration, is likely to be used in such a way that companies which have been dealing with public moneys, or companies which come under this definition as a public company, are likely to be exempted and made into private companies. As you are aware, this is exactly what the Shastri Committee says. The Shastri Committee says:

> "It is, however, well know that there are many private companies with large capital doing extensive business and controlling a number of public companies. This is made possible because funds of other companies, public or private, are invested in such companies. As public money is invested in such companies, there is no reason for treating such companies as private companies."

This is one of the reasons given.

"The problem of private companies has always been somewhat difficult. On the one hand, there are genuine private companies which are nothing but glorified parternerships and, on the other, there are private companies whose operations, financial and industrial are far wider than those of many public companies.

Instances are many. Many instances were given to us in the Joint Committee itself. There are private companies—not private companies which are private companies of the Government—which come under the strict definition of private companies under the Companies Act and they are controlling enoromous finances.

"To meet this problem, the Cohen Committee created the category of exempted private companies...."

At the same time, there is no doubt that

"private companies, which employ public money directly or indirectly to a considerable extent should be subject to the same restrictions and limitations as to disclosure and otherwise as apply to public companies. We, therefore, recommend that a proviso be added to section 3(1)(iv) in these terms:—

'Provided, however, that any private company in which shares to the extent of twenty-five per cent or more of the paid-up capital are held by one or more companies, public or private, shall be deemed to be a public company.' "

He also states in another place how the distinction between a private company and a public company should go and ultimately there should be one company. There are two views: one wanting that all the companies should be private companies and the other wanting that all the companies should be public companies. The attempt must be to make most of the companies into public companies. Ultimately, companies are dealing with public moneys, whether it is money which has been advanced by the Government or advanced by the public at large, it is public money. It is at stake. That is why the intention is that ultimately we must have only one form of company, that is the public company. Here, there are certain restrictions. It is only in such cases where 25 per cent of the paid-up share capital are held by one or more private companies, these companies are made public companies. That is the intention.

I fully agree with the original clause as it has been introduced here. I fully endrose the purpose for which the original clause was brought here. It has been very ably put forward by the Shastri Committee itself. I submit that the priviso is of such a nature that it will very easily lead to misinterpretation. In the same way are the exemptions. I would read one or two exemptions.

"Nothing in this section shall apply—

to a private company of which the entire paid-up share capital is held by another signle private company or by one or more bodies corporate incorporated outside India;

This is a thing which generally takes away the spirit of that. If the entire paid-up share capital is held by a single private company which is registered outside India, it will not constitute a public company.

"or to any other private company if, but only if, each of the following conditions is satisfied, namely:—

(i) that the body corporate or each of the bodies corporate holding shares in the private company is itself a private company,

[Shri Tangamani]

(ii) that no body corporate is the holder of any shares in any such shareholding company,

(iii) that the total number of share holders.... etc.

There are two or three exemptions. These exemptions really take away the spirit. It is only taking us to where we were before the Amending Bill came in. About the new private company which is sought to be introduced by section 43A, there have been comments in the press. When the subject was discussed before the Joint Committee and immediately after the Bill was introduced here, this was one of the clauses which came up for very serious comments. We find when we go through the evidence which has been recorded, certain interests have always been stating that the creation of a new kind of private company is not in the interests of justice, etc. Ultimately, this has come. My fear is that all these provisos and exemptions have come more to accommodate pressures from one end and the effect of this clause 14, namely, the new section 43A will not be what it was intended by the Shastri Committee.

I believe I have said enough. The original intention of the Shastri Committee was very well revealed in the original Amending Bill. The re-drafting has been very well done. If this re-drafted section without these provisos and exemptions is taken in, it will be what it was and as was expressed by many Members of the Joint Committee also. With these remarks, I submit that these two amendments, Nos. 40 and 104 may be accepted by the House.

Shri Nathwani: I rise to support amendment No. 108. It seeks to add only two words.

Shri M. R. Masani: It has not been circulated. Please read it.

Shri Nathwani: By inadvertance, it may not have been circulated.

After "share capital" insert "or debentures". The condition of shareholding is sought to be enlarged by saying that if another company owns even 25 per cent of the debentures issued by that particular private company, that private company would be considered as a public limited company. That is the effect of my amendment.

While I want to support my amendment, I also want to oppose the amendments moved by my hon. friends Shri M. R. Masani and Shri Tangamani. I shall try to trace the genesis of this idea. There are very highly praised privileges accorded to private limited companies. For instance, under the existing Act, they are exempt from the necessity of filling their accounts and making it available to public. Secondly, they are not subject to the remuneration regarding over-all management. Further, there are provisions which require the approval of the Central Government regarding the appointment of managers, managing directors and their remuneration, from which they are exempt. So, in several important matters these private limited companies are exempt, and, as was just now pointed out by the hon. Minister, there is a tendency for some of the public limited companies to convert themselves into private limited companies with the sole object of circumventing these wholesome provisions of the law.

But the whole idea of recognising private companies is to give exemption to genuine small concerns. May be there are family members, may be there are some friends, who want to start a business on a small scale. This was the original idea with which this special category of private companies was created, and it has been a recent product. But from time to time it was observed that these provisions were being abused. In the guise of

private companies, even business on a very large scale was being done, and that is why it became necessary to restrict the operations of private companies. That is how the idea of subsidiaries of public limited companies came to be recognised. That is why subsidiaries of public limited companies were not and are not exempted under the present law, from these provisions.

Now we have gone a step further. It became necessary to consider then the criterion which should apply in demarcating the line between public limited companies and private limited companies. It has been admitted that only genuine small parternerships or only family concerns should be exempted. In England, the Cohen Committee devoted considerable attention to this matter and tried to take into account various tests—the test of capital employed, the test of the number of employees, the test of turnover and so on. It considered whether one or more such tests could be applied, and came to the conclusion that none of these tests was satisfactory. The Shastri Committee also naturally applied its mind to this question, but I am sorry to say that in doing so, it only paid attention to it in a rather cavalier or summary manner. They accepted one test and one test only, namely how far public moneys were invested in the private company concerned. Having said so, they hastened to provide a short formula which was referred to by the previous speaker. He was satisfied with that, but it does not contain the logical consequences of the test laid down by the Shastri Commitee itself, namely seeing whether and how far public moneys have flowed into the private company or not. That is why it became necessary for the Joint Committee to insert a new provision, namely sub-section (6).

For instance, a private company invests in another private company. Each of these private companies may have two members each. In all, there are four persons who bring their moneys together. How can you say that the second private company has become a public limited company? The test being utilisation or employment of public funds, can you say that investment by a private company which has a limited number of shareholders in another private company would make the later a public limited company? That is why the Joint Committee went to the logical conclusion and inserted sub-secion (6) wherein they took into consideration the shareholding of private limited companies and said that if the total number of shareholders of the shareholding company or companies together with the individual shareholders, of the private company in which share mere held by private companies did not exceed 50, the latter private limited company would continue to remain a private limited company. That was the logical conclusion and that is why it became necessary to incorporate it. Therefore, Shri Tangamani's amendment seeking to delete it is not based on logical grounds at all.

But my complaint is that the Joint Committee did not improve upon it in other respects. Whereas they took into consideration whether the real persons who owned shares in a private limited company were 50 or more, they did not take into consideration how far public moneys were invested in the private limited company.

It is well known that a private limited company depends not only on its share capital, but also on capital raised by issuing debentures. By restricting this definition only to the investment in the equity share capital, we have excluded investment by way of debentures by either private or public limited companies.

13·47 hrs.

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

This idea of capital consisting of equity capital and debentures in part is not an uncommon thing. When we look at the definition of a private company, we find the restriction that not only its share capital should be subscribed to by only a limited number of persons, but also that the debentures issued by it should not be issued to

[Shri Nathwani.]

public generally. It is not open to the private limited company to invite subscriptions for its debentures from the public at lage. If it invites subscriptions to its debentures from the public, public money flows, and it sheds its character as a private limited company. Therefore, the logical thing to do it to include not merely the share in the equity capital but also the share in the debenture capital owned by the public companies.

Again, when we come to section 372, which section is also being substituted by a new one in Clause 136, we find the provisions which control the purchase by one company of shares of any other company or companies, but there you will find that the restriction applies to debentures also. A company cannot buy shares of another company beyond a cartain limit. Likewise, it cannot buy debentures also beyond a certain limit. Otherwise, there is inter-investment, and there is concentration of wealth. For this reason, the principle of capital consisting partly of share capital and partly of debenture capital is very well recognised and has also been acted upon in several parts of this Act, and I fail to see why it has not been given effect to in this clause. In the English Act also, which contains a similar provision, the holding is not confined merely to share capital but it covers the purchase of debentures also.

Objection has been raised saying that, after all, debenture-holders are in the position of creditors, they are secured creditors, and they have nothing to do with the management of the company, whereas a share-holding company by being a shareholder is entitled to take part in the management of that company, and, therefore, we are restricting this provision only to shareholding. This is the line of argument. When moneys are raised by debentures generally, and I say generally but invariably when the amount raised is large, the debenture-holders are given a right to appoint their nominees, at least, two, on the board of directors. I ask with emphasis whether any instance can be cited where any company has raised a very large amount by way of issuing debentures, when the debenture trust deed did not provide at least for the appointment of two directors on the board of the company. Therefore, the argument that because they are in the position of creditors or outsiders and they do not take part, therefore, we should exclude debenture-holding of another company does not at all appear to me.

Therefore, I commend my amendment seeking to incorporate the words 'or debentures' after the words 'share capital.'

Shri Morarka: I wish to commend our amendment No. 108 which has been so ably moved by my colleague Shri Nathwani.

The Shastri Committee laid down, in fact, only one criterion for treating private companies as public companies, and that criterion is whether public moneys are involved or not. Whether public monies are involved in the form of share capital or in the form of debenture capital is, according to us, immaterial. As long as public money is involved—and that is the criterion which the Shastri Committee has laid down, and it has been accepted—there is ample justification, according to me, to include the word 'debentures' after the word 'shares'. Irrespective of whether 25 per cent of the share capital of a company is owned by another body-corporate or whether 25 per cent of the debenture capital is owned by another body-corporate, that company whose capital is so owned should become a public company.

I wish to say a few more words in this connection. My hon. friend Shri Nathwani referred to the Cohen Committee and the practice in England. But there is one distinction between

the private companies in England and the private companies here. All these precautions such as publicity, giving of information, filing of documents with the registrar etc. are taken in order to inform the public of the affairs of a company in which public money is invested. In the English Companies Act, there is no provision at all that a private company should bear the word 'private' after its name, whereas, in India, after the Act of 1956, we have by statute provided that every private company should mention the word 'private' as a part of its name. In other words, here, any person who is dealing with a company will know whether he is dealing with a private company or a public company. And if a person deals with a private company, knowing fully well that he is dealing with a private company, he certainly knows what his rights and duties are in respect of that company. Therefore, the Cathen Committee's example, does not support our contention, so far as converting private companies into public companies is concerned. There is a small distinction, and I think that distinction has to be borne in mind.

A good deal of apprehension has been expressed about converting public companies into private companies, and steps are, therefore, being taken to safeguard against that danger. But what I personally feel is that there is an equal danger of converting these so-called private companies into public companies, because our tax laws, and our revenue measures provide a certain definite advantage in favour of a public company. Sir, you are quite familiar with section 23-A of the Income-tax Act. Those companies are called section 23-A companies, and under that section, if there is a public company, the majority shares of which or 60 per cent—I do not remember the exact percentage—are controlled and owned by less than six persons, then that company would be deemed to be a private company for the purpose of the Income-tax Act. But if there is a public company, the majority shares of which are owned by less than six persons, then it cannot be deemed to be a private company within the meaning of the Income-tax Act. Now, the tendency would be that a company may be formed with seven or eight members, because the minimum qualifications necessary for a public company are that it should have seven members at least; thus, a public company may be formed with seven or eight members, and not less than six persons would then control the majority shares of that company, and that company, as compared to any other company, would tend to benefit financially, because it will not be compelled under section 23A of the Income-tax Act to declare dividends or to distribute its reserves or undergo the other consequences. Therefore, according to me, the House has given a lot of weight to the problem of converting public companies into private companies, but they have completely overlooked the danger, which, according to me, is more practical and more poignant, namely the conversion of the so-called private companies into public companies.

I have got here the latest report of the Company Law Administration, which at least does not disclose any alarming figures in regard to the conversion of public companies into private companies. With your permission, I shall just read one or two sentences from para 39 of that report. It says:

> "The number of public companies converted into private companies has more or less remained stationary at the last year's level. During 1958-59 there were 57 cases of conversion of public companies into private companies as against 54 such cases during 1957-58 and 227 in 1956-57."

So, what is the tendency? As against 277 in 1956-57, the number has fallen to 57 in 1958-59. So, the contention of hon. Members and the impression that they have sought to create namely that there is a growing tendency on

[Shri Morarka]

the part of people to convert their public companies into private companies merely to get certain benefits or to escape certain publicity etc. do not, according to me, seem to be very well founded.

14 hrs.

The amendment of Shri Tangamani suggests that if the shares are held by a bank even on behalf of its clients, then the bank should be counted as one of the holders of the shares. In other words, if a bank holds on behalf of an individual certain shares in a private company and that percentage is, say, 25, even though the shares are not held in reality by any corporate body and are held only by an individual, still, according to Shri Tangamani's amendment, it should be deemed to be a public company. I think the Shastri Committee's Report, on which Shri Tangamani relies so much, clearly lays down the principle, and that is whether public money is involved or not. It goes a step further. Public money must not only be involved but it must be involved to a considerable extent, and that considerable extent, according to it, is 25 per cent. It has defined that. Now, our only amendment to that is whether it is in the form of a share capital or debenture capital, it makes no difference. As long as it is public money involved or invested in a private company, the affairs of that private company must be subject to the same scrutiny, the same publicity or the same control as that of a public company. I therefore feel that there is merit in our amendment and I would request the hon. Minister to consider whether it is possible fof him to accept it.

Before I sit down, I have only one more word to say, and that is, again, for the information of Shri Tangamani who seems to be a little worried about these private companies. In one of the other clauses, we have provided that even those private companies which will not come under the mischief of this clause, that in any other private company hereafter would be required to file with the Registrar not only the balance sheet, as it was hitherto required, but also the profit and loss account. So that, to that extent even an ordinary private company is subject to a little more restriction and control; to that extent, there would be more publicity.

On the whole, this clause is a very fair compromise and it embodies the recommendations of the Shastri Committee. If the hon. Minister can accept our amendment, I think it would meet the intention of the Shastri Committee to the full extent. I hope the Minister would give due consideration to this.

Shri Kanungo: My hon. friends, Shri Nathwani and Shri Morarka, have explained the position very clearly. I particulorly emphasise the closing remark of Shri Merarka's that this clause is in fact the result of a compromise after long deliberations. It could have been more rigid, it could have been less rigid, but we arrived at this. The conception that there should not be any private companies was discussed and has been discussed in this legislature, in the Press, in public and also in Committees. There are countries where this distinction does not exist, that is, there is just one type of corporation only, not two. In the UK, on the laws of which our original Act of 1913 was framed, they have alteded their law and they have this distinction but based on different principles. Therefore, we thought that considering the background of history, considering the existing circumstances and considering the tendencies, this particular provision would meet the demands of the times. If in future there are other developments, it will be time then to consider a change of law. But too violant a change of law, as it stands at present, will not be conducive to the best social interests of the country. Therefore, we have in the Joint Committee

adopted this particular provision. The quantum of control which is envisaged would come into effect if there is not less than 25 per cent paid up share capital held by one or more bodies corporate. It could have been 50 per cent, 45 per cent or 20 per cent. We came to the conclusion that 25 per cent was the reasonable figure for the time being.

As regards Shri Nathwani's proposition for considering loans—not all loans, but I believe only loans in the form of debentures to be classified as equity capital—the point was also considered and we deliberately decided that we should not include the same. As a matter of fact, in clause 136 which changes section 372, the word 'debentures' was there in another context of course, but the Joint Committee thought that it would not be useful to keep it there. Therefore, at the present moment, it has been decided for the time being that equity capital which actually controls the company should be taken into consideration. The exemptions provided, to which my hon. friend, Shri Tangamani, objected, are necessary in the existing circumstances. One of the amendments of Shri M. R. Masani suggests that where there is collaboration between a foreign company and an Indian company, it should be relaxed, but we have not deliberately done so because we do not know what is the nature of companies in different countries; also they change their laws. Therefore, the only concessions we have made is where the entire capital is subscribed by the foreign corporation. We do not go behind that. In certain quarters, in the Press and in public, the restriction has been considered as too rigid; else where it has been considered as not so rigid. Therefore, considering the present circumstances, I suggest that the clause as adopted by the Joint Committee may be accepted. I do not accept any of the amendments.

Mr. Deputy-Speaker: I shall now put amendment No. 2 to vote.

Amendment No. 2 was put and negatived.

Mr. Deputy-Speaker: Now I shall put amendment No. 3 to the vote of the House.

Amendment No. 3 was put and negatived.

Mr. Deputy-Speaker: What about other amendments?

Shri Tangamani: Amendments Nos. 104 and 40 may be put separately?

Mr. Deputy-Speaker: I shall now put amendment No. 104 to vote.

Amendment No. 104 was put and negatived.

Mr. Deputy-Speaker: Now I shall put amendment No. 40 to vote.

Amendment No. 58 was put and negatived.

Mr. Deputy-Speaker: The other amendments that are left are Nos. 58 and 108. I will put them to the vote; first No. 56.

Amendment No. 40 was put and negatived.

Mr. Deputy-Speaker: I will now put amendment No. 108.

Amendment No. 108 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 14 stand part of the Bill."

The motion was adopted.

Clause 14 was added to the Bill.

Mr. Deputy-Speaker: Clauses 15 and 16 have already been voted. I will now put clauses 17 to 24 to vote.

Shri Jaganatha Rao (Koraput): Sir, I have 3 amendments to clause 24.

Mr. Deputy-Speaker: Then, I will put clauses 17 to 23 to vote. The question is:

"That clauses 17 to 23 stand part of the Bill."

The motion was adopted.

Clauses 17 to 23 were added to the Bill

Shri Jaganatha Rao: Sir, only this morning I gave notice of 3 amendments to clause 24.

Mr. Deputy-Speaker: I can waive notice only if the amendments are acceptable to Government.

Shri M. R. Masani: Sir, it would be easier if we adopt the same procedure as we adopted last time. Then, we would know which clauses would be moved separately.

Mr. Deputy-Speaker: Then, clause 25 will be taken up separately. There are no amendments to clauses 26 and 27. I am putting them to the House.

The question is:

"That clauses 26 and 27 stand part of the Bill."

The motion was adopted.

Clauses 26 and 27 were added to the Bill.

Mr. Deputy-Speaker: There are no amendments to clauses 28 to 35.

The question is:

"That clauses 28 to 35 stand part of the Bill."

The motion was adopted.

Clauses 28 to 35 were added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 36 to 40 stand part of the Bill."

The motion was adopted.

Clauses 36 to 40 were added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clauses 41, 43, 46 to 53 and 54 stand part of the Bill."

The motion was adopted.

Clauses 41, 43, 46 to 53 and 54 were added to the Bill.

Mr. Deputy-Speaker: Now, I think these are the clauses to be taken up separately, 24, 25, 27A, 35A, 40A, 42, 44, 45, 53A, 55 and 56. We will take up clause 24.

Clause 24.— (*Amendment of section 81*)

Shri Jaganatha Rao: Sir, I have given notice of 3 amendments to clause 24.

Mr. Deputy-Speaker: I already enquired whether they are acceptable to Government.

Shri Kanungo: Yes, Sir.

Shri Jaganatha Rao: Sir, I move:

Page 12, line 27

for "the Board of directors decides" *substitute* "it is proposed". (109).

My object in moving this amendment is this, Amendment to sub-section (1) of section 81 has been moved to clarify the position that the provisions of sub-section are applicable whenever there is a proposal to increase the subscribed capital of the company irrespective of whether such a proposal is made by the Board of directors or by the company in a general body meeting. This amendment is of a verbal nature and may be accepted by the House.

The second amendment is No. 110. I move:

Page 13,—

for lines 21 to 28, *substitute*—

"(b) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company—

(i) to convert such debentures or loans into shares in the company, or

(ii) to subscribe for shares in the company:

Provided that the terms of issue of such debentures or the terms of such loans included a term providing for such option and such term." (110)

Sir, the option which has been proposed by my amendment to sub-section (3) of section 81 is to enable the company to confer an option on a lender of money or a debenture-holder to subscribe for the shares of the company, to a specified extent within a specified date in future as may be fixed. Sub-section (3) as it stands in the amended Bill does not give this option. It only recognises an option to the lender of a loan or to a debenture-holder to convert any unpaid part of the loan or debenture into shares.

It is desirable to allow a company to confer cash options of the type now proposed provided they are approved by the Government. Sub-clauses (1) and (1a) as they stand at present authorise the company to enable the lender to do so by complying with the procedure laid down in those two sub-clauses. In that case, such options should be conferred with the safeguard of government approval. In these circumstances, this amendment is necessary and I commend it to the House.

The third amendment is a small verbal one. I move:

Page 13, lines 29 and 30—

for "of the company" *substitute*—

"passed by the company in general meeting". (111)

I commend this to the acceptance of the House.

Shri Kanungo: I accept these amendments, Sir.

Mr. Deputy-Speaker: The question is:

Page 12, line 27,

for "the Board of directors decides" *substitute* "it is proposed" (109)

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 13,—

for lines 21 to 28, *substitute*—

"(b) to the increase of the subscribed capital of a public company caused by the exercise of an option attached to debentures issued or loans raised by the company—

(i) to convert such debentures or loans into shares in the company, or

(ii) to subscribe for shares in the company:

Provided that the terms of issue of such debentures or the terms of such loans included a term providing for such option and such term." (110)

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 13, lines 29 and 30—

for "of the company" *substitute* "passed by the company in general meeting" (111)

The motion was adopted.

Mr. Deputy-Speaker: Now, I will put clause 24, as amended, to the vote.

The question is:

"That clause 24, as amended, stand part of the Bill."

The motion was adopted.

Clause 24, as amended, was added to the Bill.

Clause 25— (*Amendment of section 84*)

Mr. Deputy-Speaker: There is an amendment given notice of by Shri Naushir Bharucha He has given intimation that he moves it. But he is not present himself. I am told that the hon. Speaker announced that those who wanted to move certain amendments might give intimation. The intimation is all right. But that alone cannot enable it to be treated as having been moved.

Shri Kanungo: When the hon. Speaker mentioned about intimation, he meant that the intimation should be passed on to the Table within half an hour.

Mr. Deputy-Speaker: That was done. But, now, he ought to have been here. I cannot take it up. I will put the clause to the House. The question is:

"That clause 25 stand part of the Bill."

The motion was adopted.

Clause 25 was added to the Bill.

New Clause 27-A

Dr. M. S. Aney: I beg to move:

Page 15,—

after line 31, *insert*—

'27A. *Insertion of new section 111A.*—After section 111 of the principal Act, the following section shall be inserted, namely:

"111A. (1) If the Company or its Board of Directors intimates in writing its decision not to register the transfer or transmission of a charge, or in the case of an appeal, if the Central Government informs the applicant of the dismissal of the appeal against the Company's decision of refusal to register or if the result of a proceeding, if launched by the aggrieved transferor or the transferee under section 155 of this Act, has the consequence of the dismissal of the application to register the transfer or transmission of a share purchased by the transferee, the transfer or transmission of the members charge shall be deemed to be void or inoperative from the date of the intimation either by the Company or by its Board of Directors or by the Central Government, as the case may be.

(2) Such intimation either by the Company or its Board of Directors or by the Central Government shall be despatched to the buyer as well as to the seller within two months from the date of refusal to recognise and register the transfer or transmission of a share and in the case of the Central Government within two months from the date of the judgment in appeal.

(3) Where either the Company or its Board of Directors or the Central Government omits to intimate either the buyer or the seller, either, of them may intimate in writing the Company or Board of

Directors of that Company or the Central Government, as the case may be, and shall additionally inform the other party to the transaction in writing that the transfer or transmission of share has become void or inoperative and that *status quo ante* be restored by placing the parties respectively in the same position as if the transaction had not taken place.

(4) In respect of such intimation in writing under sub-section (3), the party other than the party sending written intimation shall, within one month from the date of receipt of such intimation, perform all acts necessary to restore *status quo ante* the date of transfer or transmission of the share sold.

(5) Where the other party omits to comply with the provision of such section (4), the seller if aggrieved may institute a civil suit in proper civil court against the other party to the transaction to get back the charge certificates on offering refund of money value of shares received by him and if the aggrieved party be the buyer, to get a refund of the consideration paid to the seller on surrendering the share certificates together with other connected documents and on offering restoration of any dividends or other benefits received subsequent to transfer:

Provided that such suit shall be instituted within a period of 3 years from the date of service of intimation mentioned in sub-section (1) and provided further that such suit shall be filed within a period of 3 years from the date of receipt of intimation under sub-section (2), as the case may be.

(6) In suits instituted by virtue of provisions of sub-section (5), the company may be made a party by the court *suo motu* or on application by any party to the suit."

(88)

Sir, this amendment arises out of the feeling of oppression to which selling holders of their shares in the Brihan Maharashtra Sugar Syndicate Ltd., Poona have been called on to submit *vis-a-vis* the buyers whose transfers were not approved or registered by the Board of Directors of the Syndicate and who also failed in their appeal filed under section 111(4) of the Act. Some of these transferees filed against the Syndicate in the Bombay High Court an application under section 155 of the Act for rectification of the Syndicate's register of members by registering their transfers repudiated by the Board of the Syndicate's directors. This information can be had on page 2 of the annual report of the syndicate for the year ended 30-6-1958. Thus, there was no registration of transfers of the Syndicate's shares of the face value of about Rs. 5,44,705 and the disgruntled buyers' reaction involves injury or oppression to thousands of the Syndicate's selling share-holders. These are sought to be had in trap by the speculating buyers as stated below.

The buyers filed a test case before the City Civil Court, Bombay in the form of C.S. No. 1746 of 1958. This was decided on 17-1-1959 in favour of the plaintiffs (the speculating buyers) and the decision that was passed against the contesting defendant—a selling member was that the latter was to figure as a constructive and honorary trustee for the buyer till an indefinite time when the company would re-decide to register the transfer of the shares and place the plaintiff as a member in the place of the selling share-holders in the register of the Syndicate's members. Various kinds of oppressive reliefs were granted against the selling members. The duties cast on him will have to be performed by him practically throughout his life without remuneration and irrespective of his convenience. The selling share holders had agreed by an undertaking to make all efforts to complete the title of the buyer.

[Dr. M. S. Aney]

A.I.R. 1943 Mad. III contains a view that the contract to sell a limited company's share contemplates that the transferer would exert to get the transferee on the register of the company's members. How this could be hoped for in the face of the sweet and absolute choice of the board of directors as per articles of association of the Syndicate passes all understanding and comprehension. But such is the nature of the contract. However, the fact remains that the transaction of the sale of the share as contemplated by both the sides gets frustrated when the board of directors refuses to register. Frustration owing to failure of a contingency arising out of Section 32 of the Contract Act is similar to the frustration created by the failure of the board of directors of the Syndicate to recognise the transfer of shares.

What should be the natural result of such frustration is now the question. The answer should be that the legal result of such failure or frustration is to treat the transaction of the sale as inoperative and to make the buyers liable to reverse the sale and to render the vendor liable to return the price or other benefit received by the vendor. For this view, I rely on the principles of sections 64 and 65 of the Contract Act and also the observations of the distinguished author, Shri Ramaiya, in the top paragraph in page 3 of his book *Guide to the Indian Companies Act*, 1956.

This aspect of the state of things between the selling shareholders and the buyers in view of the working of the Indian Companies Act remained unconsidered in the judgment obtained by the speculating plaintiff buyers in their test case C.S. No. 1746/1958 which held in the buyers' favour one sided equity making the vendor to play always the role of constructive trustee or of an unremunerated servant to make available to the buyer all the benefits, rights and privileges which the buyer would have got if his transfer had been registered by taking all kinds of tedious steps and spending money over lawyers. Many of the sellers are not literate enough to undertake such work.

The above plaintiffs have served all selling share-holders with a notice to express their readiness to work throughout their life as constructive trustees for the lucky and speculative buyers in view of the judgement passed by the City Civil Court purporting to follow the view conceded in 1954 S.C.R. on 117th page—AIR 1953, S.C. 385. It can be urged that the view of the Supreme Court in paras 20 and 21 of AIR 1953 S.C. 385 was not followed by the Bombay City Civil Court. The corollaries of the equity affirmed in 45 Bombay L.R. 46 have been exploited in the City Court's judgement. This is not fair. In these cases, what is equitable from the point of view of the vendors was not considered. Indeed there is no statutory provision in the point as to the protection required by the vendor against the buyer's claim to treat the vendor as his unpaid constructive trustee or agent. Hence the need for some protective legislation to keep the seller unharmed and unoppressed by the 'speculator' buyer in case the latter's application for registration is rejected by the company or by some other competent authority. Again the selling share-holders reside in differently situated places in India. The speculator can take advantage of any breach and drag them in courts in Bombay where they reside or in Poona where the head office of the company lies.

To appreciate the nature of the oppression which the unwary seller would feel, one has to study the several relief and injunctions granted by the Bombay Court on the last two pages of its judgement. To be at peace one share-holder has, to my knowledge, ordered, as per section 206 of the Act, the company to pay the dividend if declared to the speculator or to his benamidar whoever may be considered as the real transferee. The share-holders have sold the share to a sharebroker and it was the latter who

seems to have sold the shares in turn to these speculators. The speculators, though informed of the above arrangement as to dividend payment, are not content. By their notice they want the selling share-holders to be the watch dogs for the buyers and to be alert to do various duties to the buyer free of cost and with due diligence, practically throughout the life time.

Such possible enforcement of the so-called rights of the buyer on the vendor has caused consternation to thousands of share-holders. All of them must be willing to pay back the consideration and take back the shares. Plenty of instances can be cited showing how legislature has intervened to curb wagering or speculation through forward contracts. The policy of section 408 of the Company Act is to adopt remedies to nullify oppressing measures which caused harassment to a company's members. It is quite fair at a certain stage mentioned in the amendment, the purchase in the hands of the speculating buyers should be considered inoperative with an equity in favour of the seller to back the share on refunding the price or advantage for which the shares were sold by the vendor without the slightest suspicion that by the mere fact of the sale, a continuous and life-long oppression will have to be suffered by the seller as virtual slave or unpaid servant and dummy of the speculative buyer. Necessity for relief as per amendment is thus obvious. Again, it is undesirable that a register of members mentioned as per section 150 should contain members who have no rights at all. I recommend the amendment for acceptance of the House.

Shri Kanungo: I am sorry I am not in a position to accept the amendment for the broad reason that it cuts across the very fundamentals of the conceptions of Company Law. The restrictions on shares changing hands should be as little as possible. Now, there are provisions in the law which restricts transferability in certain circumstances, provided that transferability is ensured under other circumstances. I may, in this connection, particularly draw the attention of the House to section 111 of the Companies Act 1956. Normally, companies in their Articles of Association provide any procedure, restrictions or conditions under which their shares can be transferred. Also, the very purpose of a stock exchange is that the transferability of the shares with the least possible hindrance and least possible delay should be ensured. In fact, if I remember aright, one of the conditions under which a company's shares can be listed in the stock exchanges is its transferability within the quickest possible time.

I can fully realise the circumstances of the solitary case which the hon. the Mover of the amendment has mentioned. I would like to see the judgement of the High Court if it has been brought to the High Court. In the original civil court, the court, I understand, decided that there was an obvious injustice to the transferer and, therefore, it went out of its way and permitted the transferer to sign proxies as a trustee of the transferee and on behalf of the transferee. This is rather a peculiar case, but the amendment as has been worded cannot be accepted at this stage because it cuts at the very root of the transferability of the shares. This particular instance is one of the out-of-the-way cases and if we find that the provisions of the law are not adequate, then we shall have to consider it at that stage, but at present we should not.

Mr. Deputy-Speaker: I shall now put the amendment to the vote of the House.

Amendment No. 88 was put and negatived.

New Clause 35A

Shri Tangamani: I beg to move:

Page 17,—

after line 25, *insert—*

'35A. *Amendment of section* **154.—** In section 154 of the principal Act,—

[Shri Tangamani]

(a) in sub-section (1), the following proviso shall be added at the end, namely:—

"Provided that a company shall not close the register of members for a period of fifteen days next on which dividends are due."

(b) in sub-section (2), after the words "specified in that sub-section", the following words, brackets and figure shall be inserted, namely:—

"or if a register of members is closed before the expiry of period of fifteen days referred to in the proviso to sub-section (1),".' (72)

This is virtually clause No. 38 in the original amending Bill, except that I would like the word "due" to be substituted for the word "declared". The reasons which were advanced when clause 38 was introduced will apply to my observations. When it was introduced we were told that this provision was intended to prevent any *mala fide* action on the part of the companies calculated to deprive the transferees of shares of the benefits of the dividends falling due. The amendment which I have tabled will bring it in line with section 27 of the Securities Contracts (Regulation) Act of 1956, which requires the transferee to lodge the security and all other documents relating to the transfer with the company within fifteen days of the date on which the dividend becomes due.

I believe this matter was also discussed by the Shastri Committee, which says:

"In view of section 27 of the Securities Contracts (Regulation) Act, 1956, requiring a transferee to lodge the security and all other documents relating to the transfer which may be required by the company for being registered in his name within 15 days of the date on which the dividend becomes due, it might be desirable to amend this section. Normally books are closed by a company for a period antecedent to and ending with the date fixed for a general meeting but there is no binding rule to that effect. When books are closed share transfers are not accepted for registration. Dividends are declared payable to those members whose names stand on the register as on a particular date. In order to prevent any *mala fide* action on the part of a company calculated to deprive transferee of shares of the dividends legitimately due to them by keeping the books closed after the declaration of dividend, it might be provided by means of a proviso to section 154 that a company should not close its books for a period of 15 days after the dividend becomes due."

With this amendment the original section 154 will read as follows:

"(1) A company may, after giving not less than seven days' previous notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members or the register of debenture holders for any period or periods not exceeding in the whole forty-five days in each year, but not exceeding thirty days at any one time:

Provided that a company shall not close the register of members for a period of fifteen days next on which dividends are due."

I do not know how this omission has taken place, or what alternative provisions, if any, have been made to ractify the suggestions made by the Sastri Committee. I submit that this amendment may be accepted by the House.

Shri Kanungo: I am sorry I cannot accept the amendment moved by my hon. friend Shri Tangamani. My hon. friend mentioned that in the original Bill as introduced in the House there was a provision like that. But after discussion in the Select Committee we thought that we should drop it, because there is some conflict between section 27 of the Securities Contracts (Regulation) Act and the provision in the Companies Act.

Therefore, I am not in a position to accept this amendment.

Mr. Deputy-Speaker: I shall now put amendment No. 72 to the vote of the House.

Amendment No. 72 was put and negatived.

New Clause 40A

Shri C. R. Pattabhi Raman: Sir, I beg to move:

Page 19,—

after line 26, insert—

'40A. *Amendment of section 163.*— In section 163 of the principal Act,—

(a) in sub-section (1), the following proviso shall be added at the end, namely:—

"Provided that such registers, indexes, returns and copies of certificates and documents or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, if—

(i) such other place has been approved for this purpose by a special resolution passed by the company in general meeting,

(ii) the purport of the proposed special resolution has been advertised in advance for three consecutive days in at least two newspapers circulating in the neighbourhood of the registered office of the company, and

(iii) the Registrar has been given in advance a copy of the proposed special resolution.";

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Nothwithstanding anything contained in sub-section (1), the Central Government may make rules for the preservation and for the disposal, whether by destruction or otherwise, of the registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1)."' (80).

Sir, by virtue of section 163(1) of the Companies Act, 1956 the register of members commencing from the date of the registration of the company, the index of members, the register and index of debenture holders and copies of all annual returns prepared under sections 159 and 160 together with the copies of certificates and documents annexed thereto are required to be kept at the registered office of the company. That was the provision in vogue.

It was represented to the Sastri Committee that in cities like Calcutta, Bombay and Madras on account of shortage of space in the registered office and in order to facilitate the proper compilation and maintenance of these registers, a company may be permitted to keep these documents at any place within the city other than the registered office of the company. The Sastri Committee accepted the suggestion. Para 67 of its report is relevant so far as this aspect is concerned. The Sastri Committee's recommendation was not, however, accepted by the Government at that time on the ground that it would enable companies to make it difficult for

[Shri C. R. Pattabhi Raman]

members to inspect the relevant records. Recently urgent representations have again been received from certain trade associations and other bodies that an amendment of the Act should be made permitting the keeping of the registers etc., within the city but at a place other than the registered office.

At present, the registered offices of most of the important companies are located in the crowded business areas of the principal industrial towns, where the problems of office accommodation and storage space has become extremely acute. The bigger companies whose registers and returns run into many bulky volumes, therefore, consider it necessary that the law should authorise them to keep and maintain the registers and returns, now kept in their registered offices, at any other place in the town, so that the office accommodation in the registered offices of those companies might be utilised to better purposes. The present amendment which is designed to facilitate the keeping of books at a place other than the registered office contains adequate safeguards for members and against *mala fide* actions of companies to make inspection of the records difficult.

The purpose of the amendment in clause (b) of this amendment is obvious. It will facilitate disposal of records that are not considered worth preserving any longer. They lumber record rooms and permission is sought to destroy them as per the rules.

Sir, I move my amendment.

Shri Kanungo: Sir, I accept the amendment.

Mr. Deputy-Speaker: The question is:

Page 19,—

after **line 26, *insert*—**

'40A. *Amendment of section* 163.— **In section 163 of the principal Act,—**

(a) in sub-section (1), the following proviso shall be added at the end, namely:—

"Provided that such registers, indexes, returns and copies of certificates and documents or any or more of them may, instead of being kept at the registered office of the company, be kept at any other place within the city, town or village in which the registered office is situate, if—

(i) such other place has been approved for this purpose by a special resolution passed by the company in general meeting,

(ii) the purport of the proposed special resolution has been advertised in advance for three consecutive days in at least two newspapers circulating in the neighbourhood of the registered office of the company, and

(iii) the Registrar has been given in advance a copy of the proposed special resolution.";

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), the Central Government may make rules for the preservation and for the disposal, whether by destruction or otherwise, of the registers, indexes, returns, and copies of certificates and other documents referred to in sub-section (1).".' (80).

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 40-A be added to the Bill."

The motion was adopted.

Clause 40-A was added to the Bill.

Clause 42 was added to the Bill.

Clause 44 was added to the Bill.

Clause 45— (*Amendment of Section 173*).

Mr. Deputy-Speaker: Is there any amendment to clause 45?

Shri C. R. Pattabhi Raman: Sir, I beg to move:

Page 21,—

for lines 16 to 22, substitute—

"Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects; any other company, the extent of shareholding interest in that other company of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any, of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent of the paid-up share capital of that other company." (81).

Sir, the words "the extent of shareholding interest in the company" occurring in the proviso proposed to be inserted by item (b) of clause 45 seem to be misleading in the context in which they occur, because the words "in the company" would be read to mean the company which has prepared the explanatory statement for circulation to the members. This is not the intention. What is meant to be referred to is the shareholding interest in any company (other than the company circulating the explanatory statement) which is involved in the item of business which is the subject of the explanatory statement. This amendment therefore makes a necessary drafting change of a clarificatory nature.

Shri Kanungo: I accept the amendment.

Mr. Deputy-Speaker: The question is:

Page 21,—

for lines 16 to 22, *substitute*—

"Provided that where any item of special business as aforesaid to be transacted at a meeting of the company relates to, or affects, any any other company, the extent of shareholding interest in that other company of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any, of the first-mentioned company shall also be set out in the statement if the extent of such shareholding interest is not less than twenty per cent. of the paid-up share capital of that other company." (81).

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 45, as amended, stand part of the Bill."

The motion was adopted.

Clause 45, as amended, was added to the Bill.

New Clause 53A.— (*Amendment of section 197*)

Shri Tangamani: Sir, I beg to move:

Page 24,—

after line 5, insert

"53A. *Amendment of section 197.*—In section 197 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) No document purporting to be a report, or forming a part, of the proceedings of a general meeting of the company shall be circulated or advertised at the expense of the company unless the summary of the proceedings of such meetings is also circulated or advertised." (41).

[Shri Tangamani]

In the beginning itself, Sir, I would like to make a submission, that this clause virtually is original clause 58 of the amending Bill which was introduced in this House. When this was introduced the reasons for the same were given by the hon. Minister. The notes on clauses also referred to the point why this particular clause will have a salutary effect. It was said that this particular amendment as contained in the original clause was meant and it was designed to discourage the practice of giving publicity to Chairman's speeches alone without indicating the trends of discussions at the meeting on the agenda.

Now, there are two points. One is, imposing unnecessary expenditure on the company, and the second one is, not educating the shareholders fully as to what happened in that meeting. It will not be fair to ask the shareholders to bear the burden of advertising and giving publicity to the Chairman's speech. It can be argued that so long as the shareholders know what has happened at the meeting no publicity need be given. I am not arguing that way. Possibly, it is necessary taht people should know and the shareholders also should know what has happened at a particular meeting. Deletion of the original clause 58, in my humble opinion, is, therefore, a very incorrect procedure. The clause provides that publication of the Chairman's speech at the company meeting at company's cost is undesirable. The committee then felt—actually in the Joint Committee also it was felt—that the Chairman's speech was useful and the obligation to publish a summary of the proceedings of the meeting would entail unnecessary expenditure. The shareholders are now distributed all over the country. So it will be better to let the shareholders know what has actually happened at a particular meeting. That will give them an intelligent and informed position about what actually happened in that meeting.

So, Sir, the matter is not as if it was introduced all of a sudden. The Sastri Committee also, I believe, went into this matter. In paragraph 82 of its report this is what the Sastri Committee says:

In paragraph 82, the Sastri Committee had something very comprehensive to say:

"It has been pointed out that in the case of many large companies the speech of the chairman at the annual general meeting is alone printed *in extenso* and published in newspapers at the expense of the company. It has been suggested that the entire proceedings of the meeting should be published in a regional newspaper. The present section does not make it incumbent on the company to circulate or advertise the report of the proceedings."

The existing section 197 says:

"No document purporting to be a report of the proceedings of any general meeting of a company be circulated or advertised at the expense of the company, unless it includes the matters required by section 193 to be contained in the minutes of the proceedings of such meeting.

If any report is circulated or advertised in contravention of sub-section (1), the company and every officer of the company who is in default, shall be punishable." etc.

Sub-section (1) of section 193 says:

"Every company shall cause minutes of all proceedings of general meetings, and of all proceedings at meetings of its Board of directors or of committees of the Board, to be entered in books kept for that purpose."

Now, the section as it stands, provides for the publication of the chairman's speech at the expense of the company. It has been suggested that the proceedings of the meeting should be published in regional newspapers. This section does not make it incumbent on the companies to circulate or advertise the report of the proceedings. The present practice is to publish only the speech of the chairman. In order to avoid giving an inaccurate impression of the proceedings of the meeting or the state of the company's affairs and the standing of the management to the shareholders, it is desirable that this practice should be discontinued.

The Sastri Committee also has suggested in what form the amended clause should be. They say:

> "No document forming part of the proceedings of the general meetings of a company shall be circulated or advertised at the expense of the company unless the matters required under section 193 to be contained in the minutes of such meetings are also circulated and advertised".

In other words, what they say is that the present practice of merely giving publicity to the chairman's speech must stop, or, if that is not stopped, it must also include proceedings as has been mentioned under section 193 of the original Act.

I have also made pointed reference to this at the Joint Committee and I tried to win over the Joint Committee on this important point. But I was in a minority. But I have made pointed reference to it in my Minute of Dissent, and I distinctly remember that the general trend of the notes of the evidence, which has also been laid on the Table and copies of which have been given to hon. Members, shows that they—I am referring to the employers' witnesses—want only the chairman's speech to be published. If the chairman's speech is going to be published, it can be done, and the shareholders need not be made to bear the burden of meeting the cost of it. On that point, there was no direct reply. Some people would say that the chairman's speech is more in the nature of a statement of policy, indicating how far the company is carrying out the terms and conditions which have been laid down in the articles of association and the memorandum. If that was the purpose, I say that that purpose has been amply met by the memorandum and articles of association.

If that is the position, and if the purpose of giving the chairman's speech is to indicate to the people, according to the Sastri Committee, what has happened in that particular meeting, section 193 provides that only reference to a particular meeting is to be made, and that particular meeting is given publicity. But, in practice, what has happened is, they give publicity to the chairman's speech alone. In the original Act, it is not said that they must give publicity to the chairman's speech alone. However, the present practice is that the chairman's speech is given publicity and the company is made to pay the expenses thereof.

Now, we had clearly provided that if they are going to give publicity to the chairman's speech, then not the entire proceedings but at least the summary of the proceedings visualised under section 193 should also be included. I consider that this was a very useful clause which was first introduced. I cannot put it more forcibly than what is contained in paragraph 82 of the Sastri Committee report where they have indicated that it would be an undesirable thing to give publicity only to a part of the statement, and by giving publicity to a part of the statement, one does not get the actual trend.

When the Bill was introduced, we were forcibly told that this clause was only designed to discourage completely the practice of giving publicity to the chairman's speech alone, without

[Shri Tangamani]

really caring to give the trend of discussion to the public. That being the purpose, I do not know what has happened now to change the purpose for which that amendment was brought in.

So, I submit that although the Joint Committee has not accepted this view, I commend it to the House and I submit that this is one of the clauses which should be accepted by this House as the House had also expressed its views and the Government also expressed their view in forcible terms when the Bill was first discussed here before it was referred to the Joint Committee.

Shri Kanungo: I am sorry I am not in a position to accept the amendment. As the hon. Member has mentioned, following the Sastri Committee's recommendations, in the original Bill, a provision almost like the one proposed by my hon. friend was included. But in the course of the discussion in the Joint Committee and the reasons given there, with which I now agree, it was made clear, and the main reason was that the funds of the company should not be spent unnecessarily.

Shri Tangamani: Then, will the hon. Minister state that the companies will not publish the chairmen's speeches and the funds of the companies will not be spent for this?

Shri Kanungo: Let the hon. Member wait. About the veracity of this provision, there may be two opinions and considerable conflict, and in view of those aspects, the Joint Committee thought it wise to drop that provision. So, I am not in a position to accept the amendment of the hon. Member.

Mr. Deputy-Speaker: I shall put the amendment to the vote.

Amendment No. 41 was put and negatived.

Mr. Deputy-Speaker: We shall now take up clause 55.

Clause 55.—(*Substitution of new section for Section 198*)

Shri M. R. Masani: I beg to move:

Page 24,—

after line 32, *add*—

"Provided further that the aforesaid limitation of eleven per cent. of the net profits shall not apply in the case of a company which becomes a public company by virtue of section 43A or to the remuneration of managing or whole-time directors of a company under sub-sections (1) and (3) of section 309 if such remuneration has been approved by the Central Government under section 311 of the Act." (4)

Page 25,—

after line 19, *add*—

"Provided further that the minimum remuneration of fifty thousand rupees per annum shall not apply in the case of any company which becomes a public company by virtue of section 43A or to the remuneration of two or more managing or whole-time directors of a company if their remuneration has been approved by the Central Government under section 311 of the Act." (5)

Mr. Deputy-Speaker, Sir, I wish to draw the attention of the House to these amendments—two amendments—the purpose of which is the same. It is this. In the case of companies which are deemed to be public companies by virtue of section 43A, the limits that are set in this clause to the total managerial remuneration and to the minimum remuneration of the directors should not become applicable. Now, as we know in trading companies, profits are not uniform or steady. They vary from year to year, and 11 per cent. of a good year is very different from 11 per cent of a bad year. When there are large profits, the salaries would normally not touch 11 per cent, but in a

bad year, when the profits are low, the same salaries which will be reasonable or modest would exceed 11 per cent. And salaries are not a thing that should be hitched on to the profits of a particular year. Good management would become difficult if remuneration of people involved in the management was to oscillate with the profits of the enterprise, which may be high or low, and in either event not due to their hard work or incompetence, but for completely extraneous factors of the world market, scarcity and so on, which have nothing to do with them at all. So, this whole principle of linking it with a percentage of profit is not a very suitable one.

This applies with particular force to companies which are really private companies but which are officially deemed, by virtue of section 43A, to be public companies. In this particular case, where at least those companies are managing agencies which earn no other remuneration, this clause fixing 11 per cent, would act as a hardship. I suggest, therefore, that another look should be given to this matter. Otherwise, the 43A companies will become automatically subject to these restrictions.

15 hrs.

So the proposal made in these two amendments is that two categories should be excluded from the purview of this clause. One is section 43A companies and the other is those whose remuneration has already been approved by the Central Government under section 309 of the Act, *viz.*, where special sanction of the Government has been obtained, these limitation should not automatically apply. This is the purpose of the two amendments and I hope the hon. Minister will accept them.

Shri Naushir Bharucha: I beg to move:

Page 25,—

after line 36, *add*—

"Provided that any expenditure referred to in clauses (a), (b) and (c) above shall not be included in 'remuneration' if such expenditure has been incurred solely or substantially for facilitating the business of the company or for its benefit." (59)

My amendment No. 59 deals with a point which requires the attention of Government. Clause 55 amends section 198 of the Act which provides the over-all maximum managerial remuneration. It provides that the total managerial remuneration shall not exceed 11 per cent. Sub-clause (2) says that this 11 per cent shall be exclusive of any fees payable to directors under section 309(2). The word 'remuneration' is defined in an explanation on page 25. The explanation says that remuneration shall include any expenditure incurred by the company in providing any rent free accommodation or any other benefit or amenity in respect of accommodation free of charge to any of the persons specified in sub-section (1). Those persons are managing agents, secretaries and treasurers.

My amendment is, after the 'Explanation', there should be a proviso to this effect:

"Provided that any expenditure referred to in clauses (a), (b) and (c) above shall not be included in 'remuneration' if such expenditure has been incurred solely or substantially for facilitating the business of the company or for its benefit."

I feel that it is quite possible that a company might provide rent-free accommodation because it wants certain managerial personnel on the spot, say the factory site or for some other reason and it is equally possible that the rent-free accommodation may ordinarily fetch very high rent. Take, for instance, the flats which are provided to Members of Parliament. Ordinarily some of the flats may fetch a rent which is more than the M.P.'s salary. But surely we do not regard that as being part of the remuneration paid to the M.P., for the simple reason that we understand that this is

[Shri Naushir Bharucha]

given only for substantially facilitating the work of this House.

Similarly, in private enterprises, there may be not only rent-free quarters, but various other amenities which may be provided for facilitating the business of the company, even though the manager or director does not want them for his personal benefit. Therefore, my amendment provides that where such amenities have been provided substantially for facilitating the business of the company, that expenditure has to be excluded from 'remuneration'. Otherwise, Government should give us an explanation as to what is going to happen in such *bona fide* cases.

Shri Tangamani: I beg to move:

Page 24,—*Omit lines* 31 *and* 32(105).

Page 25, lines 8 and 9,—

omit "[exclusive of any fees payable to directors under sub-section (2) of section 309]". (106)

The main purpose of my amendment is that when managerial remuneration has been fided on a percentage basis, it should include all the other amenities, benefits and emoluments which they are likely to get. When we are fixing the ceiling at 11 per cent, it should not exclude certain things. Section 309(2) provides for certain remuneration for attending the company meetings and also some monthly payments to the directors. My submission is, when are providing that the total remuneration to the managing directors is 11 per cent which is high enough—I have not gone into that—that is inclusive of all the other benefits they are going to get. It should exclude the other remunerations provided for them, particularly in section 309 of the Act. That is my submission.

Shri Somani (Dausa): I beg to move:

Page 24, line 25, *after* "its directors" *insert*—

"other than technical directors". (92)

Mine is a simple amendment that any remuneration paid to a technical director should be excluded from the managerial remuneration. The reason is quite obvious. The remuneration that is paid to technical directors of any company is for technical services that the directors render to the company. That cannot be regarded as part of managerial remuneration. So, I suggest that any remuneration paid by the company to the technical directors should be specifically excluded from the calculation of managerial remuneration.

Shri Kanungo: It is not possible to accept any of the amendments for the very simple reason that the other provisions of the law can take care of any hard cases that have been suggested. As Shri Masani has suggested, it is possible that a trading company or even a manufacturing company may run into losses for reasons beyond its control, in spite of the best of management. If in a particular year there is no profit, is it proper that the managerial personnel who have managed the company to their ability should be deprived of their remuneration?

That is exactly the reason why there are provisions that even where the maximum is prescribed in the articles of association, which according to the law cannot exceed Rs. 50,000, Government can make provision about the remuneration of the managerial personnel for any reasonable amount. As a matter of fact, there have been cases in the course of the last three or four years where these considerations have prevailed on the Government and remunerations have been provided above the maximum of Rs. 50,000 provided in the law.

As for exempting particular companies which by operation of the present law after it is passed will become public companies, obviously you cannot enact a law where you can have the advantages of both types. The very fact that by operation of the law a company moves from one category to another shows that it must take the privileges and the liabilities of the category into which it moves. But, regarding the ensuring of the managerial remuneration, it can be taken care of, as I have explained already. So, there is not going to be any difficulty. If hon. Members will read the reports of past years, they will find that Government have taken a very liberal view and have tried to ensure that even where the profits are less, reasonable remuneration is paid to managerial personnel.

So far as the amendment of my esteemed friend, Shri Somani, is concerned, it is very difficult to define the word "technical". In fact, there is a section—I do not exactly remember the number—in which there is provision for salaries and all that. But to write into the law "technical", which cannot be defined, will be opening the floodgates to this sort of things which are happening and for which the law is being tightened, as was done in 1956. Shri Somani knows that there have been cases which have come to the notice of Government, at least to my personal notice, where odd persons have been inducted as employees, technical employees, without their having even a vestige of background of technical knowledge. So, I oppose all the amendments.

Mr. Deputy-Speaker: I shall now put amendment Nos. 92, 105, 4, 106, 5 and 59 to the vote of the House.

Amendments Nos. 92, 105, 4, 106, 5 and 59 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 55 stand part of the Bill".

The motion was adopted.

Clause 55 was added to the Bill.

Clause 56— (*Amendment of section 204*)

Shri M. R. Masani: I beg to move:

Page 26.—

after line 12. *add*—

'(c) after sub-section (5), the following sub-section shall be inserted, namely:—

"(5A) A selling agent of a company shall not be deemed to be an office or place of profit under this section or any other provisions of the Act."' (6).

This deals with the position of selling agents as to whether or not the term "selling agent" constitutes an office or place of profit under this Companies Bill. This is a slightly technical matter and I shall be obliged if the Minister will follow this, because there is no point of substance but there is a point of ambiguity of law. It seems that the provisions of sections 204, 294, 314 and 356 of the Act conflict and it is not clear how they can be reconciled. If section 294 alone is applicable, as it seems to be, to the appointment of a selling agent, he can be appointed for a term extending beyond five years. But if section 204 also applies, then the appointment will be bad, in so far as the period for which the appointment operates is more than four years. So, there seems to be a conflict between sections 294 and 204 in regard to the term of five years.

Section 204, that is, the present clause 56 which we are discussing, provides that no firm or body corporate shall be appointed to any office or place of profit under a company for a term exceeding five years at a time, provided that with Government's approval it may be increased in the case of initial appointment to a term not

[Shri M. R. Masani]

exceeding ten years. Sub-section 3 of section 204 provides that appointments existing at the time of the coming into force of the 1956 Act will terminate not later than five years from the date of appointment, and there is provision for renewal for special purposes not exceeding five years further at a time.

Sections 294 and 356 deal specifically with the appointment of selling agents. Under section 294 a sole selling agent can only be appointed with the approval of the company in general meeting. Sub-section 3 of that section provides that in the case of a sole selling agent existing at the time of the coming into force of the 1956 Act, the shareholders given an opportunity in general meeting, if the appointment is for a period not less than five years, to terminate the appointment, if desired, provided the termination would be effective after the expiry of at least five years from the date of the original appointment. The power given under sub-section (3) is optional to the company in general meeting, who presumably would be in a position, even if the appointment was for a much longer period than five years, to allow the appointment to continue for the full period. Section 356, on the other hand, deals with the case of a managing agent acting as a selling agent of a principal company outside India, and expressly limits the appointment of such selling agent to five years.

Now, I think the Minister will have to agree that certain consequences follow from this. If you read these three or four sections together, then the consequence that follows is that the selling agency is not to be considered, and should not be considered, as an office or profit falling under section 204. My amendment says that this should be made clear, because otherwise there will be ambiguity and endless litigation. As I understand it, my reading of the result of these three or four sections is that section 204 should not be deemed to make a selling agent's job an office of profit under the company. If I am right, then an amendment like this, which says so in terms, should be accepted.

If that were not the position, then under section 204 the appointment can be only for a maximum period of five years and there will be no need for such a limitation under sub-section 3 of section 356. Also sub-section 3 of 294, dealing with the existing selling agents, would conflict with sub-section 3 of section 204 to the extent that it contains a provision which gives the company in a general meeting the option to allow the existing agent to continue for another five years.

As we know, the general principle of construing of statutes says that when a section deals with a general subject matter, which is section 204 (present clause 56) and another provision of the law—sections 294 and 356 deals with a specific matter the selling agent, the specific provision would override and exclude the general provisions applied under section 204. Thus the proper interpretation would be, in my view, to treat sections 294 and 356 as overriding this section, in which case the appointment of selling agent will fall outside the purview of section 294. So, whichever way one looks at the question, it will be desirable to make it clear that the appointment of selling agent in this respect does not come within the purview of clause 56, which is at present under discussion.

This view is further supported by a reference to section 314, which deals with the appointment of a firm or a private company to an office of profit in which the director of a company is interested. That section requires that no such appointment should be made except with the previous consent of the company in general meeting by special resolution. Therefore, if the sole selling agency is an office of profit, the provisions of sections 294 and 314 again directly come into conflict. The former requires a company's specific approval within a period of six months and terminates the appoint-

ment if not approved by the company's resolution, whereas the latter section requires an appointment, if any director is interested, to be sanctioned by a previous special resolution.

These various provisions, if left unconstrued, will cause considerable confusion and it seems that the amendment of the Act at this point offers a very good opportunity to my hon. friend to clarify this matter and put it beyond doubt. If a time-limit is to be fixed for the appointment of the selling agent, other than in the case of managing agent and associates, it should be done in this Bill by section 294. Appointment of selling agents, which have already been made before this amending Act, should be allowed to continue for the full period since they were made in the belief and with the justification that no limit of time was provided by the law in regard to the appointment of selling agents except in the case where there was identity between the selling agent and the managing agent. Therefore, I would request that this amendment, which is clarificatory of the position as it today obtains in law, should be accepted to put this matter beyond doubt and prevent confusion and litigation.

Shri Kanungo: As this and subsequent clauses have provided that sole-selling agency is an office of profit, that is the premise on which we have gone.

Shri M. R. Masani: What about the other sections?

Shri Kanungo: Where it is a question of a particular category of men going into certain particular categories of contracts it will be governed by certain considerations. I am advised that there will be no conflict. The provisions regarding sole-selling agency as such will not conflict with those provisions. Shri Masani is right when he says that there might be some amount of ambiguity. Maybe, there might be some amount of doubt. But I am advised that that doubt is not sustainable. Therefore I am not prepared to accept this amendment.

Mr. Deputy-Speaker: I shall now put amendment No. 6 to the vote of the House.

Amendment No. 6 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 56 stand part of the Bill."

The motion was adopted.

Clause 56 was added to the Bill.

Mr. Deputy-Speaker: We shall now take up the next group of clauses, that is, clauses 57 to 79.

Shri M. R. Masani: I have got an amendment to clause 57. I would like this clause to be discussed.

Mr. Deputy-Speaker: I shall first put clauses 58, 60 to 64, 67 to 69, 71, 73 and 76 to 78 to the vote of the House together.

Shri Somani (Dausa): What about clause 77?

Shri Tangamani: Shri Somani wants clause 77 to be discussed separately.

Mr. Deputy-Speaker: Then I will take out clause 77 and put the other clauses together.

The question is:

"That clauses 58, 60 to 64, 67 to 69, 71, 73, 76 and 78 stand part of the Bill."

The motion was adopted.

Clauses 58, 60 to 64, 67 to 69, 71, 73, 76 and 78 were added to the Bill.

Clause 57.—(*Substitution of new section for section* 205)

Shri M. R. Masani: Sir, I have an amendment (No. 7) to this clause which suggests that certain lines be deleted. I move:

Pages 26 and 27,—

omit lines 26 to 41 and 1 to 4 respectively. (7)

By this clause it is provided that the payment of dividend should be subject to certain limitations and there are two provisos whose deletion I am suggesting. The provisos are that if a company has not provided for depreciation for any previous year, the depreciation for the previous year has to be made up before a dividend can be declared and, similarly, losses for previous years have to be met before a dividend can be declared after the coming into force of this Act of 1960.

This may be a reasonable restriction in the case of a normally functioning company, but I think it will be admitted that where a new company or where a company which is making a drastic expansion of its operations is concerned, to expect these provisos and provisions to be complied with would create great hardship. If we are serious about wanting new entrepreneurs to come up in this country and are wanting expansion of our joint stock enterprise, it seems to me that this is a very queer way of going about it. In the interest of new enterprise and of expansion, I think these fetters which are sought to be put by this clause are bad. From that point of view I am suggesting that these limitations be removed in so far as new companies and expansion projects are concerned.

Shri Naushir Bharucha: Sir, I beg to move:

Page 27, line 6,—

for "necessary so to do in the public interest" *substitute* "fit" (60).

Clause 57 deals with section 205 which relates to dividend being paid only out of the profits of the company. So far as the fundamental principle underlying this clause is concerned, one has absolutely no doubt about its soundness. In fact, I think this will ultimately make for very salutary and healthy finances of companies. But I agree in a measure with my hon. friend, Shri Masani, who said that some exceptions should be made in the case of those companies which, while they function normally, would be able to carry out the provisions of this clause but which the case of very big expansion may not be able to fulfil the conditions required here. It would be very unfair to the shareholders of such a company because the company is functioning healthily, just because it has taken to expansion programmes it should not be allowed to pay dividends for perhaps a number of years.

Very probably the hon. Minister in charge of the Bill will give the answer to that by saying that there is a provision contained in sub-clause (c) on page 27 where it says:

> "The Central Government may, if it thinks necessary so to do in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year for any previous financial year or years without providing for depreciation."

The hon. Minister may say that this is a complete answer to Shri Masani's objection. But I am afraid it is not a complete answer. My amendment seeks to provide a more or less complete answer to that and it is this.

Sub-clause (c) refers to the Central Government's power to permit companies to declare dividends where it thinks necessary so to do *in the public interest*. In other words, if public interest is not involved then the Central Government even has no power. Normally, it is very difficult to see how public interest comes in where a particular corporation carries on its activities and requires dividends to be declared without providing fully for

that. It is mainly a matter between the company and its shareholders. Public interest can only come in, if at all indirectly. For instance, if it is an enterprise like the steel industry or something, one can understand an element of public interest in it. But in the case of most of the companies you will appreciate that there is no question of public interest being involved. It is a question of internal finance of that particular company. Therefore I am suggesting that instead of saying 'the Central Government may, if it thinks necessary so to do in the public interest', we should say 'the Central Government may, if it thinks fit'. It leaves a very wide latitude to the Central Government, whether public interest is involved or not, to permit a company to declare dividend without fully satisfying this provision. This is a very necessary clause and I do not think the hon. Minister should take a rigid attitude or regard it as a question of prestige and think that any amendment moved by the Opposition, if it is accepted, tends to lower the prestige of the Government.

I think that where the basic principles of a clause are sound, the pin pricks ought to be eliminated. Once the Government has got the basic principle in its favour. I do not think it ought to fight shy of accepting such an amendment. This amendment does not in any way impair the strength of sub-clause (c) as it stands. On the contrary, it gives the Government a wider latitude. I want the Government to have a wider latitude in its own interest so that at a particular time it may not feel helpless even while desiring to give a company permission, on the ground that it is not in the public interest. Therefore I appeal to the hon. Minister in charge of the Bill to consider this.

Shri Somani: I beg to move:

Pages 26 and 27,—

for lines 25 to 41 and 1 to 16 respectively, *substitute*—

"Provided that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year does not exceed a rate of six per cent on the paid-up capital or where dividend for any financial year is declared or paid out of profits of any previous financial year or years which falls or fall before the commencement of the Companies (Amendment) Act, 1960." (93).

I feel that the policy proposed to be adopted under this clause may have certain consequences and it is very desirable that the Government should seriously consider the implications of this policy on the climate of investment. Fortunately, the climate at present for investment in new companies is very favourable. I am really very much afraid that this restriction as suggested in this clause, may adversely affect that climate. There cannot be any difference of opinion in regard to the desirability of doing everything possible to promote investment in productive enterprises. I do not think, therefore, that it is the policy of the Government to do anything to discourage that investment. We have, therefore, to analyse the implications of this clause so that the results that may arise out of the application of these restrictions can be properly kept in view.

It is quite obvious that for any enterprise, it takes three years or longer to go into production after the company is floated and money is realised from the investors. After having gone into production, it should also be remembered that under the Income-tax Act, new projects are eligible to the benefit of development rebate. It is compulsory for all companies to provide at least 75 per cent. of the development rebate before any profits can be utilised for paying any dividend. In the initial period 75 per cent. of the 25 per cent development rebate to which new projects are eligible is a very substantial amount. That itself lengthens the period of payment of dividend and over and above that, it is sought to be provided that not

[Shri Somani]

only depreciation for the year in which the profits have accrued, but also all the arrears of depreciation of previous years have got to be provided before a company can declare any dividend. In practice, this means only one thing. That is, no new company or existing company with a substantial programme of expansion will be able to pay any dividend to its shareholders for quite a number of years, unless, of course, specifically approved by the Government. I do not think there is any such situation or any circumstances which warrant the imposition of the drastic restrictions involved in this clause. As a matter of fact, every company management is quite aware of the need to provide adequate amount so far as depreciation is concerned. I do not think there is any justification for coming to general conclusions to be drawn as if any companies have acted hastily in declaring any liberal dividends before making any provision for depreciation. It is better that, so far as this question of dividends is concerned, it is left to the Board and the shareholders in their general meeting. They are the best judges of the nature of the policy which the company should adopt so far as dividend is concerned.

In my amendment, I have only suggested that the companies should be given the discretion to declare dividend up to 6 per cent before making adequate provision or necessary provision for depreciation. I do not think the declaration of 6 per cent. dividend to the investors after a period of 4 years or 5 years, which is the minimum period in the light of the requirements of development rebate, is something to which any objection could be taken. I, therefore, suggest that the Government should seriously consider the desirability of not putting any restriction which may have an adverse effect on the climate of investment. Because, I have no doubt that if this Bill is strictly enforced, naturally, any investor would fight shy of investing in a company from which he cannot expect any return for a number of years, 7 or 8 years. I submit, with all earnestness, that some relaxation of policy is called for. That is all that I have suggested in the amendment.

Shri Nathwani: Fears have been expressed that the existing provisions will operate harshly, particularly in the case of new companies. It is said that there is at present a very favourable climate for investment in new companies and that if the existing provisions are to be implemented, it will act as a deterrent to the new investors who are not likely to get anything by way of yield for a considerable period of time to come. In this connection, I wish to draw attention to the existing provisions of section 208. I will read it out because it will allay the fears or apprehensions of those who think that for some time, for even as long as a period of 7 years, they may not get anything out of the company. Section 208(1) says:

> "Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any work or building, or the provision of any plant, which cannot be made profitable for a lengthy period, the company may—
> (a) pay interest on so much of that share capital as is for the time being paid up...."

In the case which is visualised by my hon. friend Shri Somani and by my other friends, there is provision in this Section 208. The concern is sound; but it is expected that it will take a considerable time before it can meet its due liabilities, whether by way of development rebate or by way of other liabilities and nothing would be left to enable the company to pay dividends. In that case, there is an existing provision whereunder the company can pay a reasonable rate of interest on the share capital.

Secondly, it is said that it would act as a deterrent. Those who are now

going for investment in new companies are doing so, not with a view to get dividends in the near future or immediately. As every one of us, who is watching the present trend in the share market, knows, there is immediately considerable appreciation in the value of the shares. Even before the capital is subscribed, even before the land and machinery are purchased, there is considerable appreciation of the shares. Therefore, the fear that the provision would act as a damper on investment is, according to me, misconceived. That is all I have to say in this connection. I think this provision would ensure a greater amount of financial stability and to that extent; from the long range point of view, it is to be welcomed.

Shri Morarka: Sir, I support clause 57 because I think it contains a very salutary provision. The main principle in company organisation or in the philosophy of corporate enterprises is that dividend should not be paid out of capital. Nobody can dispute this salutary principle. That is, the capital of the company should remain intact. If you do not provide real depreciation according to the real value of an asset, that is if you provide less depreciation, or if you do not provide for depreciation at all out of your profits and if you pay dividend, to that extent, you are paying dividend out of capital. Let me illustrate this point. Suppose there is a company with Rs. 10 lakhs as paid up capital. This sum of Rs. 10 lakhs is invested in purchasing plant and machinery. You know that the life of this plant and machinery is 10 years. At the end of the tenth year, the value of this plant and machinery would be zero. That means, every year, you must provide at least Rs. 1 lakh by way of depreciation on the plant and machinery. Otherwise, your profit figures to that extent would be unrealistic. In preparing the profit and loss account, if you do not provide Rs. 1 lakh for depreciation but provide less, or you do not provide at all, that means, the figure of profit that you have determined is not the real figure of profit, but that is only an inflated, artificial figure which is arrived at only to enable you to make payment of dividend. In other words the dividends which you are paying are not paid out of real profits. You are paying dividends only out of capital. It is like this. Suppose there are unpaid wages, unpaid salaries or certain other bills which are unpaid and you have not taken those bills into consideration, naturally your profit figure would be more. Can you pay dividend out of that profit? All that I say is that depreciation must be provided, and provided fully according to the real life of the asset. Clause 57, according to me, makes ample provision for such contingencies.

I cannot understand the amendment of Shri Masani seeking to delete this proviso. He wants the proviso to be dropped because it requires that if you want to pay dividend even out of your accumulated past profits, before you do so you must ensure that depreciation has been provided for those past years, the years to which those profits relate. If the accumulated profit is a profit without providing for depreciation, the same infirmity in the argument would exist. Those profits also would be unrealistic inasmuch as they have not taken care of depreciation.

But there is a proviso which I think would meet the requirements of Shri Masani to some extent. The proviso on page 27 says:

> "Provided further that it shall not be necessary for a company to provide for depreciation as aforesaid where dividend for any financial year is declared or paid out of the profits of any previous financial year or years which falls or fall before the commencement of the Companies (Amendment) Act, 1960."

Shri M. R. Masani: I said "after".

Shri Morarka: The proviso which he wants to delete refers to years after

[Shri Morarka]

the commencement of this Act, that is the Bill under consideration. What I mean is that even this Clause 57 has no retrospective applicability, it is only prospective. Surely, the shareholders would know that dividend would be paid only after making full provision for depreciation.

Shri M. R. Masani: It is bad for them to know it because they will not invest their money.

Shri Morarka: I beg to differ from him when he says that shareholders would not invest money if depreciation is provided. I do not agree with him. The example that Shri Somani gave I can understand, namely that the company is entitled to certain special rebate, special type of depreciation, and if in one year this rebate and depreciation amount to 40 or 50 per cent., it will not be possible for the company to make provision to that extent. Even in this Clause 57 it is not required that you must make provision for depreciation to that extent, but only on the normal basis, basis acceptable to the income-tax people or basis which is reasonable in the opinion of the Central Government. The new sub-section reads:

> "(2) "For the purpose of sub-section (1), depreciation shall be provided either—
>
> * * * *
>
> (c) on any other basis approved by the Central Government which has the effect of writing off by way of depreciation ninety-five per cent. of the original cost to the company of each such depreciable asset on the expiry of the specified period;"

All that it says is that the discretion is left to the Central Government to indicate any particular basis which would have the effect of writing off 95 per cent of the value of the asset over a specified number of years.

The real life of an asset is determined only in terms of years, and if the number of years has to be determined by the Government, whether a particular asset has a life of 10, 15 or 20 years, then surely the depreciation which has to be provided under this clause has to be in accordance with that life. That means it would be on a real basis, on a basis acceptable to the income-tax people or is permissible under various provisions. I think therefore that the fears expressed by Shri Masani and Shri Somani are not very well founded, because I feel it is a very salutary principle that before you give dividend, depreciation on the basis of the real life of the asset must be provided. Otherwise, you are paying dividend out of capital, and that is against the fundamentals of the corporate philosophy itself.

I therefore support this clause and I hope hon. Members will not press their amendments.

श्री रामसिंह भाई वर्मा (निमाड़) : श्रीमान्, जो एमेंडमेंट श्री मसानी जी और श्री सोमानी जी का है, उसका मैं विरोध करता हूं । इसका मूल कारण यह है कि ऐसा करते समय उन्होंने इंडस्ट्री का खयाल नहीं रखा है और न शेयर होल्डर्स का ही खयाल रखा है । इंडस्ट्री की चिन्ता उन्होंने नहीं की है, केवल डिविडेंड की ही चिन्ता की है । मैं अपने अनुभव के आधार पर कहता हूं कि इस प्रकार डिविडेंड देने का एक बुरा परिणाम आया है । मैंने उसे भोगा है और भोग रहा हूं । पिछले जमाने में ऐसा होता आया है कि उद्योग और कारखाना लास करता रहा है और बिना इसको देखे हुए कि कारखाने की क्या हालत है क्या नहीं है, बिना डिप्रिशियेशन निकाले हुए, बिना प्राफिट को या लास को देखे हुए डिविडेंड बांट दिया जाता था और कहीं पर तो छह सौ प्रतिशत तक बांटा गया है ।

उधर जो बिल्डिंग्स हैं, जो मशीनरी है, जो ब्लाक है, उसकी कीमत कम होती गई और इसका परिणाम यह हुआ कि कारखाने बन्दी का सवाल आ गया । इस तरह से कितने ही कारखाने और मिलें बन्द हुईं और इस कारण से बन्द हुईं कि उन्होंने डिप्रिशियेशन नहीं निकाला और अधिक से अधिक डिविडेंड बांट दिया । डिप्रिशियेशन तो मूल चीज है और उसको निकाला ही जाना चाहिए । अगर कोई ऐसा साल गुजरा हो कि उस साल में डिप्रिशियेशन नहीं निकाला जा सका हो—क्योंकि ऐसा होता है कि कभी उतार या चढ़ाव आता है, कभी लास भी हो सकता है—तो पिछला डिप्रिशियेशन आगे के प्राफिट में से निकाल लिया जाना चाहिये । अगर बारह से पन्द्रह बरस तक बिल्डिंग और मशीनरी की उम्र आंकी गई हो, तो उस पीरियड के अन्दर या उसके बाद भी बिल्डिंग और मशीनरी नई की नई बनी रहेगी, अगर डिप्रिशियेशन निकाला गया हो । अगर वह नई की नई बनी रहेगी तो आगे चल कर आपको डिविडेंड मिल जायेगा । इस वास्ते डिप्रिशियेशन निकालना बहुत बड़ी चीज है और बिना कारखाने की स्थिति को देखे हुए, बिना डिप्रिशियेशन निकाले हुए, डिविडेंड बांट देना गलत उसूल है । और कारखाना कायम नहीं रहेगा ।

सोमानी जी ने अभी डिवलेपमेंट रिबेट की बात की । अगर डिप्रिशियेशन नहीं निकाला गया होता तो डिवेलेपमेंट रिबेट का सवाल कहां से आएगा, और कैसे पैदा होगा जब पैसा नहीं है, जब आप लास करते जा रहे हैं और लास के बावजूद डिविडेंड बांटते जा रहे हैं ।

मैं श्री मसानी और सोमानी जी से निवेदन करना चाहता हूं कि आप उद्योगपति हैं और आपको चाहिये कि आप पहले उद्योगों का खयाल रखें । गाय दूध देती रही, इसका खयाल रखें और यह न सोचें कि जितना डिविडेंड दिया जा सकता है बिना दूसरी चीजों का लिहाज रखे, दिया जाना चाहिये । अगर आप ऐसा करते हैं तो मैं समझता हूं कि सोने का अण्डा देने वाली मुर्गी जैसी हालत आप करने चले हैं । ऐसा नहीं होना चाहिये । इस वास्ते मैं उनसे फिर से निवेदन करता हूं कि वे अपनी अमेंडमेंट वापस ले लें । म मजदूर वर्ग से ताल्लुक रखता हूं फिर ी उद्योग के और उनके हित की बात कह रहा हूं । वे स्वयं अपने हित की बात को समझें यह केवल मेरे समझाने वाली ही बात नहीं है ।

इन शब्दों के साथ जो ज्वाइन्ट कमेटी ने कम्पनी एक्ट में क्लाज रखी है उसका म समर्थन करता हूं और जो एमेंडमेंट पेश की गई है, उसका मैं विरोध करता हूं ।

Shri Kanungo: I would draw your attention to the clause as it was introduced in Parliament and as it has emerged from the Joint Committee. It can be safely said that the rigidity of the original clause has been considerably lessened.

My hon. friends Shri Morarka and Shri Nathwani have explained very lucidly the provisions as they exist today, and I believe all genuine apprehensions can be taken care of. In fact, as Shri Somani says, the clause now stands irrespective of the fiscal and tax laws as they change from time to time. The discretion lies with the company. Any good company will adjust its affairs to the best advantage of its share-holders. Therefore, the company can frame out its own method of providing for depreciation, and they have only to get the approval of the Central Government. That provision has been kept there merely to see that the provision which the company itself makes for depreciation is not onerous to the share-holders; but the initiative itself lies with the company. Thus, the rigidity which existed in the original Act, and which was there in the original Bill has been considerably

[Shri Kanungo]

liberalised. Therefore, I do not see any reason why there should be any apprehension.

Even in extreme cases, where dividends may not be available, as in the case of a large project where a sum of Rs. 10 crores or Rs. 20 crores is invested, and the factory comes into operation after a long time, the provisions of section 208 have been specifically excluded from the operation of this clause. In other words, dividends could be paid out from the capital itself under certain circumstances.

Shri Naushir Bharucha: Interest.

Shri Kanungo: It depends upon the circumstances whether it is interest or dividend. After all, interest is accumulation of capital.

Therefore, I commend that the clauses as recommended by the Joint Committee may be passed.

Shri Naushir Bharucha: What about Government taking more powers under section 205(1)(c), as suggested in my amendment?

Shri Kanungo: We feel that the powers as they are are enough.

Mr. Deputy-Speaker: I shall now put the amendments to vote.

The Amendments Nos. 93, 7 and 60 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 57 stand part of the Bill."

The motion was adopted.

Clause 57 was added to the Bill.

Clause 59—*(Amendment of section 209)*

Shri Naushir Bharucha: I beg to move:

No. 61, Page 29, *after* line 3, *add*:

"Provided further where books of account are temporarily shifted to a branch office in the ordinary course of business, or are shifted for the purpose of litigation in Court or for production before an authority requiring production of such books under any law for the time being in force, no such intimation may be given to the Registrar.". (61)

No. 62, Page 29, *after* line 19, *add*:

"Provided further that where on the date of commencement of the Companies (Amendment) Act, 1960, a company has not preserved books of account for the relevant period mentioned in sub-section (4A), the Government, on an application to be made by the company, within three months of the commencement of the Companies (Amendment) Act, 1960, may, on sufficient cause being shown, exempt the company from the requirements of sub-section (4A) for such period as it thinks fit.". (62)

Mr. Deputy-Speaker: These amendments are now before the House.

Shri Naushir Bharucha: Clause 59 amends section 209 which deals with the books of accounts to be kept by a company at its registered office. While we appreciate the fact that a clause of this type is necessary, I am of the opinion that so long as Government serve their purpose, it is desirable that the management of companies should not be put to any avoidable inconvenience.

The case that I have in mind is this. It is conceivable that the books of accounts of a company may have to be shifted from time to time from the head office to a branch office, or they may be required to be produced in a court of law for the purposes of evidence. If we are to maintain intact

the clause as it has emerged from the Joint Committee, it would mean that even where the books of accounts have been temporarily shifted, within seven days, the management has to inform the registrar of companies. I am of the opinion that where books have to be shifted in the ordinary course of business, this obligation on the management to inform the registrar within seven days should not be kept for two reasons; first, there will be numerous cases in which companies will be involved in litigation and there will be avoidable inconvenience caused to the management of the company to comply with the provisions of this clause; secondly, the work in the registrar's office will unnecessarily increase; especially, when books of accounts have to be temporarily shifted, the volume of correspondence that would get accumulated in the registrar's office would be huge enough.

I, therefore, appeal to the hon. Minister in charge of the Bill to consider the amendment which I have moved, namely:

> "Provided further where books of account are temporarily shifted to a branch office in the ordinary course of business, or are shifted for the purpose of litigation in Court or for production before an authority requiring production of such books under any law for the time being in force, no such intimation may be given to the Registrar.".

I suppose this is a common sense amendment, which ought to be accepted by Government. As I said, while we are in favour of making more stringent the provisions of the Companies Act, we are not in favour of unnecessarily putting in clauses which may cause avoidable inconvenience.

The second amendment to which I have to invite the attention of the House is this. Under the proposed new sub-section 4A, it has been provided that:

> "The books of account of every company relating to a period of not less than eight years immediately preceding the current year shall be preserved in good order.".

There is an obligation on the company to preserve the books of accounts of the company for a period of eight years; and that is regarded as necessary for the purpose of income-tax or for the purpose of special audit or whatever it may be. I think that the clause on the whole is salutary, but then, failure to maintain intact books of accounts of the preceding eight years entails certain penal consequences. It is conceivable that on the day that this amending Act comes into force, a company may not have for one reason or the other, books of accounts for the preceding eight years. Therefore, immediately this amending Bill becomes law, the directors of the company incur a legal penalty. In other words, what we are doing is that we are creating a criminal offence with retrospective effect, which is against all accepted standards and canons of criminal jurisprudence. An Act which was innocent when it was done should not be converted into a criminal act with retrospective effect.

Therefore, I have suggested an amendment to the effect that:

> "Provided further that where on the date of commencement of the Companies (Amendment) Act, 1960, a company has not preserved books of account for the relevant period mentioned in sub-section (4A), the Government, on an application to be made by the company, within three months of the commencement of the Companies (Amendment) Act, 1960, may, on sufficient cause being shown, exempt the company from the requirements of sub-section (4A) for such period as it thinks fit.".

The idea is this that it is not also desirable, if they are going to give some latitude to companies who have not preserved books of accounts, that they should sit over that position, until they are actually caught for some reason or the other.

[Shri Naushir Bharucha]

Therefore, I suggest an alternative by which the innocent companies, *bona fide* innocent companies, will not be penalised, and it is this. Supposing a company has not preserved books of accounts for eight years, then, within three months, it has got to apply to Government and say that it has not preserved books of accounts, and the Government will naturally make enquiries, and if sufficient cause is shown, in that case, Government may say, all right, you will be exempted for a period of another two years or three years, as the case may be; that is, the books of accounts are preserved only for the four or five preceding years. Otherwise, the effect of it will be this; the moment this Bill becomes law, immediately, because of its retrospective effect, we are creating an innocent act into a criminal offence.

I would like Government to look into both these amendments.

Shri Morarka: I support the amendment of my hon. friend, Shri Naushir Bharucha, concerning this retrospective effect. It is not so much an amendment as a clarification which is necessary from the Government side, because sub-clause 4A reads like this:

> "The books of account of every company relating to a period of not less than eight years immediately preceding the current year shall be preserved in good order."

> "Provided that in the case of a company incorporated less than eight years before the current year, the books of account for the entire period preceding the current year shall be so preserved."

Now, the difficulty may be that some of the existing companies may not have their books of account well preserved for these 8 years, because there was no law requiring them to do so—at least they may not have the books of account which are enumerated in this particular provision. I do not think it is the intention of the Department or Government to give retrospective effect to this clause and to punish people if they had not preserved the books of account. I think a clarification is necessary to say that after the commencement of this Act all companies would be required to preserve their books for 8 years. Those companies which do not have them for 8 years should intimate to the Department as to for how many years they have got the books of account. From then onwards at least, they should keep them for 8 years. I think this is a necessary clarification and I am obliged to my hon. friend for raising this point.

There is another point which I want to raise here. In this clause, for the first time we are providing a penalty of imprisonment for not keeping the books enumerated therein or for not keeping them at the registered office of the company. The penalty provided in the 1956 Act was Rs. 1,000. Now, we are enhancing that penalty to 6 months' imprisonment or Rs. 1,000 or both. This was considered in the Joint Committee to be necessary. This was as a result of the cumulative wisdom of the Joint Committee. So, I do not oppose it. But there is one thing. Wherever we have provided the penalty of imprisonment, we have also provided that the offence committed must be wilful. That is the general phraseology of the entire Companies Act. This was accepted in 1956. By some omission on my part, I could not move an amendment to this effect. But I would request the hon. Minister to consider it. If it is too late to accept an amendment to this clause, at least he should issue a directive to the Department to see that if such cases come then so far as the penalty of imprisonment is concerned, they should not ask for it unless and until they are satisfied that the offence was deliberate and wilful. If the hon. Minister is prepared to hold over the clause because we are ahead of schedule, I would be grateful to him, but if he is not inclined that way, at least he should issue directives to the Depart-

ment as I have suggested, because this is in keeping with the general pattern.

Before I sit down, there is another point I want to mention. The penalty of imprisonment is provided in two sub-clauses. One is for the managing director, general manager, manager, etc. Similarly, a penalty is also provided for other persons to whom the work is entrusted of keeping the books of account, etc. So, I would humbly request the hon. Minister to consider this. At least so far as the managing directors are concerned, there is some safeguard for them; they will have reasonable grounds to plead that the other persons were in charge and so on. But so far as the other executives, the subordinate officers, accountants, etc. are concerned, they have no such defence. So I would earnestly appeal to the Minister either to hold over the clause or introduce the word 'wilful' or at least to issue a departmental directive, on this point.

Shri Kanungo: I fully realise the apprehensions which have been voiced on the floor of the House. In fact, these apprehensions were discussed in the Committee stage and otherwise. It is true that very severe punishment has been provided for. It is also true that this clause is, by implication, to take effect retrospectively. All I want to say is this. As far as the public is concerned, the Sastri Committee Report was before the public and the Bill was introduced quite a long time ago. I concede that it is not notice enough because until a provision is written into the statute, it need not mean anything to anybody. But I would say that this provision has been made and deterrent penalty provided because there have been flagrant cases of destruction of books. Also, we have taken into consideration the fact that normally companies maintain their books, mostly for tax purposes. I am not prepared to accept any modification in the clause, but I can assure the House that Government will not invoke the penalty provision in genuine cases. That is, where in the course of routine without any *mala fides*, without any other intentions, the books are not available, we will not invoke it. In other words, we will enforce the law rigidly from the date it is enacted. As far as the past period is concerned, we will construe it liberally, and where the cases are genuine, we will not insist upon the heavy pepnalty or go in for prosecution.

As for what my hon. friend, Shri Morarka, mentioned, I would refer him to sub-clause (d) which says in item (iii):

> "after the proviso, the following further proviso shall be inserted; namely:—
>
> 'Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully' ".

So the word 'wilfully' is there.

Shri Morarka: That covers only the managing director. It does not cover the subordinate officers.

Shri Kanungo: It is true that it is primarily for the managers, managing directors and so on. Normally the primary responsibility is on the management, not upon the subordinates. It has been mentioned here, particularly to give a little modicum of safety; it cannot be strentched too far, because under the guise of what you call 'wilfulness' which in any case has got to be provided for in a criminal Act, the management should not escape punishment by making a scapegoat of the smaller fry.

Shri Morarka: I can understand the intention of the hon. Minister. But the present provision, as it stands, will excalty do the opposite. The minor fry would be sent to jail. For the bigger fry, you are providing the provision about 'wilfulness'. So why not the same be provided in the other case also?

Shri Kanungo: Wilfulness is a very difficult thing to prove in a criminal court or for the matter of that in any court. Therefore, I want to keep it as wide as possible.

Mr. Deputy-Speaker: Shall I put both the amendments together or separately?

Shri Naushir Bharucha: In any case, fate is the same.

Mr. Deputy-Speaker: I shall now put amendments Nos. 61 and 62 to the vote of the House.

Amendments Nos. 61 and 62 were put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 59 stand part of the Bill".

The motion was adopted.

Clause 59 was added to the Bill.

Clause 65— (*Amendment of section 220*).

Shri Jaganatha Rao: I beg to move:

Page 33, line 3,—*after* "provided" *insert* "further". (112).

This is the same as amendment No. 82 tabled by Shri C. R. Pattabhi Raman.

Mr. Deputy-Speaker: Is it acceptable to Government?

Shri Kanungo: Yes.

Shri Jaganatha Rao: It is a very small amendment which seeks to insert the word 'further' after the word 'Provided' in page 33, line 3. It is because there is already a first proviso, and this is the second proviso.

Mr. Deputy-Speaker: This amendment is now before the House.

Mr. Deputy-Speaker: The question is:

Page 33, line 3—

after "Provided" *insert* "further". (112)

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That clause 65, as amended, stand part of the Bill."

The motion was adopted.

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

Clause 66 was added to the Bill.

Clause 70.— (*Insertion of new section 233A*)

Shri M. R. Masani: Sir, I move:

Page 36,—

after line 24, *add*—

"Provided that before directing a special audit of the company's accounts the Central Government shall serve a notice on the company indicating the reasons why it proposes to appoint a special auditor and shall give the company an opportunity to show cause why such special audit should not be directed.

(1A) Where the Central Government makes an order under sub-section (1) or refuses to rescind any such order under the proviso thereto the company or any person aggrieved thereby may apply to the Court and the Court may if it thinks fit by order vacate any such order of the Central Government provided that no order whether interim or final shall be made by the Court without giving the Central Government an opportunity to show cause against any such application." (8)

Page 37,—

omit lines 1 to 7 (9).

Page 37, line 9,—

after "Central Government" *insert*— "shall furnish a copy of the report to the company and". (10)

Page 37, lines 14 and 15,—

omit "either a copy of, or relevant extract from, the report with". (11)

Page 37,—

for lines 16 to 18, *substitute*

"thereon and require the company either to circulate a copy of the report or such extracts thereof as the Central Government shall indicate to the members or to have the report or such extracts read before the company at the next general meeting". (12)

16.12 hrs.

[SHRI JAGANATHA RAO *in the Chair*]

This is an important clause. There was a certain amount of debate when the Bill came back from the Joint Committee. I shall try to explain the purport and purpose of these amendments of mine. Most important of these amendments is the one that seeks to suggest that certain rules of equity be given application to when the question of special audit is considered.

My amendment No. 8 reads:

"Provided that before directing a special audit of the company's accounts the Central Government shall serve a notice on the company indicating the reasons why it proposes to appoint a special auditor and shall give the company an opportunity to show cause why such special audit should not be directed and if the company shows such cause to the reasonable satisfaction of the Central Government the said special audit shall not be directed."

The second safeguard in the amendment is:

"Where the Central Government makes an order under sub-section (1) or refuses to rescind any such order under the proviso thereto the company or any person aggrieved thereby may apply to the Court and the Court may if it thinks fit by order vacate any such order of the Central Government provided that no order whether interim or final shall be made by the Court without giving the Central Government an opportunity to show cause against any such application."

The next amendment is to omit lines 1 to 9 on page 37. That would take away the power of the special auditor with Government's authority to ask for information of any kind that he wants, to launch upon an inquisition. That would not normally happen in any democratic country without the warrant of a court of law.

The remaining amendments are of a slightly more detailed and minor nature.

The last amendment is No. 12. It requires that the Central Government should make the reports or extracts of the report available to the companies and that these may be placed before the next general meeting of the shareholders by the directors so that they also cannot suppress the facts from those who own the company.

In the course of the general debate, Government never answered the question that was put to thm as to where was the necessity for the special audit. They have got so many powers of making special investigation under the other sections of the Act. That one would have thought that they would have utilised those powers that are already with them effectively before they went in for more powers. The desire of Government to arm themselves for all possible contigencies is becoming an obsession. We find that one power after another is being taken, whether it is effectively utilised or not.

The provisions of the clause, as they are at present, are of a very sweeping nature. As I pointed out earlier, when we talk of Government we talk of a

[Shri M. R. Masani]

small middle level official to whom, ultimately, the discretion of Government has to be delegated and who, in fact, must exercise that discretion.

I do not want to cover the ground that was covered in the general discussion of the Bill, but I cannot help recalling that Government were unable to give any lucid answer to the question as to how they proposed to exercise this discretion of deciding whether or not a particular business was run on prudent lines or on sound principles. These words, I pointed out then, were open to subjective interpretation and on which one good manager might be able to disagree with another good manager, on consultant or expert may disagree with another expert. In such a situation for a set of politicians or bureaucrats who know nothing about business to sit in judgment on those who, after all, invest their own money and take risks with their own property appears to be the height of unreason.

Then, as regards these safeguards, I remember that more than one member from the other side of the House and my hon. friend Shri Asoka Mehta with all his zeal for the State and State socialism, had to concede that though they were prepared to have a special audit, the safeguards I had suggested of giving the company a chance to explain and of knowing what the contents of the report were and of making the order subject to appeal in a Court of Law were necessary in free society. I am really sorry that this Government, in its usual unresponsive attitude, is not even prepared to meet the basic needs of the community when dealing with not criminals but with people who are doing their bit to expand the volume of goods and services required for society. Therefore, I feel that it would be a disgrace and a shame if these minimum safeguards were turned down in a cavalier way as they were rejected in the course of the general discussion.

Then, we come to the close of page 37, sub-clause (3A) which arms the special auditor with powers to ask for any information that he desires. Normally, there is a limit on the kind of information . . .

16.18 hrs.

BUSINESS OF THE HOUSE

Shri Khadilkar (Ahmednagar): On a question of privilege, Sir. I am sitting here and inside the Hall and we are experiencing the burning effect of tear gas here. I do not know whether it is a question of privilege or not. But it is a case of privilege in this sense. Something is going on outside the four corners of this House, it is true. Many shells are thrown and the gas has penetrated into this House. I feel that if something happens outside and it affects the house, if it affects the Members, it comes under privilege.

Mr. Chairman: I am afraid that this is not a matter of privilege. I do not think it relates to the privileges of the Members of this House.

Shri Tangamani (Madurai): Are we to be tear-gassed.

Mr. Chairman: It is something happening outside the precincts of the House.

Shri Khadilkar: Still it affects the members sitting in the House. (*Interruptions*).

Mr. Chairman: The hon. Member may write to the Speaker; but the proceedings of the House cannot be interrupted.

Shri Tangamani: But the tear-gas is meant only for outsiders.

Shri M. R. Masani: Sir, I am reminded of the story of a Speaker of the American House of Representatives who was told that there was a forecast that the world would come to an end in the course of the night. He said, 'If the lights go out, I shall ask