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LOK SABHA

JOINT COMMITTEE

ON THE

COMPANIES (SECOND AMENDMENT) BILL, 1964

EVIDENCE

सत्यमेव जयते

LOK SABHA SECRETARIAT

NEW DELHI

February, 1965/Magha, 1886 (Saka)

Price : Rs. 1.80

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III	**The Associated Chambers of Commerce and Industry of India, Calcutta**	19-1-1965	49
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	6. Shri P. Brahmayya		
	7. Shri M. P. Chitale		
	8. Shri A. Basu		
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JOINT COMMITTEE ON THE COMPANIES (SECOND AMENDMENT) BILL, 1964

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (SECOND AMENDMENT) BILL, 1964

Monday, the 18th January, 1965 at 15.00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri A. Shanker Alva
4. Shri Rajendranath Barua
5. Shri Bali Ram Bhagat
6. Shri Dinen Bhattacharya
7. Shri N. C. Chatterjee
8. Shri Sachindra Chaudhuri
9. Shri N. Dandeker
10. Raja P. C. Deo Bhanj
11. Shri Bhaskar Narayan Dighe
12. Shri G. N. Dixit
13. Shri Prabhu Dayal Himatsingka
14. Shri Cherian J. Kappen
15. Shri Madhu Limaye
16. Shri Ghanshyamlal Oza
17. Shri Shivram Rango Rane
18. Shri J. Ramapathi Rao
19. Shri Era Sezhiyan
20. Swami Ramanand Shastri
21. Shri Digvijaya Narain Singh
22. Shri Sivamurthi Swami
23. Shri Radhelal Vyas
24. Shri K. K. Warior
25. Shri Nagendra Prasad Yadav
26. Shri T. T. Krishnamachari.

Rajya Sabha

27. Shri Liladhar Asthana
28. Shri Mohan Singh
29. Shri Babubhai M. Chinai
30. Shri Vimalkumar M. Chordia
31. Shri Khandubhai K. Desai
32. Shri Suresh J. Desai
33. Shrimati Shyam Kumari Khan
34. Prof. Mukut Behari Lal
35. Shri Dahyabhai V. Patel

36. Shri N. [illegible]i Rama Reddy
37. Shri Rajendra Pratap Sinha
38. Shri Hira Vallabha Tripathi.

DRAFTSMEN

1. Shri S. P. Sen Varma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri R. C. Dutt, *Secretary, Ministry of Finance, Department of Company Law and Insurance.*
2. Shri B. M. Mitra, *Joint Secretary, Ministry of Finance, Department of Company Law and Insurance.*
3. Shri B. P. Roy, *Secretary, Company Law Board, Department of Company Law and Insurance.*

SECRETARIAT

Shri B. B. Tewari—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Indian Chamber of Commerce, Calcutta.*
   1. Shri B. P. Khaitan
   2. Shri B. Kalyanasundaram.

II. *The Indian Merchants' Chamber, Bombay*
   1. Shri P. A. Narielwala
   2. Shri G. P. Kapadia
   3. Shri C. L. Gheewala
   4. Shri S. K. Aiyar.

I. Indian Chamber of Commerce, Calcutta

Spokesmen:

Shri B. P. Khaitan

Shri B. Kalyanasundaram

(Witnesses were called in and they took their seats)

Chairman: The evidence you tender will be published. Even if you want a portion thereof to be treated confidential, it will be circulated to Members of Parliament.

Your memorandum has been distributed to members. If you have any points to stress or additional points to make, you may do so.

Shri B. P. Khaitan: We would like to stress two points. One is with regard to cl. 13 dealing with blank transfers and the other pertains to cl. 46—inter company loans.

Cl. 13: Blank transfers are used when loans are taken from bankers and also when shares are held in trust, shares registered in the name of trustees. Difficulties arise in case of devolution after death of trustees. So the practice is to keep blank transfers signed by the trustees in whose name the shares are registered and these blank transfers are kept in the office of the trust. So that after the death of the trustee, it is necessary to register them in another trustee's name. So these are utilised for registration of transfers. Therefore, we submit that an exception should be made with regard to shares held in trust.

The other exception we want is with regard to shares deposited with

banks so that it may not be necessary in every case to have the share transferred in the name of the bank. Bankers can be trusted with the custody of blank transfers without being misused.

There is another point which we have not made out in our memorandum. Since you are enforcing registration of transfer in every case, abolishing blank transfer means every time a transaction takes place or any transfer takes place, it has to be registered. So I submit that the rate of stamp duty on transfer should be reduced. Now a number of transfers take place on the same blank transfer feed. Every time a transfer takes place it will have to be registered. So the frequency of transfers will increase. So the rate of stamp duty should be correspondingly reduced.

Cl. 46, inter company loans: The present amendment will render it necessary to have a special resolution passed for each and every transaction. The section as altered will read:

> "No company....shall make any loan to....any other body corporate unless the making of such loan or the giving of such guarantee or the provision of such security has been previously authorised by a special resolution of the lending company."

It means that notwithstanding the ceilings which have been prescribed in the proposed amendment, notwithstanding the requirement as to government sanction in case those ceilings are exceeded, an additional stipulation of a special resolution has been introduced. Even with regard to small inter-company loans, you will have to go for a special resolution. I submit that having regard to the ceilings, having regard to the other safeguards provided for in the section, a special resolution should not be necessary for each and every case.

Moreover, you will find in the other portion that auditors are required to report as to whether a particular loan is in the interest of the company or not, whether it is properly secured or not. This is an additional safeguard. So in my opinion, special resolution is not necessary.

No exception has been made with regard to finance companies whose business is financial transactions. This exception should also be made.

Shri Suresh J. Desai: As regards cl. 5 and 15, you have said in your memorandum:

> "The chamber is of the view that neither a special resolution nor an ordinary resolution of the company in general meeting should be required for commencement of business by a newly registered company; for, in the case of public companies sufficient publicity regarding the initial business is given in the prospectus."

> "As regards new lines of activity subsequently, the chamber would like to point out that whenever a company proposes to enter into new business activities, the shareholders are usually informed through the reports of the directors....The chamber therefore suggests that cl. 5 and 15 be suitably amended accordingly."

Would you like the deletion of these clauses or are you suggesting what the Commission has said in its report on p. 2, para 6(ii), i.e. a provision should be made in the Act to the effect that a company shall not engage itself in any activities coming within the scope of cl. (b)?

Shri B. P. Khaitan: We have already stated in our memorandum that a resolution should not be necessary, because when registering the company, certain main objects have

been prescribed. At the very commencement of business, no resolution should be necessary.

Shri Suresh J. Desai: In regard to blank transfers, in the case of loans granted by banks or other financial institutions, in the case of trusts and in the case of a company's shares owned by it in the name of directors in the board of another company, you would like to have exceptions. Would this be enough, or you want some general change?

Shri B. P. Khaitan: A general change will have to be made if my suggestion is accepted.

Shri P. D. Himatsingka: In Clause 46, you are objecting to the change that is being introduced, or you want the present law to continue as it is?

Shri B. P. Khaitan: We have not objected to this clause whole hog. We have suggested that, having regard to the restrictions which have been brought in, a special resolution should not be necessary.

Shri P. D. Himatsingka: You accept the position that not more than 30 per cent should be lent by the company?

Shri B. P. Khaitan: We have objected, but so far as financial institutions are concerned, or companies whose business is to deal in shares or entering into financial transactions are concerned, we say that they should be be exempted.

Shri P. D. Himatsingka: Even private companies and investment companies cannot do it if the altered should be exempted.

Shri B. P. Khaitan: We have suggested exemption of private companies.

श्री विमलकुमार एम० चौरड़िया : ब्लैन्क ट्रांस्फर्स के बारे में आप ने कुछ सुझाव दिये हैं । आप ने अपने मेमोरैन्डम के पेज 6 पर कहा है कि **बेनिफिशल ओनर शुड हैव सम रेमेडी । व्हाट डू यू सजेस्ट फार दैट ।**

श्री बी० पी० खेतान: जब किसी ट्रस्ट के शेअर्स किसी ट्रस्टी के नाम में होते हैं या उसके किसी दूसरे नामिनी के नाम में होते हैं तो आम तौर से यह होता है कि ट्रस्ट अपने पास ट्रस्टी का शेअर सर्टिफिकेट और ब्लैन्क ट्रांस्फर डीड ट्रस्टी के दस्तखत करवा कर रख लेता है । अगर उस ट्रस्टी की डेथ हो जाती है तो दूसरे ट्रस्टी के नाम में वह कर दिया जाता है । यह एक बड़ी रिकग्नाइज़्ड और इस्टैब्लिशड प्रैक्टिस है । इस से बड़ी कन्वीनिएन्स है । एग्जिस्टिंग प्रौविजन में आप अमेंडमेंट करें तो यह प्राविजन होना चाहिये कि ट्रस्ट विल बी रिकग्नाइज्ड । इस के लिए आप को नियम बनाने में कोई दिक्कत नहीं होगी । जिस तरह से ट्रस्ट्स के बारे में ब्लैन्क ट्रांस्फर्स की प्रथा रिकग्नाइज होनी चाहिये, उसी तरह से बैंक्स आदि के बारे में, जिस से रुपया उधार लिया जाता है, उन के लिये भी इसे रिकग्नाइज़ होना चाहिये । दूसरे मैंने यह सुझाव दिया है कि फ्रीक्वेन्सी आफ ट्रांस्फर्स के कारण स्टैम्प ड्यूटी रिलीफ भी होना चाहिये ।

श्री विमलकुमार एम० चौरड़िया : आप ने ट्रांस्फर्स के सम्बन्ध में एक अपवाद बतलाया । लेकिन दास कमिशन ने साफ बतलाया है कि ब्लैन्क ट्रांस्फर्स से नुक्सान होता है । ऐसी स्थिति में क्या आप ने कोई विचार किया है कि किस किस को इस बारे में अपवाद माना जाये । आप ने एक दो केसेज़ ही बतलाये कि ट्रस्ट्स के बारे में या बैंक्स के बारे में ब्लैन्क ट्रांस्फर्स की प्रैक्टिस को जारी रक्खा जाना चाहिये । लेकिन इस पथा में जो बुराइयां देखने को मिलीं उन को रोकने के लिये आप के क्या सुझाव हैं ।

श्री बी० पी० खेतान : सब जगहों पर तो आप ने रेस्ट्रिक्शन्स लगा रक्खे हैं । यहां तो सिर्फ ट्रांस्फर्स के सम्बन्ध में अपवाद करने का सम्बन्ध है । जहां तक बैंक्स का सम्बन्ध है दे **आर रिलायबल इन्स्टिट्यशन्स । डिटेल्स**

हैव टु बी लेफ्ट टु दि रूल्स । आप रूल्स में प्राविज़न करना चाहते हैं । प्रेस्क्राइब्ड फार्म्स किस रूप में यह किया जायेगा । आथराइज्ड बाडी को ही इस के बारे में अधिकार होगा । इस तरह से बहुत से नियम बनायेंगे आप । उसी समय आप यह भी नियम बना सकते हैं कि अगर ट्रस्ट्स में ब्लन्क ट्रांस्फर्स अलाऊ किये जायें तो उसके लिये क्या सेफगार्ड रक्खे जायें ।

श्री विमलकुमार एम० चौरड़िया : क्लाज 46 के बारे में आप ने सुझाव दिया है कि अगर लोन्स नहीं दिये जायेंगे तो बड़ी कठिनाई हो जायेगी । लोन्स देने के बारे में दास कमिशन की रिपोर्ट में जो दिया गया है वह बहुत खतरनाक है । उस के बारे में आप के क्या सुझाव हैं ।

श्री बी० पी० खेतान : इतना खतरनाक है या नहीं यह तो स्टैटिस्टिक्स देखने से मालूम होगा । विवियन बोस कमिशन और दफ्तरी-शास्त्री रिपोर्ट में तो फैक्चुअल इन्फार्मेशन दी हूई है । उस के बारे में मैं कुछ नहीं कह सकता । वह आप के सोचने की बात है । लेकिन अगर स्टैटिस्टिक्स उठा कर देखी जायें तो मालम होगा कि हिन्दुस्तान में जितनी इंडस्ट्रीज़ की उन्नति हूई है वह इंटर कम्पनी इन्वेस्टमेंट और इंटर कम्पनी लोन्स से हुई है । जो कैपिटल फार्मेशन होता है वह प्राइवेट सेक्टर के कैपिटल फार्मेशन से होता है और उसी तरह से हम एक इंडस्ट्री से दूसरी इंडस्ट्री कायम कर सकते हैं । इसलिये इंटर कम्पनी इन्वेस्टमेंट और लोन्स से फायदा ज्यादा होगा नुक्सान कम । लेकिन यह तो स्टैटिस्टिक्स की बात है और कम्पनी ला ऐडमिनिस्ट्रेशन की स्टैटिस्टिक्स से ही सारी बात मालूम होगी । इंडिविजुअल केसेज़ से जनरलाइज़ेशन नहीं होना चाहिये । स्टैटिस्टिक्स के बिना कुछ नहीं कहा जा सकता है । कम्पनी ला की स्टैटिस्टिक्स से कहा जा सकता है कि फायदा ज्यादा होता है या नुक्सान ज्यादा होता है ।

श्री विमल कुमार एम० चौरड़िया : यह ठीक बात है कि हर चीज के दोनों पहलू हो सकते हैं । इस सम्बन्ध में भी दोनों पहलू छिपे हूए होंगे यह ठीक है, लेकिन इस को किस ढंग से रक्खा जाये जिस में कि बुराइयां कम हो जायें और अच्छाइयां बढ़ जायें ।

श्री बी० पी० खेतान : आप ने आडिट का काफी प्राविजन किया हुआ है, डाइरेक्टर्स को हटाने का प्राविजन किया है । इतनी बातें कम्पनी ला में कर ली गई हैं, लेकिन अगर वह काफी नहीं हैं तो हम उन को बदल सकते हैं । सन् 1956 का कानून है, उसमें सन् 1960 में अमेंडमेंट हुआ और सन् 1965 में फिर अमेंडमेंट कर रहे हैं । इन अमेंडमेंट्स को ट्रायल दिया जाये । जब डाइरेक्टर्स को हटाने का प्राविजन है, आडिट और स्पेशल रिमार्क्स का प्राविज़न है तब इस तरह के ट्रांन्जेक्शन्स कैसे हो सकेंगे । सन् 1956 के बाद कितने ट्रांन्जैक्शन्स इस तरह के आये हैं, इस की स्टैटिस्टिक्स आप उठा कर देखिये ।

श्री विमलकुमार एम० चौरड़िया : मेम्बर्स को लोन दिये जाने के बाद में आप ने अमेंडमेंट सुझाया है कि उन को लोन दिया जाये । लेकिन मेम्बर्स को लोन दिये जाने के जो दुष्परिणाम देखने को मिले हैं उन को रोकने के लिये आप के क्या सुझाव हैं ।

Shri B. P. Khaitan: This section is confined only to inter company loans, not loans to individuals.

श्री विमलकुमार एम० चौरड़िया : हम इंटरकम्पनी लोन से डील कर रहे हैं ।

श्री बी० पी० खेतान : मेम्बर्स के लोन के बारे में प्राविजन नहीं है ।

The second part should be deleted as there may be a conflict between the interest of the company and those of the members.

श्री विमलकुमार एम० चौरड़िया : आप के मेमोरैन्डम में है कि "**फार इट्स मेम्बर्स** को डिलीट कर दिया जाये ।

Shri B. P. Khaitan: Clause 22 is in regard to audit provision.

Shri Vimalkumar M. Chordia: Whether the loans have been prejudicial to the interest of the company or its members is a thing to be investigated by the auditors. Why do you suggest that it should be deleted.

श्री बी० पी० खेतान : यह लोन्स टु दि मेम्बर्स के बारे में नहीं है, लेकिन क्लाज़ में लिखा हुआ है :

The words "in the interests of the company" is much wider; it includes members. It is a drafting suggestion.

Shri Vimalkumar M. Chordia: About remuneration to directors you have referred to clause 43 and said that under this clause separate remuneration for services rendered by a director in any other capacity will be permitted if the services rendered are of a professional nature and the Central Government is satisfied that the concerned director is professionally qualified to render that service.

श्री बी० पी० खेतान : इस के बारे में मेरा सुझाव यह है कि जो चार्टर्ड अकाउंटैंट्स हैं, क्वालिफाइड सालिसिटर्स हैं, क्वालिफाइड इंजीनियस है उन को रिकग्निशन दिया जाना चाहिये और इस चीज को छोड़ दिया जाना चाहिये कि गवर्नमेंट सैटिसफाइड हो कि वह प्रोफशनली क्वालिफाइड हैं ।

श्री विमलकुमार एम० चौरड़िया : डाइरेक्टर्स को रेम्यूनरेशन देने में अच्छाइयां काफी हैं लेकिन इस का दुरुपयोग भी होता है । इस के बारे में आप क्या सोच रहे हैं ।

श्री बी० पी० खेतान : जो डाइरेक्टर्स अप्वाइंट होते है उन की क्वालिफिकेशन्स के साथ साथ जो टेक्नीशियन्स और मैनेजीरियल पर्सोनेल होते हैं जिन को रेम्यूनरेशन दिया जाता है उन के लिये गवर्नमेंट चाहती है कि वे क्वालिफाइड लोग हों । मेरा कहना इस बारे में यह है कि जो लोग इम्तहान पास किये हुए हैं उन की क्वालिफिकेशन के बारे में गवर्नमेंट को शक नहीं होना चाहिये । उन पर यकीन किया जाना चाहिये ।

Shri G. N. Dixit: In page 1 of your memorandum you say that the word 'officer' should be specifically defined. Are you in a position to give a definition?

Shri B. P. Khaitan: It is beyond my capacity to define it just now.

Shri G. N. Dixit: On the same page, at the end, you say that Schedule VI should be relaxed.

Shri B. P. Khaitan: It is about amounts due from such officers.

Shri G. N. Dixit: It means it is not necessary. Has your attention been drawn to the report of the commission of enquiry about the passing of the resolution with regard to the new lines of activity? Have you got the report of the Commission of Enquiry, Vivian Bose Commission's recommendations? This Bill is based on a concrete instance. The outlay on the main business was Rs. 22 lakhs only while the bulk of the outlay, about Rs. 2—6 crores, was diverted to the side business. How are such things to be prevented in future? What do you suggest so that such things may not happen, as they happened in the Dalmia Jain case?

Shri B. P. Khaitan: About the main object clause, the prospectus gives a full description that this is going to be the project, this is what we are going to do and so on. Without filing the statement and pros-

pectus commencement certificate is not got. Before the issue of commencement of business certificate, you can provide that either in the statement in lieu of prospectus or in the prospectus the nature of the business should be stated with sufficient particularity. You can ask the advances which are given to be shown separately. It is a sufficient safeguard if it is stated with particularity in the prospectus: otherwise you do not get business commencement certificate.

Shri G. N. Dixit: Fixing the majority percentage for principal business and a minority percentage for subsidiary business will serve the purpose?

श्री बी० पी० खेतान : इस में इस तरह की सिचुएशन आ सकती है कि मान लीजिये मैं ने एक कम्पनी फ्लोट कर दी थी । उस के बाद कोई एक आदमी मेरी प्रोजेक्ट को खत्म करना चाहता है तो वह यह कर सकता है कि २५ परसेन्ट शेअर खरीद ले और प्रोजेक्ट को खत्म कर दे । कारण यह है कि हम तो आम पब्लिक में शेअर देते हैं । कोई भी २५ परसेन्ट से ज्यादा शेअर खरीद कर हमारी प्रोजेक्ट को खत्म कर सकता है ।

Shri G. N. Dixit: The problem is that a certain thing has happened which this Bill wants to prevent in future. Could you give any positive suggestion? I gave you one suggestion about fixing the majority percentage for the main business.

Shri B. P. Khaitan: I am not able to follow what you say.

Shri G. N. Dixit: Take the Dalmia Jain case. Rs. 22 lakhs were spent on the main business but Rs. 2-6 crores were spent on certain other not much publicised business. How can you prevent it?

Shri B. P. Khaitan: You have divided the objects in two parts the main object and also the subsidiary objects which also are like the main objects at present and can be undertaken by a company. So far as the main object at the commencement of the company is concerned, I have given the suggestion that no company can undertake any business or enter into any transaction or incur any loan without either filing a statement in lieu of prospectus or a full prospectus. That is what I have said. If it is made compulsory that the business which will be commenced will be stated in sufficient particularity in the prospectus or the statement in lieu of prospectus, that is sufficient safeguard.

Shri G. N. Dixit: You say in the memorandum:

> "The Chamber, therefore, suggests that clauses 5 and 15 may be suitably amended".

What are the suitable amendments you want?

Shri B. P. Khaitan: For the main object, there should be no resolution necessary. For the others, we have not objected.

Shri G. N. Dixit: You say:

> "Government-sponsored industrial financing institutions like IFC and LIC also insist on both underwriting commission and brokerage."

Will you further explain it?

Shri B. P. Khaitan: The proposed amendment says that in the case of shares which have been subscribed before the issue of prospectus, no underwriting commission should be paid on them. But before we go to the public for public offer, arrangements are often made with IFC or ICICI that they will subscribe a certain quantity of shares. According to the proposed amendment, no commission can be paid to them, but they really insist on those commissions. Moreover, these preliminary arrangements with brokers and other parties is very necessary in order that the other part of the subscription may be successfully made. So, it is neces-

sary to allow payment of commission even where by private negotiation a certain amount of issue has been made secure before the issue of prospectus.

Shri G. N. Dixit: Has your attention been drawn to para 14, page 4, of the report of the Commission of Inquiry, regarding blank transfers? It says:

"In the course of the enquiry, circumstances have come to the notice of the Commission where with a view to achieve one or other objects, individuals or limited companies resorted to the practice of holding shares on blank transfers registered in third party's names in certain cases. The practice was adopted with a view—

(a) to facilitate window-dressing of balance sheets of companies like reshuffling of shares held on blank transfers between associated companies with the object of substituting inter-company loans and advances at the time of the closing of the accounts by investment;

(b) to bring into existence fictitious or ante-dated transactions in the books of companies in order to create fictitious losses in investments for the purpose of reducing the taxable profits."

What is your positive suggestion to see that the companies which are working honestly may not suffer and yet such things may not occur as occurred in the case of Dalmia-Jain companies?

Shri B. P. Khaitan: So far as blank transfers are concerned, already several steps have been taken. There is a provision in the Securities Control (Regulations) Act that the registered holder is the person to whom a dividend will be paid. Secondly, blank transfers were generally introduced with a view to bringing in what you may call unaccounted money into the capital of the company. With the tightening of the income-tax laws, that practice also has disappeared. So many other steps have been taken, so that these types of floatations are no longer occurring. If you take the statistics of that period, not only Dalmia-Jain, but many other companies also have done it. But after 1956 you will be hardly able to find such a case.

Shri R. P. Sinha: Witness pleaded that there will be difficulty with regard to the operation of the system of blank transfers in connection with trust share-holdings, because they are registered in the name of some nominees. If clauses 42 and 17 are enlarged whereby the names of beneficial holders are to be declared, so that they know for whom they hold those shares, will that solve the problem?

Shri B. P. Khaitan: I have already given that as an alternative suggestion if blank transfers are not permitted. But it will not meet the difficulty so far as loans from banks and other financial institutions are concerned.

Shri R. P. Sinha: Sometimes people who are not holders of the shares also take money. The borrowers are not the same as the owners. If a provision is made that only borrowers should be the same as owners of the shares, will you accept it?

Shri B. P. Khaitan: It means I cannot lend shares to another man. Many times you may be in need of money and I may have only shares to lend. I may not have money to lend.

Shri R. P. Sinha: But this has been misused, as my friend pointed out. What as a Chamber have you done in order to stop such malpractices?

Shri B. P. Khaitan: After the 1956 amendment, if you take statistics, there will be very few malpractices.

We are talking only on the basis of the Bose Commission. We have not collected other statistics.

Shri R. P. Sinha: There is a proverb that to find out whether a pot of rice is boiled or not, you take out one or two rice and test it.

Shri B. P. Khaitan: But you should select rice which is cooked presently, not rice cooked 20 years back.

Shri R. P. Sinha: Regarding inter-company loans, what is your difficulty if a resolution is passed? All that we want is that shareholders should be aware of what the company is going to do, because the money belongs to the shareholders. If you have surplus funds, you just take their permission and do whatever you want.

Shri B. P. Khaitan: It is a question of business convenience and business expedition. Suppose a small loan of Rs. 5000 is required from one company to another. We have to go and get a special resolution passed. We have already provided for ceilings and so many other safeguards, including the provision for a report by the auditor as to whether the loans are in the interest of the shareholders and are properly secured or not. These should be sufficient.

Shri G. N. Dixit: This Bill flows from the recommendations of the Vivian Bose Commission report. That report says that the total loss suffered by the investing public amounted to Rs. 2,60,50,280. Along with these preventive measures, do you think there should be deterrent punishment also for these companies, getting the money refunded etc.?

Shri B. P. Khaitan: I think already Government is considering what action should be taken. As to whether the action taken will amount to deterrent action or not is a question for government to decide. Those things happened 20 years ago—it is for government to decide how far it is necessary or what should be done.

Shri Rajendranath Barua: Are you prepared to accept the provision re: blank transfer with the proviso that banking and financial institutions are exempted when blank transfer is used for the purpose of granting loan?

Shri B. P. Khaitan: That is what my evidence comes to, except that the period should be extended from six months to one year. I have also suggested that because of the frequency of the transfers, the stamp duty should be reduced.

Shri Rajendranath Barua: Should private and public companies be bracketted for this purpose?

Shri B. P. Khaitan: Blank transfers are in relation to public companies.

Shri Rajendranath Barua: If the law as proposed in respect of inter company loans comes into operation, what will be the position of your credit facilities? Would you have alternative sources for short-term loans?

Shri B. P. Khaitan: Of course, this source will be dried up; all the others are there already. They are banks, industrial finance institutions, private loans, deposits. We still get loans from outside.

Shri Rajendranath Barua: Then why do you object to this restriction?

Shri B. P. Khaitan: Because this source will be dried up. At present, there are also other sources. But this particular sourse will be dried up.

Shri Babubhai M. Chinai: As regards cl. 12, under-writing commission, he gave the explanation that 49 per cent of the share capital is distributed amongst directors and their friends prior to coming before the public and that the commission should be allowed on that.

Shri B. P. Khaitan: I did not mention any percentage.

Shri Babubhai M. Chinai: Anything. Before you go to the market.

Shri B. P. Khaitan: Before going to the market, you have to make sure that a certain amount of shares will surely be subscribed because that works as an inducement; it makes the prospectus attractive in order to induce those houses which underwrite shares, you have to agree to pay that commission.

Shri Babubhai M. Chinai: There are two separate questions. One is under-writing done by financial institutions and other organisations. For that you have to give a commission—there is no bar to that. But you are pleading that on the 49 or any other percentage which the directors and their friends subscribe, this commission should be paid. I can understand brokerage being paid, but there is a difference between brokerage and under-writing commission. Under-writing commission is 1½ per cent or so whereas brokerage is only 1 per cent.

Shri B. P. Khaitan: An under-writing arrangement can be made before issue of prospectus and a firm commitment can also be made by an under-writing agreement that such and such shares should be taken by so and so. If it is conceded that financial houses who normally do the business of under-writing will be paid commission, industrial institutions will be paid commission, there should be no objection to this commission being paid to those people.

Shri Babubhai M. Chinai: In the light of experience of the past—I am not talking of the last two years—you know the subscriptions used to overflow in the capital market. In that process, 49 per cent of the capital was always said to be subscribed by directors and their friends. Do you still subscribe to the view that under-writing commission should be paid or brokerage should be paid?

Shri B. P. Khaitan: Some exceptional circumstances will always take place. Those favourable conditions do not prevail today. There may be cases where even after an under-writing arrangement has been made, commission has been paid, the balance issued will not be subscribed. There may be temporary circumstances when there may be over-subscription. But one swallow does not make a summer.

Shri Babubhai M. Chinai: The other way does it make a summer?

Cl. 36: in your memorandum, you have objected to the age-limit for a director at 75 years for a public limited concern. Also you have said that in any case, this should not apply to the private limited companies. Re: age limit, if both are put on par, will you be satisfied?

Shri B. P. Khaitan: It is certainly a very beneficial provision made extending the age to 75. But I know many old people above 75 quite fit and able to do their work properly and actively, better than younger men of 60. Therefore, it should be left to the company to be decided by a special resolution or whatever it may be. There should not be an absolute bar that a man above 75 should never be a director?

Shri Babubhai M. Chinai: Suppose private limited companies are put on a par with public limited companies, will you be satisfied?

Shri B. P. Khaitan: I will not be satisfied. If the public limited companies are put on a par with the private limited companies, it may satisfy many people.

Shrimati S. K. Khan: Regarding the Registrar inspecting the offices of the company, in page 6 of your memorandum you say that if due notice is not given, it will disrupt and cause serious inconvenience to the working

of the company. The company is expected to keep its accounts trim all the time. Why should this happen?

Shri B. P. Khaitan: You have already got powers of searches and so many other powers. On top of that, inspections, I would say, are unfair. It is like saying: if you are honest, what does it matter if you are prosecuted?

Shrimati S. K. Khan: Obviously, the Registrar will not swoop down on the company all the time, though there may be occasions. Why do you want to omit the clause?

Shri B. P. Khaitan: There are good Registrars and bad Registrars. The powers are capable of being misused.

Shrimati S. K. Khan: You say that the proposed addition of sub-section (1A) (e) to section 227 is vague. Have you not got a definition of "personal expenses" in your companies?

Shri B. P. Khaitan: This relates to the audit part. We say that there are contracts under which medical and other expenses are payable to the employees and directors. There it is already defined, but you are placing a very heavy onus on the auditor by the amended section, and views will vary from auditor to auditor. I understand from the Institute of Chartered Accountants that they will be dealing with this question. So, I do not deal with this.

Then there is an omnibus clause whereby Government has been given the power to make any rules from time to time as to the matters to be reported on. This, to my mind, is an unreasonable delegation of legislative power, because already so many clauses are there. So, it can be made more exhaustive and more definite. Otherwise, views will differ from auditor to auditor, and there will be personal equations also. There will be misuse also perhaps.

Shrimati S. K. Khan: You say that the sub-clause is extremely vague and should be defined. The sub-clause reads:

> "whether personal expenses have been charged to revenue account;"

It is very clear. Personal expenses have been defined in your contract with your directors or other employees. The only thing that the auditor has to see is whether they have been charged to revenue account.

Shri B. P. Khaitan: What is the point in reporting it specifically? Take the instance of a director attending a board meeting. Certain expenses are charged. It will be a task for the auditor to find out whether they should be put in the revenue account or not.

Shrimati S. K. Khan: Page 9, age of retirement. Have you any objection if it is provided that if a company wants the age to be more than 75 in some particular case, it should apply to Government, giving reasons?

Shri B. P. Khaitan: I have no objection.

Shrimati S. K. Khan: Clause 43. Your memorandum says:

> "The Committee feel that in the case of lawyers, chartered accountants and engineers, since they are already professionally qualified, this further condition, referred to above, of the Central Government being satisfied that they are professionally qualified should be unnecessary and that condition should therefore be deleted."

The qualification of lawyers, engineers etc., can easily be found out. Why do you object to Government finding out whether they are doing the work of lawyer or engineer in that company?

Shri B. P. Khaitan: The object of the clause is that persons in the garb of technicians or qualified persons

should not be paid remuneration, because elsewhere provision has been made that emoluments paid to a technician or a qualified person will not be regarded as director's remuneration. Therefore, the clause says that Government should be satisfied that the person to whom such extra remuneration is paid for such services is a qualified person. I submit that where, after passing so many examinations, serving as an apprentice etc., a man becomes an engineer or a doctor or lawyer or accountant, there is no necessity of having a further satisfaction that he has passed such examinations.

Shrimati S. K. Khan: That should be very easy for the company. There is no difficulty. He may not be working as a lawyer in your company and yet getting remuneration.

Shri B. P. Khaitan: If somebody is paid purporting to be a lawyer, but not working as a lawyer, that would be a fraud and that cannot be allowed.

Shri A. Shanker Alva: You are objecting to Clauses 5 and 15. The memorandum of a company is worded in very general terms. Hence, it is better to get it ratified, so that the company starts engaging itself in the main object. Don't you think it is a salutary provision that is now being made?

Shri B. P. Khaitan: I have already said that it is a salutary provision, but the question is whether, even though you have provided it in the memorandum and you have stated it in the prospectus, a further special resolution should be passed. My objection is to the special resolution even after it has been stated in the prospectus or statement in lieu of prospectus what business I am going to undertake. I fully agree so far as this sub-division is concerned. It is a compromise between two extreme views; Some registrars object to any clause except the main clause; others allow many more clauses. So, the compromise is, some main clause and some further permissible further clauses. Everybody knows what for the company had been started. Simply because somebody made some mistake or misuse 20 years ago of the then existing laws we should not do something.

Other companies are floated with foreign collaboration. They have to be floated after some collaboration has been agreed upon: we go to the Government; we make all arrangements. Then, somebody has been able to corner more than 25 per cent of the shares and does not allow a special resolution to be passed. My whole scheme goes away. The safeguards I have suggested are sufficient safeguards. Even today you have to specify it.

Shri A. Shanker Alva: Please refer to page 6 Registrar's power to inspect books of account without notice. The idea of inspection is to find out if there are any irregularities or fraud and the very idea of giving notice would frustrate that. If the Registrar is able to get some of these documents, they will be conclusive evidence.

Shri B. P. Khaitan: If you have information that books have been tampered with, the power of search is there and many drastic provisions are available in our Indian Penal Code. Inspection without notice is not the remedy. The remedy is the power of search and seizure which you have got at present.

Shri A. Shanker Alva: With regard to clause 58(ii), no person is to be compelled to disclose the source of information. Recently, some raids were conducted and the informants were given some inducements. Generally people who are working in some company alone know the affairs of that company and they will be generally knowing the malpractices perpetrated. Is it proper that such information should be divulged?

Shri B. P. Khaitan: I do not press the point: it is not so important.

Shri Sivamurthi Swami: Page 3 of your memorandum, book adjustment clause. May I know why you suggest the dropping of the clause.

Shri B. P. Khaitan: Our suggestion is that where the adjustment relates to actual cash, suppose I lend money to the company and there is an adjustment of that loan, I suggest there should be no objection to that, in stead of the company issuing a cheque to me in repayment of loan and I issuing a cheque to them.

Shri Sivamurthi Swami: Page 8—clause 26. What is the time limit you propose to return the books?

Shri B. P. Khaitan: We have suggested one month. You may make two or three months, whatever you think reasonable.

Shri Sivamurthi Swami: About the qualification of the directors—I think above 70 or 75 years the mind of the directors is mostly not working.

Shri B. P. Khaitan: I do not wish to mention the names but I know many who have exceeded the age of 75 but are quite fit and working.

Shri K. K. Warior: Do you not suggest any restriction in the existing law to make it impossible for such mischief being done in the blank transfer business?

Shri B. P. Khaitan: I have expressed my views on the exceptions which should be made. I have not come prepared to suggest, positive legislative measures.

Shri K. K. Warior: Suppose it is restricted that no such blank transfers be made in the name of private individuals, do you agree to that?

Shri B. P. Khaitan: I do not agree to that.

Shri K. K. Warior: Suppose the State Bank of India alone can do that and the private banks are eliminated from the list, do you agree to that?

Shri B. P. Khaitan: I cannot agree to that; that is going against my evidence.

Shri K. K. Warior: You do not agree to any such restriction you want it as it is.

Shri B. P. Khaitan: That is not my evidence.

Shri K. K. Warior: You say that this will be drying up the source of some loans and financial help for the company. All the other sources are there. How is it that this alone can give succour to the company? If this source is dried up, will it affect the economy of the company to such an extent?

Shri B. P. Khaitan: In my opinion, it will, because it is a substantial source.

Shri K. K. Warior: Because it is a substantial source, that is why we are restricting it. You have said in page 4 that the blank transfer system is an integral part of the stock exchange mechanism. Everybody knows what happens in a stock exchange. Do you think this is also used for speculative purposes?

Shri B. P. Khaitan: Of course, it has been used for speculative purposes.

Shri K. K. Warior: Is that desirable?

Shri B. P. Khaitan: The question is too general. There is what is known as hedging. There is good speculation and bad speculation.

Shri K. K. Warior: Is it usually used for bad speculation? I am a lay man and I want to know.

Shri B. P. Khaitan: When a man over-trades, *i.e.* if he trades beyond his means, that is bad speculation.

Shri K. K. Warior: When is it good speculation?

Shri B. P. Khaitan: Hedging is a permissible speculation.

Shri K. K. Warior: Suppose you speculate in such a way that your

position is too long or too short. Will this blank transfer come to the help of those persons?

Shri B. P. Khaitan: I think on my evidence this hypothetical question does not arise, because at the time of giving evidence, I have stressed that safeguards should be made with regard to banks, trusts, etc.

Shri K. K. Warior: Can you give some suggestion to safeguard against blank transfers being used for bad speculation in the stock market?

Shri B. P. Khaitan: I have not objected in my evidence to the clause itself. I have only suggested exceptions. It is for Parliament to consider those exceptions.

Shri K. K. Warior: About inter-company loans, you have said that that source of loan also will be dried up. Suppose a resolution is passed. Why should you mistrust Government? If it is a *bona fide* request from the company for loan, why should Government withhold sanction? What are your fears?

Shri B. P. Khaitan: It is not a question of mistrusting Government. It is a question of business autonomy. There are matters for which you should go to Government for sanction and other matters for which you need not go to Government. There should be permissible limits and within the limits the company need not go to Government for sanction. Of course, if it goes beyond the limits, sanction would be necessary.

Shri K. K. Warior: These restrictions are thought of because of certain circumstances, which are of course not favourable to you. Why don't you first inform the shareholders instead of keeping it to the Directors themselves? Why not the shareholders know for which purpose the loan is granted? Why not take the Government also into confidence?

Shri B. P. Khaitan: We have suggested that within certain limits, there should be freedom of trade and activity. The question is what are the limits. We have suggested certain limits within which we should be allowed to have inter-company loans, because I do not think during the last 10 years, you have got statistics of misuse. If there is no misuse after 1956, there is no reason why additional restrictions should be put.

Chairman: Thank you.

Shri B. P. Khaitan: Thank you, Sir.

(*The witness then withdrew*).

II. The Indian Merchants' Chamber, Bombay.

Spokesmen:

1. Shri P. A. Narielwala
2. Shri G. P. Kapadia
3. Shri C. L. Gheewala
4. Shri S. K. Aiyer

(*Witnesses were called in and they took their seats*)

Chairman: Gentlemen, the evidence that you give will be public. It will be printed and distributed to Members. Even if you want any part of it to be confidential, it will be printed and distributed to Members of Parliament.

Your memorandum has been circulated to the Members of the Joint Committee. If you want to stress any particular points, you may do so.

Shri P. A. Narielwala: On behalf of the Indian Merchants' Chamber and on behalf of my colleagues, I thank you and the Members of the Committee for giving us this opportunity to appear before you and place personally our views and suggestions on the Companies (Second Amendment) Bill before you.

The Companies Act of 1956, as amended by the amending Act of 1960, was the outcome of prolonged and detailed consideration of the various aspects of company law and its administration, and the law, as it stands today, is a consolidated and comprehensive piece of legislation, adequate to regulate the proper administration

of the corporate sector. The above view is borne out by observations made by Government spokesmen in Parliament. There are several provisions in the present Companies Act under which the shareholders and others can bring to the notice of Government breaches by the corporate sector. A great deal of discipline in the corporate sector has been noticed since the Act was brought into force. The main object of the present Bill is to implement some of the recommendations made in the report of the Vivian Bose Commission and also certain additional recommendations made by Mr. Daphtary and Mr. Sastri. The committee of my Chamber have already submitted a memorandum giving the lines on which the provisions require to be amended. Though we do not desire to take up your time by repeating what has been stated in our memorandum, we would like to clarify some of the suggestions made therein and to supplement the same wherever necessary.

Before dealing with the suggestions for amendment, I would take this opportunity to express our thanks for the changes contemplated for the purpose of simplying some of the procedural requirements which are at present burdensome to the companies without being of corresponding advantage to the government. At this stage, I would also like to point out, without prejudice to the observations made in our memorandum, that in respect of proposals such as the one to impose restrictions on the period of currency of blank transfers contained in cl. 13 of the Bill, the notifying of beneficial holdings of more than 5 per cent of equity capital as proposed by cl. 42 etc. these should, if they are deemed necessary, be provided for in other appropriate legislations and not incorporated in the company law. We would deal with these matters in more detail whille expressing our views on the relevant provisions.

With regard to the provision contained in cl. 3 for including in the definition of the term 'book and paper', the word 'voucher' in our memorandum we have suggested that the word 'voucher' should be suitably defined so as to eliminate the preservation of vouchers of small and inconsequential amounts. In this connection, I would like to suggest that vouchers for less than Rs. 10,000 should not be required to be preserved. I would also like to suggest that in view of the large number of vouchers and the difficulty of storage accommodation, the period for preservation of vouchers may be reduced to four years.

Sec. 13 is being amended by cl. 5 for having clear definitions of the main and subsidiary objects of a company. Cl. 15 which is related to cl. 5, prohibits a company at any time from commencing any business without the sanction of a general meeting by special resolution. The proposal contained in cl. 15 will, it is felt, raise serious problems to company management and I would, therefore, request you to give your careful thought to this aspect. In view of the practical and other difficulties which would arise, I feel it is advisable that this provision should not be put through. In any event, it should not apply to private companies, and as far as the public companies are concerned, it should be applicable only to those companies which are registered after the coming into force of the amending Act.

Cl. 12 seeks to provide that underwriting commission should not be paid except in respect of shares or debentures offered to public. We have suggested in our memorandum that underwriting commission paid in respect of right shares issued to persons other than directors and managing agents of the company should be allowed. I would here like to clarify that the right shares which are not taken up by public should be considered as having been issued to the public, except those issued to the directors and managing agents of the company, and the commission in respect of such issues should be allowed.

Cl. 46 seeks to rank inter company loans at par with inter company investments and to place restrictions on such loans similar to those contained in s. 372 regarding inter-company investments. As we have pointed out in our memorandum, the proposed amendment goes beyond the provisions of s. 372 in certain respects. For example, while in the case of investments directors are entitled to invest in any shares of another body corporate upto 10 per cent of the subscribed capital of the other body-corporate subject to the total investment so made not exceeding 30 per cent of the subscribed capital of the investing company etc., any loans by a company to another company has to be sanctioned by a special resolution in general meeting. The new provision would hamper the industrial and commercial development of the country especially when due to great financial stringency companies experience serious difficulties in obtaining short-term loans. The present Act contains adequate safeguards for taking care of the object in view and a provision of the present nature would, as I have stated earlier, only come in the way of the economic development of the country. I would, therefore, urge that the proposal should be deleted.

I have not dealt with the various suggestions contained in our memorandum but I would request your committee to give most careful consideration to them. My colleague Shri G. P. Kapadia will supplement and elucidate some of the provisions which in the opinion of my chamber require careful consideration at your hands.

Shri G. P. Kapadia: It shall be my endeavour to focus attention on some of the important issues, to amplify the remarks contained in the representation and to make certain additional observations.

Cl. 11 relates to the insertion of a new proviso to s. 75(1)(a) wherein a provision is made to show items of book adjustment not represented by cash amounts as such. Here a better clarification could be made. The Company Law Committee, which I had the privilege to serve, made a recommendation to the effect that the share capital of a company should be divided into three separate categories: first, shares issued for consideration for cash, the second for consideration other than cash and a third category of shares represented by bonus issues. In respect of the second category, the position is that equivalent of cash has all along been considered to be cash consideration, *e.g.* if a person has deposited moneys with the company, which stand to his credit, and he desires that those moneys to be appropriated towards the payment of share capital amounts, all legal authorities—Palmer also says so—say that that is consideration for cash. I believe the intention is to rule out such cases from being treated as consideration for cash. In my humble opinion, this should not be done.

The other type of cases will be where tangible assets in the shape of machinery are given and in respect of which entries are passed. On the one hand, machinery would be supplied; on the other, the agreement itself would provide that the consideration would be the issue of shares. In such cases something tangible has passed. If the intention is to attack malpractices of the nature where fictitious adjustments have been made, such cases should be dealt with on a different premise. In my humble opinion, we should go a step further and provide that if any entry of share capital is represented merely by book adjustment which does not represent a tangible asset, then that should be reflected in a qualification even in the auditor's report. I have not been able to appreciate the exact significance of this amendment unless it is the desire that even cases which I explained should be brought within this provision. The intention seems to be that pure cash payment will be treated as payment in cash and all other payments will be treated as book adjustments. Book adjustments as such should be divided into two catego-

ries: one represented by tangible assets where it is all *bona fide* and the other where it is not at all represented by tangible assets. This suggestion may kindly be examined, and if it is necessary, the chamber would urge that a clarification should be made in that behalf and the amendment in that behalf may stand extended.

As regards underwriting commission, in substance the point made by our President was that in effect, with regard to the principle underlying the amendment no such commission should be paid. In substance what we want to say is that if the right in respect of the shares has not been exercised by the shareholders, the disposition of the shares is under the discretion of the directors. If such discretion has been exercised for the benefit of the directors or the managing agents, naturally that should be prevented. But if the shares have been issued to members of the public in respect of which they have made additional applications, and if the issue has been covered by the underwriting, such shares which have not been allotted to directors or managing agents should be treated as shares issued to the members of the public. This is in substance our submission.

Coming to the all important question of blank transfers, the chamber agrees that it is an evil which requires to be dealt with, and dealt with severely. At the same time, a distinction should be made between a blank transfer related to the stock exchange and a blank transfer in respect of non-exchange transactions. So far as the stock exchange is concerned, the currency of an executed transfer, a phrase coined by me long ago, is very essential, but so far as the other transfers of a *bona fide* nature are concerned, if a period of six months is put, it might create difficulties. So, the period in respect of the other transfers should be extended sufficiently, and Government should take care to see that the stamp charges which are going on increasing in the various States are reduced to the utmost minimum. If we want to scotch the evil, it should not result in an excess payment in the shape of stamp duty.

We would also like to consider the position of the auditors in relation to the corporate sector—Clause 22. In the first place, an auditor can say whether the loan or advance is secured. That is a statement of fact, but to say whether it is properly secured, the auditor would have to sit in the position of a legal expert and determine whether the company has derived a proper title. An auditor who may be competent to audit the company's accounts need not necessarily be a legal expert to pronounce an opinion as to whether the company has secured a valid and proper title. The words "properly secured" require to be examined. If the auditor were to sit in judgment and give an opinion as to whether it is properly secured or not, not only will he be transgressing into the portals of the legal profession, but he would be placing himself in the position of a super director, and this should be avoided. The Companies Act contains ample provisions to check malpractices, if any, and if the directors of the company have misbehaved, there are sufficient provisions to scotch that practice; and it should not be given to a professional man who is auditing the accounts to go into the running of the business and the day to day administration of the business.

Coming to the new sub-section IA(b) to section 127 in the first place, it is necessary to define "normal business practice". Without defining it, if such an insertion were made, it would create first class misunderstandings not only between the Government and the corporate sector, but also between the professional people who examine the accounts. Therefore, the standards of business practice in relation to particular types of transactions should be laid down before we see whether the book entries conform to them.

Coming to new sub-section 1A (c) of Section 227 *i.e.* personal expenses, let us take the example of a company which has a number of motor cars for the business of the company, and such motor cars are definitely used for the business of the company, they have been debited in the books, and the directors have testified that the expenditure relates to the company. How is an auditor of the company in a position to find out whether that expenditure is of a personal nature, unless he were to take his own car and follow the car of the director in question and find out which places that car visits? In practice it will present difficulties.

We have amended the Income-Tax Act to tax perquisites in the hands of the persons who are controlling the affairs of the company. That itself is a sufficient provision, and a sufficient check that if any amount is spent for their benefit, the taxing authorities are bound to tax it, and the moment it is taxed, this question will not arise.

Only if some standards are laid down that the following type of expenditure shall be treated as personal expenditure, we can ask a professional man to say whether such expenditure is or is not debited in the books of the company, and he will be in a position to record it. So, the Chamber would urge a further examination of the amendment in this behalf.

Clause 22, new sub-section (4A). to Section 227. There is a suggestion here that a general or special order may be issued to the auditors of the company on the lines of the provision in sub-section (3) of section 619 to report to Government on particular aspects. The Chamber agrees that so far as Government companies are concerned, that provision is there, but an analogy with Government companies is not quite happy in the opinion of the Chamber for this reason that in the case of Government, the report of the auditor as an auditor of the company, as well as the special report contemplated by section 619(3), go to one entity, and there will be no practical difficulties, but in the case of the corporate sector where private non-government companies are concerned, one report will go to the shareholders about the true and fair view of the state of affairs. As a result of the directions given to the auditor, which may be of an investigating nature, a separate report would have to be given, and a question would arise whether the auditor of the company should or should not incorporate the information contained in the special report to be given to Government, in the report to the shareholders of the company. The shareholder will say that he is the proprietor of the company, and he has the right to it. The objective of inserting this provision, as I have understood it as a result of the benefit I have had of a preliminary discussion with the Company Law authorities, is that with a view to prevent the starting of investigations straightaway into the affairs of a company, they want a protective measure in the interests of the companies concerned, that in case the Government is in possession of certain facts about the affairs of the company and if Government, on enquiry, is satisfied that there is nothing wrong with the working of the company, the investigation which would have been undertaken otherwise can be stopped. A very healthy thought, and a very healthy provision, but what would happen actually as a result of this provision is what I have stated.

Section 142(1)(ii) of the Income-Tax Act provides that according to the requirements of the assessing authorities, an assessee is compelled to give to the authorities information on particular points in such form and in such manner as the authorities may want, and verified in a particular manner as also certified in a particular manner if the assessing authority so wants. Actually, therefore, the question would be better dealt with if we

insert a provision on those lines, somewhat as follows:

"The Central Government shall have power to ask any company to furnish in writing, and verified in the prescribed manner, information, materials and other particulars relating to the accounts of the company, and the Central Government shall further have the power of directing any company to have such information and material relating to the accounts of the company certified by the auditors of the company."

If such a special provision were to be there it will give everything that the Government wants in such a manner that the Government wants, according to the requirements of Government and there would be no clash of duties on the part of the auditor of the company not to report particular facets because he has submitted a report to the Government in respect of some accounts and some affairs of the company and to my mind if an attempt were made to regulate the affairs that way, it will go a long way in redressing matters and giving the required solution to the Government.

Coming next to clause 24, it provides for a new section 233(B) for a cost audit. I will relate it to another requirement for the maintenance of records relating to companies which are utilising materials and labour. In the first place, there can be no two opinions about having the cost audit and making the country cost conscious. The Chamber is wholeheartedly supporting such a view. But there are inherent difficulties. In the opinion of the Chamber because an attempt is now being made to regulate an audit which does not exist. The attempt should be to make the country totally cost conscious to compel companies to maintain certain cost records in a particular form and that form must be specific. It has been the experience of Government as also of the corporate sector that the country is still not that cost conscious as it should be. The Economic Research and Training Foundation of the Indian Merchants Chamber has undertaken a study project of price fixation in Indian Industries and in relation thereto we wanted the various corporate interests concerned to submit to us information in the form of a lay out which we suggested in the form of two questionnaires. One was to cover the companies which have been subject to enquiries by the Tariff Commission and the other, for companies not so covered. The objective was to attempt to lay out in a concrete formula what the business community has in mind as to the minimum cost requirements and to relate them to the financial accounts and financial records of a company. That questionnaire should embrace the complete field of what the Government have in view. Therefore, in the first place, with your permission the Chamber would like to tender copies of these two questionnaires for your close and critical examination; I shall make available to you sufficient number of copies. Having created a basis as to what cost records every company should maintain, one can think in terms of having a check up. Today we have not got that basis at all. The response to this questionnaire was poor. I have had occasions to study the price question and cost records of a number of industries, including key industries: and I find that they do not have the cost records in the manner required. The law should provide for the maintenance of cost records in a particular lay out which must be specific. It is no use legislating in a general manner, whether they are utilising labour or material. Under section 209, we have to take cognisance of what has been maintained and how will the auditor certify that proper records have been maintained if the very lay out of the cost records is not provided by the Act. The Act itself should lay down the minimum requirements for the cost records

Coming to the question, whether cost records should be totally diverssd from financial transactions if we have to achieve an objective and proper check, as the clause visualises, unless you relate the net costing records to the financial records, you cannot achieve the objective. It is no use considering the records in an abstract manner. The question is whether cost records have been linked up and related and examined in relation to financial transactions. The examination should flow backwards from the financial transaction to the cost records. That is what is vitally missing in the amendment proposed and therefore, I would respectfully submit that even in respect of audit as and when it is contemplated, when the basic requirements for the lay out of the cost records had been met, it should be related to the financial transaction. Once we come to the proposition of linking it up with the financial transactions of having a report made in relation to the financial transaction, the question of examination should be left to competent authorities, competent to understand and certify the financial results of the financial transaction.

Shri B. R. Bhagat: In clause 21 (d) it is provided that in the case of a company engaged in production, processing, manufacturing or mining activities, particulars relating to utilisation of material or labour should be maintained.

Shri G. P. Kapadia: That is very general: we must say: a, b, c, d are cost records, otherwise a statement of a general nature will create confusion. We are bound to find inherent difficulties. What is meant by cost records?

Shri Era Sezhiyan: The clause says that the Central Government by general or special order direct that the cost account of the company shall be maintained in such manner as may be prescribed. We are empowering the Government to issue an order and that order will contain the form.

Shri B. R. Bhagat: What is your suggestion? The whole thing cannot be incorporated in the Act.

Shri G. P. Kapadia: In the first place we have a form of balance sheet: we have a schedule showing the contents of the profit and loss account. Like that we shall have another schedule stating as to what the costing information percolating into financial results of the company shall be tabulated and presented. We should not leave it in a general manner, to be done by orders of Government. I want the legislators of my country to consider that general or special form, whatever form it is; and they should examine that form and pronounce their opinion, instead of leaving it to the administration itself to devise these forms as and when they desire. I want the whole information to be placed before the legislators of my country to examine whether the list is complete or it requires any modification.

I now come to the question of persons who are best fitted to examine the result of these financial transactions percolating from the costing records. Our view is that the proper authority is the chartered accountant to the exclusion of any other entity. If it is desired that a member of Costs and Works Accountants Institute, there might be no objection, but as a practical proposition, may I point out that out of a thousand members of that Institute, 500 are said to be in practice. But virtually, there are hardly 7 or 8 costing practitioners as such in this country. So, it requires to be examined whether we want to introduce a provision resulting in something which will not achieve the very objective.

The number of chartered accountants today stands at 6700 of whom nearly 60 per cent are in practice. Costing has been one of the important facets of the Chartered Accountants Institute. I am voicing the views of the Chamber and the corporate sector. A large number of chartered accountants are also members of the

Indian Merchants Chamber. The corporate sector believes that proper justice can be done only by linking up the examination of the financial accounts and the cost accounts. For that, a cost and works accountant would not be as competent as a chartered accountant would be.

There has been in the past discussion as to whether workable arrangements could or could not be made between the two institutes. Mr. Babubhai Chinai, who is an hon. Member of the Committee, who was also on the Select Committee on the Costs and Works Accountants Bill, had occasion to have a full discussion with the then Commerce Minister, who is now the Prime Minister. I request that the letter that he addressed to Shri Lal Bahadur Shastri may be tendered to the Members of the Committee. That letter was responded to by Shri Shastri in a proper manner and the intention was that a workable arrangement should be made between the two institutes, so that senior members of the Institute of Chartered Accountants are automatically made members of the Costs and Works Accountants Institute. The regulating period may be a number of years. I do not know what approach would be made by the councils of the two institutes. But I am of the view that even now it is not too late. Instead of emulating everything that comes from the west, we may have our own pattern. Considering that there are only 7 or 8 costing practitioners in the country, why are we not thinking in terms of a workable arrangement which ultimately results in the amalgamation of the two institutes? There are not many Fellow Members of the Institute of Costs and Works Accountants today and it would be a practicable proposition indeed to absorb them as full members of the Institute of Chartered Accountants. Having done that the Associate Members can take intensive training. In course of time, we can have costing as a post-graduate qualification through the Institute of Chartered Accountants. This will not only provide a stronger institute to the country, but will also ensure that there is cost audit, which we have in mind. If we do not do that I do not believe that the 7 or 8 practising firms in the country can be capable of taking up all the cost audit that comes in. The Institute of Chartered Accountants has had costing as one of its facets, an important facet. Why deny members of that Institute at least an equal right along with the members of the Institute in contrast to the Institute of Costs and Works Accountants, when the additional reason is that chartered accountants are more fitted for testing the results of the financial transactions. These financial transactions are the last word. The basic costing records by themselves cannot be the last word.

In order to ensure the maintenance of costing records, let there be a lay-out prepared in a proper form to be placed before the members of the Joint Committee for their examination. Let the legislators of my country examine it. I will have that satis-- faction instead of leaving it merely to the discretion of the administration.

Government having examined the existing condition and the lay-out, should make an additional attempt to find out from the Institute of Chartered Accountants as to how many of their members are in India and for how many years. A certain number of years of practice should be a proper yardstick. In the case of the members of the Institute of Costs and Works Accountants, I may repeat the proposition which I made at the time of the Costs and Works Accountants Bill. When that institute was started, there were nearly 70 Fellow Members of the institute, of which 50 were chartered accountants. The very existence of the institute is based upon the chartered accountants, who have provided the base for that institute. Let us think in terms of having a stronger institute of a combined nature for the country. This may not have direct bearing on the amending Bill under consideration today. But I am making this suggestion with a

desire to see that the legislation which is under consideration especially leaves open the door for an understanding basis in the first instance between the two institutes and ultimately if the legislators so decide for having a combined stronger institute.

Chairman: They may not agree to that proposition. You are only voicing the opinion of the chartered accountants.

Shri G. P. Kapadia: I am voicing the view of the Indian Merchants' Chamber and not my personal views.

I come to clause 42 which provides for disclosure of the beneficial holdings in excess of 5 per cent. Here also does not our taxation statute take care of it? It is more under the taxation statute that you will get the real information. Suppose the shareholder who is the beneficial holder of 5 per cent or more, does not choose to give this information, should the company remain responsible? According to the proposed amendment, the company is liable.

Now here a practical solution the chamber would suggest is the one contained in the deemed provision in the Income-tax Act. Formerly, under the respective clause, if any loan was given to a shareholder of a company, it was to be treated as dividend irrespective of the amount of the loan he took, irrespective of his interest in the company. He might hold one share; he might have taken loan to the extent of 50% of the share capital of the company which would be treated that way provided it is covered by the reserves. The latest amendment in this behalf is that it is only substantial interest that is now roped in for this, and that substantial interest has now been defined as 20% interest under the Income-tax Act. Instead of regulating this matter in the Companies Act, leave the details to be declared by the taxing statute. So far as the Companies Act is concerned, the chamber would urge that the 5% margin which has been kept be extended to 20% because that is the substantial interest the authorities have in mind. For that substantial interest, there should be no difficulty because that substantial interest will be held by persons who are more likely to report to the companies concerned.

Clause 43—regulation of the overall remuneration to managerial personnel: The chamber really supports the proposition but would want to make one little departure. Professional people have been exempted by the proviso, if that practice of the profession is their main occupation, in a like manner, if a very technical qualification is possessed by a person closely related either to the director or the managing agent, the factor of relationship, by itself, should not rule out the possibility of his employment on his own merits. So cases where a technical qualification in respect of the industry in which the company is engaged should be considered as a proper requisite for giving this additional exemption. That is the limited suggestion the chamber would make, that that small category of persons who hold that inherent qualification in relation to that particular industry at least should be exempt because by merely being related to the director or managing agent, their inherent qualification as a technical person should not be ruled out.

In conclusion, I would make some observations on clause 58 (substitution of section 635A). I can very well understand the necessary protection to government officials. It must be there. But protection to any outsider—the implications of this should be more carefully considered. If this sort of protection is given to any outsider, it may encourage malpractice at the hands of mischievous persons and *bona fide* interests may also suffer as a result. There is no remedy also provided, as was recommended by the Taxation Inquiry Commission, that in the case of informants, if they have given any

wrongful information, they can be dealt with. Here, on the contrary, instead of providing a protection that an irresponsible complaint or irresponsible action on the part of a particular person against his *bona fide* interests should be punished—we do not do so—the provision is to give him (the informant) the necessary exemption with the result that practices of a questionable nature are bound to be on the increase instead of being on the decrease. I agree so far as government officials are concerned, they must have full protection. If Government intend to go through with the provision as it is, that necessary punishment for irresponsible action is prevented because the very disclosure or the interest which started this is ruled out. This clause should, therefore, be re-examined with a view to see whether the provision relating to any outsider may not stand omitted altogether.

Shri Khandubhai K. Desai: Mr. Kapadia has dealt with some aspects of the clause relating to cost accounts audit. He has very ably pleaded the case of chartered accountants. Will he please say what does he want? He wants that there must be cost consciousness in the country. How does he want to connect the two? In one clause it has been proposed that as prescribed cost audit books shall be maintained. So most of his propositions have been accepted by the proposed provision. What change does he want? Assuming that both these things remain, does he only want that only chartered accountants may also be eligible to do the cost audit under government directions?

Shri G. P. Kapadia: I believe I have made this point, but for the benefit of Shri Khandubhai I would amplify my observations. In the first place, he rightly said that the chamber is definitely for making the country cost conscious—I have already said it. The question of audit being conducted in a particular manner has been stated clearly by my stating that today we have a certification in the form of a report by the auditor of the company about the balance sheet and profit and loss account of the company. In a like manner, I would request the Committee to put additional appendices or annexures to the Companies Act in the specific forms stating the particular costing requirements and the result of the costing requirements and cost accounts as the form is laid out. Having laid down that form in which the cost accounts information should be placed before the shareholders in addition to the requirements to the Companies Act, the auditor of the company . . .

Shri Khandubhai K. Desai: In the case of any company engaged in production, processing, manufacturing or mining activities, this is contemplated. You want a schedule to be put in. That is already contemplated to be prescribed.

Shri G. P. Kapadia: The difference between my approach and that of the hon. Member is that I want what is to be prescribed by the administration to be placed before my legislators for an initial examination. I want that to be settled by the Lok Sabha itself.

Shri Khandubhai K. Desai: Will not rules framed come before Parliament? They will.

Shri G. P. Kapadia: The difference is this. The full attention that is bestowed on a particular matter when it is in the form of an amending section to the existing Act, or in the form of a new legislation, is totally different from the cursory consideration which would be given when the rules are placed on the Table of the House. I will give you one example. Recently, the Income-tax rules were amended and Rule No. 8 prescribing a particular form of the assessment particulars was deleted. The implications of that amendment were not understood by

any one, and the Indian Merchants Chamber wrote to Government, and got a reply in the form of a circular issued to the Departmental personnel as well as commercial bodies, that the intention is not to curtail that information or take it back, that it will continue to be given in the same form; only the legal obligation of Government to give that information and any assessee questioning it on technical grounds is taken away. This vital matter, if it came in the form of an amendment to a statute, would receive better attention at the hands of the legislature than a mere placing of the rules. This is far too important a matter, and requires to be considered in the form of consideration first-hand by the legislators instead of having it in the rule-making power.

Shri R. P. Sinha: I think we can continue examining the witnesses tomorrow, so that we can put more questions.

Shri G. P. Kapadia: I shall feel grateful if the Committee finishes our examination today.

Chairman: Members are not in a mood to sit.

Shri P. A. Narielwala: If the Committee desires his presence, certainly it should have the benefit of his views. On behalf of the Chamber, I would not stand on prestige. Much as I would have liked to stay on and participate in the discussions, I cannot, as tomorrow we have a meeting with some of the Government officials in Bombay and I have to proceed.

Chairman: Shri Kapadia will come tomorrow.

(The witnesses then withdrew)

The Committee then adjourned.

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (SECOND AMENDMENT) BILL, 1964

Tuesday, the 19th January, 1965 at 09.30 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri A. Shanker Alva
4. Shri Rajendranath Barua
5. Shri Bali Ram Bhagat
6. Shri Dinen Bhattacharya
7. Shri N. C. Chatterjee
8. Shri N. Dandeker
9. Raja P. C. Deo Bhanj
10. Shri Bhaskar Narayan Dighe
11. Shri G. N. Dixit
12. Shri Gajraj Singh Rao
13. Shri Prabhu Dayal Himatsingka
14. Shri Cherian J. Kappen
15. Shri Madhu Limaye
16. Shri Ghanshyamlal Oza
17. Shri Shivram Rango Rane
18. Shri J. Ramapathi Rao
19. Shri Era Sezhiyan
20. Swami Ramanand Shastri
21. Shri Digvijaya Narain Singh
22. Shri Sivamurthi Swami
23. Shri Radhelal Vyas
24. Shri K. K. Warior
25. Shri Nagendra Prasad Yadav
26. Shri T. T. Krishnamachari.

Rajya Sabha

27. Shri Mohan Singh
28. Shri Babubhai M. Chinai
29. Shri Vimalkumar M. Chordia
30. Shri Khandubhai K. Desai
31. Shri Suresh J. Desai
32. Shrimati Shyam Kumari Khan
33. Prof. Mukut Behari Lal
34. Shri Dahyabhai V. Patel

35. Shri N. Sri Rama Reddy
36. Shri Rajendra Pratap Sinha
37. Shri Hira Vallabha Tripathi
38. Shri Ramesh Chandra Vyas.

DRAFTSMEN

1. Shri S. P. Sen Varma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri R. C. Dutt, *Secretary, Ministry of Finance, Department of Company Law and Insurance.*
2. Shri B. M. Mitra, *Joint Secretary, Ministry of Finance, Department of Company Law and Insurance.*
3. Shri B. P. Roy, *Secretary, Company Law Board, Department of Company Law and Insurance.*

SECRETARIAT

Shri B. B. Tewari—*Deputy Secretary.*

WITNESSES EXAMINED

I. *The Indian Merchants' Chamber, Bombay*

1. Shri G. P. Kapadia
2. Shri S. K. Aiyar.

II. *The Associated Chambers of Commerce and Industry of India, Calcutta*

1. Shri D. Fordwood
2. Shri T. R. Crook.

III. *Northern India Share Holders Association, New Delhi*

1. Shri Premjus Roy
2. Shri C. L. Virmani
3. Shri P. R. Sanwalka.

IV. *The Institute of Chartered Accountants of India, New Delhi*

1. Shri N. R. Mody
2. Shri Raghu Nath Rai
3. Dr. R. C. Cooper
4. Shri C. C. Chokshi
5. Shri S. N. Desai
6. Shri P. Brahmayya
7. Shri M. P. Chitale
8. Shri A. Basu
9. Shri H. B. Dhondy
10. Shri C. Balakrishnan.

I. The Indian Merchants' Chamber, Bombay

Spokesmen:

1. Shri G. P. Kapadia
2. Shri S. K. Aiyer

(Witnesses were called in and they took their seats)

Chairman: We can now proceed with questions.

Shri Suresh J. Desai: Please refer to page 4 of your memorandum. You say that the proposed amendment should apply only to companies which may be registered after the coming into force of the amending Act. It has been represented to us that clauses 5 and 15 together should not apply to new companies. What will happen will be that if 25 per cent of the shareholders are under the influence of some rival organisation or some competing organisation, they may prevent the company from implementing its project or proceeding with the work of the company. Between the minority shareholders of 25 per cent and the majority who may want to proceed with the project, controversial rights and obligations arise and it may give rise to more manipulations and fradulent practices, more than even those which are proposed to be prevented. Before proceeding with a new company, so much of spade work is done and contracts had been entered into and expenditure has been incurred. If after all that special resolution is not forthcoming, there would be a lot of difficulties and claims and counter-claims. We have been told that it will be the effect of clauses 5 and 15 put together. What is your view about it? You have not commented on clause 15 in your memorandum.

Shri G. P. Kapadia: The position with regard to the two clauses referred to by the hon. Member is such that it is bound to create practical difficulties in respect of the existing companies. It is not only that 25 per cent minority may block further progress but the very procedure in getting prior sanction for the exercise of the particular object as the main object of the company will prevent speedy action at the hands of the existing company for making progress with regard to matters which could be covered legitimately by the existing company which has been acting in a *bona fide* manner. Even the existing companies are expected to so put their memorandum clauses as to indicate what would be the main clause for the starting of the business. That drafting does not happily fit in because for the existing companies the clauses have been there already and whatever activities they had to enter into had already been exercised. Even if the clauses were put down—the chamber does not say that the clause should be retained—they will have to be subject to appropriate change. For new companies a different consideration is necessary. For new companies it is true that the new concept is to think in terms of main objects and subsidiary objects and the inspiration, if I may say so, has been derived from the Canadian Companies Act. The Bhabha Committee went into the question and came to the conclusion that the enumeration of objects as main and subsidiary will not result into something very beneficial. On the contrary it may retard the progress and natural functioning of companies. That is why that Committee did not make a recommendation in this behalf. The malpractices which had been noticed in respect of particular or individual cases in the Vivian Bose Commission are solitary examples which are exceptions to prove the rule. Where nefarious practices are used Government come out with a very heavy hand on those people. So far as the normal functioning of companies is concerned, it is in the fitness of things that a distinction should be made between the existing companies and the new companies and even if Parliament thinks in terms of having subsidiary objects, the least that we would urge is that this amendment should apply to new companies only which are registered after the new amending Bill comes into force.

Shri Suresh J. Desai: The Commission of enquiry have suggested that there should be two separate categories (a) the principal and ancillary objects which the company intends at the time of its incorporation to pursue and (b) all the other objects. They say that provision should be made in the Act to the effect that a company shall not engage itself in any activities coming within the scope of clause (b), unless such activities are sanctioned by a special resolution of the company in a general body meeting. They want to confine it to (b). What is your view?

Shri G. P. Kapadia: The question has already been answered. Canada had legislated on these lines. Suppose there is a biscuit manufacturing company. Tin industry is totally different from biscuit industry, but still biscuit factories found it to their advantage to have their own tin factory with a view to economise. Would we say that tin industry should be in category(b)? I have just given one example to show what disadvantages would flow even by distinguishing between main and subsidiary objects.

Shri Suresh J. Desai: About clause 12 you say:

> "It should, therefore, be made clear that any commission paid in respect of the right shares issued to persons other than the directors and managing agents of the company would be allowed to the company."

May we take it that you are in favour of no underwriting commission being allowed for those shares taken by their directors and their friends in case of any new issue, which are not open to the public?

Shri G. P. Kapadia: We should restrict it to directors, managing agents and their associates, because 'friends' is a very wide term. Because he has some friendly relations, he does not cease to be a member of the public.

Shri Suresh J. Desai: About blank transfer, you say "My committee, therefore, urge that the proposed new subsection should be deleted". Instead of deletion, would you not like to make some exceptions in the case of beneficial holders or when shares are held by some nominee who is appointed a director of some other company? Or, would you like that the period should be relaxed or something like that?

Shri G. P. Kapadia: Yesterday I said there should be a distinction between cases of blank transfers so far as stock exchanges are concerned and cases which are not related to stock exchanges. For stock exchanges, the nefarious practices have very wide implications and they have to be curbed. For that, the Chamber has agreed to the period of six months. But in other categories, many exceptions will have to be made and it will require all the ingenuity of the draftsman to so plan it that *bona fide* cases are not affected. Take the case of widows and illiterate persons who have per force to keep their holdings in the names of other persons. They should be exempted, because automatically the question of benami holdings comes in. So, a distinction should be made in such cases. About other categories, not only should the time limit be relaxed, but exceptions should be provided in particular cases and the States should be asked to see to it that stamp duty in respect of transfers is not enhanced.

Shri Khandubai K. Desai: Will he particularise the exceptions he wants?

Shri G. P. Kapadia: They stand enumerated in the memoranda submitted by the stock exchange and the chambers of commerce to the Mathai Commission and also to the Direct Taxes Administration Enquiry Committee, of which I was a member, and also in my dissent memorandum giving copious details. On the table, it would be difficult to enumerate them.

Shri Suresh J. Desai: About clause 46 on inter-company loans, you say "My committee, therefore, urge that

a private company should be exempted from the amendment proposed to section 370."

You say also that the provision should not be made applicable to short-term temporary loans for periods not exceeding six months. We understand that the effect of the proposed amendment would be that if a company wants to give a loan to a sister company or any other corporate body—even a small loan of Rs. 1 lakh—the general body should pass a special resolution. Also, small and new companies will be hit hard by this. What is your view? Would you like to confine it to private companies being exempted?

Shri G. P. Kapadia: Today the cases brought under the purview of this section are in respect of loans given to companies under the same management so far as private companies are concerned. Even today the private companies find it very difficult. Suppose a private limited company wants to enter into an industrial venture. When a new company is formed, it is bound to be a company under the same management. Promotional expenses have to be paid. So, the promoting company will have an agreement with the new company that if the promotion activity does not fructify, all that expenditure will be borne by the promoter. They would like to enter into lease agreements for acquisition of land, premises, etc. and in respect of that also payments would have to be made. So, from the very start, the mischief would come in. If you insist on the pre-requisite condition of passing a special resolution, the procedure will entail so much delay that the very progress of industrial pursuit will be jeopardised. That is why the chamber wants that this amendment should not apply to private limited companies.

Shri Ghanshyamlal Oza: Cl.3(i). In your memorandum, you have pointed out some practical difficulties about preserving vouchers. Would you suggest a limit for the amount?

Shri G. P. Kapadia: Actually yesterday, the leader of my delegation made a positive suggestion to the effect that vouchers over Rs. 10,000 only should be preserved. We want to suggest a higher limit, for this reason that in respect of gigantic companies the vouchers over even Rs. 10,000 are so voluminous. Action can be taken in respect of any fraudulent practice even from the books of account. Vouchers need not necessarily be the basis for such action.

Shri Ghanshyamlal Oza: You have said it would occupy a lot of space. Suppose Government gives you some space to keep them?

Shri G. P. Kapadia: This is not a practical proposition. Actually, so far as the banking companies are concerned, they have made frantic representations to the authorities from time to time regarding the preservation of records. It is a very practical difficulty.

Shri Ghanshyamlal Oza: You can have some godowns.

Shri Cherian J. Kappen: You mentioned a limit of Rs. 10,000. Suppose that is split up and several vouchers are obtained, that is, 15,000 is split up into 5,000, 5,000 and 5,000. How can that be prevented?

Shri G. P. Kapadia: This splitting up cannot practically be made. A transaction is a transaction. If payment is made in respect of a particular transaction, it is payment relating to that particular transaction.

I would make a departure from what we have already suggested. Supposing there is a total commitment of Rs. 2 lakhs and there have been part payments made from time to time, and these part payments are less than Rs. 10,000; the overall amount of Rs. 2 lakhs would have to be considered, and vouchers relating

to that transaction of Rs. 2 lakhs, whether they are individually less than Rs. 10,000 or not, should be preserved.

Shri Ghanshyamlal Oza: Regarding your objection to cl.9 as worded, would you be satisfied if the word 'due' is added in sub-clause (b), that is, 'where such certificate has already been obtained, until the entire amount of the minimum subscription due has been received by the company'?

Shri G. P. Kapadia: The limited point made in this behalf is that the moneys have to be spread over for collection in a period of 120 days, and the collections may be made in parts. Therefore, if the activity has to be started, the amount should be related to the minimum subscription as might have been collected in bits from the shareholders.

Shri Ghansyamlal Oza: Re: cl.11(a), you referred to the fact of people having deposits in the company and their wanting to turn these into payments for shares. But about the other adjustment, provision has been made in s.75. Suppose we add that book adjustments other than for cash and for deposits will not be allowed? Will it meet your point?

Shri G. P. Kapadia: I would amplify my observations of yesterday on this item. I would want the clause in question to be modified on the lines of cl.22 in respect of amendment of s. 227 under sub-clause (f). It is only in cases where their application moneys or share moneys have been received which do not represent cash or equivalent of cash, where there is no *bona fide* consideration received and there is a book adjustment of questionable nature and the information is misleading that Government want to redress matters. Therefore, the two clauses must be so worded as to permit different categories: those for consideration in cash; those for consideration equivalent to cash—whether they are adjustments of deposits or those relating to machinery or other goods delivered for valuable consideration; bonus shares is the third category already stated. The fourth category is where the share capital is represented by none of these three items but by a mere book adjustment which is of a misleading character and which has not brought something tangible to the company.

Shri Ghanshyamlal Oza: You were referring to cost accounting yesterday. You wanted the legislature to look into the principles governing these things. You objected to its being part of subordinate legislation. Our experience is that subordinate or subsidiary legislation before it is opted. is usually notified, the public is asked to state whatever objections it has to submit in respect thereof. What is the present state of affairs? As regards cost accounts, as it is, it is yet to be finalised, the principles have to be formulated. They are in the formative stage. If they are part of subsidiary legislation, it would be easier for government to amend it from time to time if any errors are noticed or the policies require to be changed. But if it becomes part of the main legislation, every now and then we shall have to go to Parliament. So would you be satisfied if at present it is kept under subsidiary legislation which has these advantages? If we try to bring it under the main legislation, I think it would be very difficult to amend the law every now and then.

Shri G. P. Kapadia: About the present state of affairs, so far as amendment is concerned, while enlarging the rules a very important form for giving particulars to the assessee had been deleted. As a result of the representation of the chamber, as I said yesterday, a circular has been issued saying that this information ought to be given to every assessee. In this case, the amendment took place without any previous publication asking for public opinion. The rule was notified as a final rule.

Shri Ghanshyamlal Oza: Under the Act, we can make it compulsory that it shall be notified and before it is adopted, the public is given a month or two to register objections.

Shri G. P. Kapadia: I was going to cover the second part of the question. Legislation has to be considered in two parts: one relating to fundamentals and another something emanating from the fundamentals and what has been put in the statute. The requirements for the maintenance of cost records and cost audit are matters of a very vital and fundamental nature which must go into the statute proper as requirements in reference to the presentation of information of a true state of affairs and a true and fair view of the balance sheet and profit and loss account of every company. If this argument were not accepted, we might as well think in terms of even deleting the form of the balance sheet and contents of the profit and loss account and all material particulars, and delegate it to rule-making power by prior publication. The intention of every legislation in any country is first to provide in the statute the very essential, fundamental things, and having provided these after due consideration and filtration at the hands of the legislature, rules are made to implement the principles contained in those fundamentals. In the chamber's view, the requirements of the maintenance of particular cost records, the form and layout of the presentation to the shareholders or government and their certification are matters of a vital nature, equal in importance to the presentation of the balance sheet and profit and loss account of a company. Therefore, it urges that any provision in this behalf must be placed in a clearcut manner in the statute itself.

Shri Ghanshyamlal Oza: But the fundamentals are not yet certain as you say.

Shri G. P Kapadia: I made a request yesterday that the fundamentals may be laid down after examining the material submitted by the Chamber; it may require examination at the hands of the interests concerned, both business and professional, and final examination at the hands of the legislators.

Shri N. C Chatterjee: Clause 9 wants to incorporate the new section 69(4), and that has been recommended both by the Vivian Bose Commission and the Daphtari-Sastri Committee. Is there any real objection to it?

Shri G. P. Kapadia: As I answered only a few minutes ago, the representation of the Chamber is of a very limited character, and I would invite attention to the concluding portion, which reads:

> "My Committee would, therefore, suggest that the words 'the entire amount of the minimum subscription' wherever it occurs in the proposed new Sub-Section (4) should be replaced by the words 'the entire amount of application money in respect of the minimum subscription'."

We have accepted the principle of the Clause. We want a little adjustment in that only.

Shri N. C. Chatterjee: In your Memorandum, in page 4 you have said:

> "Invariably the allotment money is asked on the allotment of shares and the balance of the money is spread over in one or more calls over a period of time which may exceed 120 days."

From your experience, is that correct?

Shri G. P. Kapadia: That is the experience of the Chamber, as a result of the representations which have been made to the Chamber by their member bodies as well as individual members.

Shri N. C. Chatterjee: Therefore, unless we modify this Clause as you suggest, there will be practical difficulty?

Shri G. P. Kapadia: That is exactly the reason why the Chamber has made representation in this behalf.

Shri N. C, Chatterjee: Clause 13. You say:

> "According to Section 27 of the Securities Contracts (Regulation) Act, 1956, a transferee of a share will not be entitled to dividends unless the shares together with the application for transfer and other relevant documents are lodged with the company within 15 days of the date on which the dividend became due."

Is that any real safeguard? They are imposing restrictions with regard to the currency of blank transfers. Has section 27 any bearing on that point? That simply says that you cannot get the dividend unless the relevant documents are lodged.

Shri G. P. Kapadia: If there is a disability for a purchasing shareholder not to be entitled to that dividend, that very factor will compel the transfer of the shares to be effected.

Shri N. C. Chatterjee: Therefore, what is your recommendation, what do you propose to do?

Shri G. P. Kapadia: At the cost of reptition, I would say that I have already covered the ground, making a distinction between blank transfers relating to stock exchanges and other cases.

Shri N. C. Chatterjee: And that is the limit you go?

Shri G. P. Kapadia: Yes.

श्री विमलकुमार एम० चोरड़िया : क्लाज़ ५ में आपने बताया है कि नई कम्पनीज़ जो हैं उन पर इस कानून का संशोधन जो है वह लगना चाहिये । सम्भवतः उन को अपने मेमोरेंडम आफ एसोसिएशन में परिवर्तन कराने के लिए प्रोसीजरल कठिनाइयां हो सकती हैं और इस कारण से आप को एतराज़ है । अगर कुछ सुविधायें दे दी जाय और यह चीज़ पुरानी और नई कम्पनीज़ पर भी लागू हो तो आप को क्या आपत्ति है ?

श्री जी० पी० कपाड़िया : बात यह है कि जो अब कम्पनीज़ हैं और जो नई कम्पनीज़ अस्तित्व में आयेंगी उन दोनों में बहुत फर्क रहता है । मैं बता चुका हूं कि जो चालू कम्पनीज़ हैं, उनके मैमोरेंडम आफ एसोसिएशन पहले से हैं और जो कार्रवाई होती है उस में सुविधा रहती है । जब कोई नई एक्टिविटी हाथ में लेना चाहते हैं तो उसका नतीजा यह होता है कि सब प्रोसीजरल एक्टिविटीज़ में जाना पड़ता है और डिले हो जाती है और जो प्रस्ताव आता है वह मंजूर नहीं हो सकता हैं । इस वास्ते पुरानी कम्पनीज़ और नई कम्पनीज़ में फर्क होना चाहिये ।

श्री विमलकुमार एम० चोरड़िया : जो कठिनाइयां होती हैं उन को ध्यान में रख कर ही मैं यह बात पूछ रहा हूं । ट्रांज़िशनल पीरियड के लिए अगर कुछ ऐसा प्रावधान कर दिया जाय कि पुरानी कम्पनियां भी नए संशोधन की सीमा में आ जायें और उनकी जो कठिनाइयां हैं उन को किसी हद तक दूर कर दिया जाय तो आप को क्या एतराज़ हो सकता हैं ? क्या इसके बारे में भी आप कुछ सुझाव दे सकते हैं ?

श्री जी० पी० कपाड़िया : चेम्बर को तो वह बात मंजूर होगी जोकि सुविधाजनक हो । आप जो फर्क करना चाहते हैं मैमोरेंडम के क्लाज़िज़ में, मेन क्लाज़िज़ में और सबसिडियेरी क्लाज़िज़ में वह नहीं होना चाहिये । जो अभी परिस्थिति है उस में कुछ फर्क न हो तो जो भी आप करना जो चाहें करें । अगर आप फर्क करना चाहते हैं तो चैम्बर की राय यह है कि नई कम्पनीज़ के लिए फर्क करें, लेकिन पुरानी जो कम्पनीज़ हैं, उनको आप छोड़ दें ।

श्री विमलकुमार एम० चोरड़िया : एज़ एन आल्टरनेटिव में पूछना चाहता हूं कि जो प्रोसीजरल डिफिकल्टीज़ होती हैं उनको अगर रिलैक्स कर दिया जाय, सुविधायें दे दी जायें और जो तीन चार कठिनाइयां आप बतायें उन कठिनाइयों का सिलैक्ट कमेटी निवारण कर दे तो आप को क्या एतराज़ है ?

श्री जी० पी० कपाड़िया : बड़ी कठिनाई तब होती है जब स्पेशल रेजोल्यूशन पास करवाना पड़ता है। २५ सैंकड़ा शेयरहोल्डर्स वाली जो बात है वह बहुत मुसीबत पैदा करती है ।

श्री विमलकुमार एम० चोरड़िया : क्लाज़ २२ के बारे में भी आप को एतराज़ है । यह प्रापरली सिक्योर्ड लोंज़ के बारे में है । आपका कहना है कि आडिटर्ज़ यह नहीं समझ सकेंगे कि ये सिक्योर हैं या नहीं हैं । लेकिन कई बार ऐसा होता है कि शेयरहोल्डर्ज़ के इंटिरेस्ट के खिलाफ लोंज़ दे दिये जाते हैं और ये शेयरहोल्डर्स के लिए घातक सिद्ध होते हैं । शेयरहोल्डर्ज़ के इंटिरेस्ट को वाच करने के लिए ही यहां ये शब्द रखे गये हैं जिन पर आप को एतराज़ है । क्या आप कोई ऐसा उपाय सुझा सकते हैं जिससे शयरहोल्डर्ज़ का नुक्सान न हो और जो रुपया उधार दिया जाय वह भी खतरे में न पड़े ?

श्री जी० पी० कपाड़िया : चैम्बर की राय यह है कि लोंज़ के बारे में आडिटर्ज़ को यह सत्ता नहीं दी जानी चाहिये कि वे बतायें कि प्रापरली सिक्योर हैं, या नहीं, ठीक नहीं हैं । प्रापरली वर्ड यहां नहीं होना चाहिये । सिक्योर्ड हैं या नहीं, इसको तो वह देख सकता है लेकिन प्रापरली शब्द को रखना ठीक नहीं है । सिक्योर्ड की बात को वह देखे । वह वकील तो है नहीं कि जजमेंट में बैठे । अगर आप उसको सुपरडायरेक्टर बना दें तभी वह बता सकता है कि वे लोन्ज़ बिजिनेस के इंटिरेस्ट में हैं या नहीं हैं । काम डायरेक्टर चलाता है । वह अगर ठीक नहीं चलाता है तो उसके खिलाफ कार्रवाई आप कर सकते हैं । लेकिन आडिटर्ज़ को यह सत्ता दे देना कि जो डे-टु-डे एडमिनिस्ट्रेशन होती है उस में भी वह दखल दे, ठीक नहीं है । यह उसके प्राविंस की बात नहीं है । उस को यह सत्ता नहीं दी जानी चाहिये ।

श्री विमलकुमार एम० चोरड़िया : इंस्टीट्यूट आफ चार्टर्ड एकाउंटेंट्स ने अपने मैमोरेन्डम में सुझाव दिया है और (ए) के द्वारा यह परिवर्तन चाहा है :

> "Whether the loans and advances made by the company are on terms which are not prejudicial to the interests of the company."

मैं चाहता हूं कि आप यह बतायें कि इस में आप को क्या आपत्ति है ?

श्री जी० पी० कपाड़िया : बात यह है कि जो कम्पनी की कार्रवाई चलाते हैं वे कार्रवाई चलाने के काबिल नहीं हैं तो वे डायरेक्टर नहीं रह सकते हैं । जब कम्पनी की कार्रवाई डायरेक्टर चलाते हैं तो वे ही बता सकते हैं कि कम्पनी के बैस्ट इंटिरेस्ट में कौन सी बात है । बाहर का व्यक्ति नहीं बता सकता है कि कम्पनी के बैस्ट इंटिरेस्ट में क्या है । बाहर के व्यक्ति को कम्पनी की हिस्ट्री मालूम नहीं होती है ।

श्री विमलकुमार एम० चोरड़िया : डालमिया जैन ग्रुप के बारे में जो कमिशन बैठा था उसने सारी जानकारी लेने के बाद

और डायरेक्टर्ज़ के द्वारा जो कार्रवाई हुई उससे असन्तुष्ट हो कर ही इस तरह का सुझाव दिया था । डायरेक्टर्ज़ का परसनल इंटिरेस्ट भी हो सकता है । कम्पनी का इंटिरेस्ट उनके लिए गौण भी हो सकता है । कम्पनी के इंटिरेस्ट को सामने रखते हुए आडिटर्ज़ अगर कोई नोट दें तो इसमें आप को क्या एतराज़ है? आपने कहा है कि आडिटर्ज़ को डिफिकल्टी हो सकती है, वे कानून के जानने वाले नहीं हैं । ऐसी स्थिति में इंस्टीट्यूट ने यह जो सुझाव दिया है

"Whether the loans and advances made by the company are not on terms which are not prejudicial to the interests of the company".

इसके बारे में आपको क्या आपत्ति हो सकती है ?

श्री जी० पी० कपाडिया : जो कंम्पनी के इंटिरेस्ट के खिलाफ की बात होगी या जो डायरेक्टर के अपने इंटिरेस्ट की बात होगी उसके बारे में तो कम्पनीज़ एक्ट में रक्षा की व्यवस्था कर दी गई है । जो गैर-कानूनी कार्रवाई होती है वह कानून के द्वारा रोकी जा सकती है ।

श्री विमलकुमार एम० चौरड़िया : पेज ७–८ पर आपने कहा है कि गवर्नमेंट कम्पनीज़ के बारे में जिस तरह से आडिटर जनरल स्पेशल आडिट करवा सकता है, वैसा ही प्रावधान कम्पनीज़ एक्ट में भी कर दिया जाय । आप कहते हैं

"minority are entirely opposed to this provision."

कम्पनीज़ एक्ट की धारा २३३(ए) में अगर चाहें तो स्पेशल आडिटर एप्वाइंट करके आडिट रिपोर्ट मंगा सकते हैं । ऐसी स्थिति में अगर यह प्रावधान यहां कर दिया जाय तो सिवाय इसके कि डुप्लीकेशन होगा, आप को कोई और एतराज़ भी है ?

श्री जी० पी० कपाड़िया : चैम्बर ने जो कुछ पहले कहा था उस पर दुबारा सोच विचार करने के बाद, उसकी समीक्षा करने के बाद, कल आपके सामने दूसरा प्रस्ताव रखा था । इनकम टैक्स एक्ट में जो प्रावधान है उसको खयाल में रखते हुए कम्पनीज़ एक्ट में यह प्रावधान कर दिया जाय कि सरकार अगर चाहे तो कम्पनी को आडिटर दे कर जिस प्रकार की इनफार्मेशन चाहे, जिस प्रकार की डिटेल्ज़ चाहे, वह मंगा सकती है । स्पेशल आडिट की जो प्राविजन है उसको ध्यान में रखते हुए जो कुछ भी आप करना चाहते हैं कर सकते हैं । उसको एक्सटेंड करने की जरूरत नहीं है ।

श्री विमलकुमार एम० चौरड़िया : डुप्लीकेशन के सिवाय क्या और भी कोई बात है ?

श्री जी० पी० कपाड़िया : कल बताया गया है कि गवर्नमेंट कम्पनीज़ जो हैं उनके बारे में जो रिपोर्ट जाती है वह एक ही व्यक्ति की जाती है और यहां शेयरहोल्डर्ज़ को रिपोर्ट एक जाती है और सरकार को दूसरी रिपोर्ट जाती है ।

श्री विमलकुमार एम० चोरड़िया : ५० के बारे में एमेलगेमेशन के बारे में आप ने कहा

"within such time as may be prescribed"

आप क्या यह सोचते हैं कि मामला लिगर करेगा, डिले होगी ? यदि हां तो कितना समय होना चाहिये । कोई छोटा काम होता है, कोई बड़ा काम होता है । आप जो समय बांधना चाहते हैं वह कहां तक उपयुक्त होगा ?

श्री जी० पी० कपाड़िया : टाइम लिमिट बहुत जरूरी है । चैम्बर का एक्सपीरियेंस यह है कि बहुत सालों से कि किसी प्रकार की बात हो, बहुत डिले होती है ।

श्री विमलकुमार एम० चोरड़िया : क्लाज 52 में आपने छः महीने की अवधि दी है कि छः महीने के अन्दर अन्दर

"majority are of the view that persons appointed under section should be required to submit a report within the prescribed time."

छः महीने छोटी कम्पनी के लिये ठीक हो सकते हैं, लेकिन बड़ी कम्पनी अगर अमलगमेट हो जायें और बड़ी कम्पनी के ज्यादा कागजात इन्स्पेक्टर को देखने पड़ें तो ऐसी स्थिति में क्या छः महीने का बन्धन ठीक हो सकता है ? अपना अनुभव तो यह है कि बहुत सी कम्पनियों की जांच हुई तो उसमें बहुत समय लगता है डिटेल्ड एन्क्वायरीज में । ऐसी स्थिति में आप छः महीने की अवधि को बढ़ाना चाहेंगे या घटाना चाहेंगे ।

श्री जी० पी० कपाड़िया : हमें कम से कम समय रखना चाहिये । इसका कारण यह है कि जितना समय ज्यादा लगता है उतनी ज्यादा गड़बड़ी होती है, और जो आदमी गड़बड़ी करने वाले होते हैं उनको मौका उसका ज्यादा मिलता है । जब समय ज्यादा होता है तो कार्रवाई ठीक से नहीं की जाती है । समय कम होता है तो ठीक से की जाती है । ज्यादा समय होने से काम करने का जो रेजल्ट होना चाहिये वह नहीं होगा ।

Shri Rajendranath Barua: In your memorandum you wanted exemptions in respect of banks and financial institutions but in the deposition, if I understood you right, you want to make many exceptions. How can you reconcile them?

Shri G. P. Kapadia: After submitting the memorandum we have given further thought to the matter and so we have amplified or modified our observations in respect of particular aspects. If we are wiser by further consideration we desire to place our views here and we should have an opportunity to do so.

Shri P. D. Himatsingka: Will the amendment proposed in clause 46 enable even financial corporations to lend money without a special resolution every time?

Shri G. P. Kapadia: That is a doubtful proposition and it will require careful examination.

Shri P. D. Himatsingka: Should the object of the company law be to check malpractices and help in creating a good climate for investment or what should be the main object of the company law amendment?

Shri G. P. Kapadia: This is a very wide question. With utmost respect, I may invite the attention of the preliminary observations contained in the representation of the Indian Merchant's Chamber. We have given full thought to the matter; we have made a critical survey. Our observations have been contained in the opening portion. A mass of particulars are being collected and the result is that the administrative authorities get lost in the mass of papers. What is most essential in the view of the Chamber is to take timely and forthright action against those people responsible for misdeeds and deal with them with the heaviest hand. Instead, they ask: have you filed this particular return in time? If not, there is this penalty; have you taken prior permission of the Government in respect of a technical matter which may be of doubtful interpretation if not that penalty. For instance, in section 350, there are five different methods for computation of depreciation. Each is right.

Instead of wasting our energies and time in the pursuit of enquiries of this nature and creating more of trouble for the honest corporate sector man, we should so have our legislation in such simplified manner that the honest man can progress while the provisions of a penal nature are made most stringent against persons indulging in malpractices by timely action against them. Thus, the honest man will be protected and the dishonest will be dealt with with a heavy hand. That is the approach of the Chamber.

Shri P. D. Himatsingka: In your experience as a chartered accountant you may know that there are a large number of companies having funds which they do not need for their own business in the off season. During the off season they lend money to other companies and earn interest.

Shri G. P. Kapadia: I would not make a generalisation of it. There are certain companies which have seasonal workings and which have large funds. They may think of employing these funds for fruitful purposes. In that light the question of temporary loans and advances will definitely arise. But in respect of other companies where there are no seasonal workings, the position may be different.

Shri P. D. Himatsingka: The Vivian Bose report was based on the 1913 Act. After that, have not all the loopholes been plugged by the new Act of 1956 and the amendment of 1960?

Shri G. P. Kapadia: Things have considerably improved after that first major amendment of the Companies Act and the chamber would like to offer a bouquet to the authorities that their alertness and efficient working has acted as a sort of healthy check on those who were resorting to malpractices. The chamber is of the view that with the amendments which have already taken place, there should be a halt to any further amendments, which have been so many in respect of the company law.

Shri P. D. Himatsingka: In fact, the company law administration themselves have reported that the working of companies have improved very much after the amendments.

Shri G. P. Kapadia: That is very obvious and the chamber has laid stress on this aspect on a number of occasions.

Shri P. D. Himatsingka: Regarding principal and ancillary objects, do you know the exact difficulty that occurred in the company in question on which that recommendation is based? There was no difficulty in the purchase of jeeps, but the attempt was to divert the funds to another partnership or another firm and that was the cause of the trouble.

Shri G. P. Kapadia: I would only say that the items covered by the Vivian Bose Commission are really speaking exceptions to prove the rule.

Prof. Mukut Behari Lal: Yesterday your Chairman said that blank transfers are evils to be restricted. May I know what are those evils?

Shri G. P. Kapadia: One could write a thesis on blank transfers. The chamber has accepted the proposition that blank transfers have been responsible for a lot of malpractices and the chamber has never minced matters in mentioning them.

Prof. Mukut Behari Lal: Both the Bose Commission report and the Daphtary-Sastri report have recommended absolute abolition of this system. Yet, even the Finance Minister in the Lok Sabha pointed out that if blank transfers are to be prohibited, certain exceptions will have to be made in respect of shares pledged with banks or other financial institutions for raising funds. With these exceptions, will it be possible for us to say that blank transfers should be abolished?

Shri G. P. Kapadia: There should not be a total abolition of blank transfers. Bonafide cases of the nature indicated by me and to which I have made reference and cases referred to in the representation of the stock exchanges may be considered.

Prof. Mukut Behari Lal: You have said that a thesis can be written on the malpractices resulting from blank transfers. The Bose Commission report has pointed out some malpractices which are of a very serious nature and we are faced with the serious difficulty of manipulations of black money in the stock exchange. Don't you think, therefore, it will be proper for us to abolish this system except in cases mentioned in your memorandum?

Shri G. P. Kapadia: I do not think I can usefully add to the observations I have already made.

Prof. Mukut Behari Lal: You wish to lay down in the Act itself the items on which the cost accountancy report has to be prepared. Can you submit to the committee items which required to be included in that, so that we may consider incorporating them in the Act?

Shri G. P. Kapadia: It will be a privilege for the chamber to do that.

Chairman: You may give that list.

Shri G. P. Kapadia: The two questionnaires I submitted yesterday may be passed on to the draftsman. I will also contact the President and send you the view-points of the chamber.

Prof. Mukut Behari Lal: You pleaded strongly for the amalgamation of the institutes of chartered accountants and costs and works accountants. Have they been amalgamated in any part of the world?

Shri G. P. Kapadia: I have already said that we need not copy everything that is done in the western countries and we may have our own pattern according to our own requirements. I stressed that there are only 7 or 8 costing practitioners and the chartered accountants are eminently fitted to do this because of their knowledge of the financial transactions.

Prof. Mukut Behari Lal: You wish us to chalk out our own line of action?

Shri G. P. Kapadia: It is our duty to place our viewpoints before the legislators and it is their privilege to decide.

Prof. Mukut Behari Lal: If the two institutes are amalgamated, you said there should be a post-graduate course in cost accountancy. Will you propose that those who are at present chartered accountants should undergo that training?

Shri G. P. Kapadia: Well, I will have to cover a little more ground...

Chairman: It is for Government to consider.

Prof. Mukut Behari Lal: I wish to know your opinion so that Government and the legislature may be in a position to form their own opinion in the light of your experience and advice.

Shri G. P. Kapadia: It is the chamber's view that chartered accountants are fully competent to conduct the audit Government have in view in respect of these cost transactions....

Shri B. R. Bhagat: All of them?

Shri G. P. Kapadia: Every one of them. Because every chartered accountant when he takes training has cost accountancy in his syllabus. It had a place before. Now it has a primary place in the syllabus which has been revised.

Shri B. R. Bhagat: I understand there is only one paper in the whole syllabus on cost accounting for chartered accountants.

Shri G. P. Kapadia: The point is: whether we want to lay stress on the costing records basically or we want to consider them in a manner divorced

from the financial transactions. Or have Government in view presentation of a picture of cost accounts in relation to the financial transactions? If the latter is the case, obviously the person who is definitely competent is the person who is only a chartered accountant.

Shri B. R. Bhagat: Here I would like to join issue with witness. Cost accountancy as a part of scientific management, technical assessment, is much different from just evaluating the financial transactions which ordinarily the chartered accountant does. Although it is true we may not copy everything that is in the West, certainly a management problem, whether it is business operation, research, or scientific management or any other aspect of cost accountancy, that is a branch very much developed now. To say that just because they have one paper in the syllabus on the subject, all chartered accountants can do it is something open to question. That was why I wanted to qualify it. Some of them may be able to do it, even though they are not cost accountants. But to say that chartered accountants *ipso facto* can do cost accounting is a different matter.

Shri Era Sezhiyan: Witness said that there are only 6 or 7 qualified practising cost accountants. What is the source of his information?

Shri B. R. Bhagat: It is a fact that there is only a very limited number—7 or 8—of practising cost accountants. That is because there is no scope at present for them in the private sector. Some attempt is being made in the public sector enterprises to have cost accounts evaluation. But even today even organised business houses do not encourage cost accountancy.

Shri Era Sezhiyan: Even regarding the number, I would like to know where he got it?

Chairman: We need not go into that now.

Shri R. P. Sinha: It is an important question which the Chair should permit witness to answer. He is eminently fitted to answer it because he is an eminent chartered accountant himself.

Chairman: It is the chartered accountants' view.

Shri R. P. Sinha: He is known as the father of the Institute of Chartered Accountants.

Chairman: Cost accountants may have their own view in the light of the question raised by Shri Bhagat.

Shri R. P. Sinha: We want to know his view.

Shri G. P. Kapadia: I am glad the hon. Minister has joined issue with me on this point, and it will be my endeavour to meet it.

I make a distinction between costing records and cost accounts as related to the financial transactions. If you are attempting an amendment to the Companies Act, you cannot divorce the examination from the financial transactions. If your intention is to regulate costing for industrial purposes, the forum is the Industries (Development and Regulation) Act. There whether you entrust it to a cost accountant or a chartered accountant is altogether a different matter. I do not want to belittle the importance of the cost and works accountants at all. But the observations I have made have been pertinently made because the amendment has been attempted to the Companies Act, and that Act cannot take cognisance of costing records of a dead nature completely divorced from financial transactions. Once you accept the proposition that this result cannot be considered divorced from the financial transaction, the complete importance of the chartered accountant emerges. It is in this light, and because the amendment attempted is to the Companies Act, that I am making these observations. If the object is to have

a regulation of costing records by themselves, by all means have it in another statute after due examination for industrial regulation purposes. That is altogether a different matter. But when you want certification in relation to the presentation of the balance sheet and profit and loss account, which is simultaneous with the presentation of the information that emanates from the costing records and cost accounts which must merge in the financial transactions of the company itself—it is but legitimate and proper that the functions should be exercised by a chartered accountant.

Shri Babubhai M. Chinai: Re: cl. 15, about a special resolution, the chamber has said that it will be a cumbersome procedure for companies' working, existing companies as well as new ones. So far as new corporations are concerned, is it not a fact that the promoters themselves form into a shareholders' meeting and get their memorandum and articles of association passed as shareholders so that they have not to go before shareholders as such when the corporation is formed? Therefore, what is the difficulty getting a special resolution passed in the case of new companies?

Shri G. P. Kapadia: So far as the flotation of new corporations is concerned, shareholding has to be broad-based. It has to be. The question arising to be answered is: whether from the time of incorporation the issue of shares will be of a broadbased character or it is going to be restricted to particular individuals. In the very nature of things in which the corporate sector is allowed to function and the government regulations in this behalf, unless the shares are broad-based and issued to the members of the public, the very bringing of the corporate body into existence will not arise. You cannot think in terms of a closed preserve.

Shri Babubhai M. Chinai: My question is: is it not possible that promoters of a company can by a general meeting among themselves get the memorandum and articles of association, which contain the objects for which the company is floated passed? If they have not to wait for other shareholders to enrol themselves, what is the difficulty envisaged in getting through the objects by passing a special resolution? The procedure as I have seen is the one I have just now indicated.

Shri G. P. Kapadia: It is a generalisation attempted. Really speaking, if the promoters are promoters of the highest repute, even after doing this they will get the share capital. But if the promoters do not enjoy that high repute and this special resolution and other things have to be passed, the very raising of capital at a later stage, when it is issued to the public, will stand jeopardised.

Shri Babubhai M. Chinai: Either he has not understood my question, or he does not want to answer.

In his observations he suggested the amalgamation of both the Chartered Accountants Institute and the Cost and Works Accountants Institute. He is an ex-President, or the Founder-President, of the Institute of Chartered Accountants. I would like to know from him whether the two institutes would be willing for an amalgamation. Has he sounded them?

Shri G. P. Kapadia: I would not travel into the sacred portals of the rights and privileges of the present councils of the respective institutions, although I claim that I can share my thoughts with them, and they always give the utmost consideration to my views. Whatever may be the present position, it is in the fitness of things, for the healthy development of the professional bodies as well as the industrial sector, that a definite attempt should be made to bring a sort of understanding between the two statutory bodies, and every one concerned should use his good offices to

bring about an understanding of a workable nature, so that the ground is cultivated for the ultimate amalgamation of the two institutions. I am myself a Fellow Member of the Institute of Cost and Works Accountants, which came into being by merely requesting people who were senior in the profession of Chartered Accountants, to join it. I do not think that if a sincere attempt is made, it would not meet with success. So far as I am concerned, I am prepared to use all my good offices for bringing it about, but the matter should be examined in the light of the views of the two institutions. It is for them to say the final word.

Shri Babubhai M. Chinai: You said yesterday that if they were amalgamated, the Institute of Cost and Works Accountants should be given an associate membership. Will you be prepared to give equal status to both members?

Shri G. P. Kapadia: I was not properly understood. What I said was that all the existing Fellow Members of the Institute of Cost and Works Accountants must be made full Members of the Institute of Chartered Accountants.

Shri Babubhai M. Chinai: Clause 46. The need for finances may suddenly arise, in which case will it be all right to go through the formalities of calling a special meeting, pass a resolution giving notice etc.? By that time the need of the institution may aggravate. What would you suggest if the object is to be achieved, namely to see that no misuse is made?

Shri G. P. Kapadia: On the contrary, the Chamber would suggest extension of the exemption even to private limited companies in respect of loans given to companies under the same management. The practical solution to the problem would lie in this, that in respect of the bona fide requirements of an immediate nature, if timely action is taken by the directors of the company, a subsequent ratification at the hands of the shareholders should be permissible. It should not be a prior consent.

Shri Babubhai M. Chinai: Will you also, in order to safeguard the interests of the shareholders, suggest that after that, if the Board of the company unanimously passes a resolution and goes to the Company Law Board, the loan may be taken within eight days irrespect of the company receiving a reply or no reply from the Company Law Board?

Shri G. P. Kapadia: The better course, to my mind, would be that irrespective of prior consent whether of the shareholders or of the administrative authorities, the directors should have the right to take timely action with regard to the question. A ratification should be allowed within a period of time, and at that time, the authorities should necessarily have the privilege of examining whether the timely action that was taken was justified; in case they feel that it was not a bona fide arrangement, they may stipulate something for the future, but the transaction which has already taken place need not be reopened, so that the Company Law authorities know the method and manner in which the directors of the company have acted. From their behaviour, they can give directions that in future they should not do this without the prior consent of the authorities.

Shri Khandubhai K. Desai: If the ratification does not come about in the general meeting?

Shri G. P. Kapadia: Then that particular transaction need not necessarily be disturbed, but for the future you must lay down a very stringent rule, because otherwise you will create practical difficulties. Performance of contract, damages and all that would arise.

Shri R. P. Sinha: You were a Member of the Direct Taxes Enquiry

Commission. I will invite your attention to paragraph 7·54 of their Report. You will find that all that is being done in Clause 13 of the Bill is to implement the recommendations of of that Report, that is to stop blank transfers beyond a certain period. You know that such blank transfers are also restricted in a country like U.K. There are two other recommendations in that paragraph of the Commission's Report, that blank transfers should be allowed:

(a) Where the shares are handed over to a banking company either as a security or for safe custody, or

(b) Where the shares are held on blank transfers by the directors of a company or partners of a registered firm or trustees in a fiduciary capacity.

If we provide exemption for the above two categories, will you accept the clause?

Shri G. P. Kapadia: If the hon. Member will refer to the observations in respect of this very item in my dissent memorandum, to that very report he will find my personal stand. I am not here today in my personal capacity and I am voicing the views of the Indian Merchants Chamber and their views are categorical to the effect that there should be no total abolition of blank transfers. There must be distinction between gategories relating to stock exchange and other categories, items enumerated by the direct taxes administration enquiry committee. Due cognisance of the exceptions enumerated in the Mathai Commission as also the representation of the stock exchanges should be taken into consideration.

Shri R. P. Sinha: Please refer to clause 24, section 233(B). Could a true and fair view of the state of affairs could be obtained merely by obtaining a cost audit? Secondly, are all chartered accountants competent enough to conduct cost audit in the light of what we have explained?

Shri G. P. Kapadia: This ground has been covered more than sufficiently. Examination of cost records is totally different from the audit of cost accounts as such. If you want industrial units to maintain costing records and you want examination of such records for the purpose of regulation of the price of the products of these industrial units, it is altogether different. Therefore, the question of true and fair view does not at all arise; it is a matter to regulate under the Industrial Regulations Act. If you want to make a true and fair view, whether of financial transactions or of financial transections linked with costing records, it must be uniform; you cannot think in terms of having one true and fair view for the purpose of balance sheet and profit and loss account of the company and another true and fair view for the cost accounts of the company because they are one component unit, which could not be dissected.

Shri R. P. Sinha: True and fair view of the company cannot be obtained unless we have both financial audit and the cost accounts audit.

Shri G. P. Kapadia: I will make a distinction. The position requires to be amplified. When one thinks in terms of maintenance of costing records and linking them up with the financial records, once that requirement has been put in the statute, then certification will be in respect of financial records which take only cognisance of the cost records and cost accounts; there is no separate certification of the cost accounts as such which can arise to be made under the Companies Act. It is the report on the accounts and affairs of the company in respect of financial transactions which are duly and fully supported on the basis of the legislation which Parliament may have in respect of the cost account and the complete picture that emanates from that position.

Shri R. P. Sinha: I refer you to clause 22(b) where a new clause 4(A) is being inserted. The Central Government is empowered to direct a special audit of a company to be done, and also to direct in that audit report what should be contained. Exception had been taken to the inclusion of that provision. What I have in view is this. I may refer to the Vivian Bose Commission report; there you will find that the chartered accountants made a certain audit and gave a certain certificate. That was not a proper document, a certain audit that was being conducted by the auditor of any company is not in its view correct. Then Government would like to have powers to direct as to how that audit should be conducted and what would be the report that the auditor must give. What is the real objection that you have got to this?

Shri G. P. Kapadia: The real intention of this amendment is this. Before instituting investigation proceedings against a particular company in respect of it some important information and material may be needed by the authorities, they want to screen the matter to find out the contents of the information and see if what had been conveyed to them is correct, so that if possible, if full explanation has been tendered to the authorities investigation proceedings may not be launched. If that be the objective, that can be met by giving a particular direction on the lines of section 639(A), by providing an additional clause which I have indicated yesterday before this committee because the objective is to get particular information in the hands of the Government to enable them to determine the real state of affairs relating to the company and I do not want a very ambiguous position should arise where a separate report is given to Government in respect of particular matters and the contents of that report do not reach the shareholders. They will have wide implications and also entail upon the performance of the auditors and the rights and privileges of the shareholders. The case of Government companies as such is totally different from the private companies in the corporate sector.

Shri R. P. Sinha: The witness has said that the provision with regard to the memorandum about main objects and subsidiary objects should not apply to the existing companies. This will create difficulties. What we have in mind is this. Supposing an unscrupulous fellow wants to take possession of a company which has got various funds: they take the help of the company as they did in the case mentioned in the Vivian Bose Commission and divert the funds to the other corporate sector or other purposes which is not the main object of the company, thereby the main objects of the company may suffer. The management is honest and they would like to carry on honestly. But how to safeguard such things happening if we accept your recommendation?

Shri G. P. Kapadia: How many companies of the type in question would be there which would think in terms of that? Would the directors of the companies think in terms of jeopardising the very existence of the activities of the company and launch some activities which will jeopardise the very existence of the company? The directors in their interest will see that the activities that they enter into are activities of a beneficial nature not only to the generality of shareholders but also to themselves. If there is an attempt to seek any personal benefit, action can be initiated against them under a number of other provisions in the Companies Act.

Shri R. P. Sinha: You have said that you would like to take over the existing members of the Costs and Works Accountants Institute as full members of the Chartered Accountants Institute. Do you think that they have been trained enough and they have acquired sufficient knowledge that by virtue of being only

members of the Costs and Works Accountants Institute, they can carry out the functions of a chartered accountant?

Shri G. P. Kapadia: We have a precedent regarding this in the Chartered Accountants Act itself. When that Bill was at th Select Committee stage, I had the privilege of discussing it with the authorities. A suggestion was made that those who had acquired practical training as chief accountants of industrial units or as auditors of particular companies should be enrolled as members, irrespective of their having passed any examination or having put in articleship as required under the Auditor's Certificate Ruls. The reason was that Government did not want a number of persons who held such qualifications to be debarred from enrolling themselves as members of the institute. So, if you think in terms of having an inherently strong institute for the country, some sort of compromise has to be made. It is not too late now because the number to be absorbed would not be that high. I believe that with their knowledge and experience, the members of the Costs and Works Accountants Institute will be so able to adjust matters as to assume full responsibility as chartered accountants.

Shri R. P. Sinha: You presuppose there should be some sort of scrutiny or automatically membership should be granted?

Shri G. P. Kapadia: No scrutiny because that will bring in all sorts of misunderstandings. If Government accept the principle, there should be automatic merging without any ceremony.

Shri G. N. Dixit: You said there are ample provisions in the company law by which malpractices can be checked. The Bose Commission report reveals that the investing public suffered to the tune of Rs. 2·60 crores. What are those provisions by which this money can be refunded to the investing public?

Shri G. P. Kapadia: Confirmatory provisions, provisions relating to investigation and the institution of company tribunals are sufficient to cover all these and a little more. We have recently amended the Companies Act providing for institution of company tribunals. That was only for taking timely action against those responsible for malpractices. The department is fully alert about these matters.

Shri G. N. Dixit: The amending Bill wants to prevent such occurrences in future. Do you think that the refund of the amounts alleged to be embezzled will do much good along with this amending provision to prevent such occurrences in future?

Shri G. P. Kapadia: In respect of matters covered by the Bose Commission, I would not attempt an answer because the matter may be *sub judice.*

Shri G. N. Dixit: The President of the Chartered Accountants Institute has reported that disciplinary action was pending against the chartered accountant in question who had passed all those accounts. What has happened to that? Have the proceedings culminated or is it still pending?

Shri G. P. Kapadia: The Council of the Institute could give you the reply. But that is one solitary case emanating out of the enquiry of the Bose Commission. One swallow does not make a summer.

Shri Cherian J. Kappen: About clause 11, you say, the words "and only book adjustment" should be deleted. Will you be satisfied with that?

Shri G. P. Kapadia: On the contrary, the better solution will lie in formulating a fourth separate category where the amount of share capital is nothing tangible. That should be reflected separately.

Shri Cherian J. Kappen: You have said that the ethics of company

management have improved considerably since the passing of the 1956 Act, and the 1960 amendment. Don't you think that if the proposed amendments are passed, it will be still further improved?

Shri G. P. Kapadia: Our attempt should be, as I said, to deal with the malpractices, rather than think in terms of technical non-compliance of certain provisions of the Act, and wasting our energies in that manner.

Shri N. Dandeker: On the subject of division of objects into main objects and ancillaries and other objects, you have some objection as regards the existing companies. I quite appreciate the difficulties. Would they be met if two things are done? In so far as conformity with the new provision would require amendment of the memorandum and resort to the High Court, suppose it is provided that for existing companies amendment of the memorandum can be done without resort to the High Court. Secondly, if existing companies having divided their objects in these two ways, wanted to embark upon new ventures, it is provided that an ordinary resolution of the shareholders should be adequate for that purpose. Would that meet the difficulties?

Shri G. P. Kapadia: It would be all right in respect of the first. But the question of a small minority of 25 per cent forestalling the move of the majority should have to be considered. In that light for existing companies if you say that it should be done without going to the High Court and with an ordinary resolution, that would be a good solution.

Shri N. Dandeker: The other point is about cost accounts. I am not quite sure what you wanted to say on the technical side. I think your point is that where it is a question of audit of accounts, the auditor doing the financial accounts must necessarily be the auditor to deal with the cost accounts audit as well.

Shri G. P. Kapadia: Exactly.

Shri N. Dandeker: Suppose there was the provision that the audit of cost accounts, if ordered, should be done by the same person as the financial auditor. That would cover your difficulty?

Shri G. P. Kapadia: That would definitely cover the difficulty and bring the amendment as a justified amendment under the Companies Act.

Shri N. Dandeker: Going on to the merits of cost accounting, you mentioned yesterday that your research organisation made certain inquiries and sent out a questionnaire and so on. I have gone through the questionnaire and I find it is very much geared to the problems of presentation of costs in relation to price fixation and so on. It was not really concerned with the general question of the maintenance of cost accounts and their structure.

Now, based on whatever information and response you may have got and based on your own wide experience, would you agree that the extent to which cost accounting exists in the corporate sector is very rudimentary, that is to say, it is not there in 60-70 per cent of companies and that it is only in 25-30 per cent which is represented by large well-organised companies that there is some system of cost accounting, and the others do not have anything at all.

Shri G. P. Kapadia: I would reduce your percentage to 25 to 30 or even 10 to 15, because my experience has been rather very dismal. The result of this inquiry came as a very disappointing factor.

Shri N. Dandeker: On that basis that something like 70-75 per cent of the companies, most of them small companies, either do not maintain cost accounts or maintain only rudimentary cost accounts, I thought your point was that we should not take a leap and prescribe either by rules,

as it is proposed in the Bill, or by a schedule as you suggest, an elaborate system of cost accounting when the vast structure of the corporate sector does not in fact have any kind of cost accounting at all worth speaking of.

Shri G. P. Kapadia: That, substantially, is the point made in the chamber's representation, that we cannot think in terms of cost audit without the preliminary pre-requisite of cost accounts themselves being maintained. So the effort, in the chamber's opinion, should be to see that this amendment is postponed. We should first lay down the format of cost accounts.

Shri N. Dandeker: You consider that any attempt at cost accounts audit except in the case of companies already having a fairly good cost accounts system would really be far too premature at present. That is to say if we wish to develop costing in the corporate sector at all, the attempt should be first to develop the cost accounting so that people may be encouraged to keep costing records and so on, and when we reach a certain sophisticated stake of maintenance of those accounts, the question of audit would properly speaking arise; is that your case?

Shri G. P. Kapadia: Even in respect of these organised companies, my experience has been that the format of the cost accounts they have is geared to their special requirements, which does not conform to the general principles of cost accounting invariably. I have been concerned with the inquiry relating to various industries and their price fixation. It has been my experience that the format of the cost accounts and cost records and information which government want in a particular form is a complete variation of the basis on which the records of the companies are maintained. So in respect of the well organised companies also, we have to think in terms of rationalising their records and information after consulting the various industries and then think in terms of laying out a format of the cost accounts to be maintained, and at a later stage, after we have reached a particular stage—sophisticated stage as the hon. Member calls it—we can think in terms of cost audit.

Shri N. Dandeker: About 20-25 per cent. do maintain cost accounts according to their own particular likes and necessities. Do you even there consider that it is practicable at all to prescribe any kind of standard format for cost accounting, in view of the difficulties in determining various concepts in uniform terms, such as allocation of overheads etc., particularly where there are multi-product concerns, or there are main products, by-products and so on?

Shri G. P. Kapadia: I refer to the question of the inherent difference between the format Government have in view regarding the allocation and principles of cost accountancy, because opinions differ. In the opinion of the authorities, a particular item may be a proper charge on the direct cost; in the industry's opinion, it may be the other way round. In respect of overheads, an attempt has been made to the effect that no allocation of that can form part of the cost structure at all and it has to be treated as a mere component of the price difference to be awarded as a return on capital. These are real fundamentals requiring very critical exmaination. When I talked in terms of giving something, I thought in terms of giving at a later stage after we have decided to discuss the issue in the light of the format being placed after due consideration.

Shri N. Dandeker: I am very grateful to you for clarifying the point. I thought you were straightway for prescribing a schedule to the Act like the profit and loss account schedule, balance sheet schedule and so on, and that you would straightway go on

to a sophisticated presentation of cost audit.

Shri G. P. Kapadia: Actually in the preliminary discussion with the authorities, which I had the privilege of having with the Chairman of the Company Law Board and Secretary of the department, I have made this very plea that we must first attempt in terms of laying down a requirement of cost accounts to be had and then go on to the next thing —in fact I went to the extent of saying that now we are putting the cart before the horse.

Shri N. Dandeker: Even assuming that we take the case of the sophisticated companies maintaining proper cost accounts according to their own modes of allocation of cost, overheads etc. what would be the chamber's view—even if there was cost audit—as regards the desirability of the publication of the cost accounts in the same manner as the financial accounts are now published?

Shri G. P. Kapadia: The chamber is very much afraid of secret information of a technical nature going out to the competitors in the form of presentation, if that presentation is made in a particular form. That is an inherent danger. Going further, I may say that information required under the taxing statute has also in the past been kept as confidential. If we go on revealing every sort of information like this, we will be ruining the very structure of productive activity in the country and jeopardising industrial progress.

Shri N. Dandeker: There has been all this discussion which, to some extent is not relevant as to the cost accountant being a technical man dealing with cost accounts, and the chartered accountant with training in auditing and a considerable knowledge of cost accounting also dealing with the question of financial accounts. I want to get your point of view clarified. Apart from the question of whether the two institutes should be amalgamated and so on, I take it you do agree that in so far as the technical business of preparing, maintaining and controlling company cost accounts are concerned, those are the gentlemen, specially trained people of the Institute of Cost and Works Accountants who are properly qualified for that detailed job; on the other hand, you urge that the Institute of Chartered Accountants are not ignorant about cost accounting because they have also got all the basic disciplines of cost accounting; and you contend that in so far as the review of the cost accounting results in terms of the presentation of a fair and correct view of the affairs of the company is concerned, the Chartered Accountants are better qualified for that kind of thing than the Cost Accountants.

Shri G. P. Kapadia: I made that exact point. I made a distinction: if it was a question of costing records by themselves to be examined or tested, the forum of legislation is not the Companies Act—it is somewhere else. If you want to legislate under the Companies Act, it must be an auditor under the Companies Act.

श्री मधु लिमये : आप का सुझाव कैसे अकाउंट्स और आडिट के बारे में था कि पहले अकाउट्स रखे जायें, बाद में आडिट का सवाल आयेगा। बाद में कानून की सहायता के लिये इन्तजाम बतला सकते हैं कि पहले जो बड़ी कम्पनियां हैं उनके लिये अकाउंट्स रखने और आडिट करने का नियम लागू किया जाये। इस का एक फेज्ड प्रोग्राम बनाया जाये और धीरे धीरे सभी कम्पनियों को उसके नीचे लाया जाये ।

Shri G. P. Kapadia: The Chamber's view with regard to the matter has already been stated in considerable detail. It is not a question of linking the information to particular or well organised units. There must be an attempt to make the country cost-conscious. So far as the regulation is concerned, it is not a mere question of particular companies coming

in or particular companies conforming to the requirements of the Act. In respect of such a fundamental matter if you want to lay down something, it must be in the statute itself, and it should not be left to the prescribing authority or the rule-making power.

श्री मधु लिमये : इसके बारे में मैं नहीं कह रहा हूं। कानून में हैं कि इसके लिये इन्तजाम है, लेकिन उसको लागू करने के लिये आप क्या कह रहे हैं ?

Shri G. P. Kapadia: The Chamber thinks in terms of postponing consideration of the matter completely for the present, because we have not got the very basis of consideration existing today. We have not reached that stage. We have to achieve that stage before we think in terms of legislating about it.

Shri A. Shanker Alva: Clause 24. In page 9 of your memorandum you say:

> "If it is desired also to recognise the Cost and Works Accountants, there may be no objection but such Cost and Works Accountants must have the necessary qualification for the conduct of the audit of the financial transactions."

Do you mean to say that such persons have no such qualifications?

Shri G. P. Kapadia: The Chamber has put it in very clear terms that a person who is both a Cost and Works Accountant and Chartered Accountant may be eligible, and that a person who is also a Cost Accountant should not be disabled because he is not only a Chartered Accountant. The Chamber thinks in terms of audit being conducted by an auditor of the company. There may be a Cost and Works Accountant.

Shri A. Shanker Alva: Clause 58. You are prepared to give protection to Government servants from prosecutions or suits, but you say that as far as other persons are concerned, they should not be encouraged because people are blackmailing. It will not amount to blackmailing if a person who is honest goes to the officers and gives information saying that malpractices are going on. Don't you think that such persons should be protected?

Shri G. P. Kapadia: I can only quote the Matthai Commission. Discussing the matter relating to informers, they have recommended positively that this class of informers should be discouraged. In the view of the Chamber, blackmailing a person is a greater sin than corruption or evasion.

Shri Era Sezhiyan: Clause 24. I presume that you think that it is premature because (1) the number of Cost Accountants is very small, and (2) the forms should be prepared even now. But we have a Memorandum from the Institute of Cost and Works Accountants, wherein they have anticipated this objection and stated:

> "A possible objection to this proposal may be that the number of Cost Accountants in practice today is inadequate to cope with the cost audit of a large number of companies. It may be recalled in this connection that when audit of company accounts was first introduced under the Companies Act 1913, there were to our knowledge not more than 30 firms of auditors all over India. Today there are about 1,000 Cost Accountants on the Institute's roll and 500 awaiting membership."

Therefore, this plea that we do not have enough number of Cost Accountants does not help in view of the memorandum given by a competent body.

Shri G. P. Kapadia: Out of these 1,000 members, 500 are said to be competent for practice, and it is said that if opportunities are afforded to them, they may come out of employment and start practising. Accepting the proposition as such, what will

this result in? Today they are employed in the organised companies attending to the costing records. We want to impoverish them, and bring them out for conducting audit. We will thus deplete the efficiency and the personnel which is required in the industrial sector to take charge of the costing records. By this, shall we be improving matters or deteriorating them? That is the practical aspect of it.

Secondly, today the Institute of Cost and Works Accountants thinks in terms of having articles for training. Is there any possibility of giving this training? That is the reason why I suggested useful collaboration between the two institutions and absorption. That is a practical preposition. I have fully answered the poser when Shri Dandeker put me the question as to the approach of the Chamber to this matter, by saying that we do not want to diminish the importance of Cost Accountants. Legislation need not be in the Companies Act. Only when we have reached the stage of satisfactorily maintaining costing records, we should think in terms of providing for cost audit.

Shri Era Sezhiyan: If we have a sufficient number of Cost Accountants, what is the objection to giving the work to them. The Institute of Cost and Works Accountants says:

> "A conservative estimate of 25 per cent thereof setting up their own practices in case of compulsory cost audit will bring in the field of practice no less than 350 Cost Accountants."

Shri G. P. Kapadia: The audit of the accounts, as and when the basic structure is ready, must be within the purview of the Chartered Accountant only, and none other.

Shri K. K. Warior: Is it the opinion of the Chamber that after the amendment of the Act in 1956, things have improved much? We know that one of the Ministers also has said so. Did not the Daphtary-Sastri Committee take that aspect also into consideration when recommending these amendments? After 1956, where is relevancy and necessity for this amendment?

Shri G. P. Kapadia: After 1950 some shortcomings were noticed and they were fully redressed by the amendment of 1956. There have been further amendments from time to time to provide for other matters which, in the opinion of the authorities, were not covered. The department is quite alert and we should appreciate the good work done by the department and allow them to achieve results before we take further measures involving difficulties and complexities for the honest corporate sector man.

Shri K. K. Warior: May I know whether the Sastri Daphtary report had not taken into consideration all these aspects, after the 1956 amendment and 1960 amendment? Their recomendations were after those amendments. Has that aspect been taken into consideration by the Chamber?

Shri G. P. Kapadia: On the contrary, in the view of the Chamber, the enquiry by the Vivian Bose Commission embraces a particular group of industries and instances have been given which are of a stray nature and which do not represent the generality of cases.

Shri K. K. Warior: About the vouchers, what is the usual practice? How long do you keep the vouchers? Or do you destroy them after audit?

Shri G. P. Kapadia: We cannot destroy them after audit because for the purpose of the requirements of various things—we may take the Indian Limitation Act—we may retain certain vouchers for some more period, say three years. That is why

we have suggested that vouchers for 4 years, and not more, should be preserved.

Shri K. K. Warior: About the activities of the blank transfers and stock exchange, do you think that it is a healthy practice that blank transfers must be employed in this business?

Shri G. P. Kapadia: I have already covered it; I have nothing to add.

Shri K. K. Warior: If no, you may say no; if yes, you may say yes. About cost accounts, I am fully satisfied that Mr. Dandeker has given you the chance to say what you had to say. But still, do you think that it is only as a matter of corroboration and not a corrective? Is not cost accounting a corrective to financial accounting?

Shri G. P. Kapadia: It is not a corrective to financial accounting. It is the basis for completing the financial picture as and when the former is ready, it would be something useful, subject to the consideration of the secrecy part to which I have already referred.

Shri K. K. Warior: It may be supplementary or complementary; that is what you say. Is there no chance of having a conflict between cost accounting and financial accounting?

Shri G. P. Kapadia: No, Sir.

Chairman: Thank you.

Shri G. P. Kapadia: On behalf of the Chamber and myself, I convey my most grateful thanks to you and to the Members of this Committee for having given the Chamber a very patient hearing.

(The witnesses then withdrew)

II. The Associated Chambers of Commerce and Industry of India, Calcutta

Spokesmen:

1. Shri D. Fordwood.
2. Shri T. R. Crook.

(Witnesses were called in and they took their seats)

Chairman: Gentlemen, the evidence you give here is public and is liable to be published and distributed. Even if you want any part or whole of it to be confidential, this will be printed and supplied to Members of Parliament.

We have distributed your memorandum to the Members and if you want to stress any particular point or make out any new point, you may please do so.

Shri D. Fordwood: Mr. Chairman, Members of the Joint Committee, first of all, on behalf of the Associated Chambers of Commerce and Industry, I would express our appreciation at being given this opportunity of sending representatives to appear before you.

Before commenting on certain of the provisions of the Companies (Second Amendment) Bill, 1964, I would once again express the Chambers' concerns on the frequency of the major changes being effected in the basic law which, as you are all very well aware, constitutes a very substantial and most comprehensive piece of legislation.

With regard to clause 11(a) which provides that shares shall not be shown as having been allotted for cash, if a book adjustment has been effected, the purpose of this proposed amendment is fully appreciated. Nevertheless, it is considered necessary that certain exceptions should be specified in the proviso to cover certain cases where shares have not been allotted on a direct cash basis, but nevertheless there has been a transfer of cash at some time or the other. I have in mind the case of debentures

which carry a right to be converted into equity. It would be quite wrong in such cases to say that this equity has not been allotted for cash.

Another cases which comes to point is in the case of foreign technical aid where the fees payable to the collaborater may be retained in the company and subsequently utilised for allotment of equity. There again, although it is a book transfer, it is nevertheless for cash.

With regard to clause 12 which seeks to prohibit the payment of underwriting commission and brokerage in respect of shares and debentures which are not offered to the public. These debentures and shares fall mainly into two groups: firstly, those which are subscribed by promoters, directors and their friends, managing agents and their friends and, secondly, those in respect of which firm allotment has been specified in the prospects. With regard to the first group, promoters, managing agents, directors, etc. it is not customary for companies to pay commission in such instances. In fact it would be very difficult indeed to justify payment in such cases.

In the case of (b) however *i.e.*, firm allotments, we do not see the justification in denying commission to brokers who also act as underwriters. When a broker agrees to underwrite part of an issue, it is considered by him most essential and necessary to the success of the issue that a part of the issue be placed as a firm allotment, which expresses the underwriter's confidence in the issue. Furthermore, such Brokers are encouraged to interest their various clients in the issue by being in a position to offer them part of their requirements as a firm allotment, provided their clients are prepared to apply for the remainder in the public issue. In this manner, the underwriters and/or brokers are able to build up the public issue and can ascertain the extent to which the issue will be successful. It is, therefore, considered to be essential in the interests of an issue that the payment of underwriting commission and brokerage on firm allotment continue to be made as in the past. It seems to us to be wrong to deny them the commission. ,

Clause 13 seeks to limit the currency of blank transfers to six months in the case of shares dealt in on recognised stock exchanges, and to two months in other cases. It is considered essential that the Act should provide exemptions to the proposed provisions to correspond with the exemptions which are specified in section 49 of the principal Act. Section 49 provides that in the case of a company, all its investments must be held by it in its own name and thereafter provides for certain exemptions, e.g., where a company has nominated a director to another company, it may provide for qualification shares; it may provide people with shares so as to maintain the minimum number of members, etc. All these were taken care of under section 49. We feel it is desirable that similar provisions should be made in the proposed Act. Another aspect of this restriction on length of blank transfers is in the case where banks lend moneys on the security of shares which are invariably deposited on blank transfers. To change that present system which has stood the test of time would be wrong.

Turning now clause 24, which seeks to enable the Central Government to direct that an audit of cost accounts shall be conducted in such manner as may be specified in the order. This is a clause which naturally causes great concern to the Chambers. Although it is assumed that such far-reaching powers would be exercised only in circumstances where the Government have good reason to suspect mismanagement, the Chambers consider that the specified circumstances under which an order can be directed are far too vague and indefinite. It is the duty of the financial auditors of the company to certify or otherwise whether the balance sheet and profit and loss account give a true

and fair view of the state of the company's affairs and of its profit for the period under review. To require audit of the cost accounts in order to arrive at a true and fair view of the state of affairs of a company appears to be a contradiction of the duties of the financial auditor. Further, the Chambers consider that the idea of cost audit, the findings of which are to be published and circulated in the same manner as the financial auditors report, is totally repugnant for the reasons which have been specified in our memorandum. In any event, if it is necessary to have a cost audit, we consider that the form of report should be prescribed in the Act itself and it must be in our opinion restricted to a statement whether or not adequate cost accounts have been maintained to enable sufficiently accurate statements of the cost of products to be ascertained on the basis of recognised principles of cost accounting. Again, I would emphasise that the Chambers' view is that this form should be prescribed in the Act and not be left for executive action.

Clause 26 seeks to amend the existing provisions of the Act relating to production of documents and evidence.

The Chambers consider that the right of an inspector to call for the books of any company, wherever situate, must be regarded as objectionable. I am quite sure that is not the intention, but that is in fact what has been stated. Further, to entitle such inspector to delegate these powers to any person authorised by him is considered by the Chambers to be most objectionable and it is respectfully suggested that the words "any person authorised by him" should be deleted wherever they occur.

Clause 28 seeks to provide that a company need not be furnished with a copy of the interim report made by the inspector on the investigation of the state of affairs of the company. Every principle of justice demands that a copy of the conclusions of the inspector, whether interim or otherwise, should be made available to the company, as they are made available to other bodies. The Chambers accordingly strongly recommend that this clause be withdrawn.

Clause 46 seeks to extend the restrictions on inter-corporate borrowing and lending. Although the object of the proposed amendment is fully appreciated, it is considered that the present proposals are unduly restrictive and will seriously interfere with a large range of normal and unobjectionable commercial activities. It has been stated in the Statement of Objects and Reasons that the powers of lending should be on the same par as the powers of investment. The Chambers accordingly are firmly of the view that the directors of a company should be entitled and enabled to exercise lending powers similar to those which they have in respect of investment under the existing provisions of section 372. A further aspect of this intercorporate borrowing and lending is that the loans made by a 100 per cent subsidiary to its holding company and also by a 100 per cent subsidiary company to another 100 per cent sister subsidiary company should be totally exempted from the provisions of section 370.

Clauses 49-50 deal with amalgamation of companies. The proposed procedure is going to lengthen what is already a rather lengthy procedure and it seems to the chambers to be desirable that the provisions for amalgamation of companies should be simplified. This has reference not only to the Companies Act but also to the taxation statutes which make amalgamations extremely difficult.

Shri Suresh J. Desai: On p. 3 of your memorandum, you suggest that there should be an exemption from the provisions of the new clause to cover the case of shares held by a company in the name of nominees pursuant to the provisions of s. 49. Section 49, sub-sections (2) and (5)

refer to investments of a company to be held in its own name. That relates to companies. But the question of blank transfers equaliy relates to individuals also. It impinges on the question of negotiability of shares also. More or less the system of blank transfers is current all over the world in the major stock exchanges in the World. The Jenkins Committee also has discussed it quite in detail. Do we take it that if exemptions as mentioned in s. 49 are provided, you are agreeable to the restrictions proposed to be placed on all other blank transfers, blank transfers given by individuals to banks or blank transfers given by trusts to some trustees?

Shri D. Fordwood: That is so. I was concerned primarily with investments held by companies which are already in accordance with s. 49 required to be held in its own name. But I was dealing with the other points which are also raised in s. 49 where they need not be held in its own name in accordance with the present. I wanted that position to be safeguarded. I also want the position of a company's investments which are held in its own name and which are deposited with a bank, again under blank transfer, to be recognised. On the question of individuals holding shares on blank transfer, I have no comments.

Shri Suresh J. Desai: Individuals giving blank transfers in favour of banks. If I want to take a loan from a bank, I give a blank transfer to the bank and take the loan. Now the restriction will apply that in six months I have to go and execute a fresh transfer.

Shri D. Fordwood: That is so under the proposed provision but there again I would deal with companies and individuals in the same way by granting exemption for shares deposited with banks on blank transfer, provided always that such shares are in fact registered in the name of the beneficial holder, either the company or the individual who is borrowing from the bank.

Shri Suresh J. Desai: On p. 3 of your memorandum, you say under cl. 46:

"The Chambers accordingly strongly recommend that the directors of companies be given lending powers similar to those which they have in respect of invesiments under s. 372".

Under Section 372, the limits are (1) 10 per cent of the capital of the company in which the investment is to be made, (2) 20 per cent of the subscribed capital of the investing company if it is in any other corporate body. If these limits are exceeded, an ordinary resolution, not a special resolution; plus government sanction—these are the restrictions. It is proposed that if the loan is to any other corporate body, 30 per cent of the subscribed capital plus free reserves, and if it is in the same group, then 20 per cent of the subscribed capital and free reserves. If these limits are exceeded, than the sanction of government is to be obtained.

Now as far as the special resolution is concerned, your main objection is to it for any loan, whether beyond this limit or within it. May we take it that your objection is to the special resolution to be passed and not to the enlargement of the base of 30 per cent of the subscribed capital plus free reserves, and 20 per cent of the subscribed capital and free reserves in the same group of companies?

Shri D. Fordwood: That is partially correct. One of our main objections is that under the Bill, all lending powers are taken away from the directors of a company—which to the chambers' mind is quite wrong.

Shri Suresh J. Desai: You say that the company should be given lending powers similar to those in section 372.

Shri D. Fordwood: It is a question of powers—not the quantum—of the

directors to lend money. In England, if the articles of a company empower the directors to lend money, then the directors lend money.

Shri Vimalkumar M. Chordia: P. 2 of your memorandum, cl. 26: you consider the provisions enabling an inspector to call for the books of any company objectionable. Can you state reasons?

Shri Fordwood: Objection is to the words 'any person authorised by him'. In other words, an inspector—I do not suppose he would ever do it—could in fact so authorise his servant.

Shri Vimalkumar M. Chordia. But you say: in the memorandum:

> "The Chambers consider that the provisions of this clause which would enable an inspector to call for the books of any company must be regarded as objectionable".

Shri Fordwood: I am sorry. When I was given an opportunity of addressing you earlier, I said 'the books of any company wherever situate'.

Shri Vimalkumar M. Chordia: You have objected to the inspection of the inspector even.

Shri D. Fordwood: Of any company, not necessarily of a company of which there is good reason to believe there has been mismanagement. It is 'any' company.

Shri Vimalkumar M. Chordia: In the provision of the Bill, there is sufficient safeguard. It has to be with the previous approval of the Central Government. Do you think it will be misused or improperly used?

Shri D. Fordwood: We have every reason to believe that it would never be misused. But to have it there must by itself be regarded as objectionable.

Shri Vimalkumar M. Chordia: After the sanction of the Government, the Inspector will call for the books.

Shri D. Fordwood: Of any company wherever situate. The books of the company in London may be called for.

Shri Vimalkumar M. Chordia: Clauses 49 and 50. You say that at present a very cumbersome procedure is there. Do you want to simplify it? How?

Shri D. Fordwood: Yes, I would like it to be simplified. Under the present system, there are two references to the High Court. It is practically impossible at present to amalgamate companies because of penal tax provisions which are brought in, which have no bearing whatsoever. Under the proposed law, you are really extending the difficulties by directing courts to refer any application for merger to the Central Government. That is bound to take time, and unless the companies can lay down a time-table for merger, it is practically impossible to merge.

Shri Vimalkumar M. Chordia: In this Clause, power is being taken for the company which is being wound up and is going to be amalgamated.

Shri D. Fordwood: I think there is some difference between a case of winding up and a case of amalgamating.

Shri Vimalkumar M. Chordia: Clause 49 reads:

> "Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up.....
>
> —it is in the case of companies which are being wound up—
>
> "....with any other company or companies, shall be santcioned by the Court unless the Court has received a report from the Company Law Board."

What objection do you have to Government taking this power?

Shri D. Fordwood: The same procedure would apply in the case of two

companies which simply wish to merge, one acquiring the assets of the other.

Shri Rajendranath Barua: What, according to you, is an improvement on the existing Clause 46?

Shri D. Fordwood: The Chambers appreciate the object of the proposed amendment, but here again it is a case of legislating for the wrongdoer to the detriment of the honest company.

Shri Rajendranath Barua: Will you please concretise your suggestion for the improvement of the wording of the Clause?

Shri D. Fordwood: We have already said in the Memorandum, and it has also been amplified, that powers of lending should continue with the directors of a company.

Shri Rajendranath Barua: In that case, Clause 46 goes out of the Bill.

Shri D. Fordwood: I did not say so.

Shri Rajendranath Barua: It comes to that. So, how can you reconcile the two?

Shri D. Fordwood: What I am trying to say is this. First you have restricted the powers of investment. You still permit the directors of a company to make investments on behalf of the company. But in your proposals to limit the powers of lending, you have denied entirely such powers to the directors.

Shri Rajendranath Barua: Are we to understand that you want a rewording of this Clause in relation to section 372 of the Act?

Shri D. Fordwood: I think it would be desirable to give directors some power of lending. They should not have to go to the company in general meeting on every occasion when they want to increase or make a new loan

Shri G. N. Dixit: Have you considered the other Clauses of the Bill?

Shri D. Fordwood: It has always been the policy of the Associated Chambers to deal only with what they consider to be the major clauses of a Bill.

Shri G. N. Dixit: What about Clauses 5 and 15? Do you think that in any manner they will come in the way of the proper functioning of industries?

Chairman: They have not expressed any opinion. Why should you go to matters on which they have not expressed any views? I think we need not go into that.

Shri Babubhai M. Chinai: You have not mentioned anything about Clause 36 in connection with the age of a director, which we intend to restrict in this Bill. What is the English law in this connection?

Shri D. Fordwood: I cannot usefully say anything on that, but I believe that there is no ultimate limit. I understand that companies, if they so desire, can appoint directors of any age.

Shri R. P. Sinha: Clause 11. You have objected to the mention of the allotment of shares for other than cash. This Clause merely provides that all shares which are not allotted for cash should be differently shown in the report to the Registrar. Section 75(1)(a) provides that only allotments against cash should be shown under it; all other allotments will have to be shown under section 75(1)(b). There is no prohibition of allotment of shares for other than cash. All that Government wants is that they should not be put under category (a), but under category (b), in the information to be given to the Registrar. How will it affect the operations of the company if the desired information is given separately?

Shri D. Fordwood: The Chambers feel that in certain circumstances it is entirely erroneous and misleading to say that shares have been allotted for a consideration other than cash when, in point of fact, it has been cash, although it may not be a direct cash, or it may be a book adjustment. I quoted two cases where such a thing could arise—debenture holders who have paid cash for their debentures, who are entitled under the terms of issue to convert that into equity.

Shri D. Fordwood: To say that the equity has not been allotted for cash is quite erroneous. It has been allotted for cash: the company received cash.

Shri R. P. Sinha: I agree. We have some other point of view to plug the loopholes. What difficulties would it entail in the operation of the company if certain information the legislature wants to be put in another column is done like that, granting for the time being that you are correct?

Shri D. Fordwood: The Chamber's only point is that it is an erroneous description to say that shares had not been allotted for cash when we know that in fact they have been so.

Shri R. P. Sinha: I take it that it is only from this point of view that it is erroneous nomenclature that you are objecting to this?

Shri D. Fordwood: Erroneous and misleading to an outsider reading the balance sheet and not knowing the peculiar manner in which those shares were allotted.

Shri R. P. Sinha: Supposing we have another category where all these facts are mentioned—all the points you have made out—will that suit your point of view?

Shri D. Fordwood: Indeed.

Shri R. P. Sinha: Coming to clause 46 you accept on the one hand the need for taking the shareholders' permission for making such loans or advances; on the other hand you object to such provision being made.

Shri D. Fordwood: The point there is this. We as a Chamber appreciate that intercorporate loans within the companies of the same group have in the past been abused by certain parties and we appreciate the need for Government to legislate. But you are doing it for every company, whether in the same group or not.

Shri R. P. Sinha: Your objection is that if the loan is outside the group then special resolution should be required, not otherwise?

Shri D. Fordwood: One of our principal objections to the proposed amendment to section 370 is that you are depriving the directors of a company from exercising any power whatsoever, to lend to any company whatsoever.

Shri R. P. Sinha: At the same time you say that the shareholders should have a right to get their approval before this is done. The need for shareholders' special resolution to enable the company to lend money to a body corporate under the same management is accepted.

Shri D. Fordwood: I have already said that we do appreciate the necessity for special care to be taken when lending or borrowing within the same group.

Shri R. P Sinha: We can only do that if we provide for such a special resolution.

Shri D. Fordwood: An ordinary one would be equally valid.

Shri R. P. Sinha: You want to differentiate between special resolution and an ordinary resolution?

Shri D. Fordwood: Yes I would also like the difference to be brought out between lending to companies

within the group and lending to any other company which has no connection with the group.

Shri R. P. Sinha: Special resolution for lending outside the group—you do not recommend that also?

Shri D. Fordwood: No I might add that any company under the provision can lend as much as it likes to an individual but it may not lend to a body corporate.

Shri R. P. Sinha: What is the English law?

Shri D. Fordwood: The company is governed by its own articles. If the articles give it the power to lend moneys, it has the power and lends moneys.

Shri R. P. Sinha: I draw your attention to the clause in connection with the blank transfers clause 13. You have pointed out only one exemption to be provided that is to say, shares allotted in the name of the companies. Do you think that if we accept the suggestion, it will meet your point of view and if we stop the use of the blank transfers in other matters it will not cause any difficulty for commercial and industrial financing?

Shri D. Fordwood: I think it would; yes.

Shri R. P. Sinha: What is the similar provision in the English law?

Shri D. Fordwood: First of all, I do not think it is incumbent upon the companies in the United Kingdom to have its investments in its own name. There are no restrictions on blank transfers, although the practice is not very widely followed.

Chairman: Thank you very much.

The witnesses then withdrew.

III. Northern India Share Holders Association, New Delhi

Spokesmen:

1. Shri Premjus Roy.
2. Shri C. L. Virmani.
3. Shri P. R. Sanwalka.

(Witnesses were called in and they took their seats)

Chairman: Gentlemen, the evidence that you give is treated as public; it is printed and distributed. Even if you want any part of it to be confidential, it will have to be printed and circulated to Members of Parliament.

Your memorandum had been circulated to Members. If you want to stress any particular point or make out any new points, you may do so.

Shri C. L. Virmani: I shall amplify our point regarding clause 60 first. I submit that by merely asking the company to publish the notice in the newspaper circulating in the vicinity of the registered office of the company, the purpose is not served. The companies generally publish these advertisements in insignificant and unknown papers and so the shareholders do not come to know of it. The mischief works more in the case of section 329 where sanction has to be obtained by the management before they put the resolution to the shareholders for confirmation. At the time when the Central Government give the sanction, it is a one-sided show, because the minority shareholders who are not going to support the amendment are not actually represented at that time. Under most of the sections where the sanction of the Central Government is required, the sanction is taken afterwards. In those cases, the minority shareholders who are not satisfied with that amendment know that this matter is going to the Central Government. But in the case of section 329, where the remuneration is going to be increased, which is a very vital matter, we do not know why it is said that the sanction may be obtained beforehand. When the management comes to the shareholders, they say, "Government has already sanctioned it" and the share-

holders get prejudiced. They think, probably Government has applied its full mind and the few shareholders who oppose it have absolutely nothing to say in the matter except that they can only go to the court It is not understood why in this important matter, notice is not sent to shareholders again. Actually the advertisement may be costing more to the company than giving notice to the shareholders. We submit that after making due provision for sending notice to the shareholders, it should also be provided that in the case of section 329, the sanction should follow the decision of the shareholders and not precede it.

This Association submitted a memorandum to Mr. Majumdar saying that this provision must be changed. The reply given by him was not at all satisfactory. He said, it works against the democratic principle if Government veto the decision of the shareholders afterwards. That argument does not hold any ground, because under sections 259, 268, 269, 300, 311, etc., sanction is given by Government afterwards and not before. Why should it not be so in the case of section 329 also? As I said. the minority shareholders who oppose the increase in remuneration have no other alternative to go to court, for which they have no finance and time.

Shri Premjus Roy: Regarding clause 51, we have a suggestion. Certain amendments are proposed regarding transfer from one company to another company. You may kindly refer to section 395 of the Companies Act. When there is transfer from one company to another, there is a fresh group of management coming in to take controlling interests. Provisions should be made that when the new management comes over, the shareholders must be informed and they must have occasion to make their submissions as to the propriety of the new management taking over the management. Also, they must have an opportunity to sell their shares. Just as the old management is able to get a substantially higher price for the shares, the same benefit should be given to the shareholders. If it is not possible to find out what exactly is the price at which the shares of the shareholders could be taken over, the company law department may decide and the person who wants to take over the management should be compelled to offer the same price to the shareholders.

Very often the price which the new management has to pay is substantially above the present market price of the shares. The old management gets all the benefit of the higher price and the shareholders are left high and dry. The same benefit should be given to the shareholders also.

Shri C. L. Virmani: Actually, the sub-section sought to be introduced contemplates the case of a scheme under that very section. We are suggesting that a similar situation arises when the management of a company changes from one hand, to another. Now what happens is that they manipulate between themselves. A person wants to go out of management. It was on the trust of that person that the shareholders purchased the shares because they know that such and such management is very efficient and will manage the company efficiently. When they know that this man is going to sell it to some other person who is a known manipulator in the market, they become helpless. They know that the price of their shares will go down and they will probably get nothing out of it. So we want a provision whereby when a person is going to purchase from the management or the management is selling the shares to another person with the intention of passing on the management, due notice should be given to the shareholders. That is part of the duty of the management. If they want to sell the shares, the shareholders should be given an opportunity, so that the minority shareholders can protect their interests. This safeguard will benefit the minority shareholders who are generally

thrown to the mercy of the new management.

Shri Suresh J. Desai: In p. 2 of your memorandum, you say re: blank transfer:

> "It will obviously be inconvenient for them to obtain transfer forms from the prescribed authority every time the shares are sold. The restriction on blank transfers would lead to frequent registration of transfers of the shares, which would involve payment of disproportionate transfer charges on the part of investors and also additional work for companies in having to register such frequent transfers."

Again in p. 3:

> "..share-broking firms usually deposit the shares of third parties with their bankers as security. Banks in future will refuse to accept any shares, except those which stand registered in the name of the borrower'.

May we take it that your objections to the restrictions proposed on blank transfer are more or less procedural, not fundamental?

Shri Premjus Roy: No. Our objection is to the abolition of blank transfers *in toto.*

Shri Suresh J. Desai: You have not mentioned it.

Shri Premjus Roy: We say that in case it is not possible to delete this provision altogether, we suggest certain modifications. But we would certainly suggest that in the present state of the capital market, it would be much better if the *status quo* is maintained.

Shri Suresh J. Desai: Re: cl. 51, you mentioned two points. Firstly, the price which is given to the controlling interests by the new management is much more than the price which may be offered to others. Do you suggest any practical remedy, because after all it is all manipulation?

Shri Premjus Roy: Yes. But the Government should ensure that these manipulations are reduced to the minimum, and that in any case, the benefit does not go to a particular section alone; let the shareholders also get it.

Shri Suresh J. Desai: The price may not be given out.

Shri C. L. Virmani: Government sanction will be needed for appointment of a new management. At that time, a provision can be applied.

Shri Suresh J. Desai: They may give out a price which may not be correct.

Shri Premjus Roy: I think Government has enough provisions under the Income-tax Act.

Shri B. R. Bhagat: We have been doing it. Recently, we took into consideration the reasonableness of the price.

Shri C. L. Virmani: Correct price.

Shri Premjus Roy: If it is not there, I am sure Government has many other ways to get hold of it. The suggestion is that it should be either the price given or, if you like, the matter can be left to the decision of the Company Law Department. Let Government decide the fair price.

Shri Suresh J. Desai: You say that in case the controlling interest is transferred, the minority shareholders also should be given an opportunity by a resolution or something like that. But the difficulty is that the shareholders never attend the meeting.

Shri Premjus Roy: When it touches their pockets, they will. If they are given due notice, I see no reason why they will not take sufficient interest.

Shri Suresh J. Desai: Shareholders are spread all over the country. They have hardly the time; they do not get any allowance.

Shri Premjus Roy: That is so when routine items come up for consideration. But on a matter like this, I am sure they will be wise enough to take sufficient interest.

Shri Suresh J. Desai: The practice you referred to is reprehensible and minority shareholders are put to very great disadvantage. But is there a practical remedy?

Shri Premjus Roy: We have suggested it in our memorandum. In a recent case, there was a transfer of controlling interest like this in Ahmedabad. There the shareholders' association took up the matter with the Controller of Capital Issues who put in a condition that the new management will be bound to offer the same price to the shareholders within a certain time.

Shri G. N. Dixit: Is this of relevance to the Vivian Bose Report?

Shri R. P. Sinha: What you are saying is already covered because in that case the Controller of Capital issues forced them to buy at 850.

Shri Premjus Roy: In that particular case, he was pleased to take that view. But the point is that if the law provides for it, it will be binding on all.

Shri P. D. Himatsingka: I think witness is forgetting some of the provisions of the Companies Act. We are told no notice is given to shareholders when such a transfer takes place. But no new management can be appointed or reappointed without the sanction of a general meeting and sanction of Government (s. 326).

Shri B. R. Bhagat: That is only managing agent, not managing director or others.

Shri P. D. Himatsingka: Director also.

Shri Premjus Roy: For change of directors.

Shri R. P. Sinha: The point they are urging re: the price to be paid to the minority shareholders is an important one.

Prof. Mukut Behari Lal: In p. 1 of your memorandum, you say that you would welcome any measures which Government may adopt for preventing circulation of unaccounted money or undesirable cornering of shares by unscrupulous persons. Another witness told us that this system of blank transfers is an evil and a thesis could be written on the malpractices involved in it. Government proposes to put certain restrictions. They have pointed out the difficulties in the application of the restrictions that are being proposed, and they have said that exception should be made at least in the case of shares lodged with banks. So, what will be the harm if we say that due to numerous malpractices involved in the system of blank transfers, the system should be abolished except in the case of shares lodged with banks.

Shri Premjus Roy: At present the conditions are not ripe for a step like this to be taken. Already, the capital market is in a very bad shape. There is need for stimulating investments. If you are going to abolish blank transfers completely, people will be more afraid of making investments in shares, because they will always be worried about having to register the transfers within the period; and if it is to be twice or thrice in a year, as it would be necessary in case the maximum period of validity of blank transfers is six months, it means that at the rate of Re. 0.75 stamp duty on every transfer it would come to 2 or 3 per cent of the total cost, which will be prohibitive.

Prof. Mukat Behari Lal: In Page 1 your Association has accepted that

there are certain evils which should be restricted; and the restrictions that we wish to impose are considered by you to be wrong, that they would create problems rather than solve problems. If you do not wish to stand for the abolition of blank transfers, will you suggest some other method of doing away with the evil from which the money market today suffers due to blank transfers?

Shri Premjus Roy: The problem of unaccounted money is a larger problem, and thousands and thousands of people are involved.

Shri K. K. Warior: This is also contributory. What is your suggestion as far as this is concerned specifically?

Shri Premjus Roy: The suggestion is that the system of blank transfers should be allowed to continue as it is. No change should be made at this stage. The question of unaccounted money can be attacked from a number of angles. Already the Government is seriously seized of this problem. There are a number of amendments made in the Income-tax provision in the Securities (Contract and Regulation) Act. In the case of dividends, the buyer cannot claim the dividend from the seller unless the sends the shares for registration within 15 days of the declaration of the dividend. Let the Government think of various other measures to control unaccounted money.

Shri C. L. Virmani: So far, the share certificate has been regarded as good security not only by the banks, but by private persons also. You will be destroying the utility of the share certificate altogether by making this provision. Harm will be done to the share market and the marketability of shares. It will do more harm to the country than bring out black money.

Prof. Mukat Behari Lal: Page 6 at the end, you say:

> "....in order to make the amended provision effective, the 5 per cent holding should cover his wife, children and other relatives within the meaning of section 6 of the Companies Act, 1956."

How are you going to determine other relations?

Shri Premjus Roy: I would like to restrict the definition to a reasonable extent. After all "relative" has to be defined. It is defined in section 6 of the Act. We have referred to it.

Shri G. N. Dixit: In this Dalmia-Jain case, blank transfers were misused. Is there any way of seeing that they are not misused without creating those difficulties?

Shri Premjus Roy: The abuses that have come to light should be put a stop to. We have no sympathy with them. Any suggestion would depend on an enquiry as to how exactly they were abused, and what can be done for stopping malpractices for the future. Complete abolition of blank transfers or restricting them to a period of two months or six months would appear to bring in more difficulties.

Shri G. N. Dixit: A suggestion has come that in the case of beneficiary owners, it should be referred to the Register.

Shri Premjus Roy: We will have sympathy with that suggestion.

Shri G. N. Dixit: Will it stop the disease?

Shri Premjus Roy: This certainly could be considered as one of the steps. Maybe you need to have other steps to stop the kind of abuses that have come to light.

Shri R. P. Sinha: In page 3 of your Memorandum, you have rightly pointed out that in case of failure to lodge the transfer in time, there is likelihood of loss of money. Besides the six months being provided, what period of grace would you like to have?

Shri Premjus Roy: The suggestion is that the period of 2 and 6 months should be extended to 6 and 12 months respectively.

Shri R. P. Sinha: We say we will keep the time limit and give a period of grace within which, by paying a penalty, you can register.

Shri Premjus Roy: I do not think the question of penalty would solve the problem. The suggestion is that in cases of hardship, where a person dies and the heirs find it difficult, there should be a provision to extend the time, so that no undue loss is caused to the transferees.

Shri R. P. Sinha: You have stated in pages 4 and 5 of your memorandum: "It has been found that in a number of cases the managements sell shares of the company in a suspicious manner with a view to benefit ither the buyer in whom they might oe interested, at the cost of the selling company...." I do not understand the implication. What are you driving at?

Shri Premjus Roy: We have come to know of certain cases where shares were sold in a suspicious manner by the management, shortly before declaring a high rate of dividend the management transferred the shares to another company under the same management.

Shri R. P. Sinha: How does it effect you?

Shri Premjus Roy: The shareholders of the transferor company are adversely affected.

Chairman: Thank you.

(The witnesses then withdrew)

IV. The Institute of Chartered Accountants of India, New Delhi.

Spokesmen:

1. Shri N. R. Mody
2. Shri Raghu Nath Rai
3. Dr. R. C. Cooper
4. Shri C. C. Chokshi
5. Shri S. N. Desai
6. Shri P. Brahmayya
7. Shri M. P. Chitale
8. Shri A. Basu
9. Shri H. B. Dhondy
10. Shri C. Balakrishnan.

(Witnesses were called in and they took their seats)

Chairman: Gentlemen; whatever evidence you give is public and will be distributed to all Members. Even if you want any part of it to be treated as confidential, it has to be distributed to Members of Parliament. We have distributed your memorandum to all Members here and if you want to stress any point or add anything, you may do so.

Shri N. R. Mody: Mr. Chairman, may I refer to clause 22(b) of the Bill which relates to the powers of the Central Government to give general or special directions. In the Daphtary-Shastri report, the learned jurists had recommended that the Institute may evolve a code of conduct for the purpose of audit and arising out of that the Institute took up the matter in right earnest with the result that a comprehensive code of conduct was evolved and guidance given to our members as to the procedures and techniques of performing audits. This was not the first instance of its kind. On two occasions in the past, the Institute had brought about a guide to company audits and it had gone through some revision when the Acts had been revised. The Council has two nominees from the Chambers and four others are from the Controller and Auditor-General's representative, Central Board of Revenue, Company Law Board and one other. In addition that there is ample machinery in the Institute for the purpose of giving guidance on specific questions to our members. Three or four years ago, the Institute set up what is called an expert advisory committee and

we take pride in mentioning that our example was subsequently followed by the American Institute of Certified public accountants, and to a certain extent by the English institute. In other words, we were the first in the field because we felt our members needed guidance on practical questions and we were there to assist them. This committee has been functioning quite successfully and if the opinions given by the committee are of general importance to the members of the Institute, these are published in the journal from time to time. Similarly, the research committee has tackled many questions. It has before it certain works still to be completed; one about to be completed is about the valuation of unquoted shares. Thought our regulation contains the power of the Central Government to give directions to the Institute in certain matters, I am proud to say that there has not been a single occasion on which this power has been invoked by the Central Government. As far as specific cases are concerned, sufficient authority exists in the present section 233A, which was enacted as late as 1960. As far as we know, there have been very solitary instances which have been referred under that section. In view of all this, it is our humble submission that the Institute may be encouraged to continue its good work in giving guidance to its members. If directives come from sources other than the Institute, it is likely that the Institute may be somewhat dispirited in its efforts in this direction. The Institute is a statutory body set up under an Act of Parliament and there cannot be two parallel agencies for giving directives to its memebrs. Let alone the confusion, it would be taking away some of the fundamental functions of the Institute.

I come to clause 24 which envisages cost audit by members of the Institute of Costs and Works Accountants or such other persons possessing the prescribed qualification. The Institute of Costs and Works Accountants was brought into existence in 1959 and prior to that, similar functions were carried out by an institute which was a company incorporated under the Companies Act. That institute was also brought into being in 1944. Until 1944, the functions of costing were performed by chartered accountants only. Throughout the war period, there were very extensive and expensive Government contracts, the costing of which had to be done by chartered accountants employed by Government. In addition, normally it was the company's auditor who was selected to perform that function, although in one case he owed his duties to the shareholders and in the other to the appointer, which was Government in this case. Even today, similar functions are exercised by chartered accountants. These functions are more in the capacity of an auditor doing the auditing of the costing records, rather than one who maintains or is instrumental in maintaining the costing records of the company concerned. As far as our information goes, the functions performed by the Institute of Costs and Works Accountants are largely in the second category, namely, maintenance of costing records and the vast majority of its members are those in employment and not in practice. In the statistics taken from the list of its members given in Gazette of India dated 3rd October, 1964, we find that there are six members, who were in actual practice. The total membership of the institute today is about 1300; perhaps on 1st April 1964 it was somewhere in the region of 900, but that might be an approximation.

Shri K. K. Warior: Can you give the figures for the last two or three years since the passing of the Costs and Works Accountants Act?

Shri N. R. Mody: We have not got them here; we will supply them.

Shri Khandubhai K. Desai: They may be temporarily in the employment of industries, but they may start practising later.

Shri N. R. Mody: I respectfully venture to suggest that a man who is well placed in industry is not likely to give up his employment and enter into the uncertain field of practice.

I submit that cost audit cannot be divorced from financial audit; the two are not separate compartments. It is an integrated compartment dealing with one aspect or activity of the company concerned. The fundamental duty of a statutory auditor is to give a "true and fair" view of the state of affairs of the company. These words have been taken from the U.K. Act of 1948 and the implication of these words is extremely wide. The auditor who is performing the statutory audit, the end result of which has to be to give a true and fair view, cannot work in vacuum, apart from the cost auditor who may perform certain duties which have to be brought into unison. As far as U.K. is concerned, the situation is more or less the same. The majority of the members of the Institute of Costs and Works Accountants are employed. There are some who carry out consultancy practice, but usually the chartered accountant carries out the audit of cost accounts. Admittedly, the cost accountant is inducted in large industries to maintain their accounts.

The company's auditor comes on the scene or is engaged in a large company throughout the year and he, having complete access to the books and records of the company, has more intimate knowledge of the company's affairs. From this point of view, we venture to submit that the company's auditor is in a better position, if a cost audit is required, to do it.

Cl. 24(5) visualises a report made by the cost auditor and it seems to presuppose that this report is a separate document from the report of the statutory auditor. It is our submission that whoever does the cost audit, the report of the cost auditor should be made available, if it is to have any value, to the financial auditor who can take the points made by him in performing his satutory audit. The two reports should not be separate documents.

I say this from the analogy of branch audits incorporated in s. 227 (3) where the branch auditor submits a report on his examination of the accounts, but the statutory auditor has to take the points made by him in his report and to mention them in his report, deals with them.

Finally I come to sub-cl, (6) under which the report has to be filed with the Registrar. Here our submission is that the examination of the costing records involves probing into certain aspects which are of a highly confidential nature within the ambit of the company and the filing of such a report would release to competitors secrets which would otherwise not be available.

In view of what I have stated, we feel that statutory auditors and chartered accountants should be called upon to do the cost audit side by side, if necessary, with the members of the other Institute who may be given similar powers. But it is our submission that members of our Institute should not, as has been done in the Bill, be totally excluded from performing these functions.

Shri Khandubhai K. Desai: We are not excluding.

Shri K. K. Warior: You do not like them to come parallel to you?

Shri N. R. Mody: I am suggesting that we should also be included along with them.

Shri K. K. Warior: Statutory auditors are there. They are not eliminated. Their function is statutory audit.

Cost accountants are coming in in addition.

Shri Khandubhai K. Desai: You mentioned in your last sentence that statutory auditors and chartered accountants should be called upon to do it. Is there any distinction between the two?

Shri N. R. Mody: I mean preferably statutory auditors. What we have said is that it should be by a chartered accountant within the meaning of the Chartered Accountants Act or a cost accountant within the meaning of the Cost and Works Accountants Act. We have put ourselves in a parallel position, not a position where we wish to eliminate members of the other institute. All we say is that the financial accounting, as we have explained, and the cost accounting—these two functions cannot be divorced from each other. They cannot be in a vacuum where one person performs one audit and the other performs another audit. They are all integrated functions.

Shri B. R. Bhagat: Because of the statement you made, will it be true to say that the cost accountants also should be allowed to do the financial audit?

Shri N. R. Mody: No—I am coming to that.

In the syllabus for our training, there is an enormous bias on auditing. A young man who starts his articles works in a practising accountants' office so that he gets a complete practical training in audit. We have papers in auditing in our intermediate and final examinations. If you look at the syllabus of the Institute of Cost and Works Accountants, there is hardly the subject of auditing covered.

Shri R. P. Sinha: In your syllabus, is there costing?

Shri N. R. Mody: There is a paper on it.

Shri Era Sezhiyan: Only one paper which cannot cover the entire field.

Shri N. R. Mody: I am sorry—I am a member of both institutes.

Shri K. K. Warior: That is an accident of history in India, that many chartered accountants of long standing are automatically members of the new institute as well.

Shri R. P. Sinha: There are many members of your institute who are also members of the other?

Shri N. R. Mody: Yes.

Shri C. C. Chokshi: I just wanted to mention one or two points.

When the Cost Accountants Bill was being considered by a Joint Committee of both Houes, the Institute had appeared before it and submitted that it was not necessary to have a separate institute, because according to our submission, the chartered accountants were doing costing work, and because there was no field for specialising in costing work, the Institute of Chartered Accountants had not introduced in its syllabus an intensive study of the subject of cost accounting. It was also submitted that the members of the Institute of Chartered Accountants were carrying on the functions of cost auditing. Illustrations of this have already been given by Mr. Mody: we were doing certification of cost of construction for government factories, for certain supplies to government during the war period, and even now there are a large number of costing functions done by members of our Institute.

Therefore, we had submitted before the Joint Committee that so far as chartered accountants were concerned, their scope of work of doing cost audit of companies as well as businesses should not be taken away, they should not be adversely affected. I may submit that an assurance was given by the then Minister who was in the House; he said there was no

intention of taking away this work from chartered accountants.

I do appreciate that the introduction of this clause in the Bill does not amount to taking away the function of costing work, of cost auditing, done by chartered accountants. But it does introduce an element of discrimination inasmuch as the clause only suggests that *prima facie* the members of the Institute of Cost and Works Accountants would be eligible for appointment and in case of others, it is only the government which will decide whether they have the requisite qualification or not. Our respectful submission, therefore, is that the relevant portion of the clause should be amended to read that members of the Cost and Works Accountants as well as members of the Institute of Chartered Accountants and such other persons as may be considered eligible by the Government will be entitled to be appointed to do the costing work. We also made approaches to the Government, and we had invited the then Secretary of the Department to our Council. He also gave an assurance that it was not at all intended to create any discrimination against Chartered Accountants. So far as experience of cost audit is concerned, I do not want to dilate on it. The subject of audit is an integrated subject. If you compare the provisions of the Cost Accountants Act with those of the Chartered Accountants Act, it would be clear that it is only in the Chartered Accountants Act it is said that its Members will be entitled to do auditing. These is no similar provision in the Cost Accountants Act. That also shows that at no point of time it was contemplated that Members of the Institute of Cost and Works Accountants would be called upon to do any auditing functions, whether costing or financial audit. The auditing function is one function, whether we call it cost auditing or financial auditing. If companies are required to maintain cost records as is now contemplated under the proposed amendment to section 209, I would submit that the Chartered Accountants would certainly look into those records and give their report thereon, just as they give their report on the financial books.

(The witnesses then withdrew)

(The Committee then adjourned to meet again at 16.00 hours)

(The Committee reassembled after lunch at 16.00 hoors.)

Shri N. R. Mody: There are a few matters as far as clause 22(a) is concerned. All these items appear to arise out of the Commission of Enquiry and the Institute is in agreement with the introduction of these items which the auditor should answer. The only submission that I have to make is this. We have pointed out in our memorandum that drafting is not very clear. Some of the points should be clarified.

The very first item is to see whether loans and advances made by the company have been properly secured. Now, all loans and advances made in the normal course of business are not necessarily secured. At the same time lack of security does not mean that the advance is likely to become bad. Advances, particularly in the course of business, are such that they may be against the supply of raw materials, machinery, deposits with the customs and public authorities, advances for the fulfilment of certain contracts, etc. All these are not secure and therefore, it is our suggestion that the words 'properly secured' may be deleted.

The Institute has suggested in this behalf that the clauses may be redrafted. "Whether the loans made by the company are on terms which are not prejudicial to the interests of the company"—we think that this would meet the purpose. In other words, the last part of this clause is all right. Then again, there is a phrase "or its members". It seems to bring in some conflicting aspects. That is why we have made the suggestion about re-phrasing.

With regard to sub-clause (b), whether transactions of the company which are represented merely by book entries conform to normal business practices accepted by established principles of accountancy, we have to say this. Book entries in our view do not follow normal business practices. They follow established principles of accountancy. So, here again we have made the suggestion that in respect of the transactions of the company for which the only evidence or the principal evidence is the entry, the point is whether such transaction did in fact take place and if so whether such entries are in accordance with the accepted principles of accountancy.

We have no comments in respect to (c). As regards 'd', whether loans and advances made to individuals and private concerns had been shown as deposits, we suggest that the clause could bear more widening if I may say so and so we have suggested this to be worded 'whether loans and advances have been shown as deposits'. Loans and advances could be to companies as well and shown as deposits. On the contrary, we are suggesting that the ambit of the clause may be widened.

Clause (e) says, whether personal expenses have been charged to revenue account. The meaning is quite clear. It was observed in the Commission of Enquiry how personal expenses were charged in the books of the company. But expenses which are sometimes of a personal nature are, by commercial practice or by contractual obligations, permitted to be paid. For example, free accommodation is one of the perquisites and where it is given under contractual obligations in terms of service, in the case of that person, it may not be personal; in the case of another who is not entitled to such expenses, that would become personal. Here again, we have suggested a slight modification.

Coming to clauses 5 and 15, the Commission of Inquiry had suggested that the memorandum may be divided into two parts—one to contain the main objects and objects ancillary to that, and the other to contain objects which are completely outside the ambit of the main and ancillary objects, and that if the company embarks into the latter category of activities, then only a special resolution should be passed. But in the clause as it is at present, it is intended that a special resolution should be passed even if the company embarks upon the main objects for which it was incorporated.

Clause 46 deals with section 370. The clause is more restrictive than the suggestions conveyed in the Commission of Inquiry report or the Daphtary-Sastri report. There are certain exceptions covered in section 372(14) which exempt certain companies from the purview of section 372. It is urged that the same exemptions may be imported into section 370 also. There are safeguards in section 369 prohibiting a public company from making a loan to its managing agents or to its associate. In section 370, there is prohibition for loans to companies within the same management without the sanction of a special resolution. These safeguards should be enough. There are commercial considerations also which arise from the restrictions, namely, the present financial stringency and the great difficulty experienced by business all over the country in obtaining short-term loans for urgent requirements. If the process of section 370 as intended to be amended now were to be gone through, these requirements could not be met effectively at short notice. Sometimes a company finds itself with surplus funds and these can be invested in deposits or loans with other companies. The recent Banking Companies (Miscellaneous Provisions) Act contains sufficient safeguards for control of deposits and loans. In view of this, we submit that section 370 may be left in its present state and the situation can be met by suggesting that every company which gives a loan or advance should mention in the balance-sheet the name of the party who has taken the loan. At present in the balance-sheets investments have

to be shown according to the companies and with further requirement as to companies within the same group. The same considerations may be imported for this purpose also.

Coming to clause 13 regarding blank transfers, the Commission of Inquiry had suggested in para 19 of their report that certain exceptions should be made. One was that if the shares or investments were deposited with a financial institution for obtaining a loan then the financial institution could hold the security with the blank transfer, provided the shares were in the name of the borrower. Then section 49 holdings for nominee directors are protected—when the shares are transferred to the name of the director concerned to enable him to have a qualification, he usually passes on blank transfer in favour of the company as a safeguard and that blank transfer for section 49 holdings may be permitted. Another suggestion made by the Commission was that it would discourage people from holding shares on blank transfer if the stamp duty were to be reduced on the transfers. I appreciate that is not a subject for the Companies Act, but that was one of the suggestions which would encourage people not to leave shares on blank transfer.

Clause 43 seeks to amend section 309(1) which envisages the appointment of certain professional personnel and for remuneration for services to be paid. However, this clause is circumscribed by one small thing that "in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession". We feel that the Institute being a statutory body closely controlled, it should broadly cover a chartered accountant who has passed the requisite examinations from this Institute and we hope that it would not mean that even though the man, is professionally qualified, every case would be looked into.

Shri K. K. Warior: Clause 22. In your memorandum, you are objecting to certain provisions authorising the auditors to check up the securities. In which cases are you agreeable to see that these loans are scrutinised and screened by you and give a certificate to the effect that they are properly secured? In which cases, you are not? Can you categorise?

Shri N. R. Mody: It may be shown in the books of account as secured, but actually it may be fictitious. It is certainly the duty of audit to discard the fictitious security and regard the loan as unsecured. Merely because it is described as secured, should not make it secured and would not make it secured.

Shri K. K. Warior: Do you think it will be a superimposition upon the directorship?

Shri N. R. Mody: No, because in the case of a banking company where the security against loan or otherwise is very important, we have to go into every case and see whether the security is adequate or not to cover the loan. The same would apply to a normal company because the form of balance sheet specifies the distinction between secured and unsecured loans. That is the present practice also in all companies.

Shri K. K. Warior: As regards the clause re: cost accounting, everybody dealing with industrial concerns is much afraid of it—I do not know why. Do you think there would be some conflict between cost accounting and financial accounting?

Shri N. R. Mody: There need not be. But as I said, the accounts of a company are an integrated whole. You cannot bisect it and allocate the work between two different parties, because that will really mean confusion, and I do not think it would be conducive to efficiency.

Shri K. K. Warior: What is the practice adopted by financial auditors for valuation of stocks?

Shri N. R. Mody: The Institute has gone into very great detail in its statement on different practices which has been issued recently on this particular aspect. Broadly speaking, the auditor is expected to observe the inventory when the inventory is taken or stocktaking is done by the staff of the company. He goes round with the staff and takes a list of the items and then checks this list with the records of the company to see whether there is any excess or deficiency. Then a valuation of the inventory is made to see whether the items are properly priced or are over-priced or under-priced.

Shri K. K. Warior: As I understand it, cost accounting is employed now-a-days in business management to save the industry from purposeful or un-purposeful waste, to eliminate it as much as possible, in processing so as to make the product most economical. How can the financial auditor go into this question of wastage in processing and then come to the conclusion that the profit shown in the profit and loss account is the real profit?

Shri N. R. Mody: Financial accounts and cost accounts are not separate. There may be subsidiary cost records; these and the financial account books have to be linked. There must be agreement between the two, otherwise, cost accounts are not just worth maintaining. That being the connection, the man who performs the financial audit can as well himself go through the cost records, examine for himself what he has seen on the financial side and then present a composite and true picture.

Shri K. K. Warior: Will you agree that the cost accounting is a check on the financial accounting?

Shri N. R. Mody: Respectfully no. It complements.

Shri K. K. Warior: There is no corrective process?

Shri N. R. Mody: No.

Shri K. K. Warior: Suppose the profit and loss account is manipulated to reduce or eliminate the profit figure, how is it possible to find out whether it is in consonance with the actual cost of production and valuation of stock?

Shri N. R. Mody: This is all clear from the subsidiary records of the company. The subsidiary records must be linked with the financial records.

Shri K. K. Warior: The point is whether it is not preferable to have both accounts kept separately so that the one can check the other.

Shri N. R. Mody: No, they are not that separate as you visualise, because the cost records are in a way subsidiary to the financial records. There is a link between the two, product-wise or in some other manner. That depends on the type of business and how accounts are maintained. It is definitely part and parcel, a supplement as it were, to the main books of accounts. The statutory auditor, having the responsibility of reporting on what is a true and fair position, goes into this aspect of the company's cost records even now, to the extent to which they are maintained, and examines and satisfies for himself that the cost of the manufactured article as reflected in the inventory is the correct cost.

Shri K. K. Warior: Have you come across any of these experiences where there is no cost accounting, the wastage itself is a loophole or leakage for concealing profits—purposeful wastage—the profit being divided among the interested people, resulting in a situation where when the entire profit of the company should naturally go to the shareholders, it is diverted into other channels and the profit and loss account does not disclose the actual profit or actual position?

Shri N. R. Mody: I am aware there are some concerns which do not maintain any cost records. However, the situation is gradually improving. As

far as the type of cases you have mentioned is concerned, there are certain tests which could be applied for determining whether there has been leakage. There are very broad tests such as comparison with consumption of the preceding years, gross profit ratio and such other things which would reasonably indicate whether there has been wastage, and if so, whether it has been on a large scale.

Shri K. K. Warior: Is there any conflict beween the chartered accountant and the cost accountant?

Shri N. R. Mody: No conflict of interests. All I say is that cost audit and audit as visualised in this clause are two different things, whereas they are actually not so.

Shri K. K. Warior: Do you agree that by this provision more encouragement and fillip will be given to cost accounting in India so that cost accounting will also be a big contributory factor in proper business management?

Shri N. R. Mody: Another clause in the Bill which seeks to amend s. 209 provides for the maintenance of records in a manufacturing unit. That, I should think, will go a long way towards maintenance of records. Once there are such records, the statutory auditor would undoubtedly look into them in the performance of his duties.

Shri Sivamurthi Swamy: As regards taking loans, and the provision for properly secured loans, witness wants that the word 'properly' should be deleted. What are the difficulties envisaged in retaining that word?

Shri N. R. Mody: I have suggested deletion of both the words 'properly secured', because all loans are not necessarily secured. A loan may be given to a first class company and it is more than properly secured from the point of return of money. What is a security? It ensures that the money will come back. A loan given to a good party will always come back. But all loans are not properly secured. So the implication here would be that any loan not secured would amount to an 'improperly secured' loan.

Shri Sivamurthi Swamy: 'properly secured' means legal security must be there.

Shri N. R. Mody: If the loan is not secured at all, though it is a perfectly good loan, on record the auditor would have to report that this loan is a bad loan, because it is not secured.

Shri Sivamurthi Swamy: What is the harm in observing that legal position?

Shri N. R. Mody: It may be misleading to say that the loan is bad because it is not secured.

Shri Sivamurthi Swamy: In the matter of cost accounting, I think each company has got some business secrets. Will you agree that the cost accounts also should be circulated among the directors without being published?

Shri N. R. Mody: Certainly.

Shri Sivamurthi Swamy: Cost accounting and financial accounting are both linked, and they are not separate?

Shri N. R. Mody: No. They are not separate. They are only two parts of the same thing, which will eventually be linked into one whole when the end product comes out, which is the published accounts.

Shri Sivamurthi Swamy: There are only 6 or 7 Cost Accountants practising?

Shri N. R. Mody: On 1-4-1964, there were six practising members. All the other members are employed in concerns performing the functions of cost accountants. They are not in practice as cost consultants or as cost auditors, or people who introduce systems and the like.

Shri A. Shanker Alva: Clause 22. You are objecting to the insertion of the new section (4A) in section 227. You say there will be two parallel agencies, namely Government and the Institute. Suppose Government wants information on some particular aspects of a company, will there be any objection from you to give those particulars?

Shri N. R. Mody: There is a provision for special audit under section 233A, but even before the processes of this section are let loose, there is no harm if the Chartered Accountant is asked to look into certain matters and to see for himself whether everything is all right, and if not, to report accordingly that it is not; and that may lead to the processes of section 233A.

Shri A. Shanker Alva: Are Chartered Accountants actually practising cost accounting and auditing?

Shri N. R. Mody: Yes. They are performing costing functions. They are doing the cost audit in the course of their normal duty. They are engaged in the installation of systems, they are engaged in generally what is called Management Advisory Services and Budgeting, Cost plus Contracts, and various other things.

Shri A. Shanker Alva: Are the Cost Accountants competent to audit these accounts because here it is mentioned that the cost audit shall be conducted by a Cost Accountant or such other person possessing the prescribed qualifications. Are they entitled to financial audit?

Shri N. R. Mody: No. They are not entitled to do financial audits, nor statutory audit. On the contrary, I would say that they have no audit experience, because auditing does not form part of their training in any manner whatsoever.

Shri A. Shanker Alva: How many Members of the Institute of Chartered Accountants are also members of the Institute of Cost and Works Accountants?

Shri N. R. Mody: About 100, but it is a very rough guess.

Shri Madhu Limaye: Clause 22. If the personal expenses arising out of contractual obligations and personal expenses ineurred in relation to employees' welfare are excluded, will it be all right?

Shri N. R. Mody: I think so. The only point is this, that we do not want to widen the clause by including expenditure which is not covered by normal commercial practice. There may be a contractual obligation that an employee's daily food will be provided by the company. That is not provided by any normal commercial practice, but it may come under contractual obligation. So, I do not think the intention is to widen the clause.

Shri Madhu Limaye: But what is your objection to the Clause as it exists today?

Shri N. R. Mody: There are many companies which give medical facilities, and many which do not. I venture to suggest that in the case of a company which does not provide that facility, it would be a personal expenditure of the employee, but where it does, although it is of a personal character, it still becomes a non-personal expenditure from the point of view of this Clause.

Shri N. Dandeker: I merely want to focus on some of your answers. I would like, therefore, to begin with the new obligations on the auditor, provided by the proposed insertion of sub-section (1A) in section 227. In regard to the first sub-clause under this section, as to whether loans have been properly secured, do I understand your point rightly if I put it this way? You are suggesting that the balance sheet already makes provision for distinguishing between secured and unsecured, and between good, bad or doubtful loans under each category.

Therefore, the suggestion which your Institute is making is for the wording of this to read "whether the loans made by the company are on terms which are not prejudicial to the interest of the company." In so far as security is concerned, your point is that nothing more needs to be done beyond the provision that already exists. Is that so?

Shri N. R. Mody: Yes, Sir.

Shri N. Dandeker: Would you please elaborate your objection to the new sub-clause (b), namely whether the transactions of the company which are represented merely by book entries conform to normal business practices accepted by established principles of accountancy. You see some conflict between these two requirements. I happen to be a technical man; so I know what it means and I also know what you mean. But would you explain it a little further for the benefit of the Committee?

Shri N. R. Mody: Accountancy can only reflect in entry in the books but the entries need not necessarily conform to normal business practices and the transaction itself need not conform to normal business practice. Book entry is a certificate of what is intended to be recorded; the drafting of the clause is a little confused.

Shri N. Dandeker: How do you propose to redraft it? What do you consider the real problem in issue?

Shri N. R. Mody: The purpose of the book entry is to correctly record in the books of accounts such transaction as in fact takes place: whether you feel that the transaction is genuine or whether you do not like that particular transaction, that has nothing to do as far as the recording is concerned. The transaction may or may not conform to normal business practice but it has nothing to do with the record of that entry there.

Shri N. Dandeker: Therefore, your point is that if the merits of the matter are to be pronounced upon, you think that the proposal you made in respect of the transactions of the company for which the only evidence, or the principal evidence is the entry regarding this transaction in the books and whether such transaction did in fact take place; you think that really covers the object in view?

Shri N. R. Mody: As far as we can draft it.

Shri N. Dandeker: You were a member of the Bose enquiry commission. Would you say, in respect of the transaction in question which were there in the books, if these responsibilities were put on the auditors, namely, to state whether in respect of the transaction of the company for which the only evidence, or the principal evidence, was the entry regarding that transaction in the book, whether such transaction did in fact take place, would this have been practicable?

Shri N. R. Mody: If I may instance an entry—suppose there is a loan from company A to company B. B was usually a private company. Then in the balance sheet of company A, some investments would be brought in and placed in the balance sheet and the loan would be cleared up and soon after the opening of the year, the investments would go back. That was a correct kind of recording.

Shri N. Dandeker: If you had a requirement put on an auditor to say whether these entries in fact represented anything genuine, that would cover the matter?

Shri N. R. Mody: Yes, Sir.

Shri N. Dandeker: Please refer to the proposed new sub-section (4A) to section 227—the power of the Central Government to give directions to include specified matters in the auditors' report. In the Explanatory Memorandum on page 32, they say it is ana-

logous to section 619 which empowers the Comptroller and Auditor General to issue similar instructions to the auditors in respect of Government companies. Would you like to comment on that?

Shri N. R. Mody: Yes, Sir. The Comptroller and Auditor General has admittedly been given the powers under section 619. But I would suggest that he could, notwithstanding the absence of such powers, also ask the auditors, as representing the shareholders, to carry out certain work in addition to what is covered by normal statutory audit; he is perfecly competent to do so. Secondly, he has also vast constitutional obligations in the performance of his onerous responsibility and therefore, he has been given this power in specific terms. But even without these powers, as representing the shareholders he could certainly ask the statutory auditor to perform such additional work as he desires. Following the same analogy, it would be up to the shareholders of any company to suggest to the auditors or to ask the auditors to do such extra work in addition to the normal statutory audit, if they consider it desirable.

Shri N. Dandeker: Your objection is not to the auditors being required to look into particular matters in addition to their normal audit but your objection is to the company law department requiring the auditors to do that. Is that right?

Shri N. R. Mody: In a sense, that is so, for reasons which I explained this morning. It would create two parallel agencies which would give instructions to auditors. The Institute have already taken out a very comprehensive statement on audit practices and we are trying to improve the standard of work by educating our members. We are quite receptive to any suggestion from the Government and we have always had our relations based on mutual trust and and confidence and co-operation is not lacking from our side, nor from the other side. Therefore, we feel that this provision is not necessary in the form in which it is there: it should be left to the shareholders or directors of company to request the auditor to carry out certain aspects of the work. Furthermore, I would suggest that the Institute is an autonomous body set up by parliament and as long as it is performing its duty—we feel that it does, and it should be left to manage its affairs, particularly in the technical aspects for which it is better qualified than, if I may say so, the company law department. We have six Government nominees on the Council of the Institute.

Shri N. Dandeker: Do you agree that a vast majority of companies are extremely deficient in proper cost accounting?

Shri N. R. Mody: I would not say vast majority. There is improvement. I would say, it is in the region of 50 per cent of the better-managed companies.

Shri N. Dandeker: In so far as further improvement in cost accounting by the companies is concerned, you have no objection?

Shri N. R. Mody: No, Sir.

Shri N. Dandeker: What you really object to is first of all the requirement that there should be costing audit, when in fact a large number of companies do not have even a rudimentary system of costing?

Shri N. R. Mody: Wherever they have a rudimentary system of cost accounting, they will have to improve it in order to enable proper audit to be carried out. But I would not say that that would itself prevent

audit being carried out. In the course of our work, we found that companies maintained their books in all kinds of ways, some extremely well, some rather badly and some in a mediocre fashion. But it is up to the auditor to be able to audit even such books, even though it takes more time and more trouble.

Shri N. Dandeker: Suppose I say the time has come to prod the industrialists and this new provision requiring audit of cost accounts might have the advantage of pushing them a little faster. Have you any other alternative?

Shri N. R. Mody: No, Sir.

Shri N. Dandeker: I will put a leading question. Has the Institute of Chartered Accountants done or propose to do anything in the matter of improving the audit instructions given to their members to push their clients into systematised cost accounting?

Shri N. R. Mody: Since 1959, the Institute has been more interested in various seminars, symposiums, conferences and the like on matters which are of a costing nature. For example, there was the First All-India Seminar in New Delhi in October, 1959 on 'Introduction to Management Accounting and Budgetary Control'. The second seminar was held in Bombay in January 1961 on 'Introduction of Management Accounting in Medium-sized Industry, and Budgeting for Projects.' The third was held in Calcutta in January 1962 and the subject was 'Standard Costing and Budgetary Control, and Evaluation of Making or Buying Decision'. There were seven conferences like this. Then, there was a residential course in management accounting in Calcutta in March, 1963. The subject was 'Budgeting and Planning; Inventory Control; Operational Budgeting and Costing Problems'. Only yesterday a residential course commenced in Bombay for a fortnight. The Institute was the first to start this management accounting diploma, which is a post-graudate diploma awarded to chartered accountants. From these things, it is clear that there is greater awareness amongst chartered accountants on the subject of costing than on the part of Costs and Works Accountants towards auditing—if I may be pardoned for saying so—and it is auditing which is visualised under clause 24.

Shri N. Dandeker: Unless you are able to satisfy us that there is a steady move by the Institute of Chartered Accountants to prod the corporate sector into going in for costing and cost accounting and management accounting, this kind of provision for compulsory cost accounting would be the only way.

Shri N. R. Mody: I would not like to disagree with you that this sort of provision would have a tendency to encourage the sooner introduction of proper systems of cost accounting than may come about through general persuasion.

Shri N. Dandeker: Your point is, if there has got to be cost auditing statutorily prescribed, the financial auditor is the person who really ought to be entrusted with that work, because he has to dovetail the results of the two and finally express the view whether the results are fair and correct?

Shri N. R. Mody: Yes, Sir; the financial auditor has to produce the end result. In his report to the shareholders, he has to say whether the balance sheet represents a true and fair view of the state of affairs of the company. The costing records and financial records are so integrated that they cannot be separated into water-tight compartments.

Shri N. Dandeker: Your point is that by virtue of the kind of training your Institute gives, the members of your Institute are the ones best

qualified to do the function of financial auditing and auditing in relation to cost accounting also?.

Shri N. R. Mody: I would respectfully agree. Auditing is part and parcel of the training given to the chartered accountant, both when he is taking the practical training as well as in his examinations.

Shri N. Dandeker: How many years does this practical experience extend to?

Shri N. R. Mody: Generally four years.

Shri N. Dandeker: Is that the reason why you insisted earlier that the chartered accountants should also be specified and it should not be merely left so vague as "such other person possessing the prescribed qualifications"? Or, would you go further and say that chartered accountants should be the only persons who should do this?

Shri N. R. Mody: No Sir; I am not suggesting that chartered accountants should be the only persons who can perform cost audit. But they should certainly be included. As to whether cost accountants should be included or not, it is not for us to say. As I said earlier, there are only six practising qualified cost accountants.

Shri N. Dandeker: If this provision is enacted, a number of them might leave industry and set up practice.

Shri N. R. Mody: I am doubtful whether a person would leave a good position in a company where he has established himself for the doubtful pastures of practice.

Shri N. Dandeker: Regarding clause 43: when a director is paid a remuneration for professional services, the remuneration so paid is not to be treated as director's remuneration for the purpose of the limit as director's remuneration. You are quite happy with that; you are also happy with sub-clause (a) which says:

> "Provided that any such remuneration for services rendered by any such director in any other capacity shall not be so included if the services rendered are of a professional nature".

What you are objecting to is the second proviso in (b). Your point is that a chartered accountant is *ex-hypothesi* qualified for this professional purpose and if there is a chartered accountant duly qualified to practise there should be no question of somebody having to say further, 'You are a good fellow; you shall be accepted a professional director and someone else not'. Your point is that if a chartered accountant is a chartered accountant in practice, that should be the end of the matter?

Shri N. R. Mody: Chartered accountant in practice.

Shri N. Dandeker: If this particular director has to be paid an additional fee by virtue of being a chartered accountant in practice, there should be no question of the Central Government expressing an opinion about it?

Shri N. R. Mody: Because we feel, with due humility, that a chartered accountant has the requisite professional qualifications.

Shri N. Dandeker: Would you say the same thing about cost accountants in practice, lawyers in practice, engineers in practice, if they have the proper qualification?

Shri N. R. Mody: If they belong to the recognised institutions, yes.

Shri N. Dandeker: Then there should be no question of anybody expressing any opinion about it.

Shri N. R. Mody: No.

Shri Khandubhai K. Desai: Re: appointment of a cost accounts

auditor, there appears to be a lot of confusion. I would like some clarification from witness. To one of the questions, he said that a special audit which was introduced in the 1960 amendment is sufficient. But that audit is where the Central Govt. is of the opinion that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices, or the financial position of the company was being endangered etc. So that can only be if there is a *prima facie* case established for investigation. What is contemplated in the clause here is that if the Central Government want to know whether fair and proper accounts are being kept, this audit can be ordered. What is your objection to it?

The two intentions are quite different. In the former case, specifically Government has come to the conclusion that a factory is being mismanaged and therefore it wants a special audit. In this case, there is some doubt created only, no *prima facie* case, and therefore, it wants an audit.

Now, all these things have arisen out of the Vivian Bose Commission's recommendations. You were a member of it. What have you to say with regard to the comments which you have made regarding those auditors themselves? You say that two parallel authorities cannot work. Apparently, in the Dalmia concerns' case, the auditors have failed. You yourselves have stated that the auditors failed. So prima facie, to have a little check on the financial audit, do you not think such a clause necessary in the interest of the shareholders?

Shri N. R. Mody: There is some misunderstanding in the first part of what you said. I was not trying to line s. 233(A). The answer to a question about directives under subclause (b) of cl. 22 was as to whether in place of this directive s. 233(A) can serve the purpose and whether by special arrangement envisaged at the behest of, shall we say the Company Law Board, it cannot be carried out prior to letting loose the processes of sec. 233(A).

I would respectfully submit that the transactions which came before the Commission were all prior to the 1956 Act. As we have stated in the second part of our report, that Act has gone a long way to plug the loopholes which had led to the malpractices to a great extent. Therefore, we were not left with many suggestions to make except those dealing with the loopholes which, in our opinion, were not plugged. I am aware of the remarks made about the auditors. I am sorry I cannot make any comments about it because the case is *sub judice* before the disciplinary committee of the Institute, and any remarks I might make might prejudice the case.

Chairman: It would not be proper to make any remarks on that.

Shri N. R. Mody: So I may be excused.

Shri Khandubhai K. Desai: You say that subsequent legislation has plugged loopholes to an extent. But as we all know, the statutory auditors are appointed by the board from year to year. So there is an obligation. Does not the Institute as an autonomous independent body require a provision for some sort of check?

Shri N. R. Mody: If I may correct your impression, the auditors' annual appointment is made by the shareholders. It is not made by the directors.

Shri Khandubhai K. Desai: Technically so, but really they are appointed by the board.

Shri N. R. Mody: If the auditors fail in the performance of their duty, the directors ought to perform their

duty by not suggesting their name for reappointment, suggesting somebody else in their place. As far as the Institute is concerned, we have relentlessly pursued any matter of a disciplinary character which has come to our notice. When a complaint is made to the Institute, under the disciplinary provisions the complaint has to be sent to the respondent Chartered Accountant and his reply invited. Secondly, we also take cognizance of information which comes to our possession. In the case of the auditor you were referring to previously, the matter is before the Disciplinary Committee of the Council not because of a complaint made by Government or any third party, but because of information contained in that document, which is the Committee's report. The Institute took cognizance and started disciplinary proceedings. We even take cognizance many times of anonymous complaints if they are of a serious nature. The total number of cases which have come up for consideration before the Institute has been 412; 136 were referred to the Disciplinary Committee on grounds of their being *prima facie* cases—from 1949 up to date. In no case has the High Court differed from the findings of the Disciplinary Committee except to reduce the punishment recommended by the Council.

We have often heard of statements made in the press and in the public by responsible people, but when we approach them to assist us to start the processes of our disciplinary action, we do not receive even the courtesy of a reply. Two such communications we have addressed last year—one to the Chief Minister of Mysore and the other to the General Secretary of INTUC. Both of them made statements that Chartered Accountants were not performing their duties. When the immediate past President of the Institute, sitting to my left, took up this matter and sent reminders, he did not reecive the courtesy of a one line reply. I submit that it is not fair to blame Chartered Accountants in the abstract.

Shri Sivamurthi Swamy: When did you write to the Chief Minister of Mysore?

Shri N. R. Mody: In February, 1964.

Shri G. N. Dixit: The Commission in its report has spoken of fraudulent transactions and accounts. Did you use this word "fraud" in the legal or popular sense?

Shri N. R. Mody: Sometimes in the legal sense, and sometimes in the popular sense. I am not a lawyer. I left it to my distinguished colleagues, the Judges.

Shri G. N. Dixit: The Daphtary-Sastri Committee has said that you used it in the popular sense, and not in the legal sense, and you are the best person available to us now to tell us if you used it in the sense of guilty intention or irregularity.

Shri N. R. Mody: Not in all cases; in some cases I think in the legal sense. To give an example, certain accounts were ante-dated; that was a clear fraud.

Shri Radhelal Vyas: Clause 24 reads:

> "Where in the opinion of the Central Government it is necessary so to do for the purpose of obtaining a true and fair view of the state of affairs of any company.....".

That means, a particular company has to be taken. An order has to be passed with respect to that particular company to have an audit of cost accounts. It does not make it necessary or compulsory for all the companies or every company to have cost accounting audit. There might be very few cases. If Government is of opinion that any company's cost accounts are to be audited, then any

person who is qualified can be ordered to carry out that audit. It has already been provided here that in addition to the Cost Accountants within the meaning of the Cost and Works Accountants Act, 1959, such other persons possessing the prescribed qualifications can also be appointed. I think the Chartered Accountant is covered by this Clause. So, what objection do you have to this? The Chartered Accountants have a fair chance to be given an opportunity if there is a dearth of other competent persons. Or, will you be satisfied if a specific provision is made that Chartered Accountants may also be given this, provided they hold the prescribed qualifications, and you can make some provision in your Institute for a refresher course, which may add to the qualification of the Chartered Accountants.

Shri N. R. Mody: First of all, there is provision for the Central Government specifying by a general or special order.

Shri Radhelal Vyas: But in respect of a particular company.

Shri N. R. Mody: Instead of entering into a controversy on this point, I would like to answer the second part.

We are the senior Institute of Accountants in this country, and we feel we should not be given this stepmotherly treatment by including us in a residuary clause of "such other persons". We have a name, and we like to be called by our name.

Secondly, if the Chartered Accountants who, as I have been repeatedly saying, are perfectly qualified to do cost audit and have been doing, are to undergo certain further tests, then the Cost and Works Accountants who have no audit experience should also go through some further training.

Shri Rajendranath Barua: There are two parts: one is audit and the other is cost accounting. Do you object to the audit of cost accounting because it will not reflect the real state of affairs of the company concerned?

Shri N. R. Mody: I am not objecting to the audit of costs at all. If there is separation of cost audit, it will not reflect the correct state of affairs in this sense that instead of being dovetailed, the two functions are separated. I have said that cost accounting by itself cannot operate in a vacuum.

Shri Rajendranath Barua: You mean it is a partial audit and it is not proper.

Shri N. R. Mody: It is not.

Shri Rajendranath Barua: This concept of cost accounting has come to stay. Should we not give a fair play to the new idea developing and if so are our industries in a position to maintain cost accounts in our factories?

Shri N. R. Mody: That is the primary function which the cost accountants have been performing. In fact the efficiency of the industry would certainly be very much better if they maintain proper cost accounting and as time goes on with more people being qualified, it would be more and more possible. Today the membership of the Institute of Cost and Works accountants is only 1200. That cannot service all the companies, if all the companies wish to maintain cost accountants. Admittedly, many of them work with people who have been trained in the organisation but who are not qualified cost accountants: those are not very many.

Shri Rajendranath Barua: Coming to clause 46, you have commented upon this clause in your memorandum. Do you mean to say that because there was no recommendation by the Shastri Committee or the

Bose Commission, there was no necessity to bring in inter company loans here?

Shri N. R. Mody: The original suggestion was to put it on a par with inter-company investments but what is stated here is that nothing in the two reports had indicated that the measure should be as restrictive as it appears in the Bill.

Shri Rajendranath Barua: It has gone far beyond?

Shri N. R. Mody: I venture to say so.

Shri Rajendranath Barua: It will hamper the investment market?

Shri N. R. Mody: It will hamper companies in the normal functioning very seriously.

Shri Rajendranath Barua: If the clause be redrafted according to section 372, do you think that it will not be very much injurious to the day-to-day working of the companies?

Shri N. R. Mody: Even then, there would be difficulty for the simple reason that if the temporary advances or loans exceed the prescribed limits as in the case of investments under section 372 the company has to seek pemission of the Central Government which necessarily takes time then it would be injurious.

Shri Vimal Kumar M. Chordia: In page 10 of your memorandum you say where the amount involved is 'material'. What do you consider "material"?

Shri N. R. Mody: It depends upon the circumstances in which a company is. What may be 'material' for one company may be totally immaterial to another. In any case we have not applied our mind: if the proposal is accepted, we can make suggestions.

Shri Vimal Kumar M. Chordia: In spite of auditors being there, there were many reports of irregularities in accountancy in the Vivian Bose Commission reports. Which power should be given to the auditors so that this type of accounting irregularities might be checked?

Shri N. R. Mody: Powers have been widened and are widening in terms of this Bill. The type of irregularities which happened there were those which deserved to be pointed out. I cannot go into specific cases just now because it is sometime.

Shri Vimal Kumar M. Chordia: It is the general feeling that the auditors are appointed, though nominally by the shareholders, but by majority shareholders and so they have a soft corner for those persons who manage and work the company and hold majority shares. Have you evolved some procedure so that this sort of feeling may be removed and the auditors may be appointed by some independent agency?

Shri N. R. Mody: No, Sir.

Chairman: That is not in the amendment.

Shri N. R. Mody: I do not think the honesty or dishonesty of a person will materially increase or decrease in terms of whether his appointment is made by shareholders or by Government. If a man is basically dishonest, he is likely to be dishonest whoever he serves.

Shri Suresh J. Desai: Rightly or wrongly the impression is that the audit done by your members is a mechanical one and they do not act actually as the watch-dog of the investing public. Because of that, Government has too issue certain instructions and directions, which you say should be through your institute. What is your Institute doing to eliminate that impression?

Shri N. R. Mody: As I said, we have produced a very comprehensive code of auditing practices. We have given instructions to our members in the technique of auditing and we are constantly extending that literature. We are trying to publish that literature in a folder with loose leaves, so that it can be extended or improved as and when necessary. There is a Guide to company audit, which takes the member right through the requirements of the provisions of the Act very thoroughly. There is a code of conduct which educates members on professional ethics.

Shri Suresh J. Desai: If the Institute of Costs and Works Accountants also prepares a code for cost audit and the work is entrusted to them, would you not agree?

Shri N. R. Mody: The guidance which we have given is for the improvement of something which our members were already doing. A guide will not be able to educate people who have had no knowledge before. This is not meant to be comprehensive by reading which any person can become a chartered accountant. This is only to improve his knowledge of auditing. It is not going to turn an accountant into an auditor merely by reading it.

Shri Radhelal Vyas: About clause 24, he feels that the right to appoint auditors should be with the shareholders. It might be also said that this clause is more in the interests of the consumers. Suppose the shareholders and directors combine together and make huge profits. Government might feel that the cost of the product produced by the company is very high. To safeguard the interests of the consumer, would it not be proper that the auditor should be appointed by Government? I am referring to cost audit.

Shri N. R. Mody: I venture to suggest that the two functions being very closely integrated, to bring another person on the scene would be the cause of unnecessary friction and the integration will be lost if two persons are doing the audit.

Shri Dahyabhai Patel: You have mentioned about the improvement in auditing practices and code of conduct. In view of this and in view of the fact that there has been an amendment of the Companies Act after the publication of the Vivian Bose Commission report, as an expert on audit and company law, do you think this amendment is really necessary at this stage?

Shri N. R. Mody: How can I answer that question?

Mr. Chairman: Thank you.

Shri N. R. Mody: Thank you, Sir.

(The witnesses then withdrew)

(The Committee then adjourned)

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (SECOND AMENDMENT) BILL, 1964

Wednesday, the 20th January, 1965 at 09.30 hours

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri A. Shanker Alva
4. Shri Rajendranath Barua
5. Shri Bali Ram Bhagat
6. Shri Dinen Bhattacharya
7. Shri N. Dandeker
8. Raja P. C. Deo Bhanj
9. Shri Bhaskar Narayan Dighe
10. Shri G. N. Dixit
11. Shri Cherian J. Kappen
12. Shri Madhu Limaye
13. Shri Ghanshyamlal Oza
14. Shri Shivram Rango Rane
15. Shri J. Ramapathi Rao
16. Shri Era Sezhiyan
17. Shri Digvijaya Narain Singh
18. Shri Sivamurthi Swami
19. Shri Radhelal Vyas
20. Shri Nagendra Prasad Yadav.

Rajya Sabha

21. Shri Mohan Singh
22. Shri Babubhai M. Chinai
23. Shri Vimalkumar M. Chordia
24. Shri Khandubhai K. Desai
25. Shri Suresh J. Desai
26. Shrimati Shyam Kumari Khan
27. Prof. Mukut Behari Lal
28. Shri Dahyabhai V. Patel
29. Shri N. Sri Rama Reddy
30. Shri Rajendra Pratap Sinha
31. Shri Hira Vallabha Tripathi
32. Shri Ramesh Chandra Vyas.

DRAFTSMEN

1. Shri S. P. Sen Varma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri R. C. Dutt, *Secretary, Ministry of Finance, Department of Company Law and Insurance.*
2. Shri B. M. Mitra, *Joint Secretary, Ministry of Finance, Department of Company Law and Insurance.*
3. Shri B. P. Roy, *Secretary, Company Law Board, Department of Company Law and Insurance.*

SECRETARIAT

Shri B. B. Tewari—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Federation of Indian Chambers of Commerce & Industry, New Delhi*
   1. Dr. Bharat Ram
   2. Shri C. C. Chokshi
   3. Shri N. K. Petigara
   4. Shri N. Krishnamurthi.

II. *The Stock Exchange, Bombay*
   1. Shri Kantilal Ishwarlal
   2. Shri P. J. Jeejeebhoy.

I. Federation of Indian Chambers of Commerce and Industry, New Delhi:

Spokesmen:

1. Dr. Bharat Ram
2. Shri C. C. Chokshi
3. Shri N. K. Petigara
4. Shri N. Krishnamurthi

(Witnesses were called in and they took their seats)

Chairman: The evidence you tender will be printed and published; even if you wish a certain portion thereof to be treated confidential, it will be circulated to Members of Parliament.

Your memorandum has been distributed to members. If you wish to stress any points or make new ones, you may do so now.

Dr. Bharat Ram: First of all, I would like to tank you and the members of the committee on behalf of the Federation for giving us this opportunity of presenting our case. What we wanted to submit is set out in our memorandum. I will only make one or two preliminary remarks and then Shri Chokshi and Shri Petigara will make some remarks on particular items of the proposed amendment.

The Federation has stated in its memorandum that any amendments at this stage are really not necessary except those aimed at simplification of the Companies Act. There were amendments in 1956, there were amendments in 1960. The amendments now proposed emanate very largely from the Vivian Bose Report. Even in their report, that Commission had said that the amendments made in 1956 and 1960 have, by and large, closed the loopholes that there might have been in the Act. Even the then Minister, Shri Kanungo, had said that since the amendments of 1956 and 1960, very few cases have come to the notice of Government indicating the need for changes in the Act.

Some of the sections proposed to be amended appear in the amended form to be particularly restrictive, which may not only affect the day to day working of companies but may also affect, to some extent, the confidence of the public in the companies, particularly the confidence of foreign people. Whenever we have had

occasion to talk to foreigners, they put one aspect before us, about changes being made every now and then even on an important thing like the Companies Act. You are aware that the Companies Act itself is now a very very rigid Act and therefore, it appears to us there is no need to make such wide changes as have been proposed.

My colleagues will now refer to some individual items.

Shri N. K. Pettigara: We will only supplement what is stated in our memorandum, in respect of a few sections on which we would request the Committee to reconsider the matter. The clauses concerned are 5 and 15, 12, 13, 22, 24, 43 and 46.

Cl. 5 seeks to amend sec. 13 in order to divide the memorandum into two purposes, one containing the main objects and the other the ancillary or supplementary objects. We do not know whether it would be reasonable to expect the 25,000/26,000 present companies to alter their memorandum. To alter the memorandum, meetings of the companies concerned have to be called and certain resolutions passed. Then the matter has to go to court and the Central Government can also make its views known. It would require a considerable amount of expenditure and energy to get all these memoranda altered. We would request the committee to consider whether that is necessary in the case of existing companies. Our suggestion is that if cl. 5 is to be enacted, it should apply only to companies which come into existence after the amendment comes into force.

As regards clause 15, there are several practical difficulties. This clause seeks to prohibit a company from commencing any business in relation to its objects without obtaining the prior approval of the shareholders by special resolution. As you are aware, a large amount of activity goes into the formation of a company. The promoters usually start the company. A certificate of commencement of business is taken. Before that, if the company requires foreign collaboration, agreements are entered into. These provide for financial liabilities on either side and technical collaboration. We do not find in cl. 15 as presently drafted, any provision to state at which point of time the resolution of the shareholders is to be taken. What we are, therefore, afraid of is this. If the resolution is to be taken immediately, it is really of no use. Let us suppose 7 or 10 or 20 people start a company. If a resolution were to be passed immediately, it is they who would do it; thereby the object of the legislature will not be served. If, on the other hand, the point of time is when the subscription lists have been opened and public subscriptions have come in, then the committee will please consider what is to happen to the agreements already made and the commitments already entered into.

Are all these agreements to be subject to resolutions to be passed by the company? What is more, a special resolution is required. If companies which start business go to the public usually on a prospectus and the prospectus sets out in detail what the objects are, what the prospects are, on what premises the company is formed, what are the agreements entered into—and the Act provides that no agreement or contract entered into and referred to in the prospectus can be altered without a special resolutionn of the company—if all these collaboration agreements, financial agreements, technical agreements, every effort made by the promotors of a company are to be subject to the vote of a special resolution, we are afraid that there will be considerable difficulty. We therefore request that Clause 15 should be particularly reconsidered.

If I may repeat, the point of time at which the resolution is required is not stated. If it is to be done immediately it serves no purpose, because the promotors are the people who pass the resolution. If, on the other hand, the point of time is after the public have come in, then we expose the promotors to a risk which is not justified. Having

done everything having come out with a prospectus,—and under the present law and the law as it has always been, a prospectus has to be full, fair and frank—if after every material has been published, supplied to the intending shareholder and he subscribes, is it desirable or necessary that he should have a further veto of a special resolution?

I am aware that some associations have also mentioned that in such cases it is even possible that a person's rival might be able to procure 25 per cent of the votes and stop a company from functioning. In such a case, the effect on the foreign collaborator especially must be considered. They come in with the sanction of Government. The agreements are usually passed by the various departments of Government. They come in on the basis and faith in certain premises. Usually they contribute to the share capital; certainly they contribute to the technical know-how, and it is possible that they may not want a further veto of the whole project by a shareholders' meeting I must remind the Committee that it is a special resolution that is required, and not an ordinary resolution.

Shri Khandubhai K. Desai: Would you be satisfied if it is an ordinay resolution?

Shri N. K. Petigara: No. It can only mitigate; it cannot alter the argument that I have put forward.

Dr. Bharat Ram: If, for a new company which starts the business for which it is formed, a resolution is not required, to some extent there would be satisfaction. After functioning, it may add something. Then a resolution would be necessary. When it is starting, it is starting with the objects, and a resolution on that appears to be quite redundant.

Shri N. K. Petigara: It also appears to me as a lawyer that there might be a ctrtain contradiction between the present provisions in the Act for obtaining a certificate of commencement of business and this provision. As far as I can see, no effort has been made in the Bill to reconcile the two. On the one hand, one can obtain a commencement certificate and commence business—that provision has not been altered or touched; on the other hand, a company cannot start business without a special resolution. It appears to me that this also requires looking into.

If the shareholders say "no", what is to happen to the company? Is it to wound up? Is it to start something else? The difficulties, especially with collaborators, would be very great, and it is likely that they would be scared of entering into contracts which they consider to be binding, if they know that it is possible for these contracts to be set aside and business not to be commenced.

In the circumstances, we feel that Clause 15 requires serious reconsideration, both because of the manner of its drafting—I have pointed out about the time when the resolution has to be passed—and because of the possible effects on company promotion. especially where foreigners are involved. It would ultimately come to this that a large amount of effort with Government sanction would be put in, and we can be sure of the results, and the stability of the company will be lost. In the circumstances, we are strongly of the opinion that whatever the Committee decides with reference to Clause 5, in regard to Clause 15, there should be serious reconsideration.

This Clause is going to apply to private companies also. We think that it is redundant because in a private company, which is not a subsidiary of a public company, most likely a resolution could be passed. If that is so, it is merely adding a particular formality. In any event, therefore in respect of private companies, this Committee will please reconsider the position.

Clause 12. It appears to us—and I speak wth a little experience in this matter; I have dealt both as a lawyer and as a director with reference to

many companies, especially recently—that in the case of shares which are not offered to the public, by which I generally mean shares and debentures which are offered to the existing shareholders or debenture-holders. . .

Shri Khandubhai K. Desai: Or to the promotors.

Shri N. K. Petigara: Yes. I will try to make a distinction between promotors and others, but I am talking in particular about existing shareholders and debenture-holders. In their case, intoday's conditions, it is not always possible—in fact, I would say it is not usually possible—to obtain the full subscription.

In such a case, unless one wishes to go through the formality of filing a prospectus and appealing to the public for subscription which again is usually doomed to failure, it is necessary that there should be under-writing and brokerage. I know of a large number of instances in recent years where floatation of rights shares and debentures could not have produced results but for the fact that the balance was under-written. The LIC and other financial institutions are induced to subscribe not only because of the intrinsic merits of the issues, but also because of the addition to the interest or dividend which they get by way of under-writing or brokerage. The amounts are comparatively small and the Controller of Capital issues has a voice in fixing the percentage. In view of all this, the committee might consider whether the continuance of this system is not in the general interests of the country, specially in the matter of fresh capital either by issue of shares or raising loans by issue of debentures. That is about clause 12.

Coming to clause 13, which refers to blank transfers, I do not wish to deny that it is possible that at times the system is abused, specially in evasion of taxes. But there are blank transfers used in different ways and manners. A man may buy shares and not transfer them to his name for some ulterior motive. At the same time, a man may buy shares and for the sake of the company of which he is the promoter or director, he may be induced, in order to get the advantage for him by way of loan, etc., to deposit his own shares with a company for the purpose of security. Take the case of banks or institutions like ICICI, insurance companies, etc. They give large loans for various purposes for the benefit of the company and its economy. If shares are deposited as security and they are compulsorily to be transferred to the name of the party in whose favour the security is given there is likely to be considerable hesitation in giving such security. The cost involved will be very great. There is the fact that after the transfer, the voting rights will be in the company which obtains the security and there is the cost of retransfer when the object is served. In such matters ample provision ought to be made in the law and I request the committee to consider this and to make appropriate recommendations. As it is, this provision is likely to retard industrial growth and is not likely to give that benefit which it is assumed it will give. In any event, the period of six months in the case of shares dealt with in recognised stock exchanges and two months in other cases is extremely small. If my other arguments are not accepted, I plead there should be at least two provisions: One is that banks and institutions which give loans or other facilities like insurance companies and ICICI should be kept out of the purview of this section. Secondly, the period for the transfers should be extended. The minimum would be one year in our opinin.

We can also make a suggestion which would mitigate probably what is considered as the inherent evil in this system. If a company receives by way of security shares with blank transfer forms, it should be compelled to make a disclosure thereof in its balance-sheet or as on annexure to the

balance-sheet or to the income-tax department or in such other manner as the company law department may deem appropriate.

Under section 49, a company must hold its investment in its own name. At the same time, if they invest for the purpose of having directors in the board, they are entitled to transfer to a nominee such number of shares as are required for the purposes of qualification. In respect of these shares at least, there can be no question of applying this section.

Upto now I have spoken about loans, but apart from loans a great deal of business is done in India today by means of the guarantee system. I assume with confidence that members know the amount of business done on the guarantee system. Let us take the case of a textile mill which imports its machinery requirements from outside India, or a textile mill which purchase its machinery indigenously. It cannot make the payment immediately—usually. There are deferred payment arrangements sometimes expending to as many as 7-10 years. In all these cases, there is a guarantee required of a financial institution, bank or in some cases, the parent company, if there is a very large company, *e.g.* TISCO or some other company. In such cases, it is certainly possible that for a subsidary or a company promoted by it, that bigger company will stand guarantee. If in such cases, the shares are deposited, then subject to the safeguard which I have indicated, that there should be disclosure, we see no objection in allowing shares with blank transfers to continue. What, therefore, we suggest is: cetainly in the larger interests of the country, do whatever is required to be necessarily done but then consider the exceptions and exempt them. If you think that the exceptions are more than can be conveniently set out perhaps you will reconsider the introduction of an amendment to the Act in the manner of cl. 15.

Then there are charitable trusts. Charitable trusts, unless they are societies etc.—even in some cases societies are not allowed to be members—they cannot be members of a company. In such cases, would it not be proper that they should be exempted, again if the disclosure is made? What they do is this: the shares stand in the names of trustees; in order to ensure easy turnover and easy dealing with the shares, blank transfer forms are utilised. In this case also, we request that the committee consider the matter and make appropriate alterations, amendments or even as suggested, deletion, subject to some other provisions for disclosure.

Clauses 22 and 24: on his subject, I understand from my colleague that representations have already been made to you yesterday on behalf of the Chartered Accountants' Institute. I would, therefore, not elaborate the points, but state their effect upon business houses. Under cl. 22, sub-clause (1A) (a), the auditor has to inquire whether loans and advances made by the company have been properly secured and whether the terms on which they are being made are prejudicial to the interests of the company or its members. Apart from the principle of the clause, we find some difficulty in the juxtaposition of the expressions 'of the company' and 'or its members.' We think that the interests of the company and its members generally coalesce; they are the same. In any event, we suggest that the words 'or its members' should be committed. But leaving that out, this sub-clause assumes or presumes—at least so it seems to us—that all loans and advances made by a company have some sort of security. But that is not so. A large number of loans or advances are unsecured and they are done for business purposes, completely valid, completely *bona fide*. In the balance sheet of today, under schedule six to the Companies Act, a company has to disclose how much is secured and how much not. Therefore, from

even the drafting point of view, we would request that sub-clause (a) may be reconsidered because it seems to us that it assumes that every loan advance must have a security—which is not the case. A loan may be for a very small amount, a few rupees; a loan may arise out of various considerations—may be that one company supplies another goods in the ordinary course of business for which credit is given. Generally, that is not considered a loan, but the balance sheet form today prescribes that if it is not paid within six moths, it has got to be disclosed. It will not be always possible for an auditor to consider whether a loan made is not prejudicial to the interests of the company. Instances can be cited against me and I can also cite instances. I was solicitor to the Vivian Bose Commission, where loans were made which were prejudicial to the interests of the company. But we request you to see how much such cases have come to light now after the Act of 1956. We think they will be very few, if at all, and it would create a conflict—it could create one—between the opinion of the company and the opinion of the auditor. We therefore suggest that sub-clause (a) ought to be reconsidered.

Sub-clause (b) contemplates two things, transactions conforming to normal business practices, and these being accepted by established principles of accountancy. We feel that there is a possibility of a conflict between the two. We think that normal business practices are accepted by established principles of accountancy. We would therefore suggest that one or the other, preferably the last part, accepted by established principles of accountancy, should be deleted.

As regards (c), we do not know the object. If you will see s. 372 and the definition therein, I think it is proviso to sub-sec. 10 where an investment has been defined. We think it is too narrow.

It says:

> "Provided that in the case of a company whose principal business is the acquisition of shares, stock, debentures or other securities,... it shall be sufficient...."

So, an investment company as contemplated by sub-clause (c) of Clause 22 of the Bill is a company whose principal business is the acquisition of shares, stock debentures or other securities. We feel that this is too narrow. There are banks, insurance companies and companies which, amongst other business, also buy shares, securities etc. The question will always arise if that is their principal business. The business of banks can be said to be acceptance of deposits and making of advances, that of insurance companies is the acceptance of risks and the issuing of policies, but as an integral part of their business, they buy shares, stock, debentures and other securities, lend money on them, deal with them. Such a company must buy and must sell, and in today's difficult situation in the stock markets, it is not impossible that the shares may be sold at less than the purchase price. I have known of cases where a bank purchases Government securities issued by State and Central Governments, and as and when it requires money it sells them, and it is possible sometimes that there is a loss of one per cent or so in the sales. If so, is it the object of clause (c) that a sale at below purchase price has to be deprecated? It is in the interests of the company. Why should it be specifically commented upon? If an auditor finds any transaction unusual, contrary to the interests of the company, it is his duty to report to the shareholders. That duty remains, and is not taken away. So, we respectfully submit that we fail to see the object of this particular amendment. If it is to remain, you must exempt the companies of the kind that I have enumerated, namely banks, insurance companies, companies like ICICI and companies which have large

Portfolios of stocks, shares, securities and debentures.

Dr. Bharat Ram: In the case of private limited companies, this restriction appears to be cumbersome and unnecessary. They often have to sell shares, perhaps even for investment somewhere else. Therefore, they may find that they have to sell shares at prices lower than what they have purchased in order to invest in some other shares. They are not necessarily what may be considered investment companies. Therefore, in the case of private limited companies, there is no need to have this restriction, because, apart from anything else, it is not public funds that they are dealing with, and I think the Companies Act in this instance at least should be concerned more with the question whether public money is being misused or misappropriated by anyone.

Shri N. K. Petigara: Sub-clause (e) personal expenses. We agree with the principle that it is not the function of any party connected with the company to utilise the company's funds for the purpose of personal expenses. But again, it is the duty of an auditor, if he finds that such expenses have been incurred, to report on it, irrespective of this clause. There are certain items which we have enumerated in our Memorandum which should be specifically provided for. For example, would the travelling expenses of a director or an officer of a company on the company's business, passages, train fare or ship fare to officers, medical benefits to directors and officers of the company etc., be considered personal expenses? Would momentees presented to directors and officers on occasions such as retirement after long service, be considered personal expenses? There is also relief given to employees in times of emergency, stress, strife, education allowances, medical benefits, housing allowances etc. I remember occasions like floods, typhoons etc., when employees, including officers, of companies have been given *ex-gratia* payments. In a sense these are for personal expenses, and we trust that this Committee will ensure that legitimate expenses of the kind I have mentioned are not debarred.

Sub-caluse (b) of Clause 22. I believe that the Chartered Accountants Institute has made representations and suggested that it is their duty and obligation to make provision for all these items; we do not know whether it would not be a duplication to suggest that Government can give the Chartered Accountants instructions in this respect. We request that this be also reconsidered.

Then comes a rather important matter from the business point of view, namely the provision for cost accountancy in Clause 24. I would like to make it clear that the Federation and businessmen do not have an objection to any provision for the maintenance of cost accounts or cost records by companies. If it is considered necessary that cost records and cost accounts should be there, then the first and the principal point is to ensure that cost records should be maintained, but auditing of these cost accounts by a separate auditor is likely to cause confusion for more than one reason. The first reason is today in India we do not have sufficient number of independent cost auditors to do the work. A large number of members of the Cost and Works Accountants Institute are employed with companies. I am told out of 1200 or so members, excepting 6 or 8, others are employed with companies. Secondly, we do not know exactly what is the separate cost audit intended for. If the effect is that the processes of manufacture should be common property of all, that is not right. If on the other hand the intention is that cost accounts ought to be taken into consideration by the chartered accountant in auditing the company's accounts, we entirely agree; let the chartered accountants who are the auditors of the company have access to these records. But to have two rival auditors in the same company is not justified.

We feel that the results of cost accounts cannot be independent and they ought to be reflected in the final accounts. The right step would be to insist on proper maintenance of cost accounts and make them available to the chartered accountant. The chartered accountant's duties are well-known. If it is desired that they should be clarified, that may be done. There should be a very close link between cost accounts and financial accounts. They cannot be divorced from each other.

In particular, we think it would not be in the interests of companies to have sub-clause (6) which requires a copy of the auditor's report to be filed with the Registrar within 30 days. It would be dangerous to enable other companies to go through the cost auditor's report on the methods employed by a company in manufacturing a particular article. If the information is required by Government or a particular body for purposes of statistics, etc., there is no objection to that. But to require it to be filed with the Registrar is a dangerous thing.

Dr. Bharat Ram: I would like to add that this will be extremely harmful to the working of companies. It means their costs would become public and their rivals can make use of their costs. If any department of Government wants for any purpose of the Tariff Commission or something like that, they can have it. But in a competitive world, it is absolutely wrong for other companies to know the costs of a particlar company.

Shri R. P. Sinha: If you are efficient, others also may become efficient in the interests of the country.

Dr. Bharat Ram: But they will not pay for this information. We seek foreign collaboration, go abroad, get the know-how and all that. If the companies are prepared to pay a fee for the information which is disclosed to them, they may make use of it.

Shri Khandubhai K. Desai: You have no objection if the report goes to Government?

Dr. Bharat Ram: No, provided we know what specific purpose is going to be served by the report. Government cannot make use of it to the detriment of the company and so, we will have no objection to Government having it. We only object to its becoming public property. Not only it can be made use of by the competitive companies, but it can become a bed of thorns; may be some irresponsible person completely unconnected with the affairs of the company will misuse it.

Shri N. Sri Rama Reddy: What is the guarantee that Government will keep it a secret?

Dr. Bharat Ram: It is assumed that the Government will keep it a secret.

Shri N. K. Petigara: If cost accountants are to be employed, the time lag may be very much more than the time allowed by law for publishing balance-sheets. We submit that the maintenance of cost accounts should be insisted upon and those accounts should be available to the chartered accountant dealing with the audit of the company, who is bound to make a report in the normal course. As I said, we have no objection if it is insisted that costing records should be kept.

As my leader said, if Government require information in any particular department, we have no objection to the information being available to the Government provided it is kept secret and provided that the comment upon it is the function of the chartered accountant auditing the company.

The next point is not important. I will only mention it production of books and papers before the inspector or any other person authorised under clause 26. We feel that the person

to whom the books should be produced should also be of certain status, of the same status as at least the inspector. That is all that is to be said about it.

Dr. Bharat Ram: While appreciating the need for this enactment, it should be realised that there are 26,000 companies and we are assuming that barring a few, the others are doing their work honestly. Leaving this power at a junior level will do more harm even to the honest company and therefore, it is suggested that the status of the person should be at least of an inspector.

Shri N. K. Petigara: Clause 36—if the legislature considers that the age limit should be 75, we do not wish to say anything but it should not apply to private companies which are not subsidiaries of public companies. For family concerns which enjoy the benefit of co-operative existence, it is possible that the best persons in the job would be the members of the family.

Clause 43: the Federation feels that in the matter of calculation under section 198, the remuneration payable to directors who are technical directors should not be taken into account. This is specially so in cases where foreign collaboration is invited. Those who come are usually technical personnel and for the purpose of giving them status, they are allowed to become directors. We feel that their remuneration should not be taken into account for the purpose of section 198.

Dr. Bharat Ram: On this matter, I would like to add that to us it looks like a retrograde step. We want to raise the status of our technical people in the country. Where people have been working in a company as employees for years for the sake of prestige they are made directors. Apart from what Mr. Petigara said this is a retrograde step in the formation of companies, to the idea that we want to demonstrate to have director-managed companies and so on. It appears to me that there should be provision so that they are permitted and encouraged to be made directors. One can perhaps say that you cannot have a new man as a director, a new technical man. But what about people who work for 20 years in a company and who are given some status in order that they may feel that they are growing. I would very much like the Committee to take note of this view, particularly because we want more and more technical people should man the boards of directors of the companies.

Shri N. K. Petigara: Clause 46 seeks to amend section 370 of the Act to bring inter-company loans on a par with inter-company investments, according to the objects explained in the Bill. We feel that this section requires very careful consideration because of the effects it is likely to have. We also feel that it has to be amended so that it suits the circumstances of institutions like banks, insurance companies and financial institutions, not in the sense in which I have read out the definition of financial institutions under section 372, proviso to sub-section 10. But it should be wider. If I am not making a serious mistake, ICICI is a company incorporated under the Companies Act and let us take the effect of section 370 on ICICI. I say it will be disastrous. The functioning of the ICICI banks which are left out by the section itself, the functioning of insurance companies and companies which specialise or do business of making loans or very likely give guarantees is mainly financial and it is in the interest of the country. But for this guarantees, business today would be impossible. Purchase of materials, payment by deferred instalments, all that would be impossible. Let us consider the effect of the enactment on clause 46. It would mean that a company like the ICICI, the Oriental Fire and General or the New India Assurance or any investment company cannot make a loan or

cannot give a guarantee, even for hundred rupees without first obtaining the special resolution of its general body. How is it possible for the ICICI or the Oriental or the New India or any investment company to do that? It is just not possible. These are ordinary business guarantees which are issued perhaps day by day.

Secondly, if the limits are restricted to 30 per cent in the case of the same management companies, I must make it clear that so far as companies within the same management are concerned, on the proviso to s.370, we have nothing to say. We make no objection to that. The present section is working. It is being enforced, it is being followed. But what we point out is that in such a case, a hundred rupee loan will require a special resolution of the company. Normally, to call a general meeting of a company may cost anything from Rs. 10,000 to Rs. 40,000, depending upon the number of shareholders. It would take at least a month and a half to call such a meeting because there is the requirement of 21 days notice, printing etc. Amendment to s.370 in the manner contemplated would immediately put out of business a large number of companies of the kind which are doing genuine sterling service to the community in the matter of raising capital, getting deferred term payment and generally encouraging industry and trade.

Shri Khandubhai K. Desai: Could you suggest an alternative to implement the intentions of the framers?

Shri N. K. Petigara: My first point is that the present section has served its purpose, it is useful and should be retained. If at all it cannot be, when you must make exceptions for the class of companies I have mentioned. The banks are already provided for. Even the Vivian Bose Commission which made this recommendation has said that it should be on par with s.372. Let us look at that section, subsection (14) item (a), (b) and (c). My point is that this does not appear in the amendment proposed to s.370. It will immediately affect a very large class of companies, and although I have no right to speak on behalf of the ICICI—I am not a member of it; I am not authorised to do so I feel it will be one of the companies immediately affected.

Shri R. P. Sinha: Will it serve the purpose if these exemptions are provided?

Shri N. K. Petigara: This should, in any way, be provided. But I go further and point out that in its working, it would be very difficult to implement it in the corporate sector. Let us take, for example a loan of Rs. 100 or a guarantee for Rs. 5,000. Does it require or should it require a sanction of a special resolution of the lending company? We think not. These transactions occur daily between company and company. It is very possible that in the case of transactions, there may be loans or guarantees....

Shri Khandubhai K. Desai: Would you specify a limit?

Shri N. K. Petigara: That limit is difficult to measure because of the different capacities of different companies. For one it may be 10 lakhs, for another it may be Rs. 10,000. My function today is to bring to your notice the possibilities of this section.

Shri Khandubhai K. Desai: We would suggest that you give us some positive alternative proposals so as to eliminate the difficulties you mentioned.

Shri N. K. Petigara: I will think it over and do it.

Dr. Bharat Ram: Apart from what Shri Petigara has stated, I am not worried about the ICICI because I think they are big enough to take care of themselves, but I am more concerned with regard to the short-term loans which are given within the

same group of companies to overcome temporary difficulties. If the difficulties are temporary, you will appreciate that quick action has to be taken and this is likely to affect very much the working of serveral companies which are in the same group.

I can say from personal experience that it becomes absolutely necessary very often to give loans from one company to another, which are honestly given, which are for purposes of getting over temporary difficulties. This clause is going to create a great deal of hardship in these cases. I feel, therefore, that a provision has to be made that a certain percentage, some amount, is allowed to be given from one company to another within the same group.

As we have said already, the Vivian Bose Commission itself says that the enactments of 1956 and 1960 have closed a large number of loopholes which were there. We are now making provisions based on the findings of the Commission over certain things which happened when the Act of 1913 was in existence. Today Government has to consider whether it has got enough cases or instances where this thing is happening after the 1960 Act. Therefore, it is not, to my mind, desirable all the time to refer to the Vivian Bose Report which was made on the basis of the Act then prevailing. Therefore, you have also got to see that you do not make a law which, while it closes certain loopholes for certain undesirable elements, would at the same time make it difficult for people who want to operate honestly to function.

Prof. Mukut Behari Lal: The annual reports of the company law department disclose that there are many loopholes which are yet to be plugged.

Dr. Bharat Ram: I am not against plugging loopholes. I am only suggesting that there are certain things which would create difficulties in the working of honest companies.

Shri G. N. Dixit: You referred to certain percentage. Can you specify?

Dr. Bharat Ram: It is a matter of judgment. I would say it should be a reasonable percentage. We will consider this matter and write to you. But we do feel that there is necessity for a certain elasticity in this matter.

Shri N. Sri Rama Reddy: Any percentage in the case of financing institutions?

Dr. Bharat Ram: I am not talking of the financing institutions. I am talking merely of temporary loans—I am not talking of investments. You would have seen in papers that some companies get into a temporary difficulty needing temporary financial assistance in the manner I have indicated. We will consider this and communicate to you our suggestions.

Mr. Chairman: Yes.

Shri N. K. Petigara: In support of what my leader has said, I will draw attention to the present financial stringency whicvh prevents banks and other institutions from lending money. They do not open accounts, however small.

Shri C. C. Chokshi: There is one point which had been inadvertently omitted in our observation in respect to clause 9. The clause is that application moneys received should be kept deposited in a scheduled bank not only till the commencement certificate is received but even thereafter till the full amount of minimum subscribtion had been received and it is common knowledge that in the case of many companies, first there is the application money and then the allotment of shares is made and the balance of amounts is collected over a period of time by way of calls or instalments from the shareholders in order to enable them to make payments as and when required by the company for its business. If it is stated that the entire amount of the

application moneys should be kept deposited till the entire amount of the minimum subscription is received, it would create great hardship for small shareholder who has got the facility to subscribe to the capital of the company by way of instalments. This may be looked into.

Dr. Bharat Ram: Clause 42 requires the company to notify the holders of more than 5 per cent of equity share capital. It would be very unfair on the company because in many cases the company would not know because sometimes the shares are held in trust by different people and therefore, unless and until the company does not know, how can it notify. When it knows the position then of course, it is all right. But the company should not be liable to punishment if some shareholder has not notified to the company his shareholding.

Another small point. Clause 3 says that books, papers and vouchers would be kept for eight years. Although it appears like a small clause, I can assure you that in some of the big companies, that would need large buildings to keep all the vouchers for eight years. The period should be reduced from 8 years; vouchers under a thousand rupees need not be kept and the period should be reduced to four years at the most.

Shri R. P. Sinha: The learned witness at the beginning said that there was no need of such an amending Bill. What is the Federation doing to stop such malpractice in the corporate sector brought to light by the Commission report?

Dr. Bharat Ram: When you say 'corporate sector' I think it is misleading somewhat: I believe that the corporate sector by and large is working honestly and therefore to lump together the whole business community and call it a 'corporate sector' which indulges in malpractices is rather vague.

We have no law by which we can prosecute anybody. All that we can do, I can assure you, we do by pursuation. Last year, the Federation went to the extent of saying if anybody was found doing something which is wrong the Committee of the Federation and the senior members would have to consider whether they should remain members of the federation. Responsible members of the business community have from time to time been exhorting people to have honest dealings. I do not think that the Federation, with no legal powers, could do anything more than propagate their views that the business community should be honest. On the other hand, I would say that it would be desirable for the Government to see whether after the Act of 1960, how many cases of malpractices they have found, what type of malpractices and so on.

Shri R. P. Sinha: The answer only says that because of the 1956 Act, malpractices have gone down and therefore reconsider that no amendment is necessary in order to plug the loopholes. Mr. Petigara referred to clause 5 and the difficulties which the existing companies would face in the matter of procedure. If we simplify the procedure will it meet the purpose so that the existing companies may also be brought under this clause? If so, what simplification would you suggest?

Shri N. K. Petigara: Speaking for myself, it should only be to divide the objects relating to the work carried on by the company immediately at the time and divide it from what could be carried on in future, what the company is authorised to carry on. That should be left to the companies themselves. If that is so, a line can easily be drawn, instead of calling for the procedure of special resolution at a general meeting and submitting it to the court and going through that whole procedure which is at present laid down by law for the amendment of the memorandum.

I may also add that from the drafting point of view the courts do not allow amendments except on certain stated reasons which are well known in law. Would it be one of the reasons that a new Act has been passed that there should be amendments to the existing memorandum? That might also be considered because today's law is very rigid. It is only in respect of some matters that there could be additions to the memorandum. The present clause, I do not think, allows diversification of objects. What it allows is additions, deletions etc., but not diversification.

Shri R. P. Sinha: We can provide that if you want.

Dr. Bharat Ram: To us, the object of this clause is not clear. May be some companies have taken to some business which is not in the interests of the shareholders. For that, all that is needed is to provide that if any company, even an existing company, wants to go into new business, even though covered by the Memorandum, it may go to the shareholders for a special resolution. It is not necessary to change the whole memorandum.

Shri N. K. Petigara: My reference was to section 17 of the Act, which provides that a Memorandum can be altered only in respect of certain matters, which is not altered in the present Bill.

Shri R. P. Sinha: Clause 13. It would serve the purpose if a full disclosure of those transfers is given at the end of the year in the balance sheet, but it has come to our knowledge that there is a lot of mischief done in the intervening period before the actual transfer is recorded for tax evasion and all that. Therefore, it is suggested like this. Will it not be all right if we provide exemption only so far as financial and banking institutions and fiduciary relations are concerned, as recommended by the Vivian Bose Commission?

Shri N. K. Petigara: That would meet a part of the objection, quite a substantial part of the objection, but the time limit of two months and six months is extremely small, and there are bound to be difficulties. A large number of companies which have surplus funds do make investments and make loans. To secure those loans, shares may be lodged.

Dr. Bharat Ram: You would be aware that apart from financial institutions, there is a good deal of financing done by individuals who lend money, and there blank transfers are very often held.

Shri R. P. Sinha: The whole difficulty is that most of this financing is done out of black money.

Dr. Bharat Ram: I would not be sure that this is done through black money. There is a good deal of talk about black money, but I do not think that anybody can say by any method of computation or statistics how much black money there is. There may be a general impression that blank transfers are used for black money. On the other hand, you would know that the whole fluidity of the stock exchange is dependent on blank transfers. Blank transfer is a recognised way of holding shares in the stock exchanges.

Shri N. K. Petigara: It is well known that the income-tax authorities require from each broker particulars of the shares sold by him to various parties. That information goes to the Government and to the tax department. It is not very usual that a bundle of shares can change hands under blank transfer from one person to another without passing through the stock exchange.

Shri R. P. Sinha: Clause 22. You must have noticed that there have been lots of difficulties with regard to the Vivian Bose Commission's enquiry in connection with ante-dating

of transactions. So, if we drop the new section (1A)(b) under section 227, it would be difficult for the auditors to comment upon or to catch ante-dating of transactions.

Shri N. K. Petigara: With due respect, no, because I consider it to be the duty of an honest, straightforward auditor to report to the shareholders about any matter relating to the company which he thinks should be brought to the notice of the shareholders. Normal business practices as accepted by auditors and all self-respecting business men are well known. It is the duty of the auditor to bring the matter to the notice of the shareholders. He is not prevented by the omission of this expression from doing it. My point was that if you have "normal business practice" and "accepted by established principles of accountancy", there is a sort of conflict. What are established principles of accountancy and what are normal business practices? It is sufficient if there is one expression, and not necessarily two, as that would raise a controversy.

Shri R. P. Sinha: Your presumptions are correct and I accept them, but if there is collusion between the company and the auditor, then difficulties will arise. This has been provided only in order to safeguard against that.

Shri N. K. Petigara: That will not help because the case you mentioned probably did not accept established principles of accountancy. Honest auditors are bound to report to the shareholders. In fact, in that very case there were auditors who did make reports, and were therefore removed.

Shri Khandubhai K. Desai: Clauses 22, 24 and 26. You know the intention underlying the Bill, that it arises out of the Daphtary-Sastri Committee report. Knowing the intention and knowing your own difficulties, will you send us your positive alternative suggestions?

Dr. Bharat Ram: We will do it.

Shri B. R. Bhagat: I could not understand the real difficulty because there is no prohibition. The companies or directors are not prohibited to do anything like that. The only thing is the auditors should try to know about this. What will be the difficulty created? I fail to understand it I would like Mr. Petigara to enlighten us.

Shri N. K. Petigara: Setting out of these items seems to me to compel the auditor to make specific report even when everything is in order. Today, the auditors are bound to report generally on any specific problems that they want to focus the attention of the shareholders. For instance, take item (c). What would be the point to say that a company like the Tatas or the Bombay Dyeing or my leader's company, Delhi Cloth Mills, if it has purchased shares in the year 1900 at a particular price, for business reasons, and sells it today, at a particular lower price? What would be the point of bringing that to the specific notice of the shareholders? If it is wrong, it is the duty of the auditors to say so: if the sale is incorrect or improper, it is the duty of the auditor to say it.

Shri B. R. Bhagat: This will enable the shareholders to decide whether they have been sold out in the interest of the company or for any other reason. They are the best judge.

Shri N. K. Petigara: The balance sheet of every company requires that the investments should be set out: it is obvious from that what is sold and what is not.

Dr. Bharat Ram: May I make a comment on what you have said? The shareholders have appointed the board of directors to deal with the business of the company. As long

as there is no malafides in sale, it would even be unwise and undesirable that the shareholders should comment upon these at the meeting. Unless and until it is considered that something has been done malafide in this matter, there is no need to do this. There is the question of sale of shares at a nominal loss or gain; if particularly they are brought to the notice of everybody, what is the good. The auditors have a right even today, without this clause, to comment upon anything which has been done wrong by the company.

Shri R. P. Sinha: What harm may be caused by this disclosure?

Shri C. C. Chokshi: If I may answer your question, the objection to clause 22 may be divided into two parts. One is the practical difficulties in the way of the auditor and that is with regard to items, a, b, d and e on which Mr. Petigara had commented. Item (a) requires the auditor to enquire into whether the loans and advances made by the company have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members. The first point that was explained was that the words 'company or its members' create difficulty although ordinarily the interests would be identical. There may be a case of some of the members where interests may not be so identical. The words 'or its members' may be dropped; that was the first suggestion.

With regard to a, b, d and e there are practical difficulties that have been explained. It is only about item (c) that there is a point. The opinion of the auditor expressed here will be a statement of fact because it only says: whether securities have been sold at a price less than that at which they were purchased by the company. On this the auditor will have to say that securities or shares have been sold at a price less than that at which they were purchased, if in fact it is so. Is it going to serve any purpose, if that was a genuine transaction? If that the transaction was done in the interest of the company, in the normal course of business of the company? In respect of that, if a note appears in the auditors' report that certain shares or securities were purchased and subsequently sold at less than the cost price, it would invite unnecessary discussion at the general meeting and it would be as if casting a reflection on the management.

Shrimati S. K. Khan: Would not the management explain it to the shareholders? Why should not the shareholders get this knowledge?

Shri C. C. Chokshi: There are a number of transactions in a company where the companies' management may not always be successful in making a profit: purchase of raw material, sale of finished product, etc. In all these cases, if the management is called upon to give explanations to the shareholders, the shareholders' meetings would last for a considerably longer time than they do now.

Shri G. N. Dixit: In your memorandum on page 1, you say that you welcome certain provisions. What are the provisions that you welcome?

Dr. Bharat Ram: We have not commented upon all the provisions and therefore, it may be assumed that as we are not commenting on the others, either we have no objection or we welcome them.

Shri G. N. Dixit: On page 3 of your memorandum you say that there are some of the amendments which hamper the enthusiasm of the entrepreneur? Will you specify some of the important ones on which you lay stress from that angle?

Dr. Bharat Ram: There are these five clauses: 5, 15, 22, 24 and 46. Also 13.

Shri G. N. Dixit: You have seen the Vivian Bose Commission report and you have seen the malpractices referred to there. What changes would you suggest in this Bill for stopping such misuses in the future?

Dr. Bharat Ram: I have already stated that to my mind the 1960 Act seeks to prevent the malpractices which had been referred to by the Vivian Bose report. In addition, while discussing the clauses, we have not asked for the complete removal of this clause. We have only made some comments about certain points which may be taken into account.

Shri G. N. Dixit: About blank transfers, if there is a provision that the names of the beneficial holders are reported to the Registrar, what will be the effect of the provision both ways?

Dr. Bharat Ram: I am afraid I cannot answer that question.

Prof. Mukut Behari Lal: In your memorandum an attempt is made to say that as the company law embodied in the Act of 1956 as amended by the Act of 1960 is sufficiently comprehensive, there is hardly any need for fresh legislation. In justification thereof, it is said that the Vivian Bose Commission observed in the report that the loopholes are to a large extent plugged by the Companies Act. But the fact that the Bose Commission in spite of their knowledge of the present Companies Act made certain recommendations for further enactment clearly implies that in their opinion, certain other loopholes are to be plugged. In the same way it is said that the Daphtary-Sastri Report also says that to a large extent the loopholes are plugged. Mr. Sastri was the Chairman of the Commission on the recommendation of which the Companies Act of 1960 was passed and he was absolutely aware of the original company law as well as the 1960 amendment. If in spite of that he maintains that certain further charges are required, does it not show that Mr. Daphtary and Mr. Sastri feel that certain new loopholes are required to be plugged.

Dr. Bharat Ram: I cannot say that Mr. Bose and Mr. Sastri cannot have an opinion different to ours. All that we have said is that even people like Mr. Bose and Mr. Sastri have said that by and large the loopholes are plugged. According to us, by these various measures you are not going to do very much better than what is already existing. One would also have to see whether something can be absolutely perfect. Human nature being what it is, can anyone say that there is absolutely no loophole not only in the running of companies in our country, but in other countries of the world as well? Can anyone say that even after all this, there would not be any loophole left? The point is how far we can go on encumbering the companies with all types of new legislation, creating problems for honest people, when there may be only a few dishonest people.

Prof. Mukut Behari Lal: In their annual reports, the company law administration have pointed out many loopholes on account of which, in spite of the law, *mala fides* are going on. Don't you think it is necessary that Parliament should take these *mala fides* into consideration and fur-further plug the loopholes?

Dr. Bharat Ram: I cannot disagree with the principle with which you are enunciating. But in our memorandum we have quoted the Industries Minister to say that there have been very few cases of a serious nature of non-compliance with the provisions of the Act.

Prof. Mukut Behari Lal: In the memorandum it is said that in the United Kingdom blank transfers do not circulate. I would like to know what it means. Are they completely stopped or if the system continues, how does it work in U.K. and with what effects on the stock-exchange?

Dr. Bharat Ram: I am afraid on this matter I could not give an immediate

answer. I understand the stamp duty there is extremely low and the transfer takes place within a day or two. On this particular matter, what I am saying may not be taken as completely authoritative; I do not know how it works.

Shri B. R. Bhagat: In U.K. they are considered as bad deliveries technically.

Prof. Mukut Behari Lal: In India also if we declare blank transfers as bad deliveries and we reduce the stamp duty, will you be satisfied?

Dr. Bharat Ram: It would meet the point to a certain extent. But we have said that blank transfers will be necessary for certain financial institutions. This would not be met merely by reduction of stamp duty.

Prof. Mukut Behari Lal: How have they been able to meet the situation in the U.K. and how do you say it will not be possible for us to meet the situation?

Dr. Bharat Ram: I do not think it would be possible for me to answer this question, except by saying that while you are quoting U.K. I might as well quote USA. That does not take us anywhere, because in different countries different traditions have been built up.

Prof. Mukut Behari Lal: By and large knowledgeable persons have accepted that there are misuses and abuses in this system of blank transfer. When we are proceeding towards industrial development, it is necessary for us to see that our industrial development proceeds on healthy lines. Is it not possible for us to build up those traditions which have been built up in the U.K.?

Dr. Bharat Ram: We have already accepted that certain malpractices can happen with blank transfers. That is why we have not suggested that you completely scrap the whole amendment altogether. We have made suggestions as to where hardship will come and where those hardships should be removed.

Shri Rajendranath Barua: In your observations, with regard to cl. 5, you said that existing companies should be exempted. Therefore, by implication, I assume that you think that this clause is necessary because you say that the companies coming into existence after the amendment becomes law may conform to it. Is that correct?

Dr. Bharat Ram: No, that is not implied at all. We have said that if the Government insists, on having this clause, then exempt the existing companies. That does not mean that we accept that this clause is necessary.

Shri Rajendranath Barua: Why do you make a distinction?

Dr. Bharat Ram: For the new companies, whatever the memorandum is can be according to whatever the law is. In the case of existing companies, effecting the change would mean a lot of hardship, a lot of expense and work which is quite unnecessary. The main object appears to be that the company should not go into a business which may not be in the interest of the shareholders without the knowledge of the shareholders. Therefore, I have suggested that if you want, you may insist that even the existing companies when they go into new business, even though it may be within the memorandum may do so after going to the shareholders. But to make a change in the memorandum on these lines becomes unnecessary work even for new companies. So what we are saying is that if you insist that it should be confirmed in that manner in the memorandum, they can take that into account according to whatever the rules are.

What is, after all, the object of this amendment? It is that no new business should be done without the

knowledge of the shareholders and when the shareholders knowing that it is going to be a paying business and that people who are managing are not going into a business which may be against the interests of the shareholders. . . .

Shri Rajendranath Barua: You referred to the difficulty in connection with foreign collaboration in the context of this provision. Could you explain further?

Shri N. K. Petigara: In any new venture that is taken up, the normal procedure is for the promoters, whoever they are—it may be an existing company or it may not be an existing company—to enter into discussions and negotiations with technical or finance people or both in other countries. Agreements are drawn up between the parties saying this is the thing we are going to do, this is the assistance expected either financially or technically. Those agreements are placed before the appropriate department of Government, mostly the Industries department of the Commerce Ministry. They go through them and after that the licences are granted to the promoters. If after all this is done, the shareholders turn down the project, it would be disastrous from the point of view of foreign collaboration.

Shri Rajendranath Barua: Till the shareholders come into the picture and confirm it, there is no possibility of foreign collaboration?

Shri N. K. Petigara: Yes, the uncertainty is there. Therefore, the foreign collaborators would not like to assist, if they know that after all that is done the scheme may be turned down.

You must remember that once confidence in a particular promoter or Indian investor is shaken, it will be very bad for him and the foreign collaborator may not want to renew an agreement with somebody else, where the same fate can befall him.

Shri Rajendranath Barua: With regard to cost audit, from the raw materials to the finished product various stages are there. So if the company so wishes, a large amount of profit can be diverted in the process. In order to check this, the U.S. rightly instituted the system of cost audit. Therefore, where is the harm if we have cost audit to check or eliminate the diversion of profit?

Dr. Bharat Ram: We have not objected to cost audit at all. What we are objecting to is its being done by the particular agency envisaged. Secondly, we are objecting to the disclosure of the information because once it is sent to the Registrar it will become public.

Shri Rajendranath Barua: It as said that there should not be two agencies. In order to check the diversion of profit at the initial stage, is it not necessary to have a cost audit apart from and separate from financial audit?

Shri N. K. Petigara: No, the chartered accountant is quite capable of doing it. I pointed out that the insistence upon maintenance of cost accounts is desirable..

Shri Rajendranath Barua: And also cost audit.

Shri N. K. Petigara: If this provision for maintenance of accounts is kept, the accounts will necessarily go to the chartered accountant who is quite capable of ascertaining the facts regarding any secret profits made, malpractices indulged in etc.

Take, for example, a textile mill. Due to fortuitous circumstances it may be able to buy cotton at a certain price, say x. Another mill, may be able to purchase cotton only at x plus 10. Whether it is rightly or wrongly

done is a matter for the chartered accountant to adjudge. If he thinks that there is anything fishy about it, it is his duty to report the matter. But for that there need not necessarily be two auditors who are likely to come into conflict with each other. It is the chartered accountant who certifies to the balance sheet, who should be the primary authority to make a report to the shareholders, if he finds anything wrong. Let him report under the present law.

श्री विमलकुमार एम० चौरड़िया : यह जो आपका मैमोरैंडम है उस के पेज 4–5 पर जहां कि क्लाज़ 3(11) के बारे में जिक्र किया गया है और जिसके द्वारा आफ़िसर की डैफीनीशन को एक्सटेंड किया जा रहा है उसके लिए आपने आशंका प्रकट की है कि उससे बड़ी गड़बड़ हो जाने की संभावना है। विवियन बोस कमिशन की रिपोर्ट भी इस बारे में है कि इस तरह मैनीपुलेशन किया जाता है जिससे कि बड़ी गड़बड़ होती है। यह आफिसर की परिभाषा जो संशोधन विधेयक में लाई जा रही है उस के लिए आपने पेज पांच पर यह बतलाया है :—

"There must also be some procedure to establish that a person is directing from behind the board of directors or any directors of the board and there must be substantial proof to establish that such directions are being given and that the board or any director of the board is acting under such instructions".

इस के बारे में आप क्या सुझाव देना चाहते हैं ?

Shri N. K. Petigara: The management may have consultants, advisers etc. They do not really instruct. They do not really direct. I am a lawyer; if a problem is brought to me, I say this is my opinion. On that opinion, the board may act. In that case, I should not be considered as an 'officer' on whose advice or under whose instructions the company acts. We do not object to the amendment; we object to the wide language employed which might create difficulties in interpretation. Therefore, you should make clear what you are meaning.

Shri R. P. Sinha: What is your drafting suggestion?

Shri N. K. Petigara: Provided we wish to provide that this shall not include management consultants, legal advisers, cost and financial accountants industrial advisers etc. whose advice is taken into consideration by the company. It is up to the company to take my advice, if it wants.

Shri R. P. Sinha: They have said 'accustomed to act'. In your case, they may not be accustomed. They can reject your advice.

Shri N. K. Petigara: But that is a question of fact which will raise very great difficulties. It is possible that a company may continuously take the advice of a senior lawyer. It is in a sense accustomed to act according to our advice on matters of law, which does not mean that the company is acting under our instructions, or that we are officers of the company. That is all that we say.

Shri R. P. Sinha: My interpretation will be this, that if the company is under an obligation to act, then alone it should apply.

Dr. Bharat Ram: Then we would have no objection.

Shri R. P. Sinha: But then, sometimes you may not accept and sometimes you may accept.

Shri Ghanshyamlal Oza: If the company is accustomed to act under the advice of an accountant, would it not put a responsibility on the person tendering advice?

Shri N. K. Petigara: A professional, in giving his advice, is responsible to his profession.

Shri Ghanshyam Lal Oza: If he is brought within the definition of "officer"?

Shri N. K. Petigara: There will be so many consequences that it will be disastrous.

Shri B. R. Bhagat: But section 7 of the parent Act excludes professional advice.

Shri N. K. Petigara: I agree with you that in a sense that helps us to a degree.

श्री विमलकुमार एम० चौरड़िया : मूल विधान की धारा 7 में जो अपवाद रक्खा गया है आफिसर के बारे में उस को छोड़ कर अगर इसे लागू किया जाय तो इसमें क्या कठिनाई है ?

Shri N. K. Petigara: This expression is too wide, and there should be a sepcific provision.

श्री विमलकुमार एम० चौरड़िया : यह जो ड्राफ्ट बतलाया गया है क्या वह आपकी दृष्टि में पर्याप्त होगा ?

Dr. Bharat Ram: Please do not take that as a draft. This is loud thinking. If you want, we can send a draft.

श्री विमलकुमार एम० चौरड़िया : क्लाज़ 5 के बारे में आपका यह कहना है कि नई कम्पनियां जो बनें उनके लिये तो यह क्लाज़ 5 लागू हो तो आपको कोई विशेष आपत्ति है नहीं परन्तु जो पुरानी कम्पनियां हैं उनके लिये आपको आपत्ति है और उसका कारण यह बतलाया कि उससे एक्सपेंडीचर होगा और एनर्जी वेस्ट होगी तो इसके लिए क्या कोई ऐसा तरीका ढूंढा जा सकता है जिससे कि एनर्जी भी वेस्ट न जाये और एक्सपेंडीचर भी फालतू न हो ताकि यह जो मूल सिद्धान्त नई कम्पनियों के लिये लागू कर रहे हैं इसे नये संशोधन का लाभ उन पुरानी कम्पनियों के लिये भी मिल जाय ?

Shri N. K. Petigara: That is what I said, that if existing companies are allowed to change their memorandum on the basis of what they are doing and what they are likely to do, it will meet our point of view considerably.

श्री विमलकुमार एम० चौरड़िया : आफिसर के लिये रेगुलर प्रोसीज्योर में मदद देने के लिए कोई एथारिटी इसमें रखनी होगी तो कौन सी एथारिटी आप इसके लिए उपयुक्त समझते हैं उसके लिए राय देने में तो आपको कोई आपत्ति नहीं हो सकती है ?

Dr. Bharat Ram: It is not merely a question of this Act. Publication and printing of new memorandum will cost at least Rs. 7,000 to Rs. 10,000 per company, and there are 26,000 companies.

श्री विमलकुमार एम० चौरड़िया : आगे एक प्रश्न और है । आपके मेमोरेंडम के पेज 20 पर दिया हुआ है कि इंसपेक्टर आपकी किताबें ले जा सकता है और उसके बारे में आप यह कहते हैं :—

> "A company's books will be required for day-to-day work and therefore, some time limit should be prescribed within which inspectors will have to return the books."

आपकी दृष्टि से इसके लिए कितनी टाइम लिमिट रखनी ठीक होगी या उसका कोई और बन्धन हो सकता है क्योंकि अलग-अलग कम्पनियां अलग-अलग कैटगरीज़ की रहती हैं तो उसके लिए कोई हार्ड और फास्ट टाइम लिमिट अगर जम सकती है तो बतलाइये वैसे हमारे ख़याल में तो जमती नहीं है ? ऐसी स्थिति में आप क्या व्यवस्था करना चाहेंगे ?

Shri N. K. Petigara: Any reasonable time limit would be acceptable. The Daily Cash Book is required immediately. A mere Store Ledger

may not be required. It depends upon the kind of book, and if such a provision is made, then it would be for the Company Law Department, in consultation with us, to prescribe.

Dr. Bharat Ram: If it is not returned within 15 days, they should make copies. The department may spend some money and make copies, but they should return the books.

Shri Ghanshyamlal Oza: About blank transfers, he has mentioned the difficulty of getting loans from banks. I was given to understand that scheduled banks or other banks are reluctant to give advances on blank transfers. Is it true?

Shri N. K. Petigara: It depends on the parties concerned. I was not only speaking of banks.

Dr. Bharat Ram: That is not correct. That depends on the status of the person who is giving the blank transfer.

Shri Ghanshyamlal Oza: Those cases are very rare?

Dr. Bharat Ram: My information is different. Banks do not refuse to take blank transfers.

Shri Suresh J. Desai: Clause 46. You want that some sort of relaxation should be made for loans to companies within the same group. A section is already there that a special resolution is necessary for loans to companies under the same management.

Dr. Bharat Ram: I am not referring to the resolution. I am referring to the permission of Government.

Shri Suresh J. Desai: You have no objection to the limits mentioned in the existing section 372?

Shri N. K. Petigara: No.

Shri Suresh J. Desai: Please refer to clause 46. Have you any objection to the limits of 30 per cent and 20 per cent mentioned there? Are they not a little wider?

Dr. Bharat Ram: We are not talking of the limits; we are talking of the necessity to have to go to the Government for the permission and for the special resolution.

Shri Suresh J. Desai: Will it affect all the companies, big or small, new or old?

Dr. Bharat Ram: To say that it will affect all the companies would not be correct. All companies do not have this type of transaction. This type of transaction comes in only when there is a need or necessity. One is investment; the other is temporary loan.

Shri Suresh J. Desai: What is your main objection?

Dr. Bharat Ram: Our main objection is to the time which will be required for a special resolution; even more than that the time which will be required to take Government's permission. I hope you would not have to deal with Government in any matter. If you did, you would know how long it takes even for such small matters.

Shri Suresh J. Desai: About blank transfers. If a provision is made that blank transfers are to be deposited with the company or given out in its balance sheet or the company should write to the income-tax department, do you think that the person who is to deposit blank transfers would like that provision to be made or would like such a disclosure to be made?

Shri N. K. Petigara: It is not a question of disliking or liking. It is a question of public interest as envisaged by Parliament.

Shri Suresh J. Desai: Such a disclosure may not always be made.

Chairman: It is a matter for argument. You may go to the next point.

Shri Suresh J. Desai: About under-writing comission. Do you suggest that institutions like the IFC, LIC or ICICI or such other institutions should get under-writing commission even in respect of shares not offered to the public?

Chairman: You may please speak into the mike. You are not audible.

Dr. Bharat Ram: We are not asking for under-writing commission on promoters' shares.

Shri N. K. Petigara: Let us assume that company A which exists today and has 10,000 shareholders and that it makes a new issue of about a crores of rupees. How can one be certain that the share holders will take up that issue? So, we have to go to the financial institutions and make an arrngement for under-writing them that they should take up all the shares, if the shareholders do not take them up.

Shri Era Sezhiyan: Please refer to your comments on clause 5. Do you want a discrimination made in favour of the existing companies, against the new companies. That is on page 5. Now, in page 3, para 2, you say that such amendments would dampen the enthusiasm of the new enterpreneurs; and new companies will not be enthused to come into operation. What have to say about these two differing points?

Dr. Bharat Ram: As far as that particular clause is concerned, it is only a procedural nature: that does not curb the enthusiasm: it is only a procedural clause which we consider to be not necessary in the case of old companies.

Shri Era Sezhiyan: Please turn to page 9, clause 12. You have commented upon the payment of under-writing commission. Are you able to induce the LIC, ICICI, not to accept under-writing commission?

Shri N. K. Petigara: There are so many other institutions which do this business; not only these two.

Shri Era Sezhiyan: Suppose you want to abolish this commission or reduce the rate. Then?

Dr. Bharat Ram: No company wants to spend money by giving commission. In the present state of capital market, even with the under-writing commission it is not easy to get capital from the market.

Shri Era Sezhiyan: Please turn to page 14, clause 15. You suggest that such a resolution will have no meaning for the simple reason that the number of shareholders is limited and the resolution can be very easily gone through. Secondly, the shareholders are informed through reports of the directors and the annual general meeting. What you want is a specific resolution, which is different from the report.

Chairman: It is for the committee to consider.

Dr. Bharat Ram: I think this explanation has been given. It would make foreign collaboration extremely difficult.

Shri Era Sezhiyan: About clause 22, the explanation given by the witnesses was auditor's difficulty. It was said that the explanation at the shareholders' meeting may not be palatable and may not be happy one. It has also been asked, why should we assume that there would be *mala fide* things? I say that the amendment only requires an inquiry into those cases. There is no condemnation or penalty. Whether it is *mala fide* or *bona fide* will be known only when the particulars are inquired into.

Dr. Bharat Ram: I have already covered that point. I do not want to repeat those things.

Shri Era Sezhiyan: It has been said that there are hardly 6 or 7 cost accountants in actual practice out of the 1200 or so. Even granting that argument, suppose Government undertakes the responsibility of creating a

cadre of cost accountants and utilises them for cost auditing of the companies, will it be acceptable to you?

Dr. Bharat Ram: We have explained at length that the chartered accountant can do the same job which the cost accountants are supposed to do according to this amending Bill.

Shri Cherian J. Kappen: The burden of the evidence has been to the effect that after the 1960 amendment there have not been cases of malpractices. Is it the suggestion that Government should wait till sufficient number of malpractices are committed before taking up legislation or is it the suggestion that statistics should be taken of the malpractices before legislation is taken up?

Dr. Bharat Ram: Any legislation is taken up when something is found wrong. Parliament does not legislate merely for the sake of legislation. It is to correct something. In that case, it is necessary to collect statistics to see whether there is something wrong.

Shri Cherian J. Kappen: Where there is a likelihood of malpractices being committed, should there not be legislation?

Dr. Bharat Ram: The question of likelihood becomes a matter of judgement for the future. Our judgment if anything, is that the tone of the business community is improving.

Shri N. Dandekar: Mr. Petigara has said that as regards blank transfers, perhaps the object will be served if banks and other lending institutions which lend on blank transfers were to put out a schedule to their accounts of the cases in which they had lent money on blank transfers. But perhaps there are two major objections: One is the secrecy provisions of the banking business and secondly, the schedule would run into hundreds of pages because each bank will have thousands of transactions where loans are given against shares held on blank transfers.

Shri N. K. Petigara: I admit the validity of the argument. What I was aiming at was disclosure. Disclosure, so far as banking companies are concerned, is on a special basis altogether. But there are other companies also lending money on blank transfer. The intention of bringing this sort of legislation making disclosure necessary would not be as against banks, but as against others in order to prevent the various so-called malpractices. Perhaps I must qualify my statement. Instead of being an adjunct to the balance-sheet, it might be in a register which might be open for inspection by the income-tax department or any other department of Government.

Shri N. Sri Rama Reddy: Have you any comments to make on how the capital market is going to be affected by this enactment as a whole.

Dr. Bharat Ram: The state of the capital market is not guided merely by the company law amendment. There are many other matters but certainly any restriction which appears to be cumbersome. which to a foreign collaborator appears to be unhealthy is going to have an effect. We have commented on some of the clauses which are particularly likely to affect foreign collaboration, and also on clauses which are likely to affect as it were the psychology of even the Indian capital. I don't think one could entirely blame the Companies Act for the malaise in the capital market. Perhaps some of the fiscal policies may also be responsible for that.

Chairman: Thank you.

Dr. Bharat Ram: May I thank you again, Sir, and the members of the committee for having given us this opportunity to express our views on this important amending Bill, with the hope that due consideration will be given to our comments and suggestions.

(The witnesses then withdrew)

II. **The Stock Exchange, Bombay**
Spokesmen:

1. Shri Kantilal Ishwarlal
2. Shri P. J. Jeejeebhoy

(Witnesses were called in and they took their seats)

Chairman: Gentlemen, the evidence that you give is public. It will be printed and ditributed to all Members. Even if you want any portion of it to be confidential, that also will be printed and given to Members of Parliament. We have received your memorandum. It has been circulated to all the members. If you want to stress any point, you may do so.

Shri Kantilal Ishwarlal: We are very grateful to you for the opportunity you have given us to appear before you. We are concerned only with blank transfers. My colleague, Mr. Jeejeebhoy, will explain our viewpoint.

Shri P. J. Jeejeebhoy: The Exchange has submitted a detailed memorandum on the subject of clause 13, which places a restriction on the currency of blank transfers. The memorandum is divided into two sections—paras 1 to 4 dealing with one aspect of it—and subsequent paragraphs explain the various difficulties and hardships that will arise if the clauses were passed into law.

The first four paragraphs deal with the issues raised by the Vivian Bose Commission in their report. It is pointed out in these paragraphs that existing legislation enacted after 1956 covers many of the points dealt with by the Commission. The new Companies Act has come into force after 1956. Similarly the Income-tax Act, 1961, has been enacted and the Securities Contracts (Regulation) Act, 1956 is also there. All these enactments take care of many of the evils and defects pointed out by the Vivian Bose Commission. In view of this, it is submitted that a clause of the nature of clause 13 is not strictly necessary.

In the remaining paragraphs, the difficulties that would arise as a result of that have been explained and it is also submitted that there is a certain amount of misapprehension, regarding the practice of blank transfers which is in vogue in this country, and the evils which are ascribed to blank tranfers really could be more appropriately ascribed to nominee holdings as well as to the basic fact that tax evasion takes place anyhow, irrespective of whether there is the system of blank transfers or not.

Apart from that, it is also pointed out in the other paragraphs that the system is not only peculiar to shares but also government securities which at the moment have an identical purpose as shares on blank. It is submitted that for the same reasons as those which incline us not to put any restrictions on government securities, namely, that it would affect the liquidity and marketability of it, for the same reasons restrictions may not be placed also on the blank transfer system. The part that blank transfer plays in the regulation of dealings has also been explained. It has been pointed out that the blank transfer system has been in existence from the inception of joint stock enterprise in this country; and in almost all parts of the world, the system is prevalent. There is nothing peculiar to India only. In fact on the continent of Europe, we have actually bearer securities and bearer shares, and in the U.S. there is a system which is practically analogous to our blank transfer system. Here of course, in this country also, the system has been in vogue for a very very long time and it plays a very important part in the matter of stock market trade. If any restriction is put on blank transfers in the manner suggested, it would affect the diquidity of the market and at the same time about other complications.

These have been particularly dealt with in para 10.

At the same time, it would also impair the credit facilities which are, very readily available. If a person desires to borrow money at the moment, it is very easy for him to pledge his shares and get credit from anyone. That aspect has also been dealt with in para. 11. The clause as it stands contains very rigorous provisions with very harmful consequences. So para 12 makes suggestions of one kind or other which have been canvassed for mitigating the rigours and hardships. These also have been set out so that if ultimately it is the view of parliament that a clause on the lines of cl. 12 is indispensable and must be enacted in the larger interests of the country, the directions in which modifications could be made to alleviate some of the hardship and mitigate some of the rigours, are set out. But basically of course, the point of view of the Exchange is that any restriction on blank transfer would seriously affect the liquidity, marketability and negotiability of shares, and that it is not strictly necessary to put such a restriction in view of the legislation already on the statute book.

Shri Suresh J. Desai: We have been given to understand that if a provision is made that when blank transfers are deposited with a company, the company has got to declare in its balance sheet or to the income-tax department whatever blank transfers are deposited along with the names of the beneficial holders, that will in a way put a check on abuse. What is your view?

Shri P. J. Jeejeebhoy: We have dealt with this in para 5 where we have pointed out that nominee holdings and blank transfers are not identical. Nominee holding implies necessarily that, first of all, there is a buyer —may be he is a tax dodger, may be he wishes to conceal his ill-gotten wealth. Therefore, instead of registering the shares in his own name, he makes use of a stooge, whom we shall call, benamidar, and has the shares registered in his name. When that is done, it implies that the blank transfer is completed by inserting in that blank transfer the name of the benamidar. Then the transfer is duly completed and forwarded to the company for registration, and the name of the benamidar comes on the register of the company. The benamidar then continues to hold the shares in his own name on behalf of his principal. But that is because of the very close relationship between the two. One trusts the other. Of course, the benamidar is *alter ego*, as it were, of his master and he is prepared to carry out whatever he says. On that assumption the blank transfer disappears.

It may be that again the benamidar may sign another transfer deed and give it over to his principal who, for safty, may take it. That is, of course, a very valid point. One cannot deny that by giving the share certificates together with the transfer deed signed by the benamidar the principal is, to a certain extent, protected. But the submission of the Exchange on this point is that after all the benamidar is there. Supposing that somehow blank transfers are completely abolished, even then the benamidar would be prepared to sign the transfer deed to oblige his principal. If he is not on good terms with his principal, in the sense that he wishes to put him in trouble, then even after signing the blank transfer deed he could say it is not his signature, it is a forgery, in which event of course the whole matter would go to a court of law and litigation would drag on.

It may be in such cases when the relations between the benamidar and the principal are very bad, the department itself, the income-tax department and other concerned departments of government, would get first hand information and the principal would be immediately put into trouble.

So it will hardly serve any purpose in such cases unless one trusts the other

very very closly and holds the shares in this manner.

After all, the main reason why blank transfers are taken out is that there is disclosure. Here the man himself, the stooge, would take action against the principal, disclose everything to the department and put him in no end of trouble, and the man would meet his desert in the end. We will welcome it.

Shri Suresh J. Desai: If certain exceptions are made in the case of blank financial institutions or in the case of trusts or in the case of companies taking over blank transfers, and holding qualification shares in connection with directorship of some other companies and if the period is relaxed from two to six months, will it meet the point?

Shri P. J. Jeejeebhoy: The approach of the stock exchange in this matter is that it affects liquidity. The President in particular feels that it would have a very harmful effect on the liquidity of shares. As we submitted at the very outset, if it is felt that in the larger interests of the country it would be desirable to put some restriction, then it may be possible to work out certain modifications which would relieve the regours of this provision, because in the form in which it stands today, it would have a very deleterious effect on the stock market.

Shri B. R. Bhagat: Suppose this provision is to say in the larger interests of the country, to protect the liquidity of the shares and the business in the share market and also to prevent abuses which this clause seeks to achieve, would you come out with any modification or would you give your considered view as to the manner in which this clause is to be modified to achieve that objective?

Shri P. J. Jeejeebhoy: This point could be considered. It may be possible to work out certain amendments which would to an appreciable extent relieve the rigours of the present clause, though liquidity would be affected, but one cannot have everything in the world.

Shri B. R. Bhagat: So, we will appreciate if you can give your specific suggestions in this respect.

Shri P. J. Jeejeebhoy: This has been pointed out in para 12, at least some of the features which press very heavily on the stock market. At the same time, it has been submitted in the concluding para, para 14, that the investor who puts his money or savings in stocks and shares, who receives the shares for valuable consideration from the market, should also be protected to a certain extent. While imposing restrictions, if some kind of protection could be incorporated which would protect the *bona fide* and legitimate interests of investers, to a considerable extent the position would be eased.

Prof. Mukat Behari Lal: On page 18 it is said that the blank transfer system is an integral part of the stock exchange mechanism, while on page 16 it is said that blank transfers are not in vogue in U.K. I would like to know how, without the blank transfer system, the stock exchange mechanism is functioning in U.K., when it is an integral part of the stock exchange?

Shri P. J. Jeejeebhoy: This question has been, to a certain extent, dealt with in para 9 where the importance of the blank transfer system has been explained at considerable length. In sub-clause (c) of para 9, the reasons why in the U.K. the system of blank transfers is not in vogue has also been explained in great detail. It is a traditional practice in U.K. and for one reason or other, the practice has been very freely accepted, but the main reason why it is not coming in the way of stock market dealings is that basically on the London Stock Exchange, and on that stock exchange only, there is a segregation of brokers and jobbers. That particular

system of trading has no counterpart in any other part of the world, and because of this unique differentiation between brokers and jobbers, the system does work in U.K. Apart from that, there are also certain facilities which are available within the City of London, which are not available in this country. Shares can be easily transferred in a matter of days. They have a system whereby the companies themselves to do run departments for transferring shares, but they delegate that function to special agencies, registry houses, which are all located round about the city. So, within that small area of the city, it is possible for shares to be registered in a matter of days. At the most it takes a week.

In this country, the Act itself prescribes a maximum period of two months but because of long distances and the places where the registered offices are situated, the experience is that it takes a great deal of time for shares to be despatched from one place to another, and for companies to give effect to the transfer. Let us say it takes two months. In the meantime the person is in need of funds, in which case he cannot immediately sell the shares. Apart from that, it may create a shortage of floating stock in the market, because if people have to go for transfer within a given period, it will take six to eight weeks or more in practice for the share certificates to come back and in the meantime the outstanding transactions cannot possibly be completed. In para 10 it has been pointed how it would affect the stock market, how long term transactions would be adversely affected etc. It has been pointed out that the carryover transactions would be severely hit, because if the financier has to have the shares registered in his name, he would not know whether the shares he will get will be lodged with the company for transfer or not; so, straightaway the contango charges would be put up, and that would occur in every clearing. Whenever the shares are forwarded for registration in his own name, it may again take a long time, and in the mean time he has got to deliver the shares against the carryover contracts, which he cannot do. And then, there would be a squeeze in the market which would upset the price structure.

Prof. Mukat Behari Lal: He has invited our attention to certain differences between the mechanisms of stocks exchange in India and U.K., and also to the distances in India compared to U.K. So far as the first is concerned I wish to know whether, if Parliament decides that the system that exists in UK should prevail in India, it will be possible for us to make the necessary changes in our stock exchange mechanism, so that the thing may function as it is functioning in U.K. The other question is of the distance. He has pointed out that in Great Britain registration is possible within two or three weeks while because of distance that is not possible in India. That is why in the 1956 Companies Act, he has himself admitted, two months were given for the purpose of registration with increasing facilities of communication, the distances are being shortened and I think the duration may not be necessary even for two months for the purpose of registration. I wish to know his observations.

Shri P. J. Jeejeebhoy: The main point is this. The system works in the United Kingdom because there is, on the London Stock Exchange, a unique system of brokers and jobbers which is not prevalent in India or any other country. It is almost a process of growth and not something which could be grafted; it has to grow itself. That system does not easily take root in all parts of the world. In this country also there are many exchanges and none of them have any segregation between the jobbers and the brokers. On the London stock exchange the membership of the exchange is divided into two broad classes at the beginning of the year; a member has to declare his position

whether he will function as a broker or a jobber. If a broker wishes to buy he goes to the jobber the jobber makes a two way price and the transaction takes place between the broker and the jobber whereas that distinction is not in vogue here.

Shri G. N. Dixit: You say that under the provisions of the Income-Tax Act the stock exchange has to report the names of the beneficial owners who own a stock of Rs. 10,000. Does the name of the beneficial owner includes both the real owners and the benamidars or the real owner?

Shri P. J. Jeejeebhoy: The provision is that the members of the stock exchanges have got to report the name of the party who buys these shares. If a benamidar comes before us it is difficult to know who would be behind him. Naturally it is the address of the party on record who buys the shares and pays the money that goes on the register of the broker concerned and it is this information which in turn would be supplied to the income tax department.

Shri G. N. Dixit: Is the stock exchange in a position to know whether he is the real owner or benamidar?

Shri P. J. Jeejeebhoy: In the nature of things, it is difficult to know who would be the man pulling the strings behind the benamidar?

Shri G. N. Dixit: What guarantee or security does the real owner take from the benamidar? The benamidar might say that he is the real owner?

Shri P. J. Jeejeebhoy: As I said, it is primarily a matter of mutual trust and confidence between the benamidar and the real owner. If the benamidar were turn against his principal, then there is the consequence.

Shri G. N. Dixit: Do documents also pass between them?

Shri P. J. Jeejeebhoy: Not necessarily. The benamidar may hand over the share certificates and may sign a transfer deed also. But it is also possible for him to turn round and say that he is the real owner, if he wishes to put his principal in trouble.

Shri G. N. Dixit: Could you suggest any method by which the system of benamidar could be abolished?

Shri P. J. Jeejeebhoy: We have been stressing a great deal that all the malpractices and all the evils and difficulties which had been ascribed to the blank transfer system are really and basically the result of nominee holdings. Nominee holdings are there in all parts of the world, in the United Kingdom also. It is difficult to imagine any measure whereby benamidar could be somehow eliminated completely.

Chairman: Thank you very much. We meet at 9·30 A.M. tomorrow.

Shri P. J. Jeejeebhoy: We are grateful to you for the courtesy shown and the patient hearing you have given us.

(The witnesses then withdrew)

(The committee then adjourned.)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (SECOND AMENDMENT) BILL, 1964

Thursday, the 21st January, 1965 at 09.37 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Seth Achal Singh
3. Shri A. Shanker Alva
4. Shri Ramchandra Vithal Bade
5. Shri Rajendranath Barua
6. Shri Bali Ram Bhagat
7. Shri Dinen Bhattacharya
8. Shri N. Dandeker
9. Raja P. C. Deo Bhanj
10. Shri Bhaskar Narayan Dighe
11. Shri G. N. Dixit
12. Shri Gajraj Singh Rao
13. Shri Cherian J. Kappen
14. Shri Madhu Limaye
15. Shri Shivram Rango Rane
16. Shri Era Sezhiyan
17. Swami Ramanand Shastri
18. Shri Digvijaya Narain Singh
19. Shri Sivamurthi Swami
20. Shri Radhelal Vyas
21. Shri K. K. Warior
22. Shri Nagendra Prasad Yadav.

Rajya Sabha

23. Shri Liladhar Asthana
24. Shri Mohan Singh
25. Shri Babubhai M. Chinai
26. Shri Vimalkumar M. Chordia
27. Shri Khandubhai K. Desai
28. Shri Suresh J. Desai
29. Shrimati Shyam Kumari Khan
30. Prof. Mukut Behari Lal
31. Shri Dahyabhai V. Patel
32. Shri N. Sri Rama Reddy
33. Shri Rajendra Pratap Sinha
34. Shri Hira Vallabha Tripathi.

DRAFTSMEN

1. Shri S. P. Sen Varma, *Special Secretary, Legislative Department, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri R. C. Dutt, *Secretary, Ministry of Finance, Department of Company Law and Insurance.*
2. Shri B. M. Mitra, *Joint Secretary, Ministry of Finance, Department of Company Law and Insurance.*
3. Shri B. P. Roy, *Secretary, Company Law Board, Department of Company Law and Insurance.*

SECRETARIAT

Shri B. B. Tewari—*Deputy Secretary.*

WITNESSES EXAMINED

I. *Tata Industries Private Limited, Bombay*

1. Shri N. A. Palkhivala
2. Miss G. N. Cowasjee.

II. *The Chartered Institute of Secretaries India Association, Calcutta*

1. Shri B. G. Pearson
2. Shri S. K. Basu.

I. Tata Industries Private Limited, Bombay

Spokesmen:

1. Shri N. A. Palkhivala
2. Miss G. N. Cowasjee

(Witnesses were called in and they took their seats)

Chairman: The evidence that you give is likely to be printed and distributed. Even if you want any portion to be treated as confidential it will be printed and distributed to Members of Parliament. We have gone through the Memorandum submitted by you. If you want to stress any particular point you may do so.

Shri N. A. Palkhivala: Sir, I shall confine myself to some of the more important clauses. There are some provisions which are undoubtedly salutary sought to be introduced by the amending Bill and I am saying nothing about them. There are only about half a dozen clauses which in our submission need re-consideration. The first one is clause 5 which is coup'ed with clause 15. Clause 5 for the first time seeks to make a distinction between the main objects of the company which are intended to be pursued on incorporation and ancillary objects, ancillary thereto, and other objects. If one looks at the rest of the existing Act or even the amending Bill one finds that nothing tells really on these main purposes to be pursued upon incorporation and the purposes to be pursued thereafter. In other words, there are no separate provisions for the two.

If it is intended that this distinction should enable the investing public to know what the company proposes to do immediately on incorporation, it is really not necessary to have it in the memorandum at all. You have such a statement expressly required to be made in the prospectus. When you go to the Controller of Capital Issues, the statement is required to be made under the various licensing laws and the Industrial Development Act. You would have to disclose what is the

enterprise you have in mind immediately. Therefore, to require this particular thing now in the memorandum would be really superfluous and unnecessary.

If it was only that there would not be so much of an objection to it. But there is something more than that. When you go and ask for your Memorandum to be registered the Registrar would ask for the main objects of the company. If a company points out six main objects to be pursued upon incorporation, he will ask whether it can do all of them together. Such a controversy with the Company Law Administration would be an unsatisfactory prelude to starting the business of the company, and this is not merely something which is academic or theoretical. Just to give you one example to show how it works, in the Tata Oil Company we wanted to have some new objects put in the Memorandum which we said could be carried on advantageously with the existing business. The shareholders unanimously passed a resolution asking us to go ahead with. We wanted to go in for the food line and to some tinned food business. The Company Law Administration refused to give their sanction. Then we had to go to the Court of Law and ultimately after 1½ years the court gave the sanction and the thing was done. In the Mafatlal Group, a very well regulated group as you are aware, the company wanted to pursue a particular object. It had to go to the court to fight for its right, even after the unanimous resolution of the shareholders, and get the judgment to go ahead with it. These are practical difficulties in the way of this demarcation at the very threshold of the company's existence. There is bound to be an acute controversy in several cases if not in most cases between the Company Law Administration on the one hand and the entrepreneur on the other as to what are and what can be permitted to be the main objects to be pursued upon incorporation. If it is only one object there is no difficulty. But there are few companies today with only one main object. Business is so diversified and there are several activities which may be integrated together and carried on economically at one time. Such diversification is so essential today that most of the companies are bound to ask for several main objects to be pursued on incorporation and that will result in endless controversy with the Company Law Administration.

Therefore, our first submission is that this particular demarcation in clause 5 is not necessary and would serve no useful purpose. On the contrary, the gap which already exists between the Company Law Administration on the one hand and the corporate sector on the other would be widened endlessly without any corresponding benefit to the investing public. If you are giving such a great benefit to the investing public that you can afford to take this risk of widening the gulf between the administration and the people inconveniencing the honest entrepreneurs, you may do all that. Then you can say that the benefit is so large. But when there is no resulting benefit to the investing public, it seems not worthwhile having this type of demarcation.

If I may, along with clause 5, take clause 15, which requires a company to pass a special resolution even for pursuing those objects for which it is expressly incorporated, which are mentioned in the prospectus on the basis of which the shareholders put in their subscription for the shares, this clause is quite frankly perhaps the least satisfactory feature of this amending Bill. You ask the company to go to the public and say "this is the object I have in mind", the people subscribe for that object and then you tell the company "you must again go back to your shareholders and if 26 per cent of the shareholders are against that object, you cannot start your business at all". The first question that arises is, if the people have

subscribed for the shares on the basis of the objects which are mentioned in the prospectus why should it be open to 26 per cent of them to completely destroy the very foundation of the company by saying "we would not pass this special resolution"? That can easily happen because a competing businessman, as we have pointed out in our memorandum, may take up shares in the new company, in the names of various people who may be members of his group, and the new entrepreneur would never know who are the applicants for the allotment of shares. When those shareholders attend the meeting, the special resolution could not be passed because 26 per cent are against those objects. You make that company, before it has commenced its business with the insuperable difficulty of not getting the special resolution passed. To this it may very well be said, why do you fear that this will happen in every case, a competitor may not take 26 per cent of the share. To that I will say, apart from benefiting the post office and the printing industry, what other purpose would be served by asking for a special resolution to be passed, for doing the very thing which the company proclaimed to the wide world it was formed to do in its prospectus? So far as the main object intended to be pursued on incorporation is concerned, I submit there would be no vestige of justification for having a special resolution for doing something which you are incorporated to do and it would be a complete waste of time and money. Because, all those resolutions cost money. For example, in the case of Tata Steel at any time the resolution has to be passed Rs. 50,000 is the minimum expenditure to be incurred for the simplest resolution, because there are 72,000 shareholders, and they have to do all the printing, despatching and other clerical work. So, these are time-consuming formalities and the corresponding benefit to the investing public is nil. Because, when they get a notice for the special resolution they will only know that the company wants to do what it was incorporated to do. Nobody is any wiser and no public interest is advanced. On the other hand, if I may repeat, there is one danger and that is you are exposing the company to the danger of a competing group destroying and defeating the very object of the company by not allowing that resolution to be passed.

The second part of clause 15 deals with a special resolution required to be passed by the shareholders in the general meeting when the company wants to do a business which is in its memorandum but is not one of the main objects to be pursued on incorporation. In other words, if the company has commenced business and has started its activities and it wants to diversify its production though it is a business which is entirely within the memorandum and therefore *intra vires* the company, the proposal in clause 15 is, again you must have a special resolution passed. Here again you will see the practical danger and the commercial disadvantages of such a special resolution. What most companies do is, whenever they have a new object in mind they will have all the formalities completed, they will enter into commitments with collaborators and try to keep this as confidential because, after all, a part of the success of every business is to do things in a manner which your competitors are not aware of. If the technical know-how, trade secrets and business confidences were all exposed to the public gaze of competing business rivals no business could be carried on as profitably as it would be possible otherwise. Therefore, a certain degree of confidential character attaches to all these new ventures and a certain degree of secrecy is essential in the interest of the company and its shareholders. If you must have a special resolution before any new business which is within the memorandum can be done, then what will happen is that this secrecy and confidentiality would not be available to the company at all.

And the further question the hon. Members would perhaps consider is, when a person applies for shares or buys shares with full knowledge that these are the five objects of the company, is it necessary that he should give his sanction by a special resolution before a second business is done? In England no sanction of the shareholders is necessary, no sanction of the court is necessary even for amending the memorandum and articles with a view to enabling a company to do a new business which is not within the memorandum. So, in England if the memorandum and articles are amended with a view to enabling a company to do new business not within the memorandum, even for that you do not need the sanction of the court. Here, surely, if the business is within the existing memorandum and articles, it should be open to the company to do that business without being prevented from doing so by a 26 per cent 'majority'. Here again, it may be—I am not disputing it at all—there are some cases and there will be some cases where some people will do business which is not in the interests of the shareholders. But the real point which the hon. Members should consider is whether this mischief is so widespread as to put every single company without exception to the disadvantage and the disability to do business without getting a special resolution passed. I should submit that there is no such widespread mischief as would justify this type of enormous inconvenience which would be caused to the honest company promoters. So much on clauses 5 and 15.

If I may take a few minutes of your time on clause 13, it requires that any one who transfers his shares must apply to the prescribed authority for the application form he must have the date stamp on it and then lodge the application with the company within six months if it is a company whose shares are quoted in the stock exchange and within two months in other cases. This section, curiously enough, does not provide for the consequences of non-compliance. What would happen if due to illness or ignorance of the law a man does not file his transfer application in time with the company? That question is left unanswered by clause 13. There is a salutary provision sought to be introduced by this amending Bill, namely, no more shareholding in fictitious names, no biname or fictitious transactions. This is a salutary provision and there is nothing to be said against it. But I would request the Committee to consider whether this absolute bar on transfer after a lapse of a certain period of time is justified in the public interest. Here again, consider what an enormous amount of hardship and inconvenience would be caused to the overwhelming section of the people who are not basically dishonest, as compared to the mischief which is sought to be remedied and the crimes which are sought to be counteracted. There are many cases, particularly in the mofussil, where people are not aware of the recent amendments at least till three years have passed. I have seen cases where documents have been drawn up in complete ignorance of the laws passed in 1964 or two or three years before. While legislating in a country of this magnitude in size and population, the people in the mofussil, people in various walks of life, they would never be able to cope with the spate of new legislation. So, in that context, is it in the public interest to put this type of total disability on a person of the possible deprivation of his proprietary rights because, after all, one man may have in good faith paid money for his shares and may not have gone to the company to get the share transferred within two or three months. Then what happens? He is in for a ten-year litigation as to who is the legal owner of the shares, whether it is the transferor or the transferee.

Consider also as to what would be the consequences even in cases

where there is knowledge of the law but there are certain factors which prevented the man from doing it or there is no evidence that transfer was applied for to the company within a certain period. There have been cases where no particular evidence was forthcoming as to on what date the application was made. There have been cases where due to supervening factors application was not made though the party knew that the application was required to be made. All these things are bound to arise and this type of a wooden rule of thumb which lays down these limits of two months and six months, I submit, is not conducive either to justice or to the advancement of public interest.

I will not say more about this because, I am sure, the stock exchange representatives who have been the Members must have elaborated this at some length.

If I may now take up clause 22, it seeks to impose further obligations on chartered accountants and auditors when they come to audit the accounts of companies. In section 227, sub-section (1A), which is sought to be added, has three clauses—clauses (a), (b) and (e)—which would convert the profession of accountant into the unpaid branch of the Company Law Investigation Department. They would be required to do things which, to be quite frank, it is impossible for any firm to do with good practice to do. It is just impossible. Either they must have scant respect for the law and say, "Here is a law which imposes obligations which it is humanly not possible to discharge"; or, if they conscientiously try to discharge their duties, it will take several years before the accounts of one year can be correctly audited.

Take the first clause, (a). A chartered accountant will undoubtedly try to see whether a loan is secured or unsecured. That is his duty under the existing law. But now what the amendment wants him to do is to apply his mind to the question whether it is properly secured or not. In order to decide whether a loan is properly secured or not, the man who is to make the enquiry must know as to what is the value of the security. In order to know the value of the security, which may be shares of a private company, he must go into the balance sheet of that company and see what is the net worth of that company. If that company has shares in other companies, he must go to the balance sheets of those companies to see what is the net worth of those shares which will be reflected in the net worth of the shares of the borrowing company. If there is an immovable property, the accountant must take it upon himself to decide what is the value of that immovable property. If there is a promissory note or if there are other securities, he must go into the financial worth of that individual to see that these are properly secured. These are enquiries which just cannot be made by an auditor because he would need a large staff. A big firm, like Fergusson and Company, will require staff of the size and proportion of the Company Law Administration to do the work of auditing the accounts of various companies while complying strictly with the provisions of clause 22.

Further, according to the requirements of clause (a), not only must he ascertain whether the loan is properly secured or not but he must decide whether the terms of the loan are not prejudicial to the lending company. You would need a good business head and either the powers of a clairvoyant or you must be a very good detective before you can answer that question in several cases. If we are dealing with good companies, you do not need this at all. If you are dealing with shady companies then alone this becomes relevant. When you are dealing with shady companies, how will an auditor who is a professional man ever be

able to discharge his duty either to his own satisfaction or to the satisfaction of his Institute which has control over him.

The other clause, (b), requires him to ascertain whether the transactions represented by the book entries are in conformity with normal business practices accepted by accounting principles Here again, first of all, it is so vague and nebulous that a certificate which is in these terms, if it is to be meaningful, must rest upon some well-established principles which it would be very difficult to apply on the facts of the given case. You have, therefore, an extraordinary degree of vagueness about this certificate in clause (b) and one imposes a burden and a liability on a professional man which really it is not right that society should impose upon him.

Then, take clause (e). He must not only audit and certify that expenses have been incurred but he must also satisfy himself that personal expenses are not included. How will he do it? Suppose, there is a motor car petrol bill. How can the accountant possibly know whether the Director used the car for his own purpose or for the purpose of the company? Suppose, he finds an entry "postage—Rs. 3,232". How will he decide whether the letters which went out were personal letters of the staff or of the Directors or of the Manager or whether they were letters on behalf of the company? He would have no means at all to know that.

These are requirements, which, I would say briefly, have if for no other reason as a concession to the shortness of human life, it is impossible to do for a professional man. It is not possible to do all the duties in the course of a year if you are in good practice and, yet, at the same time comply with clause 22. Therefore clause 22 cannot remain.

Here there is just one thing to be considered. The growing disrespect for law in this country, if I may only for a moment put a wider consideration for the hon. Members' view, is to some extent brought about by laws which it is not possible to comply and this particular clause is one instance in point.

Then, if I may request you to consider clause 36, this clause is the clause which lays down the limit of 75 years as the limit beyond which a man will not be allowed to be a Director. Consider what would be the effect of this on private companies. I will take private companies just because there is no basis whatsoever for applying this limit to a private company. Apart from public positions which a man above 75 can hold from ministership downwards,—he can carry on business as a partner in any firm; he can be the sole proprietor of a business; he can practise any profession,—but he cannot be the Director of a company. In a private company where there is no public money at all involved, why should a man be prevented from being a Director of his own company?

To give you one example, I cite the case of R. C. Jal Limited in Indore. Shri R. C. Jal, Manager (82), a Congress MLA, carries on his business, a limited company, with three shareholders—himself, his brother and a member of the family. There is no public participation at all. He is more than 75. His brother is more than 75. There is only one shareholer who is below 75. The Companies Act requires at least two Directors even in a private company. If this law is passed, what happens to this company? There are three shareholders and two Directors and the two shareholders are above 75. No public money is involved. Surely, the man has a right to carry on his own business suffers. Suppose, as a result of his senility, his business suffers. Is it the function of legislation to prevent him from doing this? In any other way also he may be losing his own money. When there is a private company, when there is no public interest at all involved, it is not at all right that this type of harsh and wooden restriction should be imposed.

Then, take clubs. There are various social clubs which are limited companies under the Companies Act. The Cricket Club of India Limited is a social institution. There are no financial involvements at all. No public money is at stake. There are no debts. Why should the Chairman, who is today 81, years old, not continue as Chairman of a social club only because it is a limited company?

Therefore, so far as private companies are concerned, I do submit that there is no justification whatsoever for this type of a rule of thumb—75 years. Actually, even on the Boards of public companies, like the Central Bank and the ICICI, I find that one Director on the Board of one and one on the Board of the other, both 75, are mentally more alert than others who are not even 50. Therefore, there is no such hard rule that a man after reaching 75 years of age is useless. If once it is accepted by the hon. Members that a man above 75 may still have his mental faculties intact, is there a reason why there should be a harsh rule which prevents the man from being a director of a company? Therefore, my submission is that so far as the private companies are concerned, the rule should not apply at all. So far as public companies are concerned, let there be some way in which a deserving man should be appointed in charge of a public company with the Government's approval.

I can give you no better instance than that of Radhakamal of Kalyan Mills, Indore. They were ruined by a certain group which allowed the money to run out and the company was sustaining losses year after year. It was than the Government of India who appointed a man aged 76 to be the managing director of the company and that man who was appointed in 1960 has now brought the company to a profitable position. The Government of India appointed to a public company, a man aged 76 and that man has brought the company to a profitable position. And today, that mill is in a comfortable position. If that is the position, if this law is passed, what will happen in a case like that? Where a man like that can deliver the goods—and he is appointed by the Government of India—if only because of his age, he is not permitted to be appointed a director of the company either by the shareholders or by the Government, what will happen? Therefore, for private companies there should be no restriction. If they are public companies, you may provide that the Government's approval should be obtained. But if the directors want such a man in whom they have faith and confidence, why should not such a man be appointed with the Government's approval?

Then I come to clause 46. This is the most controversial clause, and it deals with loans from one company to another. At the outset, it is a little important to know that there are provisions existing in the Companies Act which prevent loans being given for extra commercial considerations. You have, for instance, section 295 which prevents companies from making a loan or restricts the companies from making a loan to the directors and relatives of directors and so on. You have also section 369 which even today prevents companies from making loans to the managing agents or to their associates except in compliance with certain formalities. You have section 370 which prevents a company from making loan to companies in the same management. The question is, is it necessary to prevent any company from making any loan to any other company whatever may be the quantum of loan and whatever the benefit to the lending company without a special resolution of the shareholders? When companies need fund for a time, it does make a difference between the companies' ability to carry on business with dignity and with a certain level of integrity and its temporary incapacity to pay. For one thing, a special resolution is a

time-consuming process, apart from the enormous waste of money involved. It will cost tens of thousands of rupees to have a special resolution passed, with the difficulties of getting together all the shareholders and so on. You are all well aware of the formalities. Is it right that irrespective of the quantum of the loan and irrespective of the benefit to the lending company, this provision should be inserted? Is it right that even in all these cases there should be a rule of thumb that you must give the shareholder and have that special resolution passed?

Clause 46 aims at a two-fold objective. In every case without exception, for a loan by 'A' company to 'B' company you must have a special resolution passed. If the loan exceeds to 20 per cent of the company's free reserves or 30 per cent of the company's free reserves, according to whether the loan is to a company in some group or outside it, you will also take the Government's approval. So, a special resolution in every case, and whenever a certain level is exceeded, the Government of India's approval has to be got for the loan.

Now, the very basis of commerce is one of money being available when it is needed. You may wait for six months before the project is put up in the public sector. But business here virtually means in fact confidence in the corporate sector and benefit to the investing public and both are dependent upon the investment of money to move freely in the corporate sector. If these channels of free movement get destroyed or are bulked you have a situation which is of no public benefit to anybody at all. You would then be hamstringing the enterprise and prevent the industry from reaching fruition. So far as the benefit to the investing public is concerned, there would be none at all.

Of course, you do not say that you are legislating for individual cases, though, if you find ten cases out of, say, 30,000 loans in the country—cases where wrong loans are being made—we must certainly have a clause to prevent those people from doing that. But it is easy to legislate for individual cases. To some extent it is right. But when it reaches a point of creating public inconvenience and public discomfort and when it is out of all proportion to the great objectives sought to be achieved, then comes the time to consider whether the mischief which would be prevented is not out of all proportion to the enormous inconvenience which would be caused to the honest corporate sector.

In actual practice, if you take the balance-sheet and accounts of the best regulated companies, you will invariably find an intercorporate loan. I am not talking of a bad management. You have already restricted the loans to managing agents and associates, relatives, etc. The restrictions are there. We are dealing *ex hypothesi* with cases of companies which are not connected with each other. Surely, there, a man must have the right to give his money as he pleases, whatever remains with him after paying the taxes. Surely that man's right must be there, the right to deploy his money in such manner as he thinks best. You may ask him to deposit his money in a bank instead of in a limited company. The answer is the first-class limited companies will give you seven per cent on your deposits. TELCO for instances gives 7 per cent; its security is as good as a debenture. You get 7 per cent there; no bank will give you that, and no bank is permitted by the Reserve Bank of India to give any more than a certain rate of interest because the rules are laid down and according to that you get it. So, actually, with a limited company, the yield is, without exaggeration, almost twice as good as the yield with any bank. That is the reason why intercorporate loans and deposits are very common.

The other aspect is that later on you get back your money for the asking. You could call for the deposits or the short term deposits where the shares

are invested in securities. There is always the risk of depreciation and fluctuations which are inherent in the situation in the country and particularly so at this juncture. Therefore, it is in the interests of the shareholders that their moneys should be deployed to their best advantage. If one must have a special resolution, it means that the loans will not be forthcoming in due time. It also means that you are at the mercy of any group of shareholders who may not want a particular thing to be done though the majority may be all for it. It would mean also that really there is an unworkable restriction in the sense that the formalities required are so cumbrous, especially when you have to take the Government's approval.

To give you one instance, without any disrespect to any administration because we have a first-class man at the head—I can tell you how in practice it will work. The latest instance which happened only three weeks ago is this. We had a relative of a director who was employed on a salary of Rs. 900; he is highly qualified. Because he was a relative of a director, the Government's sanction was rightly taken. People got a dearness allowance increase of Rs. 40 because of the enormous rise in the cost of living index. So, when everybody got Rs. 40, this man also got Rs. 40, but the Government have stated that every increase must be first submitted for Government's approval. So, we made an application that an increase may be approved; this increase is for everybody, even a clerk. The answer came that the application will not be considered on merits and that he will have to fill in a prescribed form running to three pages containing about 30 items. Whereas every ordinary clerk could get this increment without any difficulty, here he is asked to submit an application. When you have controls of this nature it is necessary to realise how they operate in practice. Half the time of the Company Law Administration today, if I may say so, instead of their energies being concentrated on checking malpractices etc., is wasted on useless things like this. It is the fault of nobody, only some legal system needs to be toned up. If half their time is wasted like this, you can imagine what time will be taken up if there are all these further formalities required.

What I am asking hon. Members to consider is this. Just see the list of loans which are given by companies already. Find out what is the percentage which really is of the bad sort, something prejudicial to the interests of the company. You will be surprised at the small nature of the percentage compared to the enormous number of loans and deposits all made for good consideration and in the interest of the investing company. I venture to submit that 95 per cent of the loans and deposits are unquestionably of the right sort, where no special resolution, no government approval would be required on any consideration of justice or fair play. Are we going to impose this enormous hardship on the corporate sector only because there are some people who deserve to be no longer in the chair of a director? They continue to be in the position of director and the honest citizen goes on suffering as a result of more and more restrictions.

I submit that so far as clause 46 is concerned, it should be totally deleted. It will prevent people from making loans in the interest of both the managing company, the lending company and the borrowing company. As an example I am taking the case which is a reported judgment of the Bombay High Court. Tata Sons made a loan to their Central India Mills free of interest. Tata Sons borrowed the money from the State Bank of India at 6½ per cent interest in those days. They took upon themselves the entire burden of interest and gave the loan free of interest to the managing company. For years together the loan continued to be without interest. They drew no managing agency commission also even before 1956 when the law permitted them

to draw the managing agency commission. By remaining as managing agents they were out of pocket every year to the extent of the interest that they paid to the State Bank of India. The Company Law Administration says that their approval should be taken for this loan. We said that no approval was necessary. We fought it out in the court of law and the court said that no approval was necessary. Yet the Head of the Company Law Administration made a public statement that the law laid down by the Bombay High Court is not accepted and in other parts of India they will see that Government sanction is taken. When you are talking of approval, it is not as if in all cases people will not try to stand by the letter of the law; naturally the law is there and the letter of the law will have to be complied with in every case. But you will have case after case where honest loans, honest deposits are delayed and money being clogged down. If money is clogged down like this and channels of free movement are not allowed to remain free any longer, you will find that there will be a very good amount of economic disturbance caused in the country. Therefore, so far as clause 46 is concerned it should be completely deleted.

In the alternative, I would ask hon. Members to look at the very anomalous position which would be created if clause 46 is to be passed in the present form. If a company wants to invest money in the shares of another company up to certain limits which are laid down in section 372, without Government's approval, without a special resolution from the shareholders, a limited company can buy shares of another limited company. But if it does not want to buy shares but merely make a loan which is something more fluid, something which can very easily be revoked, then it has to go to the shareholders and to the Government. It is a completely anomalous position. It does not make any sense. You can invest in the shares of other companies without approval but if you want to do something which is easier and less objectionable, simply give a loan which you can recall within even a period of three months, then there must be a special resolution of the shareholders and you have to go to the Government for its approval. Even the Vivian Bose Commission did not recommend that. What they said was that loans may be put on the same footing as investment. Clause 46 does not seek to do that. My point with regard to clause 46 is that hon. Members would be pleased not to treat it as required at all in the context of the present circumstances. If at all it is to be retained, it must be in such a form that it makes some sense as compared to the existing section 372 which deals with investments of one limited company in another limited company.

Finally, if I may say a word about clause 53, clause 53 deals with the Advisory Commission. In 1953 the Joint Committee went into great details about this Advisory Commission. It said that the Advisory Commission should be of a permanent basis. When the Bill came before Parliament in 1955 there was a prolonged debate. Many learned members took part in it. After a full discussion the then Finance Minister again made it clear that this Advisory Commission is of a permanent basis. Now it is sought to be abolished altogether and an Advisory Committee is going to be set up. It may or may not be appointed. The duties and functions of the Committee are not also mentioned in the Act. What the hon. Members have to consider is whether this change is needed at this juncture.

I have one submission to make as a result of my practical experience at the other end of the working of the Company Law. It is very essential that the Company Law Administration and the corporate sector should be brought closer together. The gulf should not be widened. The gulf is getting wider day by day. With this

wide gulf between the authorities and the governed you find that the co-operation which is necessary for a real economic effort is not forthcoming. The whole function of the Advisory Commission was to bring the two together so that there would be harmony and cooperation between the authorities and the corporate sector. If this Commission is to be abolished that purpose would be defeated and you would be widening the gulf between the Company Law Administration and the corporate sector. We have in our Memorandum set out quotations from the debates and reports of the Select Committee which would go to show what was the conception of this Advisory Commission and how the time has come to make the Commission more energetic rather than abolish it altogether.

Shri A. Shankar Alva: As far as the main objects to be pursued by a company are concerned, as mentioned in clause 5, I suppose more than one object is contemplated as in clause 15. Don't you think it is but proper that when subscription is raised to start a business, the shareholders should be consulted which business should be started first and which afterwards?

Shri N. A. Palkhivala: The point there is this. You will find in practice that when a company is floated it will take one or two objects at a time and mention them in the prospectus. They have to indicate in the prospectus what objects they have in mind. The very fact that the people have put in their capital on the basis of what is provided in the Memorandum would show that they are agreeable to those objectives being carried on.

Now, you are quite right in saying that the shareholders must give consent. But is there any better consent or any further consent needed over the above the consent implied in their subscribing for the share of the company of which the prospector proclaims from the house-tops that these are the main objectives of the company? The only difficulty here is the practical difficulty of the consumption of time and money and the attendant risk of one group trying to thwart the business enterprise of another rival group.

Shri A. Shankar Alva: Let me clarify a little further. I am not speaking of a good company which wants to promote some good business. Let us take some speculative people. They put main objectives and in that would put a small matter which the public may not think that it would be the main object. But at the same time it is mentioned as the main object. It may be risky or hazardous to the share-holders if they started with that. In that case at least, don't you think that it is a safeguard, after the shares are taken, that their consent is taken?

Shri N. A. Palkhivala: I see the case you have in mind. You have the case in mind of a person who starts a company specifying their main objects to be pursued one of which is a risky one and he starts doing that. This is a conceivable case and it might happen occasionally. In the majority of cases, first of all, when you have the Controller of Capital Issues, he will not give his permission for raising sizeable sums from the public for that as one of the main objects to be pursued. Normally, if it is a manufacturing thing, you must have the industrial development licence. There again, the person will not be granted the licence for a risky venture. There are already in existence statutory provisions, statutory authorities, who can look after the interests of the public and the larger interests of the nation apart from the investing section. Those authorities are already functioning. You may well say that the Controller of Capital Issues should apply his mind more closely to the main purpose. That is understandable. But to ask the company to go to its share-holders would be really not achieving this purpose. After all, either the share-holders are intelligent or they are not intelligent. If

they are not intelligent, a special resolution is no safeguard. If they are intelligent, the very fact that those objects were in the Memorandum would have put them on the guard. As it is, the difficulty of promoting new companies is a fairly sizeable difficulty particularly in the context of the economic situation in the country.

Shri A. Shanker Alva: Take clause 13 to which you have objected. You said, you do not know what happens if it is not done so. If there is a clause, those transfers will be void. Will it be all right?

Shri N. A. Palkhivala: What will happen is, you will be depriving the honest purchaser of the sum of money he has paid in that direction. He will neither get back the money nor the shares. The rule of thumb can be easily made, that is, you either give the shares to 'A' or B', transferer or transferee, but you will be doing injustice to one of the two parties.

Shri A. Shanker Alva: Clause 22. Have you got any objection to (c)?

Shri N. A. Palkivala: It says, he has to find out whether the sale price is less than the cost. I think it would be difficult in normal cases to find out what is the cost and to find out what is the sale price.

Shri A. Shanker Alva: He should give a certificate to that effect.

Shri N. A. Palkivala: He has to give a certificate that the shares have been sold at a price less than that at which they were purchased by the company.

Shri A. Shanker Alva: Have you any objection to that?

Shri N. A. Palkivala: I have no objection.

Shri Era Sezhiyan: Regarding clause 46, loans to companies, inter-company loans, you yourself quoted an example where the Tata Industries gave some amount to Century free of interest. In this case it might be a *bona fide* loan and it may be repaid But don't you think that there may be some cases where such loans are being given without property security and without proper arrangements? Don't you think, in those cases, loans should be given with a previous authorisation by a special resolution? You yourself quoted a case where some loans have been given free of interest. The same may be followed by other companies or other firms in a discreet manner. Therefore, we have put in this amendment.

Shri N. A. Palkivala: I appreciate this. Obviously, what was at the back of the person who conceived this clause was that the loan should not be given without proper security and one way of ensuring that is to take share-holders sanction. The object is laudable. What the hon. Members have to consider is whether the mischief that you are seeking to prevent is not far out-weighed by the enormous inconvenience you would cause to the overwhelming majority of cases where this difficulty does not arise. You have this type of consideration when it is for the same group, when you give it to the shareholders and when you give it to managing agents. Therefore, the law wisely said also, you cannot give loans without the approval of the shareholders, etc. Here, you are dealing with cases where there is no such thing. Therefore, it is unlikely that there would be such extra commercial considerations actuating the company to give a loan.

Shri K. K. Warior: About these inter-corporate loans, should Government have some authority to scrutinise whether the loans actually had been diverted for their own benefit or for some other purposes which are not quite *bona fide* purposes? Suppose 'A' is giving a loan to 'B' and 'B' is utilising that loan not for the

purpose of that company itself or for its betterment but for some other purpose. Should Government have a chance to scrutinise that and see that the loans are properly utilised? What is the protection?

Shri N. A. Palkhivala: There are already existing provisions under which the directors who make such loans can be removed. In fact, to put it bluntly to the hon. Members, the existing powers are so wide and wider than those obtaining in any other country that I am aware of. The existing powers have to be exercised. It is not that you need new powers. What is needed is the exercise of existing powers. There is already a provision which says that any director who is acting against the interests of the company can be removed. Well, you have only to exercise that power.

Shri K. K. Warior: That is a general power, not a specific power, that a director who is acting *mala fide* and working against the interests of the concern can be removed. That is the general power with any company.

Shri Era Sezhiyan: What is suggested is an action to be taken after the mischief is done.

Shri K. K. Warior: What is the precautionary measure for that, for not utilising the loans for the proper purposes?

Shri N. A. Palkivala: I can only say this that this type of precautions that you have here is for one section of the people. The vicious section will not be deterred by this. It is the honest section that will be deterred.

Shri K. K. Warior: That is the case in every law. There is a law that you should not thieve but the thieves are there. They are not abiding by the law. That is quite certain. But still we have the law for honest persons also. If that precautionary measure is not there, they may also tend to go wrong. Honesty is one thing; the proper direction is another thing. I want to know whether you are amenable to the suggestion that there must be some protective measures at least for these loans not being diverted into wrong channels.

Shri Suresh J. Desai: Kindly refer to clause 5 and 15 of your memorandum. What you have stated is mostly based on your fears that a minority of 25 per cent of the shareholders, who might be belonging to a competing or rival organisation will prevent the company from undertaking the project for which it was promoted. Your arguments in paragraphs (E), (F) and (G) also proceed more or less on the same lines. You have some experience of the working of limited companies. Some of us here have also some experience of the working of companies. I do not think it is very usual for a rival organisation to get 25 per cent of the shares in a new company and thus prevent the passing of a special resolution. May I put it that your fears in this connection are more or less injustified?

Shri N. A. Palkhivala: It is true that a part of the memorandum on this point does deal with this particular apprehension that you have been pleased to mention. That is one aspect of it. I do not think the fear is unjustified in the sense if, obviously, you are trying to check malpractices, this is not only a conceivable but possible malpractice which some people may resort to. Apart from that, what you have to consider is how much dislocation of business it will result in. There are already delays in starting projects in this country. Every little bit like this adds to the delay. A special resolution means, believe me, a delay of at least two months. Then, the delay can be caused not only by the special resolution. There are several other laws. A licence would take three months. The Controller of Capital

Issues will take another four months. So, it adds on. That is why you find inordinate delays in starting new projects. This is one additional factor which will and to the delay without any corresponding benefit to the people.

Shri Suresh J. Desai: I can appreciate your point about the procedural delay and superficiality of it because in any case it is mentioned in the memorandum. But the fears expressed in paragraphs (E), (F) and (G) do they justify . . .

Shri N. A. Palkhivala: I follow the point. I will give this answer. Today there being no law which requires a special resolution to be passed, no cases have arisen of a group of shareholders trying to thwart the main object of the company. But once you pass this into law, you will conceivably find, and this would not be an idle fear, some people using this legal provision for their own benefit.

Shri Suresh J. Desai: Coming to clause 13, blank transfers, from the three proposals which you have submitted can we take it that you are agreeable to have some restrictions placed so that the evil of blank transfer can be stopped, making certain exceptions in the case of banks and financial institutions etc.?

Shri N. A. Palkhivala: I respectfully agree with what you have stated. Just as you have prohibited fictitious names being used as shareholders, you may equally prevent the system of blank transfers generally for no commercial reasons. When they go to a bank, there is a commercial reason; when they go to a financial house, there is a commercial reason. In other cases, if a share remains blank, it must be intimated to the Government why a transfer has not been made. In that case the Government will apply its mind to the question why should a share remain blank without a commercial reason. In the case of banks, for instance, there should be no restriction at all. In the case of others, let the matter be brought to the consideration of Government as to why the shares have remained in blank transfer form. Then you can apply your mind and if necessary direct the man to transfer it, because that will cause no injustice. But the way in which it is at present drafted, it is the honest purchaser of shares who will more often suffer the injustice.

Shri B. R. Bhagat: Do I understand you correctly that you have no objection to the blank transfers being prohibited if some of the difficulties which you have enumerated are provided for? In other words, this clause with those modifications can stand.

Shri N. A. Palkhivala: The basis of the clause is transfer only within a certain limit. What would be a good substitute for this sub-clause is a thing which will completely change the complexion of the clause. Just as you are prohibiting fictitious transfers, while there should be no restriction at all in the case of transfers to banks and financial houses, in all other cases a person should not be allowed to keep the shares on blank transfer basis for more than a certain period without intimating to Government the reasons for the blank transfer. You may provide for penalties in those cases. That will give you an occasion to apply your mind to the question what is the reason for the blank transfer. If it is for a good reason, you need nothing more; if it is a bad reason or no reason at all in law, then let the Government take the power to direct the man to transfer the shares.

Shri B. R. Bhagat: Suppose he does not give the reasons?

Shri N. A. Palkhivala: You can take the power to direct a man to transfer the shares in a case where you are satisfied that there is no good reason. It is done by the courts. But these two months seem to me to be unreasonably short a period. I would suggest one year within which intimation should be given to the government so that every year you know

whether the shares have changed hand or not. It will enable people to communicate to you in due time.

Shri B. R. Bhagat: Even if it is one year, suppose he fails to give the reason. Will it be void or you will have the power to direct the transfer?

Shri N. A. Palkhivala: To make it void will have very serious consequences. The reason is this. It will not be the fault of any person. I would not like to weary you with details but in practice cases have arisen where the person is not at fault at all. In the case of one Calcutta concern, of which I have personal knowledge, it was not the fault of the purchaser at all but of the people who are still in management of the company. Once you have provided for two things, intimation to the government within a certain period, which is a reasonable period of say one year, and then the government, having the power under the law to direct the company to transfer the share to the transferee, gives such direction, the company is bound to carry it out.

Shri B. R. Bhagat: What should be the reasonable period for intimation?

Shri N. A. Palkhivala: One year within which the Government can act. That would be good enough. So that every year you know exactly what is happening. If there is no reasonable cause for the shares not being transferred to the name of the purchaser within that time, the Government will give a direction. If, on the other hand, there is a reasonable cause, Government will not interfere.

Shri B. R. Bhagat: You want the Government to be given such powers?

Shri N. A. Palkhivala: Even now the government says to a company "do not pay that officer Rs. 1,200; pay him only Rs. 1,000 or 900". It is done even today by the Company Law Administration. While giving the intimation an opportunity should be provided to the person to explain why the transfer has not been effected so far.

Shri Era Sezhiyan: For that what should be the minimum period for intimation? Will it be one month?

Shri N. A. Palkhivala: I am not talking of intimation in the case of every transfer of shares. The intimation should be after the lapse of a reasonable period. If you have provided for six months already in the clause as reasonable period up to which the shares can remain blank, then the intimation can only be required to be given after that. That is my point. Therefore, the point I am urging is first give a reasonable period within which the Government should not be bothered with intimation; in other words, there is already a reasonable period within which the transfer can be made. It is only after the lapse of that period any intimation should be necesary to the government, when the Company Law Administration will come into the picture.

Shri B. R. Bhagat: That does not solve this difficulty. Suppose, intimation does not reach or he does not give the intimation. How is the Government to know? Therefore, there must be something.

Shri N. A. Palkhivala: There would be a penalty. You require so many intimations to be given.

Shri B. R. Bhagat: If he fails to give the intimation about these shares, it should be void; otherwise, he is under no compulsion to intimate and the Government will not know whether such a transfer has taken place.

Shri Suresh J. Desai: You have attached a good deal of importance—and rightly so—to clause 46. You say in you memorandum:

> "the Vivian Bose Commission suggested that inter-company loans should rank at par with inter-company investments and be subject to the same restrictions contained in Section 372, and that

Section 370 is being brought on a par with Section 372, it is noticed that the proposed amendment goes far beyond the restrictions in Section 372".

That may be so in a certain way, but as you know the Bose Commission recommended that Section 370 should impose the limit on the amount of loan the lending company can give and for this purpose they suggested the limit of 20 per cent of the subscribed capital and free reserves of the lending company in respect of loans to companies within the same group but with the sanction by a resolution of the shareholders. They mentioned an ordinary resolution. About loans to other corporate bodies, not within the same group, they prescribed a limit of 30 per cent and said:

"Loans in excess of the limits prescribed above should be sanctioned by a special resolution of the shareholders followed by the approval of the Central Government. The same restriction should apply as at present mentioned in section 370(2)."

The same exceptions are not there in the proposed amendment. Instead of an ordinary resolution, the provision is for a special resolution. It is already there in section 372, as far as loans within the same group are concerned. So, the amendment will not go far beyond the recommendations of the Vivian Bose Commission.

Shri N. A. Palkhivala: They do go further than the recommendations, to the extent that whereas the recommendations envisaged loans being put in the same position as investments in other companies, here even where investments are permissible loans are not, as the clause is now drafted. So, it goes beyond the recommendations. Investments you can make up to 10 per cent of the capital of that company and 30 per cent of your own.

Shri Suresh J. Desai: That is if you compare sections 370 and 372; but if you compare this with recommendations of the Bose Commission, as far as section 370 is concerned, it does not go beyond the recommendations of the Bose Commission.

Shri N. A. Palkhivala: There is one sentence which does do that. Section 370 imposes a limit on the lending company. We would suggest 20 per cent of the subscribed capital and free reserves. That is not permitted without a resolution of the shareholders.

Shri Suresh J. Desai: But it is already there in section 370.

Shri N. A. Palkhivala: That is for companies under the same management.

Shri Suresh J. Desai: Now it extends to other companies also not under the same management and 20 per cent and 30 per cent limits are placed for which the approval of Government is necessary.

Shri N. A. Palkhivala: That makes all the difference in the world, whether you confine your restrictions to companies under the same management or you apply them generally to all companies at large. Under the same management there can be extra commercial considerations.

Shri Suresh J. Desai: Is your objection mainly to the requirement about the special resolution or is it about the sanction of Government?

Shri N. A. Palkhivala: My objection is to both, because you are denying passage of money from one company to another completely unconnected with each other. When there can be no question of any extra commercial consideration, why should there be this formality?

Shri Suresh J. Desai: If, within the limits of 20 per cent and 30 per cent, this requirement of a special resolution is done away with, would you be satisfied?

Shri N. A. Palkhivala: For investiments it is all right. Even if you extend it to long-term loans, it is understandable. But for ordinary deposits, short-term loans of six months or one year, it will mean delays which will really serve no useful purpose.

Shri Suresh J. Desai: In that case it will be at par with section 372. Within these limits without the requirement of the sanction of the Government or of a special resolution loans can be given even to companies within the same group or to other corporate bodies also. Would you be satisfied?

Shri N. A. Palkhivala: I would not be satisfied. When you are dealing with investments, you are dealing with something which can be permanent. But when you are dealing with short-term loans, all these considerations, which are germane to regular investments, are not germane to such loans. Therefore, to impose on short-term loans the same restrictions and conditions which you apply to investments would be, I submit, to lose the sense of perspective. When the company invests in other companies, it is doing that on a permanent basis; but when it gives loans for three months or six months or for one year, there is no such formality necessary.

Shri Suresh J. Desai: Suppose, this requirement of a special resolution is done away with for a temporary loan which is within these limits, would you be satisfied?

Shri N. A. Palkhivala: For restriction on loans it would be necessary to do two things; firstly, to have no requirement of a resolution or approval up to a certain reasonable limit; and, secondly, to apply the requirement of a special resolution only beyond that reasonable limit.

Shri Suresh J. Desai: Would you consider the limit of 20 per cent of the subscribed capital plus free reserves as reasonable?

Shri N. A. Palkhivala: In practice it is a very low limit. Sometimes compnies are flooded with money only for a brief period and they would like to earn a good rate of interest by making deposits with and loans to limited companies for three months or six months. Though these are reasonable limits when you come to inter-corporate investments, these are not reasonable limits when you come to some cash inflow which sometimes is very high and sometimes very low. As Shri Dandeker would know as the Chairman of a very big corporation, you would sometimes find a company having 100 per cent of its capital and free reserves lying with it and it will be right to make a deposit or loan for six months or one year because after six months or one year you will need all that money. So, it is not reasonable when you apply it to loans or short-term deposits.

Shri Suresh J. Desai: So far most of the loans are given within the same group only.

Shri N. A. Palkhivala: There is already a restriction under section 370 when it is within the same group and that is a very good restriction.

Shri Babubhai M. Chinai: Does he want the present restriction on inter-company loans and investment or not? Is he suggesting that the present restriction on inter-company loans should also be removed?

Shri N. A. Palkhivala: I am not here to answer that.

श्री विमलकुमार एम० चौरड़िया : आप ने क्लाज़ 5 और 15 के बारे में बताया है कि अगर उन को सभी कम्पनियों पर लागू किया जाये, तो कठिनाई रहेगी । अगर उन क्लाजिज़ को पुरानी कम्पनियों पर लागू न किया जाये और केवल नई कम्पनियों पर लागू किया जाये, तो क्या हर्ज है ?

Shri N. A. Palkhivala: I understand, the question is: If it applies only to new companies, would there be an objection? The new companies will really be at a disadvantage compared to the existing companies already conducting business for the reasons that I have already mentioned. In the case of new companies you will find the project being delayed endlessly. You may ask them to put in the prospectus whatever you want. You may make the requirements of the prospectus more stringent. Let the company say clearly what it wants to do first, second and so on. Thereafter, the public knowing what is there in the prospectus put in their money and let the company not waste time in these formalities of a special resolution.

श्री विमलकुमार एम० चौरड़िया : क्लाज़ 5 में जो आवश्यकता बताई गई है, उसको पूरा करने में कोई कठिनाई नहीं है। धारा 15 के अन्तर्गत उन को प्रास्पक्टस इस्यू करने के बाद भी रजिस्ट्रार के सामने यह डिक्लेरेशन देनी होगी कि जेनेरल मीटिंग में ऐसा रेज़ोल्यूशन पास कर दिया गया है। इस लिए धारा 5 के बारे में तो आपको कोई एतराज़ नहीं है ?

Shri N. A. Palkhivala: Even apart from clause 15, the objection to clause 5 itself is that, as I have said, you will have enormous controversy. Believe me, there will be a regular controversy between new companies and the Company Law Administration as to what are the main purposes to be pursued upon. It is not an easy thing. Speaking from practical experience, a company's Memorandum and Articles take several weeks before they are approved by the Company Law Administration. Sometimes it will take months. If you are to have the added controversy as to what are the main purposes to be pursued in a corporation, as I said, it will be an unsatisfactory prelude to really getting down to the business of the company.

श्री विमलकुमार एम० चौरड़िया : आप ने कहा है कि "एब्सोल्यूट बार इज़ नाट जस्टिफ़ाइड" । क्या आप बता सकते हैं कि फ़िनांशल इंस्टीट्यूशन्ज़ के अलावा आप कौन कौन से अपवाद, एक्सेपशन्ज़, प्रस्तावित करना चाहेंगे ?

Shri N. A. Palkhivala: The financial institutions, the banking institutions should be completely outside the purview of its restriction. So far as other transfers unconnected with banks and financing institutions are concerned, there should be, as I said, at least the discretion given to the Company Law Administration to go into the facts and see whether there was the reasonable justification for the shares remaining on the blank transfer basis.

श्री विमलकुमार एम० चौरड़िया : आप ने क्लाज़ 46 के अन्तर्गत इन्टर-कम्पनी लोन्ज़ के बारे में बताया है कि कुछ कम्पनियों में गड़बड़ हो सकती है, इसलिए सब कम्पनियों के बारे में कानून बनाना ठीक नहीं है। विवियन बोस कमीशन की रिपोर्ट से पता चलता है कि वहां काफ़ी गड़बड़ है। इस बारे में आप का सुझाव क्या है कि इन्डिविडुयल कम्पनी भी गड़बड़ न कर पाये और जो कम्पनियां ठीक तरीके से काम कर रही हैं, उन को भी कष्ट न हो ?

Shri N. A. Palkhivala: If I might mention one very important thing, the Vivian Bose Commission and the Daphtary-Sastri Commission dealt with cases before the Company law was amended in 1960. I would ask Mr. Dutt, the head of the Company Law Administration to tell you if, after those amendments are there, any such mischiefs still continue. Actually, it would be wrong to think that those cases which happened earlier before the Company Law was amended are prevalent today and that those practices are possible today under the law. Actually, the law has been already made so stringent that the cases which came before the Vivian Bose Commission and the Daphtary-Sastri

Commission cannot possible arise except in a very exceptional circumstances. That is why, when you consider whether there are such mischiefs, there are such cases of loans, as require this type of legislation, you may please call for statistics to show you how many cases have actually arisen since 1960 which are talked about in the Vivian Bose Commission's Report and the Daphtary-Sastri Report. You will hardly find any such cases.

श्री विमलकुमार एम० चौरड़िया : आप के मेमोरेंडम के पृष्ठ 7 पर क्लाज़ 26 के बारे में दसवें आइटम पर यह कमेन्ट है :

The proposed sub-clause should be modified to provide for a time-limit for the return of the books and papers by the inspectors.

क्या आप बता सकते हैं कि आप की निगाह में क्या टाइम-लिमिट ठीक रहेगी ?

Shri N. A. Palkhivala: Actually, if you look in the public mind, one of the greatest grievances that I find as a practising lawyer is that various authorities today seize books but they are not returned for years. This applies to the Departments of Sales Tax, Income-Tax, Company Law Administration, etc. It is a matter for your consideration. Just as you do not want the public to be at the mercy of a few bad characters, do you want the public to be at the mercy of officials? For example, a couple of days ago I found a company's books had been seized and the company was not allowed to take notes and take copies—nothing could be done—because the power is there. Let there be some mode of redress to the citizens. After all, so far as the citizen is concerned against whom ultimately nothing may be found, today there is no remedy available to him. Let it be a reasonable time-limit, say, three months, or whatever it is, within which the Company Law Administration should return the books seized. Except for reasons to be approved by the head of the Department, there should be no further delay in returning the books. Let the top man apply his mind whether any more delay is necessary. In a few cases, you may find it necessary but in a large number of cases it is unnecessary.

श्री रामचन्द्र बिठ्ठल बड़े : आप ने कहा है कि विवियन बोस कमीशन और शास्त्री-दफ़तरी कमेटी के सामने नया लॉ नहीं था और उन्होंने जो इन्स्टेंसिज़ दिये हैं, वे पुराने लॉ के सम्बन्ध में दिये हैं । यह नहीं कहा जा सकता है कि उन के सामने नया लॉ नहीं था । उन की रिपोर्ट को देखने से प्रतीत होता है कि नये लॉ को दृष्टि में रखते हुए उन्होंने सुझाव दिये हैं । उन्होंने कहा है :

"However, the "vigilance" of the share-holders would ordinarily come into the picture when the company seeks to amend its objects clause...."

"....A provision should be made in the Act to the effect that a company shall not engage itself in any activities coming within the scope of clause (b) unless such activities are sanctioned by a special resolution of the company in general meeting.'

अगर नई कम्पनियों पर यह क्लाज़ लागू कर दिया जाये, तो आप को कोई आपत्ति नहीं होनी चाहिए । मैं भी इन्दौर से आता हूं । मैं जानता हूं कि कुछ कम्पनियों के मेमोरेंडम आफ़ एसोसियेशन में जो कुछ दिया गया है, वे उस से भिन्न धन्धा करती हैं । इस लूपहोल को प्लग करने के लिए आप का क्या सुझाव है ?

Shri N. A. Palkhivala: You gave an instance of a company carrying on its business even outside the scope of its Memorandum. Even under the existing law such a thing is prohibited. What I am pointing out is this. Not only in this country but in any other country in the world, there will be one section of the population which you will not be able to check and these anti-social activities will go on—

I hold no brief for them—and they have to be prosecuted and punished.

The only point is this. Has the mischief reached such proportions that the overwhelming majority of the people who are law-abiding should be put under greater and greater curbs and controls? You are quite right in reminding me that the Vivian Bose Commission's recommendations and the Daphtary-Sastri recommendations are all recommendations to the existing law. What I am pointing out is something different. Maybe, I did not make myself quite clear. It is true that the recommendations are to the existing law. But their recommendations flow from their consideration of cases which may be possible under the law as it stood when those anti-social practices were committed. In other words, it is not as if the attention of these learned members of the Commission was drawn to the fact, "Look, no doubt, all these are bad practices. But do you think under these existing restrictions, controls, which are there, it is possible to have such practices?".

Shri Khandubhai K. Desai: We got the Report only this year. They may have taken the existing law.

Shri N. A. Palkhivala: Actually, you will find that as a result of discussion and debate, certain things strike the human mind. If you sit by yourself in office, they may not strike you. No mind is universal so that it can look to all the practical consequences. Every court has arguments on both sides. If the judge were to write judgment in his chamber without hearing either party, there will be a difference in the judgment. There is a difference between the judgment and the Commission's Report.

श्री रामचन्द्र बिठ्ठल बड़े : क्लाज़ 15 के बारे में आप ने कहा है कि इस में टाइम लिमिट नहीं होनी चाहिए, क्योंकि गांवों में—और शहरों में भी—कानून मालूम न होने से असुविधा होगी । हम ने यह प्राविज़न रखा है कि यदि बाइयर कोर्ट या रजिस्ट्रार को इन्फ़ार्म कर के सेटिसफ़ेक्टरी ग्राउन्ड्ज़ बता देगा कि उस को मालूम नहीं था, तो टाइम एक्सटेंड हो सकता है । क्या यह क्लाज़ लागू कर देने से आप का समाधान हो जायेगा ?

Shri N. A. Palkhivala: The only thing is that you would not take account of other cases where the reasons for the blank transfer are not ignorance of the law but some equally valid and cogent reasons. My submission is to leave the power to the Government to have the intimation given to the Government, applying its mind at a high level as to what is the reason and then coming to a decision. Keep the power within yourself to direct the company to effect the transfer.

श्री रामचन्द्र बिठ्ठल बड़े : अगर इसको इस तरह रख दिया जाये तब तो आप को आपत्ति नहीं होगी :

If the buyers fail to get the same transferred within a prescribed time, the court or the Registrar may extend the period of time if reasonable and satisfactory cause is shown.

मेरा दूसरा कहना है कि आप को ट्रस्टीज़ के बारे में क्या करना है । ट्रस्टीज़ अपना नाम तो लिखते नहीं हैं और अगर ट्रस्टीज़ ट्रांस्फर करें तो आप को क्या करना है ?

Shri N. A. Palkhivala: I follow the question. It would have to be considered at what level you would like to have it done; if the drift would be the time-limit or the drift is what is required if the intimation is given to the Government and then it is left to the Government to decide to direct the company to transfer it or not.

Under the law of trust, if a trustee buys shares, he is bound to transfer it in his own name if he wants to

transfer it. It is a breach of trust for a trustee to allow the shares to remain blank. The existing law relating to trustees is adequate protection for the beneficiaries because the trustee is compelled to get the property transferred. That is one of his express, statutory duties.

Shri G. N. Dixit: I am referring to page 4 of your memorandum, at the bottom. I presume you would have looked into the Daphtar Commission's opinion and you are also aware that the Home Ministry is prosecuting the alleged wrong-doers. You say, while opposing clauses 5 and 15 that the remedy for the misdeeds pointed out by the Commission "does not lie in adding to the already numerous strait-jackets and fetters placed on the company and the management," but that it lies elsewhere, namely, the rigorous prosecution of the wrong-doers. I think you are aware that the Home Ministry is prosecuting the alleged wrong-doers. What civil action would you suggest for the refund of alleged loans to the tune of Rs. 260 lakhs to the investing public?

Shri N. A. Palkhivala: Under the existing law, even apart from the language of any amendments that are on the anvil today, every director is jointly and severally liable to make good to the company the losses which have been incurred as a result of what is called misfeasance, malfeasance and non-feasance. That is the civil liability, to make good to the company all the losses incurred.

Shri G. N. Dixit: Probably you are also aware that the Daphtari-Bose Commission feels that there are the latches about limitation and expiry of time. Have you looked into them?

Shri N. A. Palkhivala: I have not applied my mind to the effect of these things, and how far the law requires to be changed and as to whether on the facts of that particular case the civil action is maintainable and so on.

Shri G. N. Dixit: You feel that civil action is called for?

Shri N. A. Palkhivala: I have **not** applied my mind to that very particular case. So, I cannot say.

Shri R. P. Sinha: It was not only instructive but also a treat to listen to the evidence given by the learned witness . . .

Shri N. A. Palkhivala: Thank you, Sir.

Shri R. P. Sinha: . . but I would like to know one point from him. He has been talking about clauses pertaining to this memorandum which are clauses 5 and 15 and also about the inter-corporate loans—clause 46. You are aware of the provocations for these amendments. I would like to know whether it is now possible not only in view of the existing provisions of the Companies Act but also in view of the other powers which the Government have acquired, for such acts being committed as were revealed by the Vivian Bose Commission. For instance, the Dalmia-Jain Airways, where the surplus funds raised for the purpose of aviation industry were diverted to motor vehicles. Is it possible for such a thing to recur under the various statutes that are in existence? Similarly, they took away some of the moneys from the limited companies for which they raised funds and diverted them to the DCM and the money was lost. If the Government and the company law administration are vigilant, is it possible to see that such frauds are not committed again?

Shri N. A. Palkhivala: It is undoubtedly possible under the existing law to see to it that such frauds are not committed.

Shri R. P. Sinha: Will you kindly explain it to us, because that is the only thing under which we are labouring, and so to say; if that is cleared, then, if it is possible, we can very candidly say that there is no point in pursuing this amending legislation further.

Shri N. A. Palkhivala: Under the existing law, as it stands, once you have the connection of the same management or same group or other types of nexus of a common director or partnership in which your director is interested as a partner or a relative or managing agent or associate is interested, loans to such concerns are today restricted by clauses 295, 369 and 370. In some cases, permission of the Government is necessary and in other cases, permission of the shareholders by a special resolution is necessary. If you want to make these provisions even more stringent in the sense that you want, in case various other practices are indulged, one aspect has to be borne in mind. We are not against any provision which will hit only the dishonest. Suppose you want to give powers to the registrar to prevent such actions being committed. The only point is, here are provisions which are applied to everybody. Suppose the power was given to the registrar to approach the court in any case where he is satisfied that a loan or deposit or any other transaction between two companies is not in the interests of any one of the companies, every honest company is very happy, because surely the registrar will never exercise such powers in case where it is beneficial to both the compaines. To give powers to the registrar to move an appropriate court or authority or even take administative action in case where it is justified, where there is malpractice and deliberate detriment to the shareholders of one company for the benefit of the other, that is one thing. To take these types of blanket restrictions for everybody is completely a different thing. What is happening is this: take these pieces of legislation where there is blanket restriction on everybody. Take all the cases, even private companies included, where there is no public interest at all. There may be two family concerns: if one wants to give money to the other, there is no public interest whatsoever. Nobody has put in a rupee and yet two companies are prevented from making a loan. To give power to a public authority to move the court to issue administrative direction to prevent malpractices is one thing. To prevent all companies from making loans or deposits is completely different. That is what is sought to be achieved by clause 46.

Shri R. P. Sinha: What concrete suggestions would you make and how are we to incorporate that aspect into the law? Could you give us your suggestions so that the Chairman of this Committee could circulate them to all the Members for consideration?

Shri N. A. Palkhivala: I will be glad to do it.

Shri R. P. Sinha: You have not explained the point with regard to clause 5 and clause 15. Is it possible under the existing laws to prevent a case like the DJ Airways happening again: diverting all the moneys for the Jeep and other things? Is it possible, under the existing laws like the Industries (Development and Regulation) Act or the Industries Act or the Companies Act, to prevent such a thing happening?

Shri N. A. Palkhivala: Yes. The Controller of Capital Issues will give his sanction after being satisfied that the funds which are sought to be raised are to be used for the purpose. He can make it a condition.

Shri R. P. Sinha: Was it not there before 1956?

Shri N. A. Palkhivala: I will not be able to say that off-hand. But today there is no doubt that the Controller of Capital Issues, the persons in charge of the Industrial Development and Regulation Act, the licensing authorities and others have all full power to say that they are giving the licence or sanction to raise capital on the strict condition that it will be used for the same purpose.

Shri R. P. Sinha: Kindly make a study of this, if possible, and submit us a note.

Shri N. A. Palkhivala: I will do that.

Prof. Mukut Behari Lal: So far as the main purpose is concerned the promoters of the company may be free to start any business, but if they wish to do anything else that may form part of the Memorandum and for that a special resolution may be necessary.

Shri N. A. Palkhivala: In other words, what the hon. Member suggests is that for class A, which is the main purpose at the inception of the company, no special resolution is necessary but for class B, which is additional business, a special resolution is necessary. If that were the provision, of course, it would have taken the real sting out of clause 15, because really at the inception all this arises. The only difficulty is this that it is not enough for a company to say that these are the main purposes. But the point is, the view of the Company Law Administration which approves the Memorandum and Articles seldom coincides. You have a lot of discussion and debate as to whether all the purposes can be done simultaneously. Since you have this bifurcation in clause 5 you invite dispute on the very threshold of the company's existence.

Prof. Mukut Behari Lal: I think that will be very necessary. The Company Law Administration should have a clear idea as to what for a company is being floated. Even if it takes time it should be settled before the promoters are allowed to go to the market for shares and start their business. If they wish to start a new business, then the shareholders of the company should be in a position to decide, of course in consultation or with the approval of the Company Law Administration, whether it would be proper to start a new business or not.

Shri N. A. Palkhivala: If the hon. Members feel that some kind of a check is needed on the starting of new business, clause 15 may be modified in two ways. Firstly, it should not apply to the main objects which the company declare right in its prospectus at its very inception. In other words, it should be restricted only to class B, which is new business. But then it should be done by an ordinary resolution and it should not require a special resolution. A special resolution if insisted for a case like that, in companies where there are conflicting interests, as there are nowadays in some of the new companies floated, it would be in some respects detrimental to the interests of the majority. Supposing 73 per cent want the new business and 23 per cent are against it, those 73 per cent are deprived of the right to carry on the new business.

Prof. Mukut Behari Lal: As far as old companies are concerned we may say that the business that are being carried on at present by them will stand and no new confirmation by the shareholders or the Company Law Administration is required. But if they start any new business a special resolution or an ordinary resolution by the shareholders may be necessary. This will obviate the modification of the Memorandum and it will meet the needs and intentions of the law.

Shri N. A. Palkhivala: As I said, if the idea is that any new business in addition to the existing business of the company should be approved by the shareholders, then it should be by an ordinary resolution so that at least 70 per cent who want the new business may have the benefit of it.

Shri R. P. Sinha: The learned witness has made out a point about the Advisory Commission. He has advanced one reason that the Government gave an assurance that it will be on a permanent basis. Apart from this reason, what are the other reasons why we should retain this Commission. It is being provided that an Advisory Committee be formed. Would he tell us whether the work that is today being done by the Commission cannot

be done to his satisfaction or to the satisfaction of the corporate sector by this Committee? May we also know whether the existing Commission has been doing good work or bad work, useful work or useless work, whether their recommendations have been accepted by the Government or turned down by the Government and whether their recommendations have been in line with the views of the advanced thinking of public management and public corporate sector?

Shri N. A. Palkhivala: So far as the first question is concerned, as to what is the justification on principle, apart from the assurance of permanent status given earlier, for continuing the Advisory Commission, the justification lies in the great necessity for having some statutory body of a certain status and standing which commands the mutual trust both of the Government and of the corporate sector and which will be able to point out to the Administration what are the practical difficulties of the honest citizen which in its turn would be able to convey the message of the Government, to the citizen. Therefore, it was a kind of liaison body which acted as the public relations body as between the Government and the people. It was in 1956 that we made the most drastic changes in the Company Law. The idea was that the people may not feel that there is this enormous gulf between them and the administration.

The second question was as to why the work of this Commission cannot be done by the Committee. There are five sections in the Act—411, 412, 413, 414 and 415—which deal with this Advisory Commission. There are detailed provisions as to what the Commission has to do, what are the matters to be referred to it, on what matters the Government can seek its advice, what is its constitution etc. There are detailed provisions giving a certain status to the Commission and making it obligatory on the part of Government to refer certain questions to them. There are powers and functions well set out. Everybody knows what their functions are. All those things are now sought to be done away with. Instead of those five sections there is only one line which says that the Government may appoint if they choose a Committee. What that Committee is to do nobody knows. Its powers and functions are also not defined. In this way this committee will be practically useless. You may as well not have the committee at all. It is just a colourless kind of body which will perhaps be completely forgotten even if it ever comes into existence.

The third question is whether the commission has done good work. I would say that when the commission was first formed outstanding men in the business world were appointed in it. Though I would not like to mention names, they were people in whom the Government and the public had confidence and the commission did work admirably well. If in later years the work has not been of that standing, of that level, I could not say where the mistake lies. If it is a fact that you have not made use of the commission as you ought to have or, may be, the personnel are different from what they were earlier, if you want to improve the position, you should appoint men of the highest calibre to the commission instead of abolishing the commission as such.

Shri R. P. Sinha: May I know whether in the past the recommendations of the commission have been accepted or rejected in most of the cases?

Shri N. A. Palkhivala: In the beginning I know it for a fact that several recommendations had been accepted. I have no idea of the recommendations of the commission for the last four or five years. In the beginning various recommendations of the commission were accepted by government.

Shri N. Sri Rama Reddy: I would like to have your comments on the effect of this legislation on the general capital market. Is it going to be shy or buoyant or the same as now?

Chairman: We are not concerned with that aspect here.

Shri N. A. Palkhivala: I can only say that these provisions are not likely to inspire more confidence in the corporate sector. In other words, if the idea is to save the citizen, this type of restriction does not seem to do the right sort of job.

Shri Dahyabhai V. Patel: I have got the impression from the witness that he feels that the last amendment to the Companies Act was made in view of the recommendations of the Vivian Bose Commission. He also feels that the changes made during the last amendment were sufficiently comprehensive, that many of the provisions of the present Act would be really unnecessary just for the purpose of safeguarding what the Government, Parliament or the ordinary citizen wants. Is that a correct impression or do you think there are certain features of this Bill which are necessary today?

Shri N. A. Palkhivala: I think one feature is necessary, namely, preventing people from buying shares in fictitious names. It is very necessary and nobody can have any cavil or quarrel with it. But the other features I do not think are really necessary at the present juncture. We do not give a fair trial to one law. We pass them with deliberation and care and yet within a few months the law gets unsettled. Let us give a fair trial to the law as it stands today. Perhaps two years would be a reasonable period for the laws you have passed last year.

Seth Achal Singh: In the last page of your memorandum you have stated that:

'For the words "any court, tribunal or other authority", substitute the words "any authority other than a court or tribunal".'

What is the object?

Shri N. A. Palkhivala: This refers to clause 58 by which a new section is sought to be introduced in the Act. What is sought to be done is this. Government wants to acquire the power to refuse to divulge even to a court of law the information which the government had received on the basis of which a citizen may have been proceeded against. It is a very extraordinary provision. You can very well say "do not divulge it to a private party" because a private party may victimise the informant and naturally you would like to protect the informant. But to say that even the court will not look at it is to put this information on a higher footing than matters of States because even in matters of State the Evidence Act provides that the court may privately look at the document just to satisfy itself that the public authority has acted honestly. Now, as the clause is drafted, even the court of law cannot look at it leave aside the party. Our suggestion, therefore, is when it goes to the lower authorities or tribunals, you may say "I will keep the information confidential" but once it goes to the court of law, let us pay that much respect to the court, to enable the court to ask the Company Law Administration "let me have my own personal satisfaction by having a look at it" so that I am satisfied that you have acted fairly". In other words, our proposal is not to shut out courts from looking into such information which the Company Law Administration might have in its possession. Let that be disclosed to the court. If the citizen has at least one safeguard that the court is satisfied in its conscience that there was good material on which action was taken it will go a long way in allaying the fears of the people.

Seth Achal Singh: What do you mean by 'any authority'?

Shri N. A. Palkhivala: I meant the various authorities like the Registrar, the tribunal, Company Law Board etc.

Shri N. Dandekar. On clause 5, in relation to the incorporation of new companies, I think your point is that ordinarily the division of the objects into "main objects", "ancillary objects" and "other objects" in itself is a neutral situation and would not present any difficulty. But when the memorandum goes to the Registrar he could make the whole thing impracticable in the sense he can go on arguing for months as to which are main objects and which are ancillary objects. So, on the other hand, supposing the practice was that whatever the promoters wanted to specify as "main objects", "ancillary objects" and "other objects", they would be accepted by the Registrar without any modification, you have no objection to that at all.

Shri N. A. Palkhivala: I am grateful to you for clarifying the point. If there is categorisation as main object and subsidiary or other object, the whole dispute with the Registrar on this point may go on easily for a year. The Company Law Administration may ask: is it feasible for him to pursue the main objects on incorporation. It is for the shareholders and the directors to decide what should be pursued as main objects of the company. We do not want an appellate tribunal over the decision of the shareholders or the board of directors in the form of the Company Law Administration to decide what should be the main objects to be pursued and whether some are main or ancillary objects.

Chairman: Thank you, Shri Palkhivala.

Shri N. A. Palkhivala: I am grateful to the Committee for giving me this opportunity to present our case.

(The witnesses then withdrew)

II. The Chartered Institute of Secretaries India Association, Calcutta

Spokesmen:

1. Shri B. G. Pearson
2. Shri S. K. Basu.

(Witnesses were called in and they took their seats)

Chairman: Gentlemen, the evidence that you give before the Committee is liable to be printed and distributed to Members as also to be published in the newspapers. If you want any portion to be confidential, even that will be printed and distributed to Members of Parliament.

The memorandum that you have submitted has been circulated to Members. If you want to stress any particular point or if you want to make out any new point, you may please do so.

Shri B. G. Pearson: I think, we tried to make our memorandum quite clear and we are prepared to answer any questions if any hon. Member has any.

Shri Vimalkumar M. Chordia: Regarding clause 24 you say that the form of report and cost audit should be so prescribed as to provide adequate safeguards against the possibility of disclosure of information of a confidential character. Will you suggest the safeguards that should be incorporated in the Act itself and what form should be prescribed?

Shri B. G. Pearson: I apologise that we did not think that it was really up to us to suggest the actual wording. We only wished to make the point that if detailed figures are disclosed, they are very definitely confidential information. If the form of report of cost audit is similar to the ordinary auditor's report, which simply says that the accounts as drawn up are correct, that would be quite satisfactory. But it is not clear to us from the Bill. If the actual figures of cost audit are disclosed,

they would be confidential information because they might be of vital importance to competitors. I do not know if that answers the point.

Shri Vimalkumar M. Chordia: Will you give some form afterwards and some suggestions?

Shri B. G. Pearson: Yes, with pleasure. May I suggest, in that case we send in a further written note on that point?

Chairman: Yes.

Shri N. Dandeker: I have only one question to ask about clause 15. It says in clause 15 that a special resolution would be required even for the commencement of business according to the main objects of the company and that where a company which already exists wishes to embark upon any of its other objects, again a special resolution would be necessary. What it implies is that 26 per cent of the shareholders can hold up the company's progress completely. Have you considered this point?

Shri B. G. Pearson: I must admit that we have not considered that particular point. I think, that is a very valid point.

Shri Era Sezhiyan: Regarding clause 46 your memorandum says:—

> "The drafting of the clause may be suitably amended so as to give lending powers within prescribed limits to the directors and to require ordinary resolution for investment beyond the said limits."

Have you thought about the limit? Can you give an idea as to up to what limit can we authorise the Directors, without a special resolution, to advance money to other companies?

Shri B. G. Pearson: Our suggestion is that the wording should be brought into line with section 372. That is stated to be the intention. In the Notes on Clauses it states that the intention is to bring it in line with section 372.

Prof. Mukut Behari Lal: It has been said by some witnesses that the system of blank transfers is an integral part of the stock exchange mechanism while it has also been mentioned that the system of blank transfers does not prevail in the United Kingdom. If the system does not prevail in the United Kingdom, will it not be possible to abolish this system in India without adversely affecting the mechanism of the stock exchange? Are there some inherent difficulties in India?

Shri B. G. Pearson: We represent a body of Chartered Secretaries who are concerned with the administration of this Act and our function is to point out our difficulties in the administration of the Act itself. We are not concerned with the working of the actual stock exchange and I would prefer not to comment on that. I do not feel competent to answer that question.

May we go on to any other point?

Chairman: If you want to say anything else, you may.

Shri B. G. Pearson: There is one other point which we would like to raise and that is that the Finance Minister recently stated in Parliament that the income from filing fees is greater than the expenditure. It was in answer to a question in Parliament. The question was whether the filing fee realised from companies exceeded the expenditure incurred on the Department of Company Law Administration and the answer was: "Yes; the excess money goes into General Revenues". It is, I think, perhaps for consideration whether the fees could be reduced.

Following on from that we have another suggestion, that is, to make a consolidated annual filing fee based on the paid-up capital of companies, so as not to have a separate filing fee for every single document submitted. We would suggest it might be possible for the Department to work out the expenditure and have a consolidated annual filing fee which might

be submitted with the annual return and thus eliminate the filing fee for every single document.

Shri B. R. Bhagat: What about having the system of stamps? Instead of submitting filing fees, you may buy stamps which would facilitate your work.

Shri B. G. Pearson: Buying stamps will not actually facilitate the work. I would prefer to give a filing fee on each document than to buy stamps for each document. My suggestion is, if we pay filing fee per year, that will facilitate our work.

Shri B. R. Bhagat: That is prevalent in U.K. What is your expe-rience there?

An Hon. Member: A bit louder.

Shri B. R. Bhagat: The point made by the witness was that paying filing fee for each one of the documents submitted is very irksome and they suggested that there should be one consolidated fee per year based on the annual return. I suggested that instead of that we may have the stamp system which is prevalent in U.K. Under that system, instead of tendering fee for each document, they can buy stamps and affix them. I asked him whether that will facilitate them. His reply is that it will not facilitate them.

Shri B. G. Pearson: I would re-peat that the payment of one fee per year instead of a fee for every document would facilitate the work very greatly.

Chairman: Thank you.

Shri B. G. Pearson: Thank you, Sir.

(The witnesses then withdrew)

(The Committee then adjourned.)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (SECOND AMENDMENT) BILL, 1964

Tuesday, the 2nd February, 1965 at 15·00 hours.

PRESENT

Shri S. V. Krishnamoorthy Rao—*Chairman.*

MEMBERS

Lok Sabha

2. Shri A. Shanker Alva
3. Shri Ramchandra Vithal Bade
4. Shri Bali Ram Bhagat
5. Shri Dinen Bhattacharya
6. Shri N. C. Chatterjee
7. Shri Sachindra Chaudhuri
8. Shri N. Dandeker
9. Shri Bhaskar Narayan Dighe
10. Shri G. N. Dixit
11. Shri Gajraj Singh Rao
12. Shri Prabhu Dayal Himatsingka
13. Shri Cherian J. Kappen
14. Shri R. N. Yadav Lonikar
15. Shri Ghanshyamlal Oza
16. Shri Shivram Rango Rane
17. Shri J. Ramapathi Rao
18. Shri Digvijaya Narain Singh
19. Shri Sivamurthi Swami
20. Shri Radhelal Vyas
21. Shri K. K. Warior
22. Shri Nagendra Prasad Yadav
23. Shri T. T. Krishnamachari.

Rajya Sabha

24. Shri Liladhar Asthana
25. Shri Mohan Singh
26. Shri Babubhai M. Chinai
27. Shri Vimalkumar M. Chordia
28. Shri Khandubhai K. Desai
29. Shri Suresh J. Desai
30. Shrimati Shyam Kumari Khan
31. Shri Dahyabhai V. Patel
32. Shri Awadheshwar Prasad Sinha
33. Shri Rajendra Pratap Sinha
34. Shri Hira Vallabha Tripathi
35. Shri Ramesh Chandra Vyas.

DRAFTSMEN

1. Shri S. P. Sen Varma, *Special Secretary, Legislative Department, Ministry of Law.*
2. Shri G. R. Bal, *Joint Secretary and Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY

1. Shri R. C. Dutt, *Secretary, Ministry of Finance, Department of Company Law and Insurance.*
2. Shri B. M. Mitra, *Joint Secretary, Ministry of Finance, Department of Company Law and Insurance.*
3. Shri B. P. Roy, *Secretary, Company Law Board, Department of Company Law and Insurance.*

SECRETARIAT

Shri B. B. Tewari—*Deputy Secretary.*

WITNESSES EXAMINED

The Institute of Cost and Works Accountants of India, Calcutta

1. Shri V. K. Srinivasan
2. Shri J. N. Bose
3. Shri N. K. Roy
4. Shri L. Swaminathan
5. Shri S. N. Ghose.

The Institute of Cost and Works Accountants of India, Calcutta

Spokesmen:

1. Shri V. K. Srinivasan
2. Shri J. N. Bose
3. Shri N. K. Roy
4. Shri L. Swaminathan
5. Shri S. N. Ghose.

(*Witnesses were called in and they took their seats*)

Chairman: Gentlemen, the evidence that you will be tendering here will be treated as public and is liable to be printed and circulated to all. Even if you feel that any part of your evidence should be treated as confidential, it will be printed and distributed to the Members of Parliament. We have received your memorandum and the same has been circulated to all Members. If you want to stress on any point or you wish to add anything, you may please do so.

Shri V. K. Srinivasan: We welcome this amendment to the Companies Act giving powers and extending the scope of cost accountants to audit all industrial organizations coming under Companies Act. We had raised two points—one is about clause 24 of the Bill.

"It contemplates empowering the Government to order audit of cost accounts in case of need. The Clause, in its present form, restricts the scope of cost audit only to companies where the Government considers it necessary. This will not achieve the desired objective as the bulk of the companies will then remain outside the purview of this clause. The Institute feels that to promote efficiency and to obtain a true and fair view of the state of affairs of each company, cost audit should be made compulsory, if not for all companies at the initial stage at least for companies whose capital and/or turnover exceeds certain minimum amount."

Clause 24 envisages "that audit of cost accounts under an order from the Government shall be conducted either by a Cost Accountant within the meaning of the Cost and Works

Accountants Act, 1959 or by such other persons as may possess prescribed qualifications. It is not understood what qualifications other than "costing" may be prescribed by the Government for the purpose of cost audit. The Institute's view in this regard is that no person other than a Cost Accountant is adequately qualified to conduct audit of cost accounts and any cost audit conducted by such other person will be inadequate. The Institute recommends, therefore, that the phrase "or such other person possessing prescribed qualifications" at the end of the proposed Section 233B(1) may be deleted."

Shri Suresh J. Desai: Clause 24, page 10, line 15 reads as follows:—

> "either a cost accountant within the meaning of the Cost and Works Accountants Act, 1959".

After this, if the words "Chartered Accountant as defined under the Chartered Accountants Act or such other person" are added. I think you won't object to that.

Shri V. K. Srinivasan: Section 2(2) of the Cost and Works Accountants Act, 1959, clearly indicates:

> "that a member shall be deemed 'to be in practice' when—
>
> (i) he engages himself in the practice of cost and works accountancy;
>
> (ii) he offers to perform or perform services involving the costing or pricing of goods or services or the preparation, verification or certification of cost accounting and related statements or holds himself out to the public as a Cost Accountant in practice; or
>
> (iii) he renders professional services or assistance in or about the matters of principles or detail relating to cost accounting procedure or the recording, presentation or certification of costing facts or data."

That being so, whether it is very valid to define by rule by bringing in the Chartered Accountants to do Cost Accounting as that will be going against the Parliament's earlier enactment in 1959, of bringing into existence the Cost and Works Accountants as a professional body.

Shri N. C. Chatterjee: May I ask a few questions? It seems that there is a paucity of qualified men to do cost accounting: You want to make cost audit compulsory. This would mean that Cost Accountants too should be entitled to do cost auditing. May I know how many members are there on your roll?

Shri V. K. Srinivasan: We have got about 1,000 members on our roll.

Shri N. C. Chatterjee: How many of them are qualified to be the Cost Accountants within the meaning of Sec. 2(2) of the Act, 1959?

Shri V. K. Srinivasan: If you compare this with the Chartered Accountant's Act, while here the cost accountants who are under the salaried employment, cannot issue a practising certificate, it is not so in the case of Chartered Accountants since such people should be entirely on practice.

So, if the Cost Accountants take to a monthly salaried job, they cannot issue a practising certificate under the Cost Accountants Act as such, the situation being that there is no statutory necessity or obligation for anybody to utilise the Cost Accountants for audit purposes. The Cost and Works Accountants Act, 1959 prevents us from practising cost accounting. Besides, the number of Cost Accountants in practice has been necessarily small and I have to admit that it is only about ten. But, if the Act comes into force, many of the senior members in our profession will

automatically leave their salaried jobs and go into the profession of practising. The number can be even more than 50 per cent of the existing members which will be 500; and there are about 500 qualified cost accountants who have not applied themselves. The admission to members is also very stringent. Those people are coming up. The number will increase. The Act visualises the introduction of cost accounting only to a few concerns. As it grows, the necessity for cost audit will increase. In the opinion of Parliament, the number will increase. Now the percentage is only seven per cent or ten per cent. The Council is worrying about this small percentage. We have introduced compulsory coaching system. The area where the failures may be due to want of proper assistance in preparing for examinations may be overcome and the percentage is bound to increase. There are four thousand candidates every year and now roughly about fifty persons pass in the final examination. Fifty people also include those whom we may call Ghazni Mohammads, who appear for any number of times. The candidates who appear for the first time may be very little. With the coaching system and better facilities for students to have proper training on the lines that the institute has demarcated we expect that the passes will be more. There may be increase in one or two years at the rate of 500 cost accountants every year.

Shri N. C. Chatterjee: How many sat for your annual examination last year?

Shri V. K. Srinivasan: 3500 including . . .

Shri N. C. Chatterjee: How many passed?

Shri V. K. Srinivasan: 52 passed. This is better than in the previous year.

Shri N. C. Chatterjee: If we accept your suggestion that in the case of companies whose turn-over exceed certain minimum amount they should have compulsory cost accounting how many can you requisition for this purpose?

Shri V. K. Srinivasan: There will be at least 300 to 500.

Shri N. C. Chatterjee: Can you give any concrete idea of what would be the minimum amount prescribed?

Shri V. K. Srinivasan: We have not made up our mind. There should be capital involved of at least Rs. 20 lakhs and an income of at least one lakh and then a turn-over of at least Rs. 10 to 20 lakhs.

Shri N. C. Chatterjee: You suggested that it should be compulsory in the case of companies whose capital has come to certain figure. What is the capital you are suggesting?

Shri V. K. Srinivasan: I referred to that, 20 lakhs, minimum.

Shri N. C. Chatterjee: We were told by competent men who appeared before us that chartered accountants are competent to undertake the task. What is your view?

Shri V. K. Srinivasan: I have no quarrel with chartered accountants. I don't want to enter into a quarrel, because, as an accountant, whether a cost accountant or any other accountant, we respect our profession. Therefore, I want to submit that in the opinion of Parliament the Act would not have been passed if they could have done those duties relating to costing.

Shri N. C. Chatterjee: It is a very specialised field which requires special technical knowledge.

Shri V. K. Srinivasan: Yes. We go a step further. They study the field of engineering beyond and above the requirements of accounting. They study elements of engineering in the intermediate course. The candidates,

before they become members, have to have undergone at least 3 years' service in a proper accounting office attached to a productive organisation. We had submitted, and we also submit now, that this is a specialised field within a wider field of Accountancy.

Shri N. C. Chatterjee: You object to the last words "Or such other persons possessing the prescribed qualifications". Suppose it is prescribed that the requisite qualification should be upto the standard. Do you object to that?

Shri V. K. Srinivasan: We have no objection. We for one should not object to anything that the Government feels is the right thing to do. This has not been brought in our amendment at our initiative.

Shri N. C. Chatterjee: One more question. Was the 1959 Act sponsored at your instance?

Shri V. K. Srinivasan: I cannot say. We were formed into this organisation in the year 1946 under the Societies Act of 1944. The organisation came into existence in 1946. That was because the English Institute of Cost and Works Accountants, due to war conditions, could not conduct this examination. There was scope for cost accounting in the field of manufacture and relating to defence accounts. The then Controller of Defence somehow got an initial grant from the Government and he brought in and collected a nucleus of cost accountants so that they may be available for costing work in connection with the industrial accounts of war factories. There was the necessity for that. In 1949, this was taken into consideration by the then Accountants' Board to introduce cost accounting as a subject like auditing. Due to obvious reasons and objections from other sources that was vetoed. Then came this question. I don't remember exactly, because I was in the Council somewhere from 1957 or so. I thought it came more because of the remarks by the Estimates Committee and the Tariff Board, that production accounts should be better maintained for various industries and Government factories. When it came to our view, we agreed to it and we were anxious to have Government recognition, and we did work for, and gave all the information necessary and did our best in regard to the regulation and maintenance of costing on the Statute-book. Then also there was lot of objection to the Act being promulgated. But it was passed.

Shri N. C. Chatterjee: We were told that most of the cost accountants have no audit experience.

Shri V. K. Srinivasan: I have to submit one thing. The question of audit is a fundamental feature. If there is no proper inspection and scrutiny of the evidence back at the transactions which go to build up the final cost of the material, then cost accounting would be of no value. Therefore, cost accounting and cost audit go hand in hand. Without the accuracy of evidence back at the transactions cost accounting has no value. The cost accountant has to go into all the facts and reach the final fact which should be non-controversial.

Shri Ghanshyam Lal Oza: Under the present state of affairs you accept the position that there is dearth of qualified persons who can carry out the cost accounting work. Whatever you say about near future is only a probability. In the meantime if such of the chartered accountants as possessing necessary qualifications prescribed by the law are also allowed to do this job, don't you think that this problem of shortage of cost accountants can be overcome?

Shri V. K. Srinivasan: There are two things. The point raised is about the absence of certain number of cost accountants. In regard to that I should say that after the last war was over many of the cost accountants were released from war factories. Then I thought that there

would be a great slump in the profession. But Government went in for introducing industrial evolution and started many factories which has resulted in this present scarcity of cost accountants. Powerless as we are to increase the number each one of us is worried with one's own job. Now during the last two or three years we have been taking steps to meet the requirements of the profession. The other point raised was about other professions coming in. We do not like that idea. I should say that it is the opinion of the bulk of the members. If they are allowed to do this job, the specialised nature of the function of the cost accountants will be watered down and that will at least affect adversely the efficiency of the costing.

Shri Ramachandra Vithal Bade: I want to put one question. I have received a memorandum from the Secretary of the Institute of Chartered Accountants, New Delhi. In that memorandum it is said: that instead of cost accounting, there should be internal audit or performance audit which is done in foreign countries also. The memorandum says:

> "Internal audit would be at one complementary to the statutory audit and purposeful and positive as respects improving operational efficiency".

If this system is followed the problem of dearth of cost accountants which you are facing today will also be overcome. Internal audit serves all the purposes because after all rules will be provided by the Government as to how many companies should be audited and so on. What is your opinion?

Shri V. K. Srinivasan: This internal audit is already there to some extent. Just as costing is a specialised subject, internal auditor also should have a basic qualification of specialisation in a particular subject. Secondly, this cost audit as envisaged by the Bill is different from internal audit because internal audit is entirely internal. There is lot of difference between internal audit and external audit. I do not think it can satisfy or fulfil the purpose for which Parliament and Government have passed the law.

Shri Ramchandra Vithal Bade: What will be the factors of internal audit? According to this memorandum:

> "An internal auditor, on the other hand, can select weak functional areas in the organisational set-up of the company and examine transactions in greater depth with a view to focussing attention on inadequate performance, on non-adherence to company policies and procedures, and on opportunities for profit improvement. The internal audit can thus report on excessive and idle stocks in the inventory, on lack of follow-up and vigour in collection of debts, on loss of sales owing to delay in effecting deliveries on loss of production through defective scheduling, or through inadequate planning of purchases etc."

All these come under internal audit.

Shri V. K. Srinivasan: It sounds all right so far as it goes. But still, if Government have thought it fit to introduce something new, I need not comment on that.

Shri Vimalkumar M. Chordia: I will refer you to page 3 of the second memorandum where you have said as follows:

> "Maintenance of proper cost records: To enable cost audit, proper records of production are not only required to be maintained, but should be maintained by only qualified cost accountants".

My question is this: Considering the number of companies in India, how many cost accountants, do you think, will be required to maintain the proper records?

Shri V. K. Srinivasan: Actual maintenance means two things. Just like in the case of a huge construction of a bridge or building or some other structure there is an engineer and there are workers, here also there will be a cost accountant and some clerical force. One cost accountant in each organisation will be sufficient. Government have already provided for maintenance of cost records under section 21. When those records are maintained, it is easy for one cost accountant to do the job. In some industries the cost accounting required may not be of a technical nature and therefore the cost accountants required to do the job there need not require any deep knowledge of costing. A final passed candidate who has gone through the thing may be in a position to do this job. For small organisations where there are not many technicalities, we have got about 20,000 students members who are studying costing and about 5,000 appear for examinations every year.

Shri Vimalkumar M. Chordia: I just wanted to know this much: How many cost accountants are required for maintaining proper records in all the companies?

Shri V. K. Srinivasan: That depends on the number of companies and the nature of the records.

Shri Vimalkumar M. Chordia: I thought that you would have studied this problem and found out as to how many cost accountants would be required for maintenance of proper records. Have you estimated the number required?

Shri V. K. Srinivasan: One cost accountant can audit the accounts of many companies just as one chartered accountant can audit many companies. Regarding maintenance of proper records, there should be at least one cost accountant in every organisation. A final qualified costing man can do this job for internal purposes. I have no definite statistics regarding the number of companies having productive or industrial organisations under their control. I should think that at least 10,000 people will be necessary, both fully and partially qualified. For immediate necessities, 1,000 cost accountants are more than enough.

Shri Vimalkumar M. Chordia: For both the purposes?

Shri V. K. Srinivasan: 10,000 for maintaining records, fully or partially qualified. 1,000 cost accountants will be more than necessary for cost auditing purpose. Even 300 will be more than enough if only a small number of industrial organisations have to be audited.

Shri Vimalkumar M. Chordia: You have suggested in your memorandum that cost auditing should be made compulsory. As it is, most of them are absorbed in companies which are required to maintain records. If we make the cost auditing compulsory, those cost accountants will leave their job and practise as cost accounting auditors. What will be the position of those companies where they are working? They are not in surplus there.

Shri V. K. Srinivasan: Their number is also increasing. There are also under-studies to the cost accountants in many cases already in employment. When once costing is laid down on proper footing and the procedures laid down, the maintenance does not take much original knowledge or expert cost accountancy. Further we have asked for a phased programme. The Institute feels that to promote efficiency and to obtain a true and fair view of the state of affairs of each company, cost audit should be made compulsory, if not for all companies at the initial stage, at least

for companies whose capital and|or turnover exceeds certain minimum amount. We want to go by steps. Then, we will be able to meet the situation.

Shri Vimalkumar M. Chordia: You say that 10,000 cost accountants are required for maintenance of records. At present, we have got only 1,000. If we make cost auditing compulsory, how this gap will be filled up?

Shri Ramchandra Vithal Bade: Are you going to make the examinations more lenient?

Shri V. K. Srinivasan: If we had done that, we would have had cost accountants more than necessary. We have 20,000 pupils on roll and 5,000 are appearing every year. If we make 50 per cent of them pass, we would have flooded the country with cost accountants. We have not done that because leniency will never be good in the long run and the profession will be brought into disgrace if that is followed. We have asked for a phased programme. As far as Government can move, we will also move forward. All these 10,000 pupils need not necessarily be fully qualified for internal purposes in managed companies or in partnerships or in individual companies.

Shri R. P. Sinha: Is a student, after he is awarded the diploma, given or to undergo any practical training and if so, what is the nature of training given to the students?

Shri V. K. Srinivasan: We have got a provision under the Act that there should be training under articles. Because the practice has not been made statutory, we are not enforcing it. If it is made statutory, then enforcement will come. At the present moment, practical training is restricted to working in plant and attached to companies for a period of 3 years —factory accounting experience.

Shri R. P. Sinha: Am I to understand that a student is given a diploma after he has served in some company as cost accountant for two or three years?

Shri V. K. Srinivasan: Three years. He should have passed intermediate and final examination; he also should have costing experience in all aspects of costing work for at least a period of three years. That is the requirement.

Shri R. P. Sinha: What is a person supposed to do when he is asked to do costing audit?

Shri V. K. Srinivasan: Just like any other audit. It is left to the individual circumstances and cases which come under the purview of audit. But shortly put, a proper assessment and appreciation of the material required and actually spent, labour involved, overheads distributed and the overall cost. To know that the material is spent on the prescribed job, he has to see whether all the material drawn for a specific job has been used for that purpose and no excess materials had been drawn and not returned on that job account. Similarly, he has to see that the material drawn for the job is not diverted to some other job, but the cost is borne on the original job. Therefore, it is a complicated thing. Of course, it is very difficult to understand. He has got to keep an open eye and see that materials are drawn against particular jobs and they are used against those jobs. There are standard estimates before the jobs are undertaken and proper assessment of the issues of the storekeeper. He has to see whether signing has been done at proper level and the man who has drawn it has also signed the receipt etc. He has to see whether issues are there on the basis of requirements of the job, which will, of course, vary from job to job, from organisation to organisation and also the technicalities of the case. If there are chemical industries there are still further differences and there will be more wastages and spoilages. In a chemical factory, because of absorption of moisture from air, the output will be greater in weight than the quantity of material supplied. This will vary

from industry to industry. Similar is the case for labour. Similar is the case for machinery utilisation. Then overhead expenses come. He has to see what are the expenses incurred in running and maintaining factory. He has also to see how it is allocated under different heads of activities.

Shri R. P. Sinha: From what you have said, it gives the impression that the work of cost auditing is a complicated one and one could discharge this duty only when he has got proper experience and background—I hope the witness will agree with me. A diploma holder from the Institute who is working in a factory as a cost accountant will not have the experience of cost auditing work. Will it be proper to ask such a person to do this auditing? In the case of a chartered accountant, he has to undergo training as an articled clerk for some years. Don't you think that you should also prescribe some minimum training in cost auditing work before a person is asked to take up this auditing work? Or do you think that a raw person, having worked for two years as an employee in a concern, will be fit enough to carry on this onerous duty?

Shri V. K. Srinivasan: In a way your question is right. The procedure that is adopted for admission of candidates is the passing of the intermediate and final examination. The low percentage of 5 to 10 per cent is not due to any lack of knowledge. We have mentioned in the memorandum or somewhere that about 500 candidates await admission to membership. That is due to the very stringent conditions laid on candidates before they are admitted to membership. Unless they are admitted to membership they cannot be called cost accountants; and they cannot be called raw hands when once they are admitted to membership after passing through all the stringent examinations and tests and the stringent requirements of at least three years' experience. The detailed experience has to be gone through, and he has to give two references. And the referees have to mention their views as to the effective experience of these persons and their costing experience and engineering knowledge. That is the reason.

Shri R. P. Sinha: I would like to understand this from you. In order to maintain the proper name and the efficiency of the Institute itself, don't you consider that it is imperative that the Institute should provide that a person who is called upon to do cost audit work should undergo a training under a practising cost auditor before he can undertake this job? Do you think that he can do this work without undergoing training as an articled clerk under a cost auditor who is a practising auditor?

Shri V. K. Srinivasan: I have already submitted to this Committee that while compiling cost accounts they go into the background of the transactions, and that involves sufficient knowledge before attempting the cost auditing, namely that the transactions are properly backed by the evidence of those transactions and utilisation of labour, machine, etc. or other experience. It is a wise idea that they should be given further training, if possible. All that will come, as already provided for in the Cost and Works Accountants Act, when there is a sufficient number of public practising cost accountants. In any profession, for instance even in England, when the chartered accountants came into the field, with or without qualifications they were practising: and I had read that some butchers were also practising as auditors! Likewise we are starting, but we are not so bad as that. All that will come automatically.

Shri N. Dandeker: I want to get into some focus from three points of view in the first place and then I will ask questions, so that you will know what my drift is and may not wander about the place.

In the first place my questions will be directed to ascertain whether you

think that cost audit, as distinct from just an audit of the proper maintenance of accounts, in a concern is possible at all in the state of affairs as they are now in India today. The total number of companies according to the statistics that we have is 20,000 public limited companies and 6,000 private limited companies. I do not know how many of them are engaged in production, processing, manufacturing and mining activities. But whatever they be, with your very wide experience, what would you say is the proportion of companies that maintain reasonably sophisticated cost accounts at all?

Shri V. K. Srinivasan: Even fifteen or twenty years back I have seen a printed matter that in England, a very advanced country, not even 20 per cent of the manufacturing concerns did have cost accountants on their rolls or maintained proper cost accounts. Therefore, in our country it would not even be 5 per cent that maintain proper cost accounts.

Shri N. Dandeker: In other words, in so far as the kind of companies to which we may apply outside audit are concerned, not more than 5 to 10 per cent maintain any kind of accounts that one might call cost accounts. Would you say that our objective should be directed more to encouraging, through the Institute of Cost and Works Accountants, a wider spread of the practice of maintaining cost accounts etc. before we impose an external cost audit upon utterly inadequate material?

Shri V. K. Srinivasan: That is for the Joint Committee and Parliament to decide.

Shri N. Dandeker: I want your opinion. You are here, and I appreciate that you are representing a very highly technical profession which profession is gradually building up. What I want to know is, do you think as a matter of public policy—I am not concerned with chartered accountants etc.—do you think as a matter of public policy our attention should be more directed towards developing, by whatever means may be available, a gradually increasing field of companies engaged in these particular fields which will maintain some kind of reasonable cost accounts, providing them with enough cost accountants, prodding them into maintaining such kind of accounts; or do you think that we can suddenly impose on them an external cost audit of the standard required of financial audit? Is it practicable?

Shri V. K. Srinivasan: I think—I am only expressing my view—the thing is, costing is already there, and what is referred to here, I understand, will relate to the bigger organisations, and at least the protected industries. Now, in the evolution of things as it has happened in India, the protected organisations which are permitted to import on a licence basis or in collaboration with foreign principals, they start some manufacture, and immediately the foreign imports are stopped; as a result of it their cost has an impact on the general public. When you support them so much, I feel that there should be a necessity that this Parliament may take into consideration—it is only as a loud thinking I am saying this, I cannot express any definite opinion as to what should be done or should not be done—when you give so much protection. when the general community also suffers, there should be insistence on the large-scale industries functioning with governmental support, to maintain proper cost accounts.

Shri N. Dandeker: I will start from the end. So you say that generally speaking, industries which are subject to price control, industries which are subject to tariff protection, only those which are in receipt of specific benefits at public expense need at this juncture be subjected to cost auditing. Is that so?

Shri V. K. Srinivasan: And public-sector organisations also, and in any

case a company whose capital, under the Companies Act, has investment by the general public and not by a few persons.

Shri N. Dandeker: Let us go back to the question of potential. Have I understood you correctly to mean that it is not likely to be more than 5 or 10 per cent of the companies engaged in the kind of things that referred to in this section that actually do have anything like cost accounts, and others do not have it? This section requires companies engaged in production, processing, manufacturing or mining activities compulsorily to have, not a cost accountant—that would be understandable by us—it is not merely that they must have a qualified cost accountant, it is not merely that they must have an internal cost audit system of some kind, but they must have an external cost audit subject to the kind of reports that this external audit would have to make. The provisions of sections 227 and 229—233 of the Companies Act would apply to this audit. That is the standard of the audit. Would you say there is material to be audited?

Shri V. K. Srinivasan: Surely, there is, in my opinion.

Shri N. Dandeker: From the point of view of a statutory report upon which the company's fate might hang?

Shri V. K. Srinivasan: My conviction is, unless there is some statutory necessity at least in the larger organisations to maintain cost accounts and provision of cost audit is there, it will not come automatically.

Shri N. Dandeker: I will be very grateful if you will answer my question. We all agree that large companies have cost accountants, they maintain cost accounts, and the large companies can be audited. That is all right. But this is not concerned with large companies, whatever the definition of that may be; this is concerned with companies engaged in production, manufacturing, processing or mining, that is to say companies by a class and not by name, company X or company Y. If it was a case of your proposing to have audit of a specific company in a particular notification named, that is another matter. Because, then I would agree with you very largely that it should be done in such and such companies which are having a proper cost accounting. But that is not the point here. The point here is not a particular company by name but a class of companies or industries engaged in production, processing, manufacturing or mining. I think you say that not more than 5 to 10 per cent of these maintain records worth talking about for this purpose.

Now, let me go on to another point. You have stated in your first note that until the Companies Act, 1913 even as regards financial audit, there was no such audit prescribed for companies. The 1913 Act prescribed financial audit as a rudimentary sort of financial accounts to be maintained. Then we came to the 1956 Act. Then of course, the requirements of Government have gone up very rigorously, and quite rightly. To reach the point at which under s. 209 there is prescribed a very detailed schedule of the form in which the profit and loss account has to be maintained and the form in which the balance sheet has to be maintained, it has taken a period of 50 years. What is it that you will be auditing except the new provision which says that companies in processing, production, manufacturing or mining activities will have to have this audit and will have to maintain material and consumption accounts, labour utilisation accounts and so on?

Shri V. K. Srinivasan: That is the beginning and from there it will grow; it is necessary in the interest of the organisation, the general public and the Government also as a

major entity in the sharing of the benefits of production or profits of the organisation. That position should be there.

Shri N. Dandeker: We are making a beginning in this Act, as we made a beginning in 1913 with regard to financial audit with some specified accounts to be maintained. Now, would you apply this to the sophisticated audit work that is envisaged in sections 227, 229—233, with rudimentary cost accounts records such as the ones suggested by maintaining consumption and labour statistics?

Shri V. K. Srinivasan: I would submit that from 1913 to 1946 or even 1950, our progress and other things were on a different footing as to speed and other things. Within the last few years, the speed and content of our progress in every sphere of activity is so phenomenal that unless we speed up this aspect also, we will be in a very poor and difficult situation.

Shri N. Dandeker: As against 40-50 years to reach a stage of sophisticated accounting, prescribing all the details as to profit and loss accounts and balance sheets in schedules, would you say it will take 10 years, 15 years or nothing at all in this respect?

Shri V. K. Srinivasan: All those details are not indicated in the Act. They have to be formulated and implemented by executive decisions and instructions. Cost accountants also have to lend their shoulders and press their service into the organisation. Without causing dissatisfaction or difficulty in any quarter. We are alive to our responsibilities. But having regard to the progress made in other directions and other aspect, Parliament and this Committee will have to see—this is my submission only—that something is done to speed up this aspect also.

Shri N. Dandeker: Would you speed it up, say, in one year?

Shri V. K. Srinivasan: There are several industries, huge ones, and several new huge industries coming up. This aspect should be speeded up in the matter of seeing that the money is properly spent and the activity of the organisations is useful to the community and the Government. This will be a check on their cost.

Shri N. Dandeker: I am talking of the generality of companies. Do you say we have reached a stage at which it is possible to impose a sophisticated costing audit without any cost accounts records?

Shri V. K. Srinivasan: The same thing as ordinary financial audit. There are merchants who simply say 'This I bought, this I sold and this is my profit'. So, also in industrial organisations. The necessity, the legal requirement, to maintain accounts, has to be slowly, gradually, persistently and gently induced into the organisation. That should be taken care of.

Shri N. Dandeker: That is precisely what I am suggesting, that it should be gently, persuasively, nicely done. Would you advocate doing it with a bang in one section of the Act? Or should it be done the way you suggest it should be done?

Shri V. K. Srinivasan: The bang will be intolerable, to those who give it and those who receive it.

Shri N. Dandeker: You have given an admirable summary of function of cost accounting and the kind of matters to which a cost accounts auditor would address himself to, inventory audit stocks audit, stores issue procedure audit, work in progress audit, capacity utilisation, overheads and indirect expenditure etc. How long do you think it would take to do that audit, say, for the Associated Cement Companies?

Shri V. K. Srinivasan: Need not be in every case. It has got to be continuous.

Shri N. Dandeker: That was my point—it has to be continuous. Here is an excelent argument for stating that many large companies must have continuous internal cost accounting audit. But as regards an external audit that comes once in a year, would you say that anybody can undertake this kind of audit that you have put down only on certain aspects when you are only concerned here with about 3-5 different aspects of costing? How long do you think to do this in the case of the Scindia Steam Navigation company?

Shri V. K. Srinivasan: That depends on the method in which the cost records are made available, internal audit and other things there. In every case the auditor has to decide the extent to which he has to spend time and energy on the basis of the material placed before him. Just as in the case of general audit, so also in the case of this audit.

We have mentioned here more or less things which are rather a litle idealistic. It may not be possible to adopt and apply that in every case; and that cannot be done immediately. It is a long process from here to there.

Shri N. Dandeker: In terms of the provision you have to give a report at the end of it, that the accounts of the company from the costing point of view represent a true and fair view of the affairs, how many companies do you think are there in regard to which you can give this certificate, if we make it compulsory now, as against encouraging, as you say, pushing if necessary, towards maintenance of proper costing systems.

Shri V. K. Srinivasan: We have said that the Act visualises—and our memorandum also indicates—that this should be reached in stages, not immediately, and not in all cases.

Shri N. Dandeker: That is the point. Have you read s. 227 and all the other relevant sections specified here as to the responsibility of the cost auditor?

Shri V. K. Srinivasan: Yes.

Shri N. Dandeker: Do you think that is practicable?

Shri V. K. Srinivasan: It should be practicable. I feel it is, to the extent to which it is humanly possible.

Shri N. Dandeker: You say it has got to be done in stages.

Shri V. K. Srinivasan: Introduction into an organisation in stages. The idealistic condition to which cost accounts must reach has to be brought about in stages, not one fine morning by transferring things into what is required.

Shri N. Dandeker: Exactly the point I was driving at. Given the minimum cost account requirements which it is now proposed to introduce under s. 209, what would be the appropriate external audit certification? Would it be that envisaged in s. 227 and so on and so forth or would it have to be, as you say, in stages, one by one?

Shri V. K. Srinivasan: A practising cost accountant will have his eye not on every aspect of cost records and cost audit, but with the material at his disposal he will do his best and advise the proprietory interests and also submit his version to the Government, where things are lacking. Just as in regard to maintenance of financial accounts has developed during these years, this also will develop.

Shri N. Dandeker: Do you envisage any difficulty in discharging the statutory responsibility of an external cost accounts auditor under the sections I have mentioned?

Shri V. K. Srinivasan: Material, labour statistics etc. can be fully gone through. In regard to overheads also,

in actual practice, certain things and aspects, especially in the public sector, which are items which should go into overheads are not now, I think, going into overheads. Therefore, this effort is necessary.

Shri N. Dandeker: There would be endless arguments as to how overheads have to be allocated.

Shri V. K. Srinivasan: The auditor's duty ends with the submission of his certificate to the proprietory interest or Government or others. As regards the arguments etc., that is another matter. But he has to do his best in the circumstances in which he is placed with reference to the records at his disposal.

Shri N. Dandeker: I wish to know whether he can discharge the statutory responsibility.

Shri V. K. Srinivasan: What is put for the final stage could not be done in all cases now; that will be a long development.

Shri N. Dandeker: I want to come to one another point the last one. The Institute of cost and work accountant is setting up standards of examination of trainees and so on. Who would be the most competent to say what standard of cost accounting should be accepted? Naturally, it would be the institute which should be consulted. But if you read the second part of section, it says 'in such manner as may be specified by order by the Central Government". Are you content with this? Is it the proper thing to do? That is to say, the standards are to be indicated in such manner as may be prescribed by the Central Government. If that be so, the medical profession man must do his job according to Health Ministry's dictates and engineers must do according to the other Ministry's dictation. Would it not be correct to say that the standard or the manner or type of cost accounting would, properly, be the function of the Institute?

Shri V. K. Srinivasan: I think that Government will be circumspect. To think of abstract grounds is rather difficult for me. I am not quite conversant with the functioning of the Health Ministry or their functions. The doctors are under the disciplinary control of their own organisation and some aspects are under the control of the Ministry of Health. To what extent it should be, is a matter which I cannot comprehend just now.

Shri N. Dandeker: There is no 'extent' it shall be conducted in such manner as may be specified in the order.

Shri V. K. Srinivasan: The manner is not specified now. When the order is issued and the manner is specified, if it is impossible for doing so, a submission will be made to the Government that they may revise the orders.

Shri N. Dandeker: Do I understand, in your opinion, Government is at least as competent as the Institute?

Shri V. K. Srinivasan: Government has also on its staff cost accountants and I hope they will be consulted or we will be consulted before the issue of such orders. We will make our submission when asked to do so. I do not meant any disrespect to anybody. What is to come is a matter which could not be foreseen at this stage.

Shri K. K. Warior: I wish to know whether this clause will encourage or not, the factories and processing industries to have cost audit.

Shri V. K. Srinivasan: The cost auditor will require certain records and if they are insufficient they will ask for them. In the first year the position may or may not be satisfactory. With the available information he will do what is necessary, duly circumspecting his report and indicating what has been done and what has not been done. Unless the cost accounts are maintained, audit of the cost accounts testifying to the

accuracy of the maintenance of accounts and the way in which it is maintained cannot be testified.

Shri K. K. Warior: We were told that some syllabus or some portions about cost accounting are included in the syllabus of chartered accountants and they were themselves capable or competent of doing this cost audit.

Shri V. K. Srinivasan: Costing and accounts do not always go hand in hand together. In some cases there is a system called the integrated system of accounts where, to the extent to which it is necessary from the pont of view of general auditing of accounts, cost accounts are included. But usually costing and financial accounting run on parallel lines. It is only the stock of the final product or work in progress is given by the work side and it is not generally submitted for the scrutiny of accounts. I have been in charge of such accounts also, and to some extent it may be possible. But in the vast majority of cases costing is separate from general and financial accounts. The general accounts must have a proper grip. One cannot know the correct position except to the extent to which the final position is indicated by those who are in charge of the production side.

Shri K. K. Warior: A fear was expressed here that the trade secrets which are sources of profit may be revealed by this audit and it may be given to competitors. What is your view about that?

Shri V. K. Srinivasan: Even as cost accountants or chartered accountants, we go from firm to firm. There is the professional conduct and we have to maintain the official secrecy of our employers and as auditors they become officers of the company under the company law. If they divulge secrets they will be liable for professional misconduct. Similarly, chartered accountants also have many secrets which they never divulge. So also, the accountant, when he is put in that position and given those powers, has got to maintain certain amount of official etiquette: otherwise lack of professional etiquette will be taken note by the Institute and proper action would be taken against him.

Shri K. K. Warior: Do you think that submission of the audit report to the registrar will be detrimental to the particular company?

Shri V. K. Srinivasan: It depends upon how the report is submitted. The report may be submitted to Government confidentially; the trade people need not know: it need not be made public, in some cases Auditors' reports are made where there are very grave inefficiency or other aspects of maintenance of accounts and if they are also published, that will go against concerned organisation. It is the same with cost audit reports.

Shri K. K. Warior: In your experience have you come across in U.K. or U.S.A. instances where there is cost accounting as also a parallel cost audit?

Shri V. K. Srinivasan: Cost accounting is there; cost audit is also referred to in several things which I have read. I think there is no formal enactment about cost audit in other countries. If in India it is thought to introduce such audit by this Parliament, they should have sound and reasonable grounds for doing so.

Shri N. Dandeker: If I may follow up that question I take it that there is no provision in any other country that you know of where an external audit, apart from whatever internal costing they may have, is compulsory by statute in the sense that a report has to be presented to the shareholders and so on?

Shri V. K. Srinivasan: To my knowledge, there is no such provision in the statute or regulations.

Shri N. Dandeker: Do you think that this fact that nowhere else, however sophisticated the countries may be, there is such provision for exeternal statutory cost auditing and the fact that only 10 to 15 per centn of companies in India maintain a proper set of cost accounts, lend point to the questions I put earlier that to insist upon external statutory cost auditing in this country is rather meaningless?

Shri V. K. Srinivasan: It cannot be meaningless. The conditions under which industries work in other countries may not be the same as conditions here. In other countries, Government gives a lot of assistance and there are a lot of public concerns; certain Government departments themselves may conduct the audit. I cannot answer this question, but to my knowledge there is no such provision in the enactments of other countries.

Chairman: Thank you.

Shri V. K. Srinivasan: Thank you, Sir.

The witnesses then withdrew.

The Committee then adjourned.

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