C.B. (II) No. 16

LOK SABHA

THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
May, 1955

COMPANIES BILL, 1953

1. Report of the Joint Committee on the Companies Bill, 1953 - Vol. I

2. Report of the Joint Committee on the Companies Bill, 1953 - Vol. II (MINUTES)

3. Joint Committee on the Companies Bill, 1953 (EVIDENCE)

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CORRIGENDA

to

EVIDENCE VOLUME TO THE REPORT OF THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953.

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(1) At page 9, left hand column, line 12 from bottom,

for "should ot be" read "should not be".

(2) At page 11, right hand column, line 8,

for "purchase" read "purchases".

(3) At page 11, right hand column, line 23 from bottom,

for "got" read "get".

(4) At page 15, left hand column, line 15,

for "say" read "says".

(5) At page 21, right hand column, line 22 from bottom,

for "There" read "These".

(6) At page 25, left hand column, line 8,

for "enligatement" read "enlightenment".

(7) At page 25, left hand column, line 9,

for "that" read "what".

(8) At page 27, right hand column, line 26,

for "or" read "of".

(9) At page 39, right hand column, line 4 from bottom,

for "workinf" read "working".

(10) At page 53, right hand column, line 1,

for "ies" read "is".

(11) At page 54, left hand column, line 20,

for "proper" read "public".

(12) At page 54, left hand column, line 2 from bottom,

for "being taken directly by the corpora-"
read "Pandit Upadhyay: You have made".

(13) At page 57, left hand column, line 6 from bottom,

for "Gurupadasyamy" read "Gurupadaswamy".

(14) At page 58, left hand column, line 1,

delete the word "[Shri Vasavada]".

(15) At page 59, right hand column, line 15 from bottom,

after the word "it" insert the word "in".

P.T.O.

(16) At page 61, line 4,

after "July," add "1954".

(17) At page 61, left hand column, line 5,

for "Venkatraman" read "Venkataraman".

(18) At page 61, right hand column, line 7,

for "Chowdari" read "Chowdary".

(19) At page 62, line 1,

for "OFFICES" read "OFFICERS".

(20) At page 63, right hand column, line 24,

for "36:9" read "36.9"

(21) At page 76, right hand column, line 1,

delete the words "/Shri Dube/".

(22) At page 83, left hand column, line 14,

for "aquire" read "acquire".

(23) At page 84, right hand column, line 21,

for "on" read "or".

(24) At page 84, right hand column, line 4 from bottom,

for "investigating" read "investigation".

(25) At page 87, right hand column, line 22,

for "malpratices" read "malpractices".

(26) At page 88, left hand column, line 16 from bottom,

for "dustrialsation" read "dustrialisation".

(27) At page 102, right hand column, line 16 from bottom,

for "ding" read "ing".

(28) At page 105, left hand column, line 5 from bottom,

for "Shri Maganlal: Yes" read "Pandit Upadhyay: You stick to the".

(29) At page 106, left hand column, line 8,

for "Moraka" read "Morarka".

(30) At page 119, right hand column, line 10, from bottom,

insert the whole line after the line 9 from bottom.

(31) At page 122, left hand column, line 23 from bottom,

for "equaliy" read "equally".

(32) At page 122, left hand column, line 7 from bottom,

for "dimissed" read "dismissed".

(33) At page 124, right hand column, line 19 from bottom,
for "gentlemen" read "gentleman".

(34) At page 127, left hand column, line 1 from bottom,
for "cient" read "ent".

(35) At page 128, left hand column, line 24 from bottom,
for "pepple" read "people".

(36) At page 129, right hand column, line 13,
for "no" read "on".

(37) At page 129, right hand column, line 14,
for "fidese" read "fides".

(38) At page 129, right hand column, line 12 from bottom,
for "Aticles" read "Articles".

(39) At page 134, left hand column, line 7,
for "trousands" read "thousands".

(40) At page 137, left hand column, line 2,
for "firm" read "limit".

(41) At page 145, right hand column, line 2 from bottom,
for "withdraw" read "withdrew".

(42) At page 157, left hand column, line 5 from bottom,
for "bena" read "bona".

(43) At page 163, right hand column, line 14 from bottom,
after the word "mind?" add "What".

(44) At page 181, right hand column, line 2 from bottom,
for "agriculturists" read "agriculturists".

(45) At page 184, left hand column, line 1,
delete the words "Shri Chairman".

(46) At page 190, right hand column, line 18,
for "Chambers" read "Chambers".

(47) At page 199, left hand column, line 24,
for "We are told you" read "In what type of".

(48) At page 207, left hand column, line 22,
for "in" read "it".

(49) At page 216, right hand column, line 16,
for "example" read "example".

P.T.O.

(50) At page 217, left hand column, line 20 from bottom, delete the word "simple".

(51) At page 219, left hand column, line 21 from bottom, for "gvien" read "given".

(52) At page 223, right hand column, line 24 from bottom, for "sugested" read "suggested".

(53) At page 223, right hand column, line 17 from bottom, for "wae" read "was".

(54) At page 237, left hand column, line 4, for "show-" read "chow-".

(55) At page 241, left hand column, line 24, for "exteremely" read "extremely"

(56) At page 276, left hand column, line 24, for "K.V. Dhage" read "V.K. Dhage".

(57) At page 277, right hand column, line 15, for "are" read "say".

(58) At page 278, left hand column, line 13, for "or" read "of".

WITNESSES EXAMINED

Names of Associations and their spokesmen	Date	PAGES
I. The Employers' Federation of India, Bombay . . .	2-7-54	2—18
Spokesman :		
Shri J. D. Choksi.		
II. The Associated Chambers of Commerce of India, Calcutta ..	2-7-54	18—23
Spokesmen :		
1. Shri G. M. Mackinlay.		
2. Shri G. A. S. Sim.		
3. Shri A. S. Officer.		
4. Shri Vaidyanath Aiyar.		
5. Shri K. M. Wilcox.		
6. Shri R. Adam Brown.		
7. Shri R. V. Fuller.		
8. Shri C. J. B. Palmer.		
III. The Indian National Trade Union Congress, New Delhi ..	3-7-54	23—60
Spokesmen :		
1. Shri S. R. Vasavada.		
2. Shri G. D. Ambedkar.		
3. Shri Deben Babu.		
4. Shri Sumant Desai.		
IV. The Bombay Shareholders' Association, Bombay .	5-7-54	62—105
Spokesmen :		
1. Shri Dhirajlal Maganlal.		
2. Shri H. T. Parekh.		
V. The Federation of Indian Chambers of Commerce and Industry, New Delhi	6-7-54 7-7-54 and 9-7-54	107—215
Spokesmen :		
1. Shri B. M. Birla.		
2. Shri Shanti Prasad Jain.		
3. Shri Shantilal Mangaldas.		
4. Shri P. D. Himatsingka.		

Minutes of Evidence taken before the Joint Committee on the Companies Bill, 1953.

Friday, the 2nd July, 1954 *at* 9 A.M.

PRESENT

Shri H. V. Pataskar—*Chairman.*

MEMBERS

LOK SABHA

Shri C. D. Deshmukh
Shri Chimanlal Chakubhai Shah
Shri Awadheshwar Prasad Sinha
Shri V. B. Gandhi
Shri Khandubhai Kasanji Desai
Shri Dev Kanta Borooah
Shri Shriman Narayan Agarwal
Shri R. Venkataraman
Shri Ghamandi Lal Bansal
Shri Radheshyam Ramkumar Morarka
Shri B. R. Bhagat
Shri Nityanand Kanungo
Shri Purnendu Sekhar Naskar
Shri T. S. Avinashilingam Chettiar
Shri K. T. Achuthan
Pandit Chatur Narain Malviya
Dr. Shaukatullah Shah Ansari
Shri Tekur Subrahmanyam
Shri Mulchand Dube
Pandit Munishwar Dutt Upadhyay
Shri Radhelal Vyas
Shri Ajit Singh
Shri Kamal Kumar Basu
Shri C. R. Chowdary
Shri M. S. Gurupadaswamy
Shri Amjad Ali
Shri N. C. Chatterjee
Shri Tridib Kumar Chaudhuri.

RAJYA SABHA

Dr. P. Subbarayan
Shri Shriyans Prasad Jain
Shri Somnath P. Dave
Dr. R. P. Dube
Shri Braja Kishore Prasad Sinha
Shri R. S. Doogar
Shri S. C. Karayalar
Shri Amolakh Chand
Shri M. C. Shah
Shri V. K. Dhage
Prof. G. Ranga
Shri B. C. Ghose.

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar, *Secretary, Ministry of Finance (Department of Economic Affairs).*

Shri K. V. Rajagopalan, *Officer on Special Duty, Ministry of Finance (Department of Economic Affairs).*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*
Shri A. L. Rai—*Under Secretary.*

WITNESSES EXAMINED

I. *The Employers' Federation of India, Bombay.*

Spokesman:

Shri J. D. Choksi.

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

Spokesmen:

Shri G. M. Mackinlay—*Leader*
Shri G. A. S. Sim
Shri A. S. Officer
Shri Vaidyanath Aiyar
Shri K. M. Wilcox
Shri R. Adam Brown
Shri R. U. Fuller
Shri C. J. B. Palmer.

III. *The Indian National Trade Union Congress, New Delhi.*

Spokesmen:

Shri S. R. Vasavada
Shri G. D. Ambedkar
Shri Deben Babu.
Shri Sumant Desai.

I. *The Employers' Federation of India, Bombay.*

Spokesman: Shri J. D. Choksi.

(*Witness was called in and he took his seat*)

Chairman : You are Shri Choksi?

Shri J. D. Choksi: Yes.

Chairman: You represent the Employers' Federation?

Shri Choksi: Yes, and the Bombay Millowners' Association also.

Chairman: You have come to-day on behalf of the Employers' Federation of India?

Shri Choksi: Yes.

Chairman: I find that there is no memorandum submitted by you.

Shri Choksi: The memorandum of the Bombay Millowners' Association has been adopted by the Employers' Federation, and that has been circulated to this Committee.

Chairman: Do you want to make any preliminary suggestions generally about the Bill, regarding some of the new provisions—not with respect to the technical wording etc; that is different.

Shri Choksi: I would like to make a few observations on the Bill as a whole and I would also like to refer to some of the important provisions, if I may. I shall do it in brief.

As this Bill is a very comprehensive measure—it has over 600 clauses—the parties I represent would prefer the Government had first brought forward, as they did in England, an amending Act incorporating the amendments to the Companies Act and allowed that Act to remain on the Statute Book for a period of six months to a year, so that any deficiency or even grammatical errors which may escape our attention would have come to the surface and could then be incorporated in the consolidated Act to be passed later. In fact, that is the practice followed in England. It is not followed in India, but when we have a comprehensive measure of this character, it might with some advantage have been followed. The reason why I say that is this. The broad principle of the Bill we all support. We think it is an excellent measure, but I think in framing the Bill quite naturally a certain number of inaccuracies have crept in, and some of them are rather important and fundamental.

For instance, Clause 44 says:

"All investments made or held by a company shall be registered or held by it in its own name.."

There are a number of practical and legal difficulties in giving effect to this clause. For instance, a company may pledge its investments to a bank and may have to transfer them. The bank then has a pledgee's interest, and the company retains its ownership of the shares, but the shares would be registered in the name of the bank.

Then again, you have this position in some of the companies which I am connected with. You have wholly-owned subsidiary companies of public companies. The Bill, as I will presently refer if it is needed, provides that a company can be a hundred per cent subsidiary of another company. When that is so, what normally happens is that the company which is the holding company allows two or three or may be half a dozen shares to remain in the name of its officers to enable general meetings to be held of the subsidiary company. Otherwise, it would not be possible to conduct the affairs of the subsidiary company because the law requires that every company must have at least two shareholders. In that case, the principal company would be the beneficial owner of all the shares, but naturally one or two or three or four shares would remain in the names of nominees of the principal company to enable the normal business required by the company law to be carried on by the subsidiary company.

These are two important instances. I am myself connected with the Tata Steel Co., which has coal companies that are one hundred per cent subsidiaries. We hold 99 per cent of the shares in the name of the principal company, but about one per cent is transferred to the names of officers of our companies and they manage these companies and they take part in general meetings of the subsidiary company. That, for instance, is an omission in the Bill.

Then again, we have this position that in many firms of managing agencies and many private companies which are managing agents, the individual members of those firms and the directors of the managing agents, where it is a private company, put all their resources into the private company. And therefore, the shares of the principal company which are owned by the firm or by the members of the private company are all invested in the name of the private company which is the managing agency. Under such conditions, it is quite normal for a managing agency member or a director to get a transfer of some shares to his name to qualify him as an ordinary director of one of the managed companies. There is nothing wrong in it in principle because he gets his qualification from his own firm. The proviso in the clause does not cover such a case.

So, my submission to this Joint Committee would be that what is required is disclosure of all nominee holdings. I respectfully suggest that the clause instead of its reading in the form it does, should contain a provision that shares held by a company through a nominee should be disclosed through a note, because all investments of a company appear in the balance sheet. Once it appears as a note everyone will notice and enquire into it. Otherwise, you would have to put a number of exceptions in the Clause itself saying that shares may be held by nominees under the following conditions; and I am not sure that I can think of all the conditions or even this Committee can do so.

Chairman: Are there any points from the memorandum which you particularly want to bring to the notice of this Committee?

Shri Choksi: There are a few points which I would like to bring to the notice of this Committee, but before I deal with the memorandum, there are one or two other clauses which I should deal with because they are of fundamental importance. Clause 80 relates to voting rights of preference shareholders.

Shri C. D. Deshmukh: It is not referred to in the memorandum.

Shri Choksi: Several sub-committees of the Federation were appointed to

[Shri Choksi]

go into portions of the Bill. Unfortunately, the sub-committee which dealt with the first 150 clauses of the Bill did not submit the report in time. So, we could not submit it.

Shri C. D. Deshmukh: Then, you are adding a codicil to the memorandum?

Shri Choksi: Yes.

Shri C. D. Deshmukh: We have not had the advantage of studying it.

Shri Choksi: I will only take up what I consider a very important point.

Shri C. D. Deshmukh: A point which has been left out cannot be a very important one.

Shri Choksi: That is quite true normally, but you will notice on the first 150 clauses we have made no comments.

The suggestion under Clause 80, if I may say so with great respect, is quite reactionary. The proposal is that preference shareholders should not be entitled to any voting rights except when their dividends are in arrears. It follows as a corollary that so long as the dividends are paid, the company can embark on any speculative enterprise and probably lose the whole of its capital. May I say that it completely ignores the history of joint stock development at least on the Bombay side. We have some companies in which the Government have large holdings of preference shares such as our Tata Group, and we do not want to deprive Government of the voting right. In the Tata Locomotive company Government hold Rs. 2 crores of preference capital. I do not see why they should be deprived of the voting right at all. I wish to give particular instances because they are necessary to establish the point I am making.

The Tata Iron & Steel Co., had a capital of Rs. 10 crores. Out of the capital of Rs. 10 crores, Rs. 7 crores were subscribed by preference shareholders. They made it possible for the company to develop and expand and that company did pass through critical days. I certainly consider that we cannot take away the voting rights of preference shareholders which have been established over a long period of time and which have made the development of individual companies and the expansion of their businesses possible. I suggest that we give a positive right to preference shareholders to vote where they have no votes—in cases where their dividends are in arrears, but at the same time if the constitution of the company or the rights and conditions attached to the issue of preference shares give them any other voting right, that has to be maintained. For instance, some companies have given the right of one vote for every five preference shares. That right may be maintained, and in addition, we may provide that when the dividends are in arrears, this statutory right should be enforceable by the preference shareholders, *viz.*, they should have a right to appear and vote at general meetings when their dividends are in arrears or for any of the purposes that are mentioned in clause 80 (2) (b). That way you are not taking away the rights which are established in favour of preference shares, but you are protecting them against the possibility of being deprived of all rights given under the constitution of an individual company.

Shri T. S. A. Chettiar: That means it will vary from company to company. You want to leave a certain amount of mobility in the memoranda of companies?

Shri Choksi: Yes.

Shri G. L. Bansal: May I know what is the nature of preference share capital? Does it not partake of the nature of loan capital? If so, why should preference shareholders have voting rights? After all, why should you assume that ordinary shareholders will always enter into speculative activity, and not the preference shareholder?

Shri Choksi: The answer to that point is that preference shares are

capital and nothing more; they are not loans. If the company is in difficulties, the preference capital can be reduced. There is no difference between an ordinary share and a preference share in that at all. All that a preference share normally provides is that it has priority.

Chairman: In so far as they are entitled to a particular amount of interest on the money advanced, is it not more or less in the nature of loan capital?

Shri Choksi: With great respect, I submit that it is not loan capital. All that happens is that their profits are limited. There must be profits before they can be paid. In the case of a debenture or a loan, whether you make profit or not, you have got to pay the interest and you have got to repay the capital. That is not so in preference capital. In the case of preference capital you only pay dividends out of profits, if there are profits. Secondly, you only repay the corpus if you have funds available. Therefore, it is quite plain that share capital is share capital and preference capital as much as equity capital is share capital. So, frankly I do not follow that point. I am not suggesting that in every company ordinary shareholders will embark on speculative enterprises; all I am saying is that there must be protective provisions in the law which the preference shareholders should be entitled to exercise. I cannot see why if as a result of the bargain between the various members of the company preference shareholders are given a vote, that vote should be taken away by statute.

Shri C. D. Deshmukh: Does it happen that a preference shareholder has a voting right disproportionately large as compared to the money he has put in?

Shri Choksi: I have never had that experience. That also can be safeguarded.

Shri C. D. Deshmukh: For a capital of equal amount, you would say that there should be a vote where the articles provide for such a vote?

Shri Choksi: Yes. That is an important point. We may provide a further condition under the section that no preference shareholder should have a vote disproportionate to his holding compared to the total holding. In other words, he must not get a more favourable vote than an ordinary shareholder. It seems to me if you have those safeguards, then you may allow preference shareholders to exercise normal voting rights where the constitution of individual companies permits them.

Shri C. D. Deshmukh: In addition, you would give rights to those whose dividends are in arrears where those rights are not provided?

Shri Choksi: That is right.

Shri Bansal: There is a slight difference. There is the venturesome aspect of capital and inasmuch as that venturesome aspect of preference share capital is slightly less, some obligations have to be placed on them.

Shri C. D. Deshmukh: I am speaking now on behalf of our own shares in TELCO. They were in difficulties and they approached us for a loan of Rs. 2 crores. After consideration in the Standing Finance Committee, we decided that we should give them Rs. 2 crores in the form of preference capital. Now, there was no venture or other thing. They ventured; we ventured. There were not very many other shareholders there. But it was part of the conditions on which we came to their assistance. Actually our capital is larger than the capital...

Shri Choksi: No.

Shri C. D. Deshmukh: ... that was at that time.

Shri Choksi: Possibly.

Shri C. D. Deshmukh: It was 1½ crores. You had 1½ crores and we supplied 2 crores. Now, we did not ask for any other rights. We had only

[Shri C. D. Deshmukh]

one director. Then we sent two directors; we have these voting rights. By and large we are getting on all right without any question of their wanting to be speculative or our wanting to be not venturesome and so on and so forth. What he is saying is that there is no reason why purely on economic theory arrangements like these which are working well, should be disturbed.

Shri Choksi: Yes.

Shri Bansal: In that case, I will exclude such arrangements from the purview of this Bill. You can make any safeguards. It is public money. As far as the share capital of ordinary shareholders is concerned, inasmuch as a preference shareholder has a right to have the first charge over the capital, his right should be somewhat more limited than that of an ordinary shareholder.

Shri K. K. Desai: We are now examining a witness. I think it will be better if we reserve our discussion among ourselves to some later date.

Shri B. C. Ghose: Is it the intention that in principle there is no difference between ordinary and preference shareholders? If so, then why have two classes of shares?

Shri N. C. Chatterjee: I wanted to put the same question. I am quoting from Palmer's Company Law which says:

> "The interests of the two classes of shoreholders i.e. preference shareholders and ordinary shareholders, are very commonly more or less in conflict. The interest of preference shareholders is to preserve the business on a safe basis sufficient to produce the preference dividend, but the interest of the ordinary shareholders is to increase it and for that purpose incur some risk."

That was the point which weighed with the Company Law Committee and, therefore, they recommended that there should be a discrimination made and so clause 80 has been put in that form. Now, do you agree that there may be an interest of ordinary shareholders in conflict generally with the interest of preference shareholders? Ordinary shareholders may like to take some risk whereas preference shareholders may not take the risk and may wait for a few years till the company is on a proper footing.

Shri Choksi: The first question, as I understand it, is: Am I putting forward a plea that there is no difference between ordinary and preference shareholders? I certainly am not. There is quite a distinction between ordinary and preference shareholders. But the point which had been previously made was that a preference share was not a share at all; it was a loan. That was the point I was contesting.

Shri Bansal: What I said was that it partook of the nature of a loan.

Shri Choksi: That again I contest. It is share capital and nothing more and nothing less. Now the Bill has limited the share capital of a company to two main categories—equity capital and preference capital. It seems to be a wise limitation. So I admit there is a difference between ordinary and preference capital. I see no objection to preference capital being given voting rights at all. The hon. Shri Deshmukh has referred to the TELCO case. Similarly, in the case of the Tata Steel, if the preference capital had not come forward and agreed to subscribe a further three crores of capital in the year 1923 or 1924, that company would have had to shut down. I do not see why the bargain that the company has come to with the preference shareholders at that date should be destroyed by legislation.

Now a quotation has been given from Palmer suggesting that there may be a conflict of interest. I quite admit that in many companies it is possible that the preference shareholders would be less venturesome and

the ordinary shareholders more venturesome. When you have got two parties of fairly equal strength, they suggest: 'We come to an arrangement as to our rights'. Voting right is a proprietary right; it is just as much a right as, for instance, the right to dividend. It is an advantage of voting rights which are attached to a share. I do not see why if a bargain is made between two classes of shareholders where you balance a larger equitable right to share higher profits in the ordinary shareholders by giving a protective right to the preference shareholder to vote, that cannot be done. In fact, there are many companies which provide that preference shareholders have 1/5th of the voting rights. I do not see why that should not be preserved, so long as preference capital does not have preponderating voting rights, namely, voting rights which are in excess for the same quantity of capital of those of ordinary shareholders.

Shri C. D. Deshmukh: We may consider this point ourselves. His point of view is clear.

Shri N. C. Chatterjee: Supposing we agree with Mr. Choksi and redraft a clause suitably saying that in cases where there is no provision made in the articles to that effect, preference shareholders would be given voting rights only when dividends are unpaid, in that case would it be fair to give them voting rights on all sorts of Resolutions or only in the case of Resolutions affecting that right?

Shri Choksi: I thought I answered that. If by a bargain between the two parties you have given that, if it is already there, there is no reason why it should be taken away.

Shri C. D. Deshmukh: For the future what sort of arrangement would you advocate?

Shri Choksi: I would frankly advocate leaving the company itself to provide for rights subject to this limitation that preference capital should not have a disproportionate right.

Shri B. C. Ghose: Unless we make certain restrictions, will there not be the likelihood of preference capital having the upper hand? Nowadays in Insurance companies we usually provide the preference capital. Whenever a company may be in difficulty, if we have only the arrangement that subject to the provision that they will not have a disproportionate right, they will have those powers, then it may be acting in this case to the detriment of the ordinary shareholders.

Shri Choksi: I do not see that at all. If companies are in difficulties and they want further capital, and they can get preference capital, I do not see why they should not take it on terms which can be arranged.

Shri C. D. Deshmukh: The only term, as far as Mr. Choksi is concerned, is that if 100 is the existing capital and if 200 is wanted, all that the preference shareholders require is proper voting power. There does not seem anything very wrong in that; that is to say, those who provide the 200 say: 'Let us have voting power according to 200'.

Shri R. R. Morarka: In view of what you have suggested about preference shareholders, would you also say that debenture holders should also be given voting rights?

Shri Choksi: No, no. That is a very big question. There are two or three points of some importance in our memorandum which, I hope, you will allow me to deal with.

Shri N. C. Chatterjee: We can deal with clause 44 later on.

Shri C. D. Deshmukh: We are going to have a small amendment ourselves to clause 44.

Shri Choksi: I would like to deal with clauses 331, 340 and 341. Now, we accept in principle the definition of 'net profits' on which a managing agent is to be granted a commission.

Chairman: In the course of your statement, you referred to certain associations and bodies also, for instance, the Tatas. I would only like to point out that whatever evidence that you give and statements that you make are likely to be treated as public statements.

Shri Choksi: Yes. They are public companies.

We have not been able to understand the significance of the proviso after clause 331(c). I want that to be deleted. The proviso says that in the first year of calculating the managing agent's commission, any arrears of depreciation which have not been taken into account in arriving at net profits of any year or years preceding the first year may be taken into account. Frankly speaking, I feel that this gives retrospective effect. It means this. Suppose in the past, the remuneration of a managing agency was calculated on an entirely different basis, and had nothing to do with profits—there are managing agencies, the remuneration for which has been calculated on the basis of sales, gross receipts etc. But now, the proviso says that any depreciation which has not been taken into account in the previous years may be taken into account in the first of the financial years. It is difficult to understand the meaning of this provision. Does it mean that in cases where depreciation has not been taken into account in the past, while paying remuneration to managing agencies, it will be taken into account in the first year? Does it not come to saying that there should be a completely different type of calculation? We have a managing agency agreement, according to which we have only taken Rs. 250 a month in the past. According to this proviso, when a new managing agency agreement is framed, you have to find out what are the arrears of depreciation, and take them into account in calculating the managing agency's remuneration, as if this new contract had been in force. I think we are going to get into a lot of difficulties there. My humble suggestion is that there is no reason for that proviso. We have a clean slate from the date the Act comes into force, and you say that all new managing agency contracts should be on a new basis; and you have laid down the basis. In fact, I would say that under the old Act, there was a permissive basis under which net profits could be calculated, and there was a provision for deduction of depreciation.

Shri C. D. Deshmukh: There was.

Shri Choksi: But that was interpreted by most lawyers as meaning depreciation as provided in the accounts, because it does happen that in the year in which a company has large profits, it takes a larger sum for depreciation, while for income-tax purposes, it all depends on the formula under the income-tax rules, and those rules may be quite at variance with the depreciation provided in the accounts. In the long run, it works out to the same thing, because ultimately the full amount of depreciation is taken.

I would strongly recommend that this proviso be deleted. Otherwise, it will put some of the managing agencies in an unfair position; in some cases the managing agencies will be unfairly penalised. I have known managing agents in the past give up all their remuneration, because the companies were not doing well. It may be that in those cases also, there would be arrears of depreciation, and we would have to find out what they are.

Frankly speaking, the term:

> ".....may be taken into account in the first of the financial years referred to in section 329, in so far as these arrears have not been taken into account in arriving at the net profits of any year or years, preceding the first year aforesaid."

is difficult to interpret.

Shri C. D. Deshmukh: In so far as net profits are relevant for calculations under the existing Act.

Shri Choksi: But as you see, the fallacy there is that we are talking of

an existing Act, and calculating for the future. How can it be relevant in respect of a past period?

Shri C. D. Deshmukh: But the sum to be taken into account is what is defind as depreciation. The fact to be found out is whether depreciation as defined has been taken into account in calculating net profits, if managing agency remuneration is payable on a basis which involves the calculation of net profits. To the extent to which such depreciation has not been taken into account, and only to that extent, it has to be taken into account now, and shall not be excluded.

Shri Choksi: That means you are dealing with past managing agency contracts, and there may well be a completely different basis for calculating the managing agency remuneration. So, that is where the difficulty arises. Really, it means giving retrospective effect to managing agency contracts. In other words, you will recalculate the managing agency remuneration for past periods, in effect. That is what you are doing.

Shri V. K. Dhage: Do you feel that there have been managing agency remunerations in the past paid without taking into consideration any depreciation at all?

Shri Choksi: There have been managing agencies paid remunertion in the past, without taking into consideration depreciation. For instance, there are instances where a managing agency, instead of taking ten per cent. as commission, may have taken five per cent. as commission, but stipulated that depreciation should not be a charge. That has happened in the past.

Shri Dhage: Suppose they have taken remuneration that was payable to them according to the contract, without providing for depreciation and without.....

Shri Choksi: But I say, the contract itself has provided in the past for a reduced commission, but excluded depreciation from it in arriving at the net profits.

Shri Dhage: The commission to be paid without taking into account depreciation?

Shri Choksi: What you propose to do, if I may say so with all respect, is this. You want to recalculate the past remuneration paid to the managing agents under this proviso. I agree that for the future, it has to be there. But I am talking of the past here.

Shri Dhage: In order to see that there is a fair distribution of the remuneration to them?

Shri Choksi: Yes.

Shri Chatterjee: The Company Law Committee have recommended that proviso. I would invite your attention to pages 364 and 365 of their Report. They have given a redraft of clause 87C. I think our Draftsman has pointed out that in making that proviso, he has tried to adopt the recommendation made in clause (2) which reads:

> "The amount of depreciation to be deducted as stated above shall be the amount of normal depreciation allowable under the Income-Tax Act and special, initial or other allowance or arrears of depreciation shall not be taken into account, provided however that the written down value of every asset for the purposes of this section shall be calculated after deducting such normal depreciation only....."

Shri Choksi: I agree with this. But the proviso to section 331 (c) is somewhat different.

Shri Chatterjee: Do you think that this proviso goes much beyond that?

Shri Choksi: Yes. This merely says that you calculate for the future depreciation, after taking down the written value of the assets, while the proviso says that in case past depreciation has not been provided for, you must deduct it from the managing agency remuneration or the net profits in the first year.

Shri Chatterjee: You are objecting to the retrospective nature of it?

Shri Choksi: Yes.

Shri C. D. Deshmukh: Today, it is not compulsory to deduct depreciation. Therefore, it was left entirely to the company; sometimes they deducted depreciation, and sometimes they did not, and so a position arose in which the capital was eaten into, and there was no provision made. What Shri Choksi means to say is that this situation should have been dealt with as it arose, but so far as the new arrangements are concerned, you have a managing agency on which you have now imposed this obligation to have a defined depreciation to be deducted every year. Having done that, in addition, why do you impose the deduction of arrears of depreciation even as defined now—it might not have been deducted for, the Lord knows, how many years in the past. In other words, what is an arrear of depreciation for an arrangement in which it is not compulsory to deduct depreciation? I think that is a valuable point.

Shri B. K. P. Sinha: But it operates only for one year, *i.e.* the year in which the Act comes into force.

Shri Choksi: It makes it operative in respect of the last twenty years, in the first year. In other words, supposing there are arrears of depreciation covering a period of twenty years, all that will have to be deducted from the net profits of the first year.

Shri Sinha: But it is all covered in the first year.

Shri Choksi: It will go on. If there are losses, they may be carried forward to the next year.

Shri K. K. Desai: In that case, they will get the minimum.

Shri Choksi: With great respect, I would say that the minimum is too low.

As regards clause 340, the principle is unexceptionable, but I should say that we think there has been a slight drafting error. The first sub-clause reads:

> "Save as provided in this section, no managing agent of a company, and no associate of a managing agent, shall receive any payment, whether by way of expenses, commission or otherwise, from the company in respect of purchases of goods made on its behalf."

The second sub-clause reads:

> "Where purchases of goods are made on behalf of a company by the managing agent or an associate of the managing agent, at any place outside the State in which the goods so purchased are to be used by the company, then, if the managing agent or associate maintains an office at such place for his own business, that is to say, for any business not connected with that of the company, he may receive, at the option of the company...."

either the expenses or the remuneration, by way of commission in respect of that work.

Now, there is a third alternative. The managing agent may only ask for the actual out of pocket expenses incurred by him in making this purchase. It is not unknown that when a large quantity of stores, or other equipment or plant is purchased it is for the managing agencies to depute someone to negotiate that contract, subject to the approval of the Board of Directors. Surely, it is not suggested that the expenses incurred for that purpose are not a legitimate charge on the principal company. Sub-clause 2(a) covers the case of an office which the managing agent maintains outside the State,—for instance, it may be abroad. But it is conceivable that the managing agent may have no such office. In such a case, he himself may proceed to this place and carry out the purchases. I can see no objection to his actual expenses being met. My suggestion would be that to sub-clauses 2(a) and 2(b), you add a third item 2(c) on the following lines:

> "the actual expenses or the out of pocket expenses incurred by the

managing agent in carrying out the purchase."

Question: This refers only to the appointment of a managing agent or associate as a buying agent, in respect of small transactions.

Shri Choksi: I am not talking of a regular contract. I am merely referring to clause 340, which in sub-clause (1) enables expenses to be charged, actual expenses incurred in relation to the purchase of goods. But it says that it must be charged to the extent that it is provided for in the latter sub-clause; and the latter sub-clause provides two methods of charging. One method gives the expenses of an office maintained by the managing agent outside the state. The other is the remuneration.

I am now suggesting a third alternative, that the managing agent should be paid the actual out of pocket expenses incurred in relation to that purchase.

Question: Am I to understand that where the managing agent has no office or associate and he prefers to make the purchase on his own, then actual expenses cannot be charged?

Shri Choksi: That is quite correct; under this clause actual expenses cannot be charged. It makes the difference.

Question: Under the contract of managing agency, the managing agents are entitled to buy and sell. Mr. Chairman, there is one point which I would like Shri Choksi to consider. The whole idea of the Bill is that the managing agents shall be given a certain remuneration as provided in the Bill and all that the managing agents do for the company should be treated as being included in the remuneration. Buying on behalf of the company is also a function of the managing agent and therefore what I thought was that it was also included in the remuneration. That is to say, whatever the remuneration provided in the Bill comes to, the idea must have been that unless you make that provision there is a loophole which may be taken advantage of by unscrupulous people. The idea is that once you say that the managing agents shall get some remuneration, that remuneration is inclusive of all the work that the managing agent does. Therefore, the idea of the Bill is that purchase that may be done on behalf of the company—for the conduct of the business of the company—should be included in the remuneration that is paid. That is what I conceive.

Chairman: As far as I have been able to follow you, your contention is that the actual expenses incurred by a managing agent for effecting a purchase outside the country or elsewhere, he should be entitled to have?

Shri Choksi: Yes, as one of the three alternatives.

Chairman: My hon. friend just now said that the remuneration which the managing agent gets for his work—which includes buying and selling—is all inclusive and therefore he should not get anything extra for buying and selling.

Shri Choksi: I agree that he should not got remuneration for it. But, it so happened in one of our group of companies, where we had to go to Germany to buy a lot of equipment. If he goes abroad and incurs expenditure in going there and buying, certainly it must be a legitimate charge.

Shri C. D. Deshmukh: Here this clause makes a distinction between purchases inside the State and purchases outside the State, not necessarily inside and outside the country. Where the purchase is made outside the country, office expenses or commission, as alternative, becomes possible and commission, certainly includes expenses.

Shri Choksi: I agree to that

Shri C. D. Deshmukh: Therefore, there seems to be no reason why a separate provision should be made for payment of expenses. That is one thing.

[Shri C. D. Deshmukh]

My difficulty is this. Is there really such a big difference between purchase inside a State and purchase outside the State, if our broad objective, which you seem to accept, is that commission should not be paid to the managing agent for purchases made because commission includes actual expenses and it becomes another form of adding to the remuneration? If that is not permissible inside the State why should it be permissible outside the State? In other words, I am questioning the desirability of sub-clause (2) (b). In business practice, is there such a big difference between purchases inside the State and purchases outside the State? Suppose a company's headquarters is in Delhi. Then, for all practical purposes, they will be getting a commission on all things they would be wanting to buy, because most of them would be from outside the Delhi State. Therefore, the managing agent would always be getting a commission. Can you shed some light on it?

Shri Choksi: You will see that sub-clause (2) refers to purchases by a managing agent or associate where an office abroad is maintained. I say we have in my group offices both in London and New York and it is convenient to pay those associates a commission based on the purchases—it may be 2 per cent. or a bare minimum—rather than find out the actual expenses attributable to the purchase. It is not simple to find out. Then I can understand why (2)(b) is put in. It is really intended to cover the commission agency charges. Instead of having some other body to carry out the purchases for you, this associate of the managing agent can carry it out. I do submit that any contract of that type should be approved by the Board unanimously. I think there is a provision for it. If that is so, it seems to me to meet the objections you have just raised.

In places like the Continent and South America, it may be that there are certain associates of a managing agent and he may have to incur actually certain out of pocket expenses to carry out a purchase. I do not think it is intended to deprive him of the actual expenses.

Shri C. D. Deshmukh: You are asking for payment of expenses for purchases made outside the State where regular arrangements for purchase through associates are not possible and also where there is no office.

Shri Choksi: Yes.

Shri C. D. Deshmukh: So far as purchases inside the State are concerned, you are content with sub-clause (1)?

Shri Choksi: I am quite content for all purchases in India, not only the State.

Shri C. D. Deshmukh: The clause limits it to the State.

Shri Choksi: I agree that it should be India.

Shri C. D. Deshmukh: Otherwise, I cannot see much use in this clause. You can always make purchases outside the State and therefore get commission.

Shri Choksi: I would strongly urge that sub-clause (2) should only be limited to purchases abroad.

Shri C. D. Deshmukh: You suggest that there may be a third method; besides maintaining an office or paying an associate, you may incur some expenditure which should be approved by the company by a resolution.

Answer: Yes.

Question: In Schedule VII, part I, power is given to the managing agents to purchase, obtain, or acquire all machinery, stores, goods and materials of any kind whatever which are necessary for the purpose of the company, and to sell the same when no longer required for these purposes. Does it mean that the managing agents, for effecting this, can incur legitimate expenses wherever they may purchase?

Answer: Yes, if it stood by itself; but it is over-ridden by clause 340. Clause 340 would over-ride the provision of the Schedule because it prevents the taking of any remuneration for all purchases. It is that difference which matters.

Question: You mean buying without incurring expenses?

Answer: They can buy; but the difference is the managing agent incurs certain expenses to purchase the goods that are purchased.

Chairman: He is naturally anxious that whatever expenses are incurred in carrying out the business of purchasing material from outside India, should be reimbursed.

Shri Choksi: That is all.

Clause 341.

Shri Choksi: As I read it, it means this. If I am the managing agent of an Electric Supply Company and I supply electricity to a company which is also under my managing agency, I cannot charge the managing agency remuneration which I can get for myself from the electricity company. I must pass it on to the Textiles for whom also I am managing. It seems to me to have never been the intention. The clause reads this way.

> "The company in general meeting may, by resolution, authorise its managing agent or any associate of its managing agent to retain any commission or other remuneration earned by such agent or associate as the managing agent, manager, agent, secretary or selling or buying agent of any firm, body corporate or other concern in respect of any goods, power, freight, repairs or other services, for the sale, purchase, supply or rendering of which a contract has been entered into by such firm, body or concern with the company, provided the prices or amounts charged to or received by the company are at market rates or are otherwise reasonable."

It seems to me it is wrong in principle that I should go to company A to get the sanction of A's shareholders to enable me to retain my managing agency remuneration for services which I perform to company B, because company B happens to have dealings with company A. It seems to me that the principle is wrong. All I suggest is that the clause should be limited only to buying and selling. It is a general principle of law that if I act as an agent for company A, I cannot take a selling commission from company B for goods sold to company A unless I disclose my position to company A and get their approval. That I accept. There is no point in trying to extend it.

Shri Chatterjee: Have you gone through the Company Law Committee Report?

Shri Choksi: I am afraid the report is rather confusing though it is a very lucid document.

Shri Chatterjee: I think the Draftsman has tried to embody in that clause paragraph 143.....

Shri Choksi: I find that the Company Law Committee Report is rather confusing on that point.

Shri Chatterjee: Have you anything to say with regard to their recommendation on page 110 of the book, where they say—

"We would, however, recommend that—

> (i) no managing agent should be permitted to receive such commission from third parties, unless he is expressly authorised to do so by an ordinary resolution of the managed company;"

Shri Choksi: If you refer to page 109, it only refers to selling. He cannot receive any commission on the sale price of goods supplied.

My point simply is this. It is not correct for the Legislature to provide that if I am a managing agent of two companies and one company sells goods or sells power to the other com-

[Shri Choksi]

pany, I must go to the purchasing company and get their sanction to retain any managing agency remuneration which I get from company A (selling company). That seems to be wrong in principle. Because, it means every time I promote a new company and agree to be managing agent for it I will have to go to all the companies in my group and get their sanction to my holding an appointment and retaining that remuneration. And, I see that under the clause it holds good only for three years.

Shri C. D. Deshmukh: The company does not pay to its managing agent on the sale of its products.

Shri Choksi: It is not allowed to pay under the new law. Under the clause only remuneration as a managing agent he can get.

Shri C. D. Deshmukh: Under which clause?

Shri Choksi: Clause 329. "Save as otherwise expressly provided in this Act,.....profits of the company."

Shri C. D. Deshmukh: That is remuneration. In other words, a managing agent is not to be appointed as the selling agent for a company.

Shri Choksi: Except under conditions which have been dealt with just now.

Shri C. D. Deshmukh: We have a section to prevent the managing agent from being a selling agent and we have a section to prevent the managing agent from being a buying agent. Then clause 341 is really unnecessary. If you want the managing agent not to receive selling or buying commission, that is provided for in clauses 338 and 340. There should be no connection between the business of one managing agent and the other.

Shri D. L. Mazumdar: What we try to provide here is something outside clause 338. How do you meet a situation where a managing agent is a managing agent of two companies: one is an electricity supply company and the other is a cement company. In regard to the purchase of power from the electricity supply company for the use of the cement company he gets some commission. Is that point covered by the other two sections? We venture to think, not.

I am giving you a specific case. The managing agency company gets some commission from the electricity company for purchasing power in bulk for sale to the cement company. Will it be entitled to this commission or not? That is, purchase made not on behalf of the electricity company, but purchase for another company of the managing company. That is not covered either by clause 338 or clause 340.

Shri Choksi: May I answer that point?.

Shri Deshmukh has raised a very fundamental point. By having clause 341 you will enable a number of managing agents by getting resolutions passed to get all kinds of sales and purchase commissions which are otherwise prohibited by clause 340, sub-clause(1), because clause 340 clearly says:

> "(1) Save as provided in this section, no managing agent of a company, and no associate of a managing agent, shall receive any payment whether by way of expenses, commission or otherwise, from the company in respect of purchases of goods made on its behalf."

It strikes me that if you have another clause, 341, which says that in connection with purchase of goods which are sold by another company of which the managing agent is either a selling agent or a managing agent, this company can authorise his taking a commission. I have no objection to your retaining clause 341.....

Shri Mazumdar: The crucial words of clause 340 are "from the company in respect of purchases of goods made on its behalf". We consider that those words do not cover the case which I gave you, that is when you purchase

power in bulk from your managing agent electricity supply company for use at your managed cement company, you are not roped in by clause 340.

Shri Choksi: I have no objection to clause 341 remaining provided the words "remuneration earned as managing agent" is taken away.

Shri C. D. Deshmukh: Now, A is the managing agent. He is paid a commission by the power company. It can be argued that A is paid the commission as the selling commission, in which case it is barred. But what Mr. Mazumdar say is that it can be argued that A gets neither a buying commission under clause 340, nor a selling commission, but A, as the managing agent of the cement company gets some commission from the electric company, of which he is the managing agent.

Shri Choksi: I follow Shri Mazumdar to say that he is against a managing agent of a cement company receiving a selling commission for electricity sold to the cement company, from the selling company. So far as the states the bare fact I am entirely with him. I may say, first of all,—what I think, you yourself said earlier—that that position is barred by 338 and 340. So long as it is prohibited to the managing agent under some other section, the mere fact that it is not paid by the particular company does not matter.

Shri C. D. Deshmukh: Clause 341 provides for a person arguing that he has not received it as a buying commission he has not received it as a selling commission but he has received it as a commission, because he has bought it. He has not received the buying commission from the company.

But there may be cases where a power company may give some remuneration to the managing agent of a cement company for placing contract with them. How do we deal with those cases? That is what clause 341 seems to provide for.

Shri Choksi: Sir, first of all, under the general law, if I am a managing agent of company A, I cannot receive a selling commission from company B, unless I disclose it to company A and get it sanctioned.

Shri C. D. Deshmukh: But clause 341 seems to be necessary to deal with cases of the kind pointed out by Shri Mazumdar.

All that Shri Choksi seems to be particular about is that receipt of managing agency commission should not be covered by this, and if drafting changes are made he would have no objection.

Shri S. C. Karayalar: There cannot be any question of selling power by an electric company to another company except under a licence, and rates are laid down in the licence itself.

Shri C. D. Deshmukh: Of course, power appears to be a bad example.

Shri Khandubhai Desai: So, Shri Choksi, you would like to exclude the words "managing agency commission"?

Shri Choksi: Yes, that is provided by the contract of the managing agency and that is perfectly legitimate.

If I may crave the indulgence of the Committee there is only one other matter of some importance to which I would like to refer and that is in connection with the balance sheet. It is set out in Sehedule VI. The whole intention of the framers of this measure is that the balance sheet should be produced in such a form as to be intelligible to, and understood by the shareholders of a company. I am afraid that in case of practically every item, there are half a dozen foot-note annexures. Most of the shareholders will not be able to see the wood for the trees. I see no objection in principle to the foot-notes, but it adds to the confusion of the document. It might be far better to have a simple balance sheet and have a separate document, where

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subsidiary information can be given regarding certain items of the balance-sheet. With this general observation, I would like you to refer to the first item "fixed assets".

In the last column there is a note: "Under each head the original cost, and the additions thereto and deductions therefrom during the year, and the total depreciation written off or provided, to be stated." My quarrel is with the words "or provided". In the past it is known that many companies did not write off the depreciation under each particular head. What they did was, they created a depreciation fund which appeared on the other side of the balance-sheet and they merely deducted the whole amount of that depreciation from the fixed block. As far as I understand this note, it means that under each of these seven heads (a) to (k) you have to provide for depreciation individually; and in addition, you have to give retrospective effect to it from the commencement of the acquisition of that particular asset. Frankly speaking, many companies who have depreciation funds have made *en bloc* contributions every year and they have not allocated it to all these seven or eight heads. You are now asking them to go back on it and reallocate it. My suggestion is that if you drop off the words "or provided" it meets the whole situation. Why should you write off depreciation under each head when you consider that in the long run it may be that a particular asset has not depreciated. So long as you create an adequate depreciation fund it is enough.

Take for instance, the case of vehicles, patents, trade marks etc. I may have a general provision for depreciation which I think will cover everything, but I am not prepared to earmark it for the twelve items. It may be that my assmuption this year may not be borne out three years hence. So long as I have my depreciation fund which is a pool for depreciation of all my assets, in general, there can be no objection. It does not require any specific depreciation.

Shri C. D. Deshmukh: Would there be no rational process by which you can arrive at a lump sum figure?

Shri Choksi: There would be, but not always. If this year I am making a very large profit, I would provide a higher amount for depreciation. Next year I would provide a lower amount. What is the objection? I may not have sufficient profits. Many companies have arrears of depreciation which they know they cannot provide for because they have no profit, but if they have higher profits, they will provide higher depreciation. Frankly, this is interfering with the autonomy of management in a company. My objection is only to the words "or provided", and if you are going to apply it retrospectively, it creates lot of difficulty.

Shri C. D. Deshmukh: That is another difficulty.

Shri Choksi: In the written memorandum we have drawn your attention to a number of points. I cannot go into them now. I would earnestly request the Joint Committee to go into them as each and every one of them has been considered in great detail and the points we have made are really in connection with the practical working of companies.

Shri Chatterjee: If clause 44 stands as it is, will a company be prevented from holding shares on blank transfer?

Shri Choksi: If the clause stands as it is, a company will be prevented from holding shares on blank transfer.

Shri Chatterjee: Will that make arranging overdrafts from banks impossible?

Shri Choksi: It might. I am in favour of full disclosure of all the assets. So long as a note is affixed to the balance sheet showing how the assets are held, either in the name of the company or in the name of nominees and giving particulars, that is all that is needed.

Shri Chatterjee: In actual practice you think retention of that clause will make business operation difficult?

Shri Choksi: Yes, I think so.

Shri Chatterjee: Would you look at page 291 of the Company Law Committee Report? Their recommendation is:

> "A new section should be inserted after section 88 to provide that all investments held by a company should be registered in the name of the company, the only exception being the qualification shares required to qualify a nominated director of a company, but such shares should be in the possession of company or its bankers."

In the Remarks column, they say:

> "The Committee considers this specific provision in the Act necessary as it would reduce the temptation to misuse the investment of the company."

From your experience, do you think deletion of clause 44 would meet the situation provided we accept your other recommendation of compulsory disclosure of all the assets?

Shri Choksi: My answer is that if you carry out the suggestion of mine, you will provide adequate safeguards which clause 44 is intended to provide and at the same time you will allow that flexibility of holdings which is essential in the ordinary day-to-day management and running of a company. That is the point.

Shri T. S. A. Chettiar: Would you like to place any limitation on that?

Shri Choksi: You may say it must not exceed certain limits.

Shri Chettiar: Have you experience of any companies in which nominal holdings have gone beyond limits that can be considered safe?

Shri Choksi: Frankly, I do not know personally, but I am prepared to believe there may be companies where nominal holdings go beyond safe limits.

Shri Chettiar: If people hold nominal holdings, what happens to the emoluments such as sitting fees etc., which are attached to the shares?

Shri Choksi: A director earns his sitting fees not for the shareholding he brings in but for the service he performs. So, there is no point in the sitting fees being transferred to the company. In the case of any other remuneration, I agree it should be transferred.

Shri K. K. Basu: If the transfer of a certain percentage can be made in the name of the bank or in the name of the nominees of the controlling company with the sanction of Government, do you think the difficulty visualised will be solved to some extent?

Shri Choksi: It will only mean delay and difficulty. For instance, companies need emergent borrowing. A change in the economic policy of the country may result in companies having to go overnight to banks for accommodation. Surely if you have to refer all these cases to Government and get their sanction, it will necessarily take up time, and certainly it means that banks will not be so easy to deal with. Banks would prefer not to deal with companies. That is the difficulty.

Shri Chettiar: In page 300 of the Bill, Schedule VI, Part II, 3(ii) (a), they want certain particulars:

> "In the case of manufacturing concerns, the purchases of raw material, and the opening and the closing stocks of the goods produced."

Certain commercial concerns have represented to me that such a disclosure will adversely affect them in the market. Do you think there is any reason for such apprehension?

Shri Choksi: I see no point in this. I think it should be disclosed.

Shri Chettiar: You think the market will not be affected?

Shri Choksi: No, because you disclose it only in the aggregate.

Shri Chettiar: No, No. Separately. For instance, in the case of a Spinning Mill, cotton should be disclosed separately and the yarn should be disclosed separately. The disclosure of the existence of large stocks will itself be a tendency to bring down prices in the market.

Shri Choksi: I am against non-disclosure. I am strongly in favour of disclosure. As I said earlier, we have only covered very little of the ground. But a number of the suggestions that appear in our written memoranda deal with what we consider minor defects or inaccuracies, which naturally arise in drafting so comprehensive a Bill. I should be obliged if due attention could be paid to them.

Chairman: They will be duly taken into account. On behalf of the Committee, I thank you for this expression of your views, and the help that you have given us by putting some points of view before us.

Shri Choksi: Thank you very much. I am very grateful to the Committee for the opportunity given to present our view points.

(Witness then withdrew).

II. *The Associated Chambers of Commerce of India, Calcutta—*

Spokesmen:

(1) Shri G. M. Mackinlay.
(2) Shri G. A. S. Sim.
(3) Shri A. S. Officer.
(4) Shri Vaidyanath Aiyar.
(5) Shri K. M. Wilcox.
(6) Shri R. Adam Brown.
(7) Shri R. U. Fuller.
(8) Shri C. J. B. Palmer.

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

Chairman: On behalf of the Associated Chambers of Commerce, you have submitted us three memoranda. I would like some one of you as the head of this group to place before us some of the important aspects of this question. On all the questions which have been raised by you, we shall go through the memoranda very carefully, when we deal with the clauses. But now, we would like to have the pleasure of knowing from some one of you as the leader of this group, the most important points which you would like to present before this Committee.

Shri Mackinlay: We would like first to deal with the commencement of the Act. We hope that there will be no question of retrospective effect being given to the Act. The very comprehensive differences between the existing Act and the new Bill will make it necessary for all companies to review their position. It will entail substantial alterations to articles of association and agreements. And moreover, the accountancy provisions will require very careful study. There are big differences between the existing Act and the new Bill, and if any retrospective effect is given to the Act, it will merely entail delay in producing accounts.

Shri B. K. P. Sinha: May I exactly know what you mean by retrospective operation? Do you mean to suggest that it should not apply to old companies?

Shri Bansal: Which particular provisions you have in view when you say retrospective effect should not be given?

Shri Mackinlay: I am referring to the date on which the Act will come into force.

Shri Bansal: That is not my point. I want to know what particular provisions you have in view, when you say that they should not be given retrospective effect?

Chairman: His point is that the Act itself should not be retrospective in its effect. That is the short point.

Shri Bansal: But it is not.

Chairman: Probably, you are referring to clause 1 (2), where it is said that the Act will come into force on the first day of April, 1954. We have passed that date since, and a suitable date will be provided. Is that your precise objection?

Shri Mackinlay: Yes. But we should have sufficient time in order to enable the companies to review their position, before they have to conform to the new Act.

My next point deals with the definition of a Branch Office, and Mr. R. A. Brown will explain the position.

Shri R. A. Brown: The definition of a Branch Office is given in clause 2 (6). The position here is that the Company Law Committee made certain recommendations with regard to the definition of a Branch. In the Bill, a definition has been given, and in the notes on clauses, it is stated that this definition has been slightly altered from that recommended by the Company Law Committee, in order to clarify the position. In the view of the Associated Chambers of Commerce, the definition adopted in the Bill far from clarifying the position makes it complicated and obscure. The Company Law Committee recommended that places of manufacture should not be considered to be Branches. The definition does not make it clear whether that is intended or not. But whatever the final definition adopted may be Associated Chambers of Commerce, would like to suggest that places of manufacture should be Branches. The reason for this is that under the regulations of clause 194 regarding books to be maintained all the records of the company have to be maintained at the Head Office. In the case of Branches, periodical returns might be sent in. Now, in places of manufacture or of production, factories, tea gardens etc., a great many transactions take place in the first instance, and it is essential that these should be recorded at the place wnere they take place. If it is necessary for these to be maintained at the Head Office, then that involves duplication of records. It involves additional staff to be employed in the head office, additional office accommodation being made available etc. That is from the point of view of the company.

From the point of view of the auditor, where a place other than the Head Office is a Branch, the accounts must be audited by the auditor himself or by a local auditor, unless the company pass a resolution to the effect that they need not be audited by a local auditor, but in such cases, the auditor must either go himself and audit them or be fully satisfied with regard to the returns that are received. Therefore, a very adequate check must be imposed on accounts maintained by a Branch. Where it is not a Branch, then it more or less devolves upon the auditor to go and audit the accounts. There is no provision for him for incorporating in his report that returns adequate for the purpose of the audit have been received. Therefore, he must go there. which would involve visiting tea gardens and factories all over India, and this will delay the production of accounts and place very great strain on the present limited supplies of qualified auditors. Therefore, in the opinion of Associated Chambers of Commerce, all such places, places of production, factories, gardens, etc. should all come within the scope of the definition of a Branch.

Shri N. C. Chatterjee: How do you want to alter the definition?

Shri Brown: We are not trying to suggest a definition; we leave that to the Draftsmen. We only propound the suggestion as to what we consider ought to be incorporated. The Draftsmen are more capable than we are.

Shri Chettiar: In certain firms where such activities are going on, it is usual for daily accounts to be transferred to the Head Office. I

[Shri Chettiar]

know of cases where this is being done. May I know whether such a system may not be feasible so that one need not go to every office where manufacture is going on?

Shri Brown: For the purpose of carrying out business at the various places, they would have to be retained there for reference. If they are retained there, it is not possible to verify unless the place is visited. Again, stores records are vitally necessary on the spot, at the factory, and cannot be maintained except in duplicate, at Head Office.

Shri C. J. B. Palmer: The next point is with regard to clause 2(9), definition of debenture. It is in the second memorandum. The point is of very great importance in respect of Insurance companies being able to invest in debenture issues. The Insurance Act severely restricts debentures which can be invested in by Insurance companies. If we keep the definition as it is in the Bill, we might have that possibility of Insurance companies cut right out. If I may refer to a House of Lords decision—the definition in the English Act, is in exactly the same form as we have in the Bill, and I understand it is borrowed from there—it was decided that a mortgage of land fell within the definition of debentures. In this country, it would mean that not only mortgages of land but almost any form of charge, and even of unsecured debt, would fall within the definition. If, therefore, there was a debenture issue and there was such a thing as hypothecation in favour of bankers of book debts or stocks, it would mean that that debenture could never be an approved investment for the purpose of being taken up by Insurance companies.

Chairman: Was it a recent decision?

Shri Palmer: 1940.

Shri C. D. Deshmukh: We will look into it.

Shri Brown: The next point we would like to take up is with regard to clause 44—this is in the first memorandum. This clause provides that companies shall maintain all investments which they have registered in their own names. This is not in accordance with the recommendations of the Company Law Committee. In the second place, it raises difficulties. If this is adhered to, it is impossible for any company to have a 100 per cent. subsidiary company. Also, difficulties might arise in connection with obtaining overdrafts from banks against securities or pledging securities for any other purpose. These points have been mentioned in our memorandum. One further point which has not been mentioned and which we would like to raise is: The information which will be divulged by this means is, in our opinion, definitely undesirable to be divulged, and that is the number of shares held by managing agents in managed companies. This point, I would mention, was considered in connection with the point regarding investments held by companies and there it has been decided that it should not be necessary for managing agents to reveal the shares which they hold in managed companies. That decision is nullified by the effect of clause 44. It would only by necessary for anyone having any interest to write to the Registrar of Joint Stock Companies and obtain a copy of the list of shareholders.

Shri Mackinlay: The next point is regarding clause 273—page 7 of the first memorandum—loans to directors. We have had considerable difficulty in interpreting the clause as it stands. But we are apprehensive that it may be taken to mean that in effect a managing agent may not be permitted to loan money to its managed company, which would appear to cut right across one of the main facilities provided by managing agents

Shri Ghose: Which particular subclause can have this effect?

Shri C. D. Deshmukh: Sub-clause (1) (c) and (d) might come in the way of managing agents lending to a managed company.

Shri Mackinlay: Yes.

Chairman: The only thing is that it is made obligatory there that they must obtain the sanction of the Central Government.

Shri C. D. Deshmukh: What he says is that such sanction should not be required in the case of a managing agent lending to the managed company. That is one of the main functions of managing agents. What we have to see is whether the language of (c) and (d) is capable of being construed that way; if it can be construed that way, they would suggest that it should be taken out of the mischief of that clause by making a special provision under sub-clause (2) provided that it shall not apply to a loan by a managing agent to a managed company.

Chairman: Is there any other important point on which you have anything more to urge?

Shri Brown: The next point is with regard to clause 285. The effect here is the same as of the point I referred to as additional point under clause 44. It is referred to in page 7 of the first memorandum. Clause 285 imposes an obligation to keep registers in which the share-holdings of the directors shall be entered. For the purposes of this clause, managing agents are included as directors. Therefore, you would have to maintain a register in which all the share-holdings of the managing agents are recorded in detail. In our opinion, that is most undesirable.

Shri Bansal: Why is it undesirable?

Shri Brown: Because there can be various parties interested in obtaining control, for their own ends, of certain companies and if they can obtain information with regard to the share-holdings of the managing agents, they can make an attack on a company in which the position may not be securely held.

Shri Mackinlay: The next point is clause 287, the remuneration of directors. We feel that the proviso to sub-clause (3), as at present drafted, is inequitable. We feel that the whole-time director of a company that has no managing agent bears the whole responsibility for the conduct and administration of that company on his shoulders. We do not see why it should be necessary to limit the extent to which he can derive commission. We should think that it is a matter to be dealt with by the company at its annual general meeting. A number of companies give a larger commission and a smaller salary to their managing directors so that the directors concerned shall be interested in the prosperity and adversity of the company. If a restriction is placed on the extent to which he can draw commission, it will mean that the salary will be increased and the commission reduced. We think it is undesirable.

Chairman: I would like you to say anything on which you want to stress. We will go through your memorandum. It is already there.

Shri Mackinlay: There are the point that we think are important.

Chairman: If you have anything more to say than what is contained in the memorandum, we would like to hear you.

Shri Mackinlay: I will make a reference to the clauses that we think are important and to which we want to draw special attention. They are clause 309—page 8 of the first memorandum and clause 329 on which we would like to elaborate.

Shri Brown: The additional point is further, a very important example of what has been illustrated in the memorandum; to limit the extent. This clause limits the amount payable to managing agents as remuneration for their services as managing agents or in any other capacity. The limit placed on it is 12½ per cent. of the net

profits. Clauses 338, 339 and 340 of the Bill provide that the managing agents, in addition to acting as managing agents may act as purchasing or selling agents for the company at places outside the State where the headquarters of the managing agents exists Under these clauses, provision has been made for remuneration being paid to the managing agents for this service. But, by clause 329, the payment of that remuneration for services is absolutely nullified, because the managing agents are not to be allowed to receive more than 12½ per cent. of the profits of the company for their services as managing agents or in any other capacity. For this reason, we consider that the words 'or in any other capacity' should be eliminated, as it would prevent the managing agents carrying out any service such as the selling or buying, whereas, under the Bill as it stands—but for 329—they are entitled to such remuneration.

Chairman: In your opinion, the words 'in any other capacity' conflicts with the other provisions?

Shri Brown: That is correct, Sir.

Chairman: This will be considered at the time we consider the clauses.

Shri C .D. Deshmukh: We have a maximum on the remuneration and other things. He wants that there should be no limit to remuneration on business done in any other capacity. We can consider it on merits when we consider the clauses.

Shri Chatterjee: If there is anything else which requires specific mention it may also be stated.

Shri Brown: I will give two examples of services rendered by managing agents where it is reasonable that they should be entitled to remuneration other than as managing agents. They are (i) where the managing agents guarantee a loan. It has been customary in the past for a small commission to be allowed for guaranteeing the loan granted. Then there is the commission paid to the managing agent as clearing agent. This is something quite outside the normal duties of any managing agent and it is reasonable in such circumstances that remuneration should be paid for the services rendered. These are two examples.

Shri C. D .Deshmukh: What are the customary payments for guaranteeing?

Shri Brown: I think it is about one-fourth per cent.

Shri C. D. Deshmukh: As shipping and clearing agents?

Shri Brown: Normal charges which would be paid by a shipping and clearing agency.

Shri Palmer: Another point deals with clause 314. We would like to elaborate a little what we have referred to in our second memorandum, page 4.

In the Company Law Committee's recommendations, it is suggested that as an inducement to the managing agents to bring their remuneration into line with the new provisions, they should be given an opportunity to use an option. As the clause now stands, it seems to us that the option, if exercised, does not put them in a very favourable position. It may be stated that they shall be eligible for re-appointment for period not exceeding ten years. The terminology now used is rather vague and does not show whether it shall necessarily be a period at all. The word, 'eligible' also appears to us to be not sufficiently specific to have any effect as far as the clause is concerned. The existing managing agents would exercise the option with no certainty that by doing so they would get an extended period.

We refer to the earlier clauses in the Bill. It would seem from the wording used in clause 311, that, in any event, on a certain date in 1959 all managing agency agreements are to expire unless before that date there has been a re-appointment under the specific clauses 309, 310 or 314, the clause about which I am talking. It pre-supposes that in drafting clause 311, the Draftsman had in mind that clause 314 would result in a re-appointment. It may be said that in some instances it would be undesirable not

[Shri Palmer]

to allow the full period of 10 years. That, I think, can be taken care of by other provisions which exist in the Bill. In one of the Schedules of the existing Indian Companies Act the provision is to go on for some while so that in case where clause 314 will apply, it will be necessary to obtain government approval. So, if there is any particular case, where it is not desirable to allow a managing agent to carry on, Government would be able to have that restraining influence and put in a condition for a shorter period.

Shri Chettiar: What is your recommendation?

Shri Palmer: We suggest that the word 'eligible' should be replaced by the word 'entitled', to have a safeguard which I mentioned just now.

Chairman: Have you any other points to make.

Shri Mackinlay: We have no points to make other than those already covered by our memorandum.

Chairman: I thank you gentlemen, on behalf of the Committee, for having placed your valuable views before this Committee.

Shri Mackinlay: We are grateful to you, Sir, for having given us this opportunity of appearing before you.

(Witnesses then withdrew)

III. *The Indian National Trade Union Congress, New Delhi.*

Spokesmen:

(1) Shri S. R. Vasavada

(2) Shri G. D. Ambedkar

(3) Shri Deben Babu

(4) Shri Sumant Desai.

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

Chairman: I realise that in the case of the INTUC, though the memorandum has been circulated, the members have not had enough time to study it.

Shri C. D. Deshmukh: As in the other cases, we may ask them which point of the memorandum they wish to enlarge upon.

Shri Vasavada: I am very sorry for the inconvenience that has been caused to the hon. Members of the Joint Committee. In fact, I owe an explanation. Our memorandum was despatched from Ahmedabad as early as the 25th ultimo by registered post. Only yesterday we learnt that somehow, because of postal difficulty or whatever it may be, the memorandum has not reached this office. So, yesterday, we supplied the office with some extra copies. If the hon. Members feel that before we are examined they should like to go through the memorandum, you may postpone our examination for tomorrow.

Shri Morarka: I think it is a very fair suggestion made by Shri Vasavada.

Chairman: Now that the leader of the delegation himself is prepared to come tomorrow, I have no objection. We will take you up tomorrow at 9 A.M.

(Witnesses then withdrew)

(The Committee then adjourned).

THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953.

Minutes of Evidence taken before the Joint Committee on the Companies Bill, 1953.

Saturday, the 3rd July, 1954, at 9 A.M.

PRESENT

Shri H. V. Pataskar—*Chairman*

MEMBERS

LOK SABHA

Shri Chimanlal Chakubhai Shah
Shri Awadheshwar Prasad Sinha
Shri V. B. Gandhi
Shri Khandubhai Kasanji Desai
Shri R. Venkataraman
Shri Ghamandi Lal Bansal
Shri Radhesyam Ramkumar Morarka
Shri B. R. Bhagat
Shri Nityanand Kanungo
Shri Purnendu Sekhar Naskar
Shri T. S. Avinashilingam Chettiar
Shri K. T. Achuthan
Pandit Chatur Narain Malviya
Dr. Shaukatullah Shah Ansari
Shri Tekur Subrahmanyam
Shri Mulchand Dube.
Pandit Munishwar Dutt Upadhyay
Shri Radhelal Vyas
Shri Ajit Singh
Shri Kamal Kumar Basu
Shri C. R. Chowdary
Shri M. S. Gurupadaswami
Shri Amjad Ali
Shri N. C. Chatterjee
Shri Tulsidas Kilachand
Shri G. D. Somani
Shri Tridib Kumar Chaudhuri
Shri C. D. Deshmukh

RAJYA SABHA

Dr. P. Subbarayan
Shri Shriyans Prasad Jain
Shri Somnath P. Dave
Dr. R. P. Dube
Shri Braja Kishore Prasad Sinha
Shri R. S. Doogar
Shri S. C. Karayalar
Shri Amolakh Chand
Shri M. C. Shah
Shri V. K. Dhage
Prof. G. Ranga
Shri B. C. Ghose

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS.

Shri D. L. Mazumdar—*Secretary, Department of Economic Affairs, Ministry of Finance.*

Shri K. V. Rajagopalan—*Officer on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*
Shri A. L. Raj—*Under Secretary.*

WITNESSES EXAMINED

The Indian National Trade Union Congress, New Delhi.

Spokesmen.

Shri S. R. Vasavada
Shri G. D. Ambedkar
Shri Deben Babu
Shri Sumant Desai

WITNESSES EXAMINED

THE INDIAN NATIONAL TRADE UNION CONGRESS, NEW DELHI.

—*Contd*

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

Chairman: We will begin now.

Shri Vasavada: In the first instance, I would like to thank the Chairman and the hon. members of the Joint Committee for allowing our organisation to place our views on this very important subject. We as the national organisation of labour have come in contact with the managing agents who have run, practically speaking, the entire private sector of the industry for a considerable period and being directly connected with the industry, we have come to know a number of things,—the difficulties experienced by the industry, difficulties experienced by some others, by the Government and by the workers. Naturally being the other side of the industry, namely, the working classes, most of our sources of information and the background under which I am placing these views will be those of the working classes. We have been feel-

ing the difficulties arising out of the managing agency system for a very long time, but after the country attained independence that is in 1947 we began to consider seriously whether public opinion could be educated and our views could be placed berore the public so that enligatenment could spread as to that are the difficulties and evils of the managing agency system.

When I am talking about the system, I want to make it very clear that myself personally and my organisation have got very great regard for those entrepreneurs, those leaders of the industry and pioneers who started all these industries in the country, and when I am talking and placing my views about the system, I do not want to convey for a minute that I want to minimise the importance and value which may be attached to the talents of the industrialists. We in this country do not want to lose any talents. We want to harness their talent for service of the society.

With these preliminary remarks, I would submit that since 1948, we began to consider whether the system could be rectified. We passed resolutions, we pointed out to Government as to what amendments we would like to have in the system and, practically speaking, in the entire company law. Some amendments also took place in the Companies Act. Then Government appointed a Committee. We placed our views before that Committee also. And when we find today that after the Committee's report, a draft Bill is before the House, and the Joint Committee is examining it, we feel that there are a number of shortcomings in the Bill, and we feel that the objective that our organisation is trying to attain is not attained because of the draft Bill and we have, very humbly come before you to place our views.

Chairman: May I ask whether your association is in favour of the managing agency system or you want the abolition of the system or you want improvement of the system?

Shri Vasavada: Abolition of the system. I will explain what I mean.

Chairman: In case, you advocate abolition, I think the members would like to know what is the other alternative. If we confine ourselves that way, we will have a useful discussion.

Shri Vasavada: I am very thankful to you for guiding me. That would be the most correct approach to the subject. I was just going to explain what we mean by the system.

Chairman: The third point which we would like to be informed about will be the period of transition. Suppose we decide to abolish that and to have some other alternative system, then what is to be the period of transition?

Shri C. D. Deshmukh: And how is the transition to be brought about? Supposing we were to do away with managing agency at the end of the year, then do you think that the transition to the new system will be easy or some time must necessarily elapse before one system can merge into the other? Also about loss of economic production, industrial production and so on.

Shri Vasavada: I will try to place our views on all these three subjects during the course of the time at my disposal. As I was explaining, we are not against the managing agents, the personnel of the managing agency. We are against the system. But what is the system after all? So long as the system and the chapter about managing agency is there on the Statute-book, the system merely means this: that the son of the managing agent becomes the managing agent. He can transfer his shares, he can sell away his shares and there are various other evils which are inherent in the system. If you want to do away with all these evils and if you still want that the system should be there, we have no quarrel with words. Today we find that there are a number of evils known evils.—I do not know, Sir, how many unknown evils are there, but if a research is made

[Shri Vasavada]

in every direction, we may even add to the list. Even my list is rather a long one. For example, because of the system, we find there are cases of mismanagement; we find that the remuneration charge is rather very extraordinary. I will with your permission develop all these points. But I have prepared a list of the evils which are there because of the managing agency system. If all these evils are removed, I want to make it very clear that we have no quarrel with the system. After all, what is the system of marriage in Hindu society? We do not find fault with marriage itself, but the dowry and so many other practices which have entered the system are the evils attendant upon that system. We quarrel with that. Therefore, I would emphasise this point that if all the evils that have come into the picture as a result of the system are rectified, we do not mind whether you call it managing agency system or the system of running the industry by managing directors (or personnel who run the managing agency or whatever it may be).

I will place before you the objective with which we are approaching the subject. I do not consider this merely an economic Bill. This Bill has got far-reaching effects on the social structure of this country and if I read before you the fundamental objective of the constitution of my organisation, it will explain why I am here with certain suggestions which I want to place before this Committee. The main objectives of my organisation is the establishment of an order of society which is free from hinderances in the way of an all round development of all its individual members, which fosters growth of human personality in all its aspects and goes to the utmost limit in progressively eliminating social, political or economic exploitation and inequality, the profit motive in the economic activity and organisation of society and the anti-social concentration of power in any form. I want to concentrate only on this one objective which is nothing but a paraphrase of the directive principles of the Constitution of our country. This idea has been introduced in the Constitution as a directive principle of State policy.

Now, let us examine the various evils which we find in the managing agency system.

Shri Amolakh Chand: Can we have a copy of the list of the evils which he has prepared?

Shri Vasavada: I will submit a copy of the list of the evils arising out of the managing agency system to the Secretariat.

In fact, I have jotted down all these points; I merely want to develop and explain some of them; otherwise, they are there in my memorandum. We have come across a number of cases of mis-management, particularly during the post-war period, with regard to companies run by managing agents. The reason is the hereditary nature of the system, because there are no qualifications attached.....

Shri C. D. Deshmukh: May I ask a question to clear it up? By 'hereditary' you mean transfer of shares by inheritance?

Shri Vasavada: Two ways. By the hereditary system, as Shri G. L. Mehta has once put it and Shri Vakil has quoted in his book, that if the son of a doctor cannot be a doctor and the son of a Minister cannot be a Minister, he is.....

Chairman: That is not the point which Shri Deshmukh was putting. Even under the present law, the managing agency system is to last for a period of 20 years and then the shareholders will decide whether they should continue the same managing agency or they should have some other arrangement.

Shri C. D. Deshmukh: So far as private limited companies and public limited companies of managing agency are concerned, that follows according to the law of inheritance. It is no more hereditary than any other thing is hereditary.

Shri Vasavada: My conclusion is that the existing law satisfies the

position that it would not be hereditary and shareholders will have the right to decide as to who becomes the managing agent.

But, unfortunately, as a layman I have found that the provision has been circumvented. I have come across several instances where it is circumvented even though the shareholders have the right to elect.

Chairman: It is circumvented by the fact that the election is to be decided by the shareholders and the shares can be inherited. Supposing the father owns shares worth Rs. 5 lakhs, the son naturally inherits and probably, Shri Deshmukh's difficulty is that to that extent it is circumvented because there is no limitation in the law. On account of the law of inheritance, the shares are inherited by the son.

Shri C. D. Deshmukh: Even if it is a managing director, by the same process it becomes hereditary.

Chairman: I would like you to suggest how you would get over the difficulty. There is inheritance not only to shares but also to other kinds of properties.

Shri Vasavada: Had I approached the Finance Ministry at any other time requesting them to do something which is *ultra vires* of this Act or which is not in consonance with this Act, I would certainly have been prepared to hear this. Naturally this thing happens, because that is a provision of the Act. But, today, we are here before this Committee to change that natural thing.

I am explaining this. Because a managing agent has promoted a company and run a company, it does not necessarily mean or naturally mean that his son or heir is going to be quite competent to do the same thing. I want an amendment to the effect that somebody, central authority, government or somebody or even the shareholders should have the right to decide whether he shall be the managing agent not only because he has got the shares but decide whether he has got the competence or not. This is what I am saying.

Chairman: So that the managing agency depends not on the holding of shares alone but upon competency also?

Shri Vasavada: That is the main plank on which we are standing.

Shri G. L. Bansal: Mr. Chairman, I would like to ask Shri Vasavada this. Who is going to decide whether a particular individual is competent or not?

Chairman: I hope the witness would be allowed to proceed.

Shri Vasavada: Mis-management arises, as I told you, because of inheritance and the incompetence of the person who is entrusted with the affairs of the company. The result is that it ultimately culminates in closure, stoppages, curtailment of production and so on . A number of instances can be quoted where firms have come to grief because of mis-management even in times or great crisis when the country required every little bit of production for the good of society.

Next comes the question of commission; that is, what is called remuneration. If it is really said to be remuneration, I would not have objected to it at all. If a managing agent works for 8 hours a day as every other social being in this country is supposed to, I do not see why he should not be remunerated. But, what is called the remuneration of the managing agents today is known under the company law as commission and the methods by which this commission is charged are rather very astonishing. In some cases commissions are charged on sales; in some.....

Shri R. R. Morarka: In the Bill there is a definite provision that the commission would be chargeable only on the net profits and all these old methods would be abolished by this Bill.

Shri Vasavada: I am thankful to the Draftsman of the Bill for that.

[Shri Vasavada]

I was on the question of the evils of the managing agency system. One of the evils of the system is commission. I am happy that the Draftsman has provided that it will be on the net profit. I want to make it very clear that remuneration shall be remuneration; that is, it will be something which the managing agent may draw in lieu of the services which he might render. The amount that has been fixed is really more objectionable from my point of view. My organisation has got strict views on the subject.

Shri M. C. Shah: What is your suggestion?

An Hon. Member: Can I suggest one thing? All these are covered by the memorandum submitted to us. Would it not be better to take some points out of the memorandum and elaborate on them?

Chairman: When he has finished, I will ask the Members to put whatever questions they have to put.

Shri Vasavada: I am now talking on commission. I have made a definite suggestion as to what should be the commission. I want to develop that. All that I have mentioned in the memorandum is not sufficient. When I have finished my points, I would certainly request that Members may put questions.

The amount earned by the managing agents by way of commission—I would quote from figures—is something like 70 to 75 per cent. of the total dividends paid during the last five years, particularly in the textile industry. I have got it from the balance sheets.

Shri Bansal: Is it for the whole of India?

Shri Vasavada: No; it is only for Bombay and Ahmedabad.

Shri Bansal: Is it related to the shareholdings of the managing agents?

Shri Vasavada: Only commission relating to dividends declared and paid to shareholders.

Shri G. D. Somani: Are you referring to the average or to individual cases?

Shri Vasavada: The average.

Shri G. D. Somani: Are you sure?

Shri Vasavada: I am quite sure.

Chairman: Can you give us a copy?

Shri Vasavada: I am quite sure and I will forward a copy of the note prepared by the organisation to the Committee. If my calculation is correct, the commission drawn by the managing agent comes to roughly Rs. 2,100 lakhs, which comes to the entire block capital—I am sorry, paid up capital—of the industry during the last five years. In Bombay and Ahmedabad, the industry have a paid up capital of about Rs. 2,200 lakhs or Rs. 22 crores. And, the amount which the managing agents have drawn from the industry during the last five years by way of commission is nearly the same.

Shri Bansal: You said block capital.

Shri Vasavada: I have corrected myself. I later said paid up capital.

Shri Bansal: You must be very careful.

Shri Vasavada: I am already careful. It does not include allowances; it includes all legal allowances under the contracts.....

Chairman: He is going to supply a copy of the figures and I will see that it is circulated to all the Members.

Shri V. B. Gandhi: Can you possibly give us some figures for any other industry, other than textile?

Shri Vasavada: Iron and steel, and tea and jute, if you want. I will send them all in my note. It is related to the dividend paid, 70 to 71 per cent. of the total dividends and 100 per cent. of the paid up capital.

Shri Bansal: May I know from Shri Vasavada as to how these figures

in regard to the jute and textile industries have been arrived at? Has he taken them on the basis of a sample survey or had he taken some units and the figures arrived at?

Shri Vasavada: I would not give the figures of a sample survey. We know what these figures are. It may be 200 per cent. also. Naturally, all the balance sheets have been studied; otherwise, they do not mean anything. If I have to make a sample survey it will be a big thing and I cannot study all the balance sheets.

Shri Bansal: All the units in that particular industry?

Shri Vasavada: Practically speaking all the units which publish balance sheets.

Shri Tulsidas Kilachand: You have not based these figures on the total profits of the year. It is better these are given on the total profits than on the paid up capital or on the dividend declared.

Shri B. K. P. Sinha: Supposing the limit put in the Bill is strictly enforced, by what amount will the remuneration of the managing agents be cut short by accepting your suggestion?

Shri Vasavada: It is a matter of calculation and if the Committee want it, my organisation will do it.

Shri B. P. K. Sinha: That will be helpful to us also.

Shri Vasavada: I will submit the figures based on the calculation suggested by my organisation as to what amount would have been drawn on the basis of 7½ per cent. and what would be the difference from that drawn on the basis of 12½ per cent.

Shri C. D. Deshmukh: Have you got the figure for net profit for this period?

Shri Vasavada: Yes, Sir.

Shri C. D. Deshmukh: Then one can easily calculate 12½ per cent. on the net profits and compare that with the Rs. 22 crores which you suggested, have been drawn by them.

Shri Vasavada: Gross minus depreciation; but is depreciation statutory or actual?

Shri C. D. Deshmukh: Statutory.

Shri Vasavada: As to statutory, nobody knows; it should be actually charged. Statutory depreciation is something known only to the Income-tax Authorities and the manufacturer. If it is actuals, then we can calculate. It is the only figure anybody will have. On that we will calculate what will be 12½ per cent. and what will be 7½ per cent.

While talking on commission, I merely want to say that we have limited it to 7½ per cent. both for the managing director and the managing agent. I have been asked what is going to be my alternative for the managing agency system. I do not mind anybody calling himself a managing agent, provided his remuneration is only 7½ per cent. of net profit. I am concerned only with that; or it may be Rs. 2,250, whichever is higher. I merely want to stipulate that it should be limited to the highest pay now allowed by the Government of India. I do not wish that the managing agent should be drawing any salary higher than the Minister of the State or the Minister of this country.

Sir, this also brings me to the other vital fact. The greatest difficulty today is the setting right of the social order. There is inequality. If this Bill does not make an attempt to bring about the correct ratio between the maximum and the minimum—at least if there is not an attempt made—I think we will be failing in our duty to bring about a just order in this country. The correct ratio according to my organisation will be 1 to 10. If the minimum is Rs. 100 the maximum should be Rs. 1,000 or at the most Rs. 1,200. I also want that this should come slowly and therefore I am putting it at 7½ per cent. of the net profit for the time being or Rs. 2,250, which would be the correct remuneration for services rendered by the managing agents.

[Shri Vasavada]

Sir, I do want to bring out one or two points about the managing agents. I do not want the managing agent to be connected with more than two companies, as suggested about the managing director. It does not apply to the managing agent also. During the last 27 years, I have found a managing agent who was attending to 20 companies. He is drawing the commission from all these 20 companies; sometimes 20, sometimes 15 and so on. I can quote figures which will be staggering. We are beating hollow the foreigners in this respect. A managing agent is attending to more than one company and he is drawing about Rs. 120,000 or Rs. 150,000. My feeling is that he is drawing practically more than what the Viceroy in the old regime was drawing. But, is he not supposed to work for 8 hours for drawing Rs. 10,000. How can he attend to every company and also draw this Rs. 10,000 from each of them? I suggest that there is always a limitation to the capacity of a man. It is possible that mis-management may arise because the managing agent tries to take over the responsibility of too many companies on himself. Therefore, we should limit his attendance to not more than two companies at a time as you have done in the case of managing directors.

Sir, the next point is with regard to nepotism and corruption. I have already said something about commission. No doubt commission is legal remuneration; it is provided for in the contract itself. But those of us who have come in very close contact—consequently, we have also suffered very much due to this system—know that there are a number of other ways by which money can be earned. Money can be earned on sale transactions; money can be earned on purchase transactions. It is a well known fact that friends and relations of the Managing Agents enter into a number of trades connected with the industry; it is a matter of common knowledge that relatives of managing agents are appointed as officers in the company. Sir, I have been connected with some of the committees appointed by Government. I have very closely studied the various aspects of preparing balance sheets. I find that the managing agent is capable of doing away with a company's money in more than hundred ways. You will find that the bungalow which he may have in some distant hill station may happen to be the company's bungalow; you will find that the motor cars which he is using are office motor cars. I have received complaints that people on the company's pay rolls have to cook the food of the managing agent and have to work as gardeners and servants.

My relations with these managing agents and industrialists in the private sector are so amicable that outside this Committee, I may not consider it proper or decent to talk about these things. But my heart is heavy and I consider this a good opportunity to try to lessen at any rate the evils arising out of the concentration of wealth in the hands of a few. I have no quarrel with individuals as such. We want that industrialist should be permitted some scope. I do not mind their taking their share of the profits. I know that some incentive has got to be given; nobody is going to live on air. My only appeal to the manufacturers and industrialists outside and hon. Members of this Joint Committee is to give people an incentive of national service also to serve the country under the Companies Act. The incentive of profit must be made subservient to the sense of national service. This is the overall background to the facts which I am just going to place before you.

We have made definite suggestions to combat nepotism. No doubt it is very difficult to find out as to how many crores of rupees are going into the pockets of the managing agents and what equality we are creating in the field of purchasing power. On the one hand we are talking that we want to create purchasing power in the masses so that we may improve the standard of living and bring about a better social order. On the other

hand, we find that we are widening the gulf between the purchasing power of one man, or a few men at the top and the large millions at the bottom.

The other evil of this system is the diverting of the company's money from one company to another. This comes about because a man, or group of men are connected with various other companies. Several instances have been cited in the note prepared by my office, where one company's money has been diverted to another company, and the former one has come to grief, because the new company has failed.

Shri Morarka: There are provisions in the Bill in regard to inter-locking of capital; do you want to make any further suggestions for tightening up these provisions, or do you consider them satisfactory?

Shri Vasavada: I will deal with that question later on.

A Member: What are your suggestions for eliminating illegal gains of the managing agents?

Chairman: The witness may go ahead with his submission. I wanted to suggest one thing to you, Shri Vasavada. I have no desire to come in your way. It appears that many people are anxious to put so many questions because they have gone through your memorandum. I would, therefore, suggest that you may mention only those points which are not covered by your memorandum.

Shri Vasavada: I shall be as brief as possible.

To check nepotism, corruption and illegal transactions, we have suggested in our memorandum that all sales, even speculation, should be registered immediately. Of course, we have to create an atmosphere whereby our borrowing power can go up, but that will have to be left to social agencies. We can certainly provide that all transactions whether of purchase or sale, should immediately be registered and no forms should be left blank so that the managing agent may buy a thing and if he finds it is profitable he may pocket the profits, and if it is a loss, he may debit it to the company.

As a citizen of this country I consider it my duty to bring it to the notice of this Committee that evasion of tax has become a regular method of earning illegal monies. We have come across so many cases. Again in my capacity as a member of a committee appointed by Government, I have come across cases where income-tax has been evaded like anything. When detected by the Income-tax Department, personal dues are shifted to the shoulders of the company. If Government could give us the actual amount of income-tax evaded, it will give us an idea of the illegal money earned by these people.

Sir, I have dealt with the subject of inefficiency which brings mismanagement and the ruin of the company, I have also dealt with speculation. The Finance Minister has put me a question: what is the alternative, and how does my organisation propose to check this evil. My reply to the first question is that to run a company is not the job of the son of a father. We, therefore, have to specify the qualifications of a managing agent and a managing director.

In the interests of production, in the interests of the consumer, people who manage the companies must be men of integrity, men with a sense of responsibility, people who have the technical know-how and experience. What is it we are finding today? We find that the wife of a managing agent also becomes a director or a managing agent. I have come to grief because a managing agent happened to know nothing about the company. When I went to talk to him, he pointed out to me a person with whom normally nobody will talk, and we have to talk with such people. Therefore, I say let there be some qualifications prescribed regarding experience, education, knowledge of finance, technical know-how etc. I fail to understand how a person simply because he has inherited shares from his father or is born in a family, becomes a managing agent. It is a highly undemocratic method which should not be allowed

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to be continued in the industrial and economic sector of our country.

I have laid stress on qualifications, but I want to urge, and urge very emphatically, that we will be doing the greatest disservice to the shareholders of the company if we do not specifically mention the disqualifications of the managing agents. People who have evaded taxes, people who have brought ruin to a company, people who have speculated and who have sold away the company's assets like scrap—all such persons should be disqualified and they should not be put in charge of any company.

There should be no firm of managing agency, but an individual managing agent. How can a firm have experience or technical knowledge? I insist and I want that the managing agent should only be a person. There is no sense in saying there is a managing agency firm. A firm does not know how to manage. We are of opinion that, just like the managing director, there should be one person only as managing agent, and he should not be in charge of more than two units.

Have we taken sufficient care to see that there are managing agents in which at least one director is an Indian national, *i.e.*, not all of them are foreigners. I think it may become the duty of the Government to see to this as they also suggest that production in the private sector has to be controlled. Otherwise, mixed economy has no sense or value. What will be the most effective way of controlling the production in the private sector? My suggestion is that Government should be empowered under this law to nominate their own directors. This power will also secure the other thing, which is very important from the Government's and country's point of view, that we must have at least one national in all companies as a director.

I want to remind you that the background of the whole thing is the suffering of the labour. If we want to inspire confidence in the workers, if we want them to be responsible to the industry, society and the State, I think they will also have to be given some incentive. They will have to be trained and equipped with knowledge so that they can become directors. My suggestion is that labour should have at least one director of their choice in the Board. I am very emphatic on that point.

Shri C. D. Deshmukh: Without any financial stake, is it?

Shri Vasavada: Yes. Both the representatives of the Government and labour (both should be nominated by Government) should have no financial qualifications. The other qualification regarding experience etc. should remain.

There is also another suggestion which I have put in our memorandum. That is with regard to auditors. I may tell you that I came across the balance sheet of a very big company, audited by a reputed firm of auditors. I found something wrong in the balance sheet, and brought it to the notice of the auditors. They had taken the opinion of a very great counsel in the country who said that the auditor need not teach the shareholders how to read a balance-sheet. The balance-sheet is before the shareholders. If they know how to read it, well and good. The auditor will not teach them. He will simply certify that everything is according to the books, according to the vouchers and so on and so forth. Many an industry in the private sector today is run under the shelter of the various Ministries in the Government of India. Can they remove their goods from one part of the country to another if thousands of wagons are not put at their disposal? Then there are the export and import licences. I also, as an employee of those employers, approach these Ministries, and therefore I know. The fact which I want to bring out is that industries are run today with the assistance of Government. It is not sufficient to say that the companies are responsible to the shareholders. I say that the financing of the industry and the maintaining of the production and the distribution is all

done to a very great extent with the help of Government, and therefore the auditors should also be responsible to the Government. They must give an account of their actions and inactions to the Government, and my definite suggestion is that the auditors should be appointed by the Government.

Shri C. D. Deshmukh: Do you not make a distinction between industries which are helped financially and industries which, as you say, are running with the assistance of Government—you used the word "shelter". Then you gave two instances—of removing goods by railway and import and export licences, by way of illustration. It seems to me that in any economic system any State, if it takes over public utilities, has to provide the services. In other countries there are private concerns which run transport. In that case it can be their responsibility, and you might figuratively say one industry is running under the shelter of another industry.

So far as import and export restrictions are concerned, since Government themselves impose those restrictions, they owe it to industry to see that those restrictions are properly operated. There again, would it not be wrong to say that they are running under the shelter of Government? In other words, Government have created a nuisance which it is Government's business to remove. I do not see how, because of the furnishing of those services or because of the removing of those obstacles, a right accrues to Government to nominate an auditor. Conceivably there is a difference between this and the other case I mentioned where Government or an agency of Government gives finance to a company, in which case it might be proper. I say it might be arguable that an auditor should be appointed by Government, to see that the monies that have been advanced to that particular industry are properly utilised.

Shri Vasavada: I can catch the point. A distinction is made between industries which are directly financed by Government and those to which shelter is given according to me. The Finance Minister has pointed out to me that the shelter has got to be given because the Government have created all these obstacles.

My approach is slightly different. These nuisances are there because we have accepted the principle of mixed economy. While accepting mixed economy, we have allowed the private sector to continue only on certain conditions. I will not use the word 'nuisance'; I will say that we have imposed conditions. We have imposed conditions on the private sector, that for running these industries they will have to fulfil so many conditions. I want to export so much; I am getting a higher price. The Government will come in the way and say: 'No, no.' We want to import this machinery etc. Government have to take an overall picture of the position in the country, whether we want it or not. Can any individual employer or manufacturer be in a position to decide what is good for the country? I think, therefore, it is perfectly right that Government have created all these checks. Government impose all these checks on the industry. I want one more check. It is perfectly logical—if you do not call it 'nuisance'—if you say that people working in the private sector have necessarily to accept these checks, check about import, about export, about this and that. Have we not made a condition that there should be a balance sheet presented? Does not the Companies Act say that there shall be an annual general meeting held at such and such time and balance sheet will have to be produced? What is the sort of feeling among the consumers? I do believe that shareholders have paid their money, but I do not want anybody to forget that but for the consumers in this country, shareholders would also lose their money. If this shelter—I do not want to use the word 'protection'—had not been there, what would have been the position of this industry. This shelter is at the expense of the consumers; therefore, the consumers

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want to know whether Government are satisfied that the company's accounts are properly maintained and are properly regulated and properly placed before the public. The only effective way of doing it is to make auditors responsible to the Government. While entering this room I remembered that there is an Act, the Companies Act. I know that the Act is there outside. But this Committee is sitting to make changes, whatever changes they may think proper in order to attain the objective which I am placing before you and which you find is the very correct objective. The right of the shareholders to appoint auditors is there under the Act, no doubt. I want to say that that right should be with Government. The Act is before you to amend and we may amend it accordingly.

There are only one or two points more. One is about the winding up process—the last thing,—which, according to me, should be the first thing which I should have placed—about the workers' lot. When the question of winding up comes, what happens to the shareholders, what happens to the country and what happens to the employees? I look at the question from these three angles. So far as shareholders are concerned, I do not know what happens to them, because years are spent before they know whether they are going to get 4 annas or 6 annas or 8 annas in the rupee. And there is always a person called Liquidator who is always interested in prolongation of the proceedings. So far as consumers are concerned, in 99 cases out of 100 whenever the question of winding up of a company comes, production comes to a standstill. The country loses the production. About the workers' lot, mention has been made in the last paragraph of my memorandum. It is really very pitiable. He does not know when the work will resume. His earned wages, everything that he has earned, also becomes uncertain—whether he will get it or not. And finally, there is no guarantee whether he will be retained as an employee by the new man who comes in charge of the company. In a society, in a country where we say that we have a Welfare State, I think this company law should also have provisions to safeguard the interests of the workers. I will not take the time of the committee because I have enumerated it in the last paragraph of my memorandum and I would request the Committee to take note of it very carefully.

There is only one thing—about the central authority. While drafting the memorandum, we had not made up our mind as to what should be that central authority. I congratulate the Bhabha Committee that they have thought it very proper that the entire supervision and conduct of the Companies Act should be entrusted to the Central Government. In our opinion, that central authority should be a Statutory Board to be appointed by the Government, because a number of objections are always raised whether it will be an authority under the Ministry, whether it will be under the system of bureaucratic arrangement of Registrars with delays, red-tapism, lack of experience and so on. But if there is a Statutory Board—the country has got good experience of these Boards in various other directions, I think it will be a satisfactory arrangement to administer the Act.

The Finance Minister had put me a very important question, as to what is to happen to the existing arrangement about managing agents if we want to abolish or change the system fundamentally. On page 10 of our memorandum, we have said:

> "All contracts, guarantees and obligations arising from previously approved articles of association or memorandom of association of the company or decisions taken in general meetings or meetings of the Board of Directors shall be null and void to the extent they contravene the provisions of the new legislation".

The first line says:

> "It is our considered view that by 15th August 1955, all companies must make arrangements to make

suitable alterations to comply with the provisions of the new Act, irrespective of the existing contracts".

We hold that view because we feel that the Bill will be passed and will be put on the Statute book long before that time. It may become necessary to call extraordinary general meetings of the company to pass the necessary resolutions. All our suggestions with regard to the question are given in that paragraph on page 10.

Chairman: I would like to summarise what you have said. When you suggested that auditors should be appointed by Government, naturally a question was put to you 'well, if the shareholders are there?' and you suggested that Government give protection or shelter or whatever it was. Looking to all your proposals and looking to the evils as I find, if I might summarise, your view is that you cannot leave industries to be managed by private capital in the interest of that capital itself. You do not exactly want that we should entirely nationalise it; you do not go to that extent. You would suggest that there should be something like controlled industry run by private capital.

Shri Vasavada: We know that shareholders are there all along and even then we know that companies have come to grief.

Chairman: I agree on that point.....

Shri Vasavada: I was making out a point that we were making too much of the shareholders. These shareholders have been there since the Companies Act came into force. They, poor creatures, have not been.....

Chairman: They also need protection.

Shri Chettiar: He has promised to give certain figures about managing agents' profits, commissions etc. I presume he will submit the figures to you and they will be circulated to us.

Shri Vasavada: I will send as many copies of the note as I have sent copies of the memorandum, namely, 70.

Shri Chettiar: He has enumerated many of the defects in the managing agency system most of which we know, and he has said that he would like to avoid inefficiency etc. That is all true. But how does he expect to get this done? What is the machinery, and how does he propose to have this sort of thing implemented in a Bill like this?

Chairman: He has suggested the appointment of auditors.....

Shri Vasavada: Just as we have got qualifications for directors, we should have qualifications for managing agents.

Shri Chettiar: Does he propose something like a Public Service Commission where people will be examined and recommended for managing agency? What is the machinery he envisages?

Shri Vasavada: I will amplify what I said. In order to get the right sort of people to become managing agents or managing directors, the only thing that the Act can do is to prescribe the qualifications of the managing agent, as we have prescribed qualifications for directors. Then the shareholders, of course, will have to find from among them as to who is the most qualified man and the check will be exercised by the central authority.

Chairman: The question is, what is the machinery suggested?

Shri Vasavada: The central authority, I have very categorically said that a firm is something which I do not understand. A firm cannot have any qualifications; it is only the single individual who would be the managing agent.

Shri Chettiar: He has suggested that firms should not be managing agents, but only individuals. One of the reasons why managing agency firms are there, is because of the financial backing the various partners can give to the management. That is so in the case of firms in the area from which I come—mills in Coimbatore etc. So how does he propose to have this financial backing?

Shri Vasavada: I was asked to be brief, but I am now being put questions. It is in my note also as to what

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has been the actual contribution of the managing agents in the past.

I have got figures collected from the balance sheets of two places. In one place the capital furnished by the managing agents varies from 2 to 11 per cent.

Shri Achuthan: What is the highest?

Shri Vasavada: From 4 to 12 per cent.

Shri C. D. Deshmukh: What is the highest percentage?

Shri Vasavada: It is 12; in one individual jute concern it was 27 per cent. Otherwise, it is only 11.5 and 12 and so on.

Shri C. D. Deshmukh: Apart from this particular case of 27 per cent. in no case of an industry has the capital furnished by the managing agent been more than 2 to 12 per cent?

Shri Vasavada: In some case, it may be.

Shri C. D. Deshmukh: Are you referring to the jute industry only?

Shri Vasavada: No, Sir; I say of all industries, mostly jute and textile.

I have got other figures also. Loans by managing agents in Bombay are 21 per cent., banks 9 per cent., public deposits 11 per cent., share capital 49 per cent. and debenture issue 10 per cent. In Ahmedabad, loans by the managing agent 24, by banks 4, by public interests 39, share capital 32 and debentures 1 per cent.

Shri Chatterjee: Is it about a particular industry?

Shri Vasavada: Yes, Sir. Apart from that, he has got the shelter of the government in various respects.

I was once asked whether I will be able to collect Rs. 2 crores for running a company which may come to grief very soon. My reply was that if government would afford the same shelter to me, I could also develop.

Shri Bansal: What do you mean by shelter?

Shri Vasavada: I mean shelter that is given to private enterprise.

Shri Chatterjee: You are not suggesting that there is discrimination between individuals. If you are to start a company you will have the same facilities.

Shri Vasavada: What I mean to say is that the Imperial Bank will not give me Rs. 2 crores.

Shri Jain: What are the shelters you object to?

Shri Vasavada: I do not object to any. I may make it very clear here that it is the duty of the Government and also the duty of the industrialists to respond and to be magnanimous enough to accommodate the various needs and demands of society. There is no question of anybody complaining about it. There may be concessions and restrictions about exports and imports. That is certainly government's duty. I congratulate the private sector that they have not revolted against that. But I merely want to add that the next step has to be taken now, whereby we may be able to create a society where inequality may disappear and exploitation may be absent and where we can work for the uplift of society.

Chairman: All the statements that you are now making before the Joint Committee are public statements. They should be accurate as far as possible.

Shri Vasavada: I am merely quoting. All these are taken from published reports. I do not refer to this quotation but this is exactly the feeling of the Finance Ministry and the Government of India today. This is what Shri Subedar says in his Enquiry Committee Report. "The managing agency system does not encourage but checks the flow of capital from the industry." The Finance Ministry of the Government of India feels that even though in the Five Year Plan a proper place has been given to the private enterprise, the flow of capital has not been what it should be. This is what I have been hearing in season and out of season.

Shri Chatterjee: May I put a few questions? We are cognisant of the many defects and shortcomings of the managing agency system. We are deeply perturbed about the hereditary

character of the managing agents. Do you think that it is directly due to Indian managing agents? Take for instance, the British managing agents. They always take outsiders. It is not always the relative. In that sense is it really confined to the Indian system?

Shri Vasavada: So far as my information goes, the managing agency system as such is not to be found anywhere outside this country.

Shri Chatterjee: Take for instance the British managing agency firms in Calcutta. There you will find outsiders also being taken, not merely sons and sons-in-law as in Indian houses. What I am pointing out is that this difficulty is really confined to the Indian managing agency houses.

Shri Vasavada: I have placed before you not only one phase of the thing. Immediately after the hereditary thing which I have pointed out, I have also said that there should be qualifications. If the British managing agency firms are including in their Boards of Directors, directors who are properly qualified, well, to that extent my purpose is served.

Shri Chatterjee: Let us see how to eliminate this devolution by inheritance. What kind of qualification are you thinking of so that by legislation we can eliminate this devolution by inheritance?

Shri Vasavada: On page 7 of our memorandum we have given the qualifications of directors etc: I have specified, 'qualified persons, having a minimum education up to a certain degree or administrative experience in business and industrial management in approved institutions followed by practical experience for a reasonable period.'

Shri Chatterjee: Do you mean to say that we shall legislate that the managing agent should be B.Com., etc?

Shri Vasavada: We have to prescribe a qualification.

Shri Chatterjee: That is, you want to eliminate others? What kind of qualification do you want? An M.A. cannot be a good managing agent.

Shri Vasavada: If it helps the Committee, I will mention the qualifications according to me. I will submit a note regarding the qualifications of a managing director and a managing agent. I have indicated the lines on which they can be selected.

Shri Chatterjee: I am quite sure my colleagues would be obliged if you can give specific instances of qualifications so that we can think about it. Apart from academic qualifications what do you want? You know qualifications go a little way only.

Shri Vasavada: I do not want academic qualifications at all. I have described them. It is so very difficult to get a managing agent. They do not know how the industries run; they do not know what the population of a State is, what are the municipal affairs of a certain place etc. Some academic qualifications are also necessary. Some general knowledge.

A Member: What would be the minimum qualification required?

Shri Vasavada: I have given them in the memorandum. If the Committee desires, I will be happy to send them a list of the qualifications, which are necessary according to my organisation.

Shri C. D. Deshmukh: Under the existing law—the temporary amendment of 1951—Government has the power on the advice of a Commission to approve of changes in managing agencies. Are you not satisfied with that arrangement? If not, why not?

Shri Vasavada: That power is vested in the Centre and the Government is not able to exercise that power and it does not provide for any qualification. That is also applicable only in cases of changes of managing agency.

Shri C. D. Deshmukh: In regard to composition of managing agencies my difficulty is this. Hereditary nature and incompetency and all these things are there. The power vested in government is this. Somebody makes a transfer of his shares. Naturally he would try to transfer the managing agency and government would have to say yes or no. That is the only remedy.

Chairman: That is only for existing managing agents.

Shri C. D. Deshmukh: Changes of managing agencies out of inheritance.

Shri Vasavada: That is without any qualification.

Shri Chatterjee: May I put another question? May I draw the attention of the witness to Schedule VII? I am drawing his attention to para 2 on page 307. You will notice that the Bill is providing certain restrictions (page 306) on the powers of managing agents to appoint a relative of the managing agent etc. in (2)(b). Certain safeguards have been introduced. Can you suggest any other steps?

Shri Vasavada: We have applied our mind to this particular clause; when we have a managing agent or managing director of the type we want, then what will be the position or effect of this clause? This clause may remain as it is. If he is an honest and responsible managing agent he will go by this clause, and I would not like to suggest any amendment to the clause.

Shri Chatterjee: So this is acceptable to you?

Shri Vasavada: Provided the person appointed is a fairly satisfactory person. I would in this connection draw your attention to the last sentence of the first paragraph at page 9 of our memorandum which says:

> "We also suggest in this connection that power to employ officers of the company, above a salary of Rs. 500 per month should be vested in the general meeting or some other suitable arrangement should be made by creating a Recruiting Board from the shareholders for the purpose."

I may inform the members of this Committee that this is the practice generally followed in the case of Government-run industries.

Shri Chatterjee: You know the Bhabha Committee has pointed out various defects and shortcomings in the Managing Agency system....

Shri Vasavada: Without coming to the correct conclusion.

Shri Chatterjee: They have pointed out that they consider that in the present economic structure of the country it will be an advantage to continue to rely on the managing agency system.

Shri Vasavada: I have read this statement so many times. I fail to understand as to how, after having found out all these defects, they can reach this conclusion: otherwise I would not have been here at all.

Shri Chatterjee: The main point which that Committee has emphasised is that the lack of an organised capital market in this country is responsible for the development of the managing agency system.

Shri Vasavada: I have already paid my homage to the entrepreneurs who have started the industries.

Shri Chatterjee: May I ask you whether you agree that there is still lack of an organised capital market in India today?

Shri Vasavada: Everything depends upon the view which the Government, representing the entire population of this country, take about the expansion of the industry. It is really a very serious and very important point—whether we want large scale industries

or whether we want cottage or small scale industries. If the managing agency system really wants to serve the needs of this country, I would appeal to them to migrate to the villages and employ their talents and their organisational skill in developing the cottage industries.

Really speaking, today we do not want a capital market for expanding any large scale industry. From what I have been noticing, I find that all basic and key industries are run today by Government. Government have brought into existence more than a dozen industries of a basic and key nature. The capital required in the case of these industries ranges from Rs. 3 crores to Rs. 70 crores. Who has found out this money? Which capital market has produced money to the extent of Rs. 3½ crores for a penicillin factory, or Rs. 70 crores for a steel plant in this country? It is the Government which has found out the money. It is now a fundamental question for the Government to decide whether these key and basic industries are to be run by the public sector or by the private sector.

So far as consumer goods are concerned, I would humbly suggest that these things may better be left to the cottage industries and village industries. This will in a way relieve the concentration of wealth in the hands of a few; it will also obviate the difficulties of distribution, which are confronting us every now and then.

This is a question on which I can talk for half an hour if the Committee so desires. So far as textiles are concerned, the field may be left to the handloom.

Shri Amjad Ali: At page eight of your memorandum you have fixed the tenure of office of a Managing Agent at seven years. Is there any particular reason behind that?

Shri Vasavada: You should allow a fairly reasonable time to a person to make his contribution to a company.

Shri Somani: Even the establishment of an industry will take from four to five years: then there is the period of teething trouble. Do you consider that a period of seven years would be enough to attract anybody to invest his capital in it?

Shri Vasavada: It can be further extended by another seven years. But if a person cannot do it in seven years there is really something wrong with him.

Shri Amjad Ali: With regard to the Central Authority for the Administration of this measure, the Bhabha Committee had reported that there ought to be a Central authority. The Bill provides for the setting up of three regional offices at Madras, Bombay, and Calcutta. You seem to favour the Bhabha Committee's view and the draft Bill does not appear to satisfy you?

Shri Vasavada: There is a lot to be said on both sides of the question. A statutory board with adequate powers and proper personnel is as good as any departmental authority. There would be no red-tape or interference by the officialdom and the body will reflect the views of the mercantile and business community.

Shri Basu: In regard to your suggestion in connection with the operation of the law of inheritance, such a change cannot take place, unless and until the Central Government approves of the change.

Shri Vasavada: That is the very amendment that I am seeking that merely on account of the law of inheritance he should not become the managing agent. The succeeding managing agent should possess the qulifications which will be prescribed.

Shri Basu: Is it your intention that the succeeding managing agent should be from among the persons who are already workinf? I take it you would not rule out an independent outsider who is brought in to replace the managing agent.

Shri Vasavada: I would not object even to the son becoming the managing agent, if he is fully qualified: there is no question of his being a partner in that firm.

Chairman: In other words, mere inheritance by itself should not entitle him to be a managing agent. He must in addition possess some qualifications.

Shri K. K. Basu: You have said something regarding the capabilities of the managing agents in organising capital requirements of the concern. Is it your case that so far as the managing agency system has worked in our country, they have not to a large extent been helpful in organising the capital required for the particular concern?

Shri Vasavada: I have relied upon the quotation which I have read out and also on the day to day expression of views of the spokesmen of the Finance Ministry and of the Government of India that capital is not coming forth freely.

Shri K. K. Basu: Is it your suggestion that by better organisation of industrial banking it is possible to fill up the gap in the establishment of new industries?

Shri Vasavada: Banking is also an industry.

Shri C. D. Deshmukh: His point seems to be that whereas in Ahmedabad the managing agents find a part of the capital on loan, if you were to do away with managing agents, will it be possible for banks, in your view, to take over that function of financing the industry?

Shri Vasavada: That is being done in other ways. In Ahmedabad they have relied for their capital formation on private depositors and to some extent on banks. In Bombay and other places they are relying mostly on banks.

Shri K. K. Basu: Do you consider that the existing banking arrangements are enough or there should be better organisation of industrial banking, or a better type of commercial banking to supply the finance?

Shri Vasavada: The Government should also be alive to the question of creating new facilities.

Shri K. K. Basu: In regard to your suggestion about the appointment of auditors, don't you think that the clause which enables Government to initiate investigation is enough to prevent malpractices?

Shri Vasavada: My difficulty is that I have not been able to explain to the Members that I represent really the other side of industry. I know that there have been defections, mismanagement, misaccounting and all sorts of things. I have moved the Central Government and State Governments a number of times. Why talk about the shareholders moving the Government? Even the Government have themselves got the power, but it is really very unfortunate that those powers are found to be either ineffective or it takes so much time that they have not satisfied firstly the other side of industry, secondly the shareholders, and thirdly the consumers. After all, even under the Bill what are the powers today? Government will send for the records immediately. So far as auditing is concerned, you know the cancer starts years before, and if we want to really save the industry and the assets, we should see that the first boil should not take place, and only the auditor can check it at that stage. When the matter comes before Government, it is a declared cancer and just on the eve of liquidation.

Shri Basu: If a provision is put in, that not only the shareholders, but either the workers or the employees of the concern may put their case before the statutory body that you suggest, and that they, irrespective of the provisions of the Companies Act, may appoint an auditor to look into

[Shri Basu]

the matter, will that be acceptable to you in preference to your suggestion for an auditor being appointed by Government.

Shri Vasavada: I will be satisfied if an additional check is put that the workers can also approach the Government complaining against the auditors appointed by Government. That will be really an additional and necessary check. Government auditors also may commit mistakes and this check is necessary.

Shri Basu: You have suggested that at the time of winding up, the claims of workers as to their arrears and wages or provident fund should be the the first charge. Do you mean to say it should be the first charge even over the dues of Government?

Shri Vasavada: I am not a lawyer. If the Government is of a welfare state, I would expect Government to forego their due. So far as secured debts are concerned, it is a legal matter, and I would request the Joint Committee to find out some way whereby priority may be given to workers' wages.

Shri C. D. Deshmukh: Do you put the welfare of the community below the welfare of the workers?

Shri Vasavada: I do not represent any sectarian interest at all. Whatever I have been saying is definitely with the intention of serving the society and the community at large.

Shri C. D. Deshmukh: Therefore, it follows that the dues of the community should be paid before the dues of the workers.

Shri Vasavada: The community would be very unhappy if a section of the community is starving.

Shri Basu: Is it not your suggestion that the workers should be paid first on the principle that they have the least capacity to bear suffering?

Shri C. D. Deshmukh: This is a leading question!

Shri T. K. Chaudhuri: The INTUC wants the managing agency system to go and the Finance Minister wanted to know thereon what is the alternative form of organisation or institution that they want to introduce. It seems from the memorandum and the discussions that we have had, that they are only seeking to replace the present system of managing agency by an alternative system of the managing agency, viz., only an individual as managing agent. They suggest that in future only an individual should be the managing agent. But the managing agency system has a specific meaning, that a certain individual or body of persons separate from the Board of Directors, exercise powers of the Board of Directors under a contract. Do they want to replace that system or want to retain that system?

Shri Vasavada: I have described the evils of the system. It is a system which brings power arising out of the concentration of wealth in the hands of a few people. I want that system to be abolished entirely.

Shri C. D. Deshmukh: This is what you say, but the suggestions that you have made seem to indicate that what you want is mending of the managing agency system to an extent further than what the Bill has provided for. Shri Chaudhuri's point is: do you want it to be abolished altogether?

Shri Vasavada: If the evils of the system are ended, I do not mind whatever remains, if it is called managing agency. I have no quarrel with the name.

Shri V. K. Dhage: He has stated that the appointment of the auditor must be made by the Government. Without disputing that, may I know whether he would like to put a limitation on the audit that a particular person may be able to conduct, just as directors are required to limit the number of directorships to 20?

Shri Vasavada: When the auditor is appointed by Government, I think they will take care to see that he is entrusted with only such work as he can do.

Shri Dhage: A managing agency firm is supposed to continue from year to year. The auditors are also required to practice under the law in their firm's name. Under the provisions of the present Bill, an auditor or an auditor firm shall be reappointed ordinarily. May I know whether he would like to put a restriction upon that kind of appointment, because it might happen that a firm might continue to be an auditor of a particular company irrespective of the fact that those who started practising in that name might have died years ago?

Shri Vasavada: Auditors are qualified persons. They are members of the Chartered Accountants' Institute. A firm started long ago may not have the same status and reputation today. That is why I said the Government should appoint the auditor, and not the company or the shareholders.

Shri Dhage: Would you not be in favour of the auditors' profession being conducted in the name of a firm?

Shri Vasavada: I have not thought over that question.

Shri Dhage: He has said that persons known to have evaded taxes etc., should be disqualified for the appointment of directors. I would like him to amplify as to how this can be done?

Shri Vasavada: It is being carried out at so many places; say, any person who has been convicted as being guilty of moral turpitude or income-tax evasion, shall not be a director...

Shri Dhage: How will you know that somebody has evaded tax?

Shri Vasavada: When found...

Shri C. D. Deshmukh: Arising out of that question, there is a difficulty which perhaps Shri Vasavada may not have thought of, and that would be for us to consider. So far as evasion of income-tax is concerned, under section 54 of the Income-tax Act, it is not possible for the Income-tax Department to divulge the names of those who have evaded tax. Therefore, it will not be possible for either the central department or the central statutory body to have the information on the basis of which they could disqualify directors.

Shri Vasavada: Quite right. My feeling is that we will come across so many other things where something or the other may come in our way. All these lacunae will have to be rectified.

Shri B. C. Ghose: I should like clarification on three points. First, I am rather confused about the attitude of the organisation to the managing agency system. First, I should like to know whether the defects which they say attach to the managing agents, also attach to other forms of management, whether by managing director or managers or secretaries. Secondly, if they want to abolish the managing agency system, why do they say that there may be a seven year period and 7½ per cent. for managing agents and 5 per cent. for managing director? Thirdly, is it their contention that with regard to the inheritance system—of course, the whole problem will not be considered in connection with company law; it will have to be done otherwise—there is no objection to the managing agency system provided the hereditary system is abolished.

Chairman: I think the witness is not likely to say anything in regard to such doubts which should naturally arise. We will consider them, unless you point anything which.....

Shri Vasavada: On page 8 of my memorandum, I have discussed the question of remuneration and period of tenure. In the last paragraph I have distinguished between a managing agent who promotes a company and

then becomes the managing agent so far as production is concerned and the other....

Shri B. C. Ghose: All right. I shall not pursue it.

The second point was in respect of capital furnished by the managing agent. The managing agency people say that even in regard to bank loans and public deposits apart from capital directly come to the company either by way of loan or share capital contributed, it is their name which brings in capital from the banks, and from the depositors. They put forward the argument that if their names were not there, then deposit would not be forthcoming and advances from banks also would not be available. Is there any truth in that statement?

Shri Vasavada: That is so. But that is exactly what we are doing. At present we are trying to change the values—whether the bank will respect the black-marketeer, the evader of tax, the defrauder or it will respect the honest director who has wide experience. If the Act says that the Banks will respect only honest people, only people who are competent to deal with companies, naturally, the banks will....

Shri Ghose: What has been your experience so far—do they respect honest people or dishonest people?

Shri C. D. Deshmukh: Arising out of that, do you make a distinction between managing agents and promoters of companies? Apart from tax evaders, defrauders and others, there must be some good people among them, the benefit of whose competence we wish to have for the progress of the country. Would you say that those very people could promote industries and, if they were found to be promoters, then the public would come forward with their deposits and so on?

Shri Vasavada: I am sure we can change the values and we have to change them.

Shri G. D. Somani: So far as banks are concerned, the first thing is about the resources and credit-worthiness of the firm or individual to whom advances are made. Or is it only because of its honesty or competence?

Shri Vasavada: The bank representative can reply to that question. Obviously they must also have come to grief because of dishonest managing agents.

Shri Ghose: The third point is this: Is it correct to say that so far as the hereditary principle is concerned, the witnesses agree that if certain qualifications—of which a list will be furnished—are provided, they see no objection to it.

Chairman: He has already explained. We will pursue it later.

Shri Ghose: I was not quite clear whether they have no objection to the principle being in operation.

Chairman: He says that mere inheritance should not entitle a person to be a managing agent. There must be something else.

Shri Ghose: Then about auditors. There is a provision even in the Bill prescribing qualifications for auditors. If auditors do something wrong or if they attach their signature to a wrong statement, then they are also liable under the Act. I take it that witnesses are satisfied with these provisions. If they are not, is it their contention that there should be a panel of auditors from whom each company may select an auditor or that a particular auditor should be deputed by Government for a particular company.

Chairman: His suggestion is that there should be an auditor appointed by Government.

Shri Vasavada: I do not want to use the word, but in short, I want to nationalise the auditors' profession.

Shri Ghose: It will not be from a panel.

Shri Vasavada: Yes.

Shri Radhelal Vyas: There are many undertakings in the private sector in this country, e.g. Insurance companies. What have you to say about the evils that you might have found in such undertakings also? Are they equally prevalent in insurance companies and other companies where there is no managing agency system?

Shri Vasavada: So far as my organisation is concerned, we are definitely of the opinion that Insurance companies should immediately be nationalised.

Shri Vyas: As regards pay of the managing agent, profit, commission etc., you have recommended that it should be Rs. 2,250 or 7½ per cent. of net profit, whichever is higher. May I know to what extent this higher limit can go? Can it exceed Rs. 2,250 and if so to what extent, and how that will compare with the recommendation of the Company Law Committee which fixed Rs. 20,000 as the minimum, and also with the provision under clause 329 which fixes it at 12½ per cent. of the net annual profits?

Shri Vasavada: If we have got a properly qualified managing agent or managing director, I have no objection in fixing up a minimum salary for that gentleman for doing 8 hours work, and I do not mind if a minimum salary, say, Rs. 1,000 to 1,200 per month is fixed. Regarding the maximum, of course, I know....

Chairman: You have said 'whichever is higher'. 'Higher' may be Rs. 2 lakhs or Rs. 3 lakhs.

Shri Vasavada: I know the limitations under which we are all working. We have been accustomed to charge, as I mentioned, anywhere from Rs. 1,50,000 to Rs. 3,00,000 as remuneration for running a company. I have suggested this thing so that things may be slowed; one has to go slow. If 7½ per cent. is found to be high, we will take the next step and reduce it later on. So far as my organisation is concerned, when the actual data is supplied, as I have been asked, as to what will be 7½ per cent. and what will be 12½ per cent. it will be known, and if a reasonable maximum is also fixed, I will be really very happy.

Shri Vyas: You must be aware that in some of the State undertakings, e.g. Sindri, Chittaranjan Locomotive Works and Damodar Valley Corporation, the General Manager's pay is in excess of Rs. 2,250.

Shri Vasavada: This is really a very important factor. After we gained Independence, I think there was a view in this country that our maximum should be reduced so far as government officers are concerned. What do we find? As soon as even the idea or talk of reduction started, it was the private sector who began to induce away these people. So the correct approach will be to prevail upon the private sector to first fix up the maximum and then of course Government machinery will also start.

Chairman: May I request honourable members that as the witness has very exhaustively dealt with almost every aspect of the question and viewpoints which he wanted to place before us, if there is any elucidation only, then it may be asked. Otherwise, we need not discuss these things.

Shri Amolakh Chand: On page 9 of your memorandum under the heading 'Check favouritism and nepotism', you suggest a Recruitment Board from among the shareholders to employ all officers drawing salary over Rs. 500. If there is to be a Recruitment Board, should it not be by the proposed government officers in charge of the company?

Shri Vasavada: The Recruitment Board, according to my notion, will be a sort of committee from the Board of directors.

Shri Venkataraman: You find in clause 253 about a person being director of not more than 20 companies? Are you in favour of that or would you like to restrict the number of companies?

Shri Vasavada: The Act now provides only two.

Shri Venkataraman: No, directors. You find in clause 253 that a person can be the director of 20 companies at a time. What are your views about it?

Shri Vasavada: I think the Bill provides only for two companies.

Shri Venkataraman: Not for managing director but for being a director. What are your views about that?

Shri Vasavada: I have a note prepared wherein I say I find that there is no limit to the number of companies on which a man can be a director. I subscribe to the view that it may be twenty.

Shri Venkataraman: You said that the managing agency system may continue with some restrictions. Would you like some ceiling to be fixed with regard to the number of companies that can be managed by a managing agent?

Shri Vasavada: I said two.

Shri Mulchand Dube: Is it your case that the managing agency system should be abolished altogether?

Shri Vasavada: I have placed my views before the Committee.

Question: I want you to say, 'Yes' or 'No'.

Answer: Yes; the scheme should be abolished as I have described.

Question: Do you suggest that a law should be enacted declaring the managing agency system to be illegal or that it should be prohibited?

Answer: That is what I am here for. I want all these provisions to be included in this Act so that the scheme may be prohibited.

Question: Do you mean to say that it should be prohibited in this Bill itself?

Answer: Yes.

Question: Do you mean that the business of the managing agents is an illegal purpose?

Answer: I have already said that. I have not used that word.

Question: May I draw your attention to the definition contained in page 3 of the Bill? It includes any firm or company. A company is not bound to employ a firm or a company. It may employ an individual?

Answer: That is what I have suggested; the managing agent should mean an individual and not a firm or a company.

Shri Dube: So, there is no harm if the words, 'firm or company' remain there because a company has the option to employ a firm or an individual or a company?

Shri Vasavada: My submission to the Committee is that the managing agent should mean only an individual and not a firm or a company.

Question: You do not seem to attach sufficient importance to the fact that the company has the option in the matter?

Answer: I do not want the company to have any option in the matter.

Question: The next point is this. The relationship between the managing agent and the company is fiduciary as declared in the Bill. Will it help you in the position that you take up? It means that he is in the position of a trustee. Will that meet your wishes?

Answer: I want that the managing agent should be a real trustee.

Question: If the relationship is declared to be that of a trustee, then will it ultimately meet your wishes?

Answer: It may be described as trustee; but then what will be his qualifications and liabilities?

Question: There is another law on the point.

Answer: Yes, the Trusts Act. But may I suggest that there is another

law which may be considered; there is the law of the Co-operative Societies. If we do away with the companies and have all the business transacted by co-operative societies..

Chairman: Let us not go away from the Bill.

Shri Dube: Supposing the managing agency is a company and the company has a managing director. The managing company relying upon the qualifications of the managing director enters into an agreement of managing agency with the company. Supposing it is provided in the agreement that is entered into that after the death or retirement of the managing director the agreement should be revised. Will that meet your wishes?

Shri Vasavada: I know of managing agency firms where the husband, wife and child are the partners.....

Question: Reply to the question. Are you agreeable to the suggestion?

Shri G. Ranga: You talked about qualifications that should be insisted upon for the managing director or the managing agent. Would you like to suggest that Government should be empowered to say that the candidates for the managing directorship or managing agency should have certain qualifications and thereafter only the shareholders of companies will be able to select their men or elect them from out of those having the minimum qualifications?

Shri Vasavada: I think so.

Question: Whenever government appoints managing directors for any of their own concerns, they fix a maximum period of five years and the time limit you suggest—that is seven years—is a concession. Do you mean that this should be a concession to them?

Answer: In fact I would like the government also to appoint these managing directors for 7 years, which they do not do today.

Question: As a result of their good names, some of the managing agents are able to command influence in the market and they get the public to contribute more than what they contribute to the companies. Have you not come across a number of managing agents who have exploited their so-called goodwill, especially in the post-war years and floated a number of companies and collected lots of money from the public without themselves making any large contribution to the industrial development of the country?

Answer: I have described as many of these instances as have come to my notice in my note.

Question: If the managing agency system has been as successful as it has been made out and in spite of their defects they have been able to induce the investors to invest money for the industrial development of the country, would there have been any necessity for the Industrial Finance Corporation at the Centre and in the States?

Answer: Certainly not. That is why Government have brought in the Industrial Finance Corporation to see that the industries of the country are properly financed. I want to make it clear that by all this these people should be made to do what they ought to do. The Corporation will also serve as a model to them for what you and I want them to do.

Shri B. K. P. Sinha: You have suggested the appointment of auditors by the Government. That means that Government should pick and choose from the auditors and assign them to each and every company. Would it not be better if Government were to establish a regular department of Company Audit?

Shri Vasavada: It does not appeal to me.

Question: You want that Government should pick and choose from the present auditors. All right.

About capital market, Shri Chatterjee read out something from some book that this system came into existence because there was no development of capital market in this

country. Don't you feel that since a sort of capital market has developed in this country—though it is not well organised—there is no need now?

Answer: I think so, Sir; and it is coming up.

Question: Talking about basic industries you said that huge basic industries requiring huge capital are started by government. That means that the private sector is dealing only with middling industries. Do you not think that the capital market is organised enough for the purpose of establishing these industries?

Answer: It is good enough for the purpose of starting new industries and running existing industries.

Question: Now the banks invest money in these companies because of the association of these managing agents. Now, after the law comes into force and the companies become well settled, do you think that even if these managing agents do not take greater interest in them banks will develop greater confidence in those companies and will give them more loans?

Answer: Yes; really speaking, banks should pay only on the assets of the company.

Question: I do not want to know what they should do, but only what they do?

Answer: They will be doing it. But the only thing that is required is that you should insist on the State Banks that they should come in when necessary.

Question: Will not the supply of capital dry up?

Answer: No, Sir.

Question: You say about qualifications, that is, for choosing persons with proper qualifications. I can very well understand your prescribing the disqualifications. That is a method of condemnation. But so far as prescribing positive qualifications are concerned, I feel it would not be workable in practice, because then Government will have to maintain a list as voluminous as the voters list.

Answer: Government need not do it. I will submit my note as promised. The Committee will be able to judge what are the qualifications that might be incorporated in the provisions of the Act and then the shareholders will decide. If there is any dispute then the central authority may interfere. There will be no necessity to prepare a list because after all we are dealing only with about 18 crores of rupees.

Shri Sinha: One question more about positive qualifications. You seem to lay emphasis on academic qualifications. My experience has been that people with academic qualifications do not get along while others with less qualifications have.

Question: I have not said anything about educational qualifications.

Shri Vasavada: Experience of the industry, technical knowledge, know-how of the industry—these are the qualifications.

Shri S. P. Jain: You have advocated that the son should not be appointed as the managing agent. Suppose he engages experienced persons—one may be a technical person, the other may be well-versed in accounts, the third may be experienced in the administrative side—what would be your reaction if some sort of such arrangement is made?

Shri Vasavada: I have no objection if they become directors, one may be a technical director, the other a financial director, the third an administrative director.

Shri Jain: It means you have no objection if they are appointed as directors and form managing agents of a firm?

Shri Vasavada: If they want to give their services to the country, they can certainly become directors: they need not become the managing agents.

Shri Jain: It means you want to split the managing agency into groups.

Shri Vasavada: I have still to see such a firm.

Shri Somani: Shri Vasavada, I should like to take up the question of finding finance. You have been repeatedly saying that a man of honesty and integrity, desiring to do service to the community should be eligible to loans either from the depositors or from the banks. Do you think that a depositor or a banker would agree to give any loan to a managing agent, however efficient and honest he may be since in case of difficulties, which are bound to arise in any industry, he will not be able, as a guarantor or as a borrower, to pay back the money to the depositors or to the bank?

Shri Vasavada: Therefore, for the stability of the banks as well as the stability of the company, banks should give loans only on the assets. The other question does not arise.

Shri Somani: Even after raising loans on assets, a margin has to be found from somewhere by a party of means. Unless you associate with your remarks that the party receiving the money must have adequate means to satisfy the lender, do you think seriously that any bank or any lender would come forward to give loan only because a man is honest or is capable of doing service to the community.

Shri Vasavada: The only reply I can give to your question is that, the sooner we do away with gentlemen who can procure money from the banks because banks are accepting their guarantee, however corrupt they may be, however, much they may defraud a company, or cheat the Government, the better it is for the community at large. I would not object to your calling a gentleman big, provided he is honest, he is competent, and provided he is actuated by a sense of service to the company and the community.

Shri Somani: I would draw your attention to the resolution that was passed by your organisation at Rajkot in April 1954 in the course of which you said: "It (the managing agency system) leads to concentration of power over means of production without corresponding responsibility". You are aware of the picture of well established industries functioning in the country, in the case of which the managing agency houses have given their valuable contribution in the shape of administration and technical management. Will your organisation be justified in making a sweeping observation of this nature?

Shri Vasavada: In my preliminary remarks I myself have said that I have got a high regard for the pioneers of industry. When Christopher Columbus discovered new land he got a name in history. It cannot be said of the captain of every ship that crosses the Atlantic.

There is absolutely no comparison between people who have pioneered new industries after taking so many risks and the present managing agents. The question put to me is how I can pass such a resolution Well, we have passed this resolution after due deliberation and deep consideration with many instances of people mismanaging the companies, defrauding the shareholders, evading taxes and bringing workers to grief. If the honourable Member wants I am prepared to give a whole list of such companies. If only he will care to go through the innumerable letters we receive, he will not differ from me.

Shri Somani: In this memorandum you say: "The Managing Agent, however, almost uses the authority of the owner and suppresses the Directors who really ought to direct him. This has come to happen due to his being

in the position of authority. It is due primarily to this fact that the resolution demands the abolition of the existing system of management."

In view of the fact that the powers of the managing agents are being sought to be restricted drastically, and the directors' powers are being increased, the state of affairs that you have contemplated in your memorandum is not likely to exist any more.

Shri Vasavada: The Resolution was passed after the Draft Bill was published and after studying the various speeches made in the House. I have here a summary of the speeches of the various honourable Members in the House.

Shri Somani: In your memorandum you have said: "Government can even prepare lists of panels of eligible persons, who in their opinion are qualified to be Directors in companies in different industries. Retired Judges, accountants, solicitors, experienced lawyers, persons in public life or high administrative services of the State, bankers etc., can serve as Directors and would inspire confidence of the public and the investors also." But nowhere have you said that the businessman who has got experience of industry should find a place as a director.

Shri Vasavada: In my scheme of things the managing agent is going to have a certain number of directors. If the Government were to ask me where they are going to find so many directors, I have suggested the way. I have no objection to including the Members of Parliament also in the list I have given.

Shri C. D. Deshmukh: Have you got statistics as to the number of companies managed by one managing agent?

Shri Vasavada: Among the British companies, Macleod & Company manage about 60 companies; the minimum is B. N. Elias & Company with ten. Among the Indian Companies, Birla Brothers manage 128 companies; Surajmal Nagarmal 11. Between 11 and 128, there are 16 other companies, some of them managing 14, some 15 and so on.

Shri C. D. Deshmukh: When you say that a managing agent should not manage more than two companies, do you contemplate that the composition of the managing agency company may be slightly changed and yet the same persons may continue to manage, or do you mean to say that the same person must not have shares in more than two companies?

Shri Vasavada: In fact, I have been considering as to what should be the position during the transition period. If you would permit me, I will submit a note on the composition of the managing agency companies, and if an individual is to be permitted to manage only two companies, as to how it should be given effect to during the transition period.

Shri C. D. Deshmukh: This is assuming that it does not offend against the provisions of the Constitution. What you are saying in effect is that it might in that alternative be that a person shall not hold shares in more than two managing agency companies.

Shri Vasavada: Not necessarily.

Shri C. D. Deshmukh: It might or might not be. If you do not insist on that, then you will probably force the present managing agency companies to split themselves up into a large number of groups—in the case of Birlas into 64 groups. How they will do it, I cannot say, but it will not be beyond their intellectual resources to be the same and yet be different. I only want you to consider this possibility, because in the light of it, it might strike you that two perhaps is too low a figure and the interest we all have in mind might as well be served if we have a reasonable figure of say 10 or 20. You may say that the Directors should not attend to more than 20 companies. I want you to consider whether two is not too low a number in the interest of carrying on the business of the country.

Shri Vasavada: We will certainly have to take that into account. I also concede that whatever suggestions we make should not offend the important provisions of the Constitution.

Shri C. D. Deshmukh: Even if you have all these suggestions about the choice of directors and so on, Governments are not infallible and they can easily make mistakes in the choice of lawyers, judges, or even public men.

Shri Vasavada: Government in a democracy are amenable to public opinion.

Shri C. D. Deshmukh: I am saying that mistakes might be committed in the attempt to implement this reduction from this large number to two and you might on reconsideration say that it is going too far and you might have 10 or 12.

Chairman: You said Birla Brothers were managing agents of 128 companies. Each one of these managing agents may have a different composition. Is that so?

Shri Vasavada: It is possible there may be three brothers in one group and four in another.

Shri Bansal: It is the name of a group. It is not the name of a managing agency.

Shri Tulsidas: The witness has repeatedly told us that he represents a particular body, and therefore I will confine my questions to that interest.

He has suggested that the managing agency system should be restricted to individuals. Probably he does not know that in other countries there is a system by which "Managers" are appointed, not as individuals, but as firms, acting more or less on the lines of managing agents.

I do not know why there should be any qualification, educational or professional for directors, when there are none for members of equally or more important bodies such as Parliament or the executive of the Labour Unions.

Chairman: We are not concerned with it.

Shri Tulsidas: Some of the suggestions made by him, if accepted, would require the amendment of different Acts. Does he suggest that this Bill should wait till the amendments of those Acts are made?

Shri Vasavada: I do not want this Bill to be deferred. Let this be passed, and the other Acts will also be amended.

Shri Tulsidas: Does the company law of any democratic country provide for the appointment of Government-nominated directors to represent labour, consumers and minority shareholders?

Shri Vasavada: It all depends upon the constitution of the democratic country concerned. We have pledged ourselves in our Constitution by a directive that we shall not have any concentration of wealth in a few hands.

Shri Tulsidas: Does he suggest that the function of the company law is also to regulate the relations between labour and management, as otherwise, there seems to be no need for a representative of labour to sit on the Board of Directors?

Shri Vasavada: When a company comes to grief, lakhs and lakhs of employees come to grief. I am appealing to the people elected by the community to please take care of the interests of these people. It is worth trying.

Shri Tulsidas: How will Government-appointed auditors be better than those appointed by the shareholders, particularly since they will have a particular qualification under the new Bill?

Shri Vasavada: Auditors are under the impression, which is probably correct, that they need not teach the shareholders as to how to read the balance sheet. They are not going to show to the shareholders what are the flaws, what are the manipulations etc. For this reason, I want the auditors to be responsible to Government.

Shri Tulsidas: On the one hand, the witness has no confidence in the Government, and on the other hand he wants Government to appoint the auditors?

Shri Vasavada: I never said I have no faith in this Government.

Shri Tulsidas: How will the appointment of an individual instead of a firm as managing agent remove the hereditary nature of the managing agency if the controlling interest remains only in one family?

Shri C. D. Deshmukh: The point here is: in other countries you have holding companies, not managing agencies, apart from Managers and Secretaries and so on. That may be separate, but there is another firm which is very common in other countries, and that is holding companies, and one holding company may direct the operations of a hundred other companies. There is a difference between them and managing agents. They will, in order to keep their hold on those companies, have to have a reasonable proportion of the shares. Now, in such a case—supposing our system were to be replaced by a system of holding companies—we would have no control over the passing on of shares by inheritance as we would have no control over the passing on of shares by any other means. I think that is what the honourable Member has in mind when he says that power may still be exercised by a privileged few. Only they will not have certain of the advantages which accrue to them under the present law as managing agents, but they can convert themselves by buying a sufficient number of shares of the holding companies, into holding companies, in which case, I take it, his question is: would you still want to interfere with the transfer of shares in the holding companies?

Shri Vasavada: Suppose we decide that managing agents will be only the individual, will still the holding companies be protected?

Shri C. D. Deshmukh: There is nothing to stop the formation of holding companies. In other words, you cannot convert all managing agency companies into individual managing agents. That is your view, but it may not be accepted. When there is the other alternative, people might think in terms of the holding companies. When there are holding companies of this kind, there is nothing contained in the suggestion that you have made which will come in the way of transfer of inheritance. That is what he means.

Shri Vasavada: If the holding companies are going to be there and if transfer is going to be permitted, legally or with the knowledge of the Government, I think it will create a problem. We may have some other type of cartels in this country and the company law will have to provide for that also.

Chairman: Probably cartels of larger dimensions.

Shri C. D. Deshmukh: They are there. That is provided for.

Shri Vasavada: That is provided for, but we are of opinion that that should not be permitted.

Pandit Munishwar Dutt Upadhyay: You have told us very valuable things, and I was really considering one point very seriously, after hearing you on this subject. Do you want to maintain the supremacy of the real owners of the shares, i.e., the body of the shareholders in the company, or you want to disturb it? Let us be clear on that point, before we go further. As a matter of fact, I think you are aware that the real owners of the company are the shareholders, and if you really mean to give supremacy to the real owners of the property of the company, I think we cannot disturb it. That was my trouble.

Shri Vasavada: I do not think so. In another connection, I have made it amply clear that just as I object to the unwarranted supremacy of the managing agents, I also object to the supremacy of the shareholders.

Pandit Upadhyay: As a matter of fact, the managing agent has been created by the real owners of the company; he is not the real proprietor, he is not the person who should really control things, but the company has been managed somehow or other by that person. Therefore, his position is absolutely different from that of the shareholders. How do you put that category of shareholders along with that of the managing agents?

Shri Vasavada: You want to know whether I want to disturb the supremacy of the shareholders. I understand that is your question. My reply was that I have already objected to the supremacy of the managing agent.

Question: That is very right, and I quite agree with it.

Answer: I have objected because of the power given to them. The shareholders are also likely to exercise their power in a misdirected manner, *i.e.* they are likely to misuse their power—I feel there is possibility for that. Therefore, I want Government's intervention there also.

Question: Don't you think that we shall not then be upholding the democratic principles that the Constitution has adopted? Should we not interfere then with the electorate also, if the electorate is an ignorant one, and is not in a position to make the right choice?

Answer: Quite right. But if eighteen crores of the electorate in this country were to sit together some day at some time, then you may not require all the laws of the government.

Question: That is my difficulty. You might also be realising that. I wanted to be clear on that point, before proceeding to further questions. Now, I come to the other question.

Answer: Yes. We have enacted the laws, we are creating governments, and giving them powers.

Question: What do you say on that? Should we allow the supremacy of the real owners of the company or not?

Answer: That is only a theoretical matter. They never exercised their supremacy. There is nothing like a supremacy.

Question: If they are not in a position to manage their affairs, if they are not competent to do it, they shall become competent in course of time, and in fact you have to make them competent. But that is a different question altogether. If they are the owners of the shares, should they have supremacy or not, *i.e.*, control over the company or not?

Answer: That is the main objective of the Act, and I think you have correctly struck the right and correct point. The most important point is this. If the shareholders are not competent, we want a company law which will create a feeling of trusteeship among the managing agents.

Question: Then, if you take away the rights of the real owners of the company.....

Answer: It is not a question of taking away, but it is trusteeship. All the rights will be utilised in their interests.

Question: Who shall be the trustees of it?

Answer: The managing directors or managing agents,—by whatever name you want to call them.

Question: You want the managing agents to be the trustees of the real owners. Don't you think that by this suggestion, you want the same system which you have condemned, with certain modifications, so that the managing agents could be brought into the position of trustees of such ignorant people as the shareholders, who cannot manage their own affairs? What will be the result of it? I believe you remember the cases of those *talukdars* and landlords, who appointed managers, because they were incompetent, and you know to what fate they have been driven ultimately.

Answer: What is the other way out then? The Government should take over.....

Question: You say that you feel the need of entrepreneurs?

Answer: I did not say so.

Question: You have said in one of the memoranda. I have gone through them, and you will find it, if you read it.

Answer: I have paid homage to those entrepreneurs. I want all these industrialists to be the real servants of society.

Question: You want these promoters. But then, after promotion, if they are not needed, you have suggested that they should be given a certain amount of compensation, and be allowed to go. But do you not think that this will be no encouragement to entrepreneurs to come forward, and promote industries?

Answer: If I understand the dictionary meaning of 'entrepreneur' correctly, he will be qualified for becoming a managing agent or a managing director. He need not go away.

Question: I absolutely agree with you, when you condemn the system, when you condemn these people who have really been managing affairs, when you say that these managing agents have been so corrupt, and so on.

Answer: How is it that an incompetent man is able to manage the industry? It is because of the system. I am merely correcting the system.

Question: So, you are not in favour of abolishing it altogether. You want that after some modifications, this system should remain, and you find that in this Bill, a number of modifications have been made, and that the additional things that it has said are of course very valuable.

Answer: It comes to this. Remove the eyes, remove the ears, remove the nose, remove the hands, and so on, and if you still want to say that it is the same thing I have no objection. Anything that ies objectionable may be removed. Let us please ourselves by calling it by the same name.

Question: You have also suggested that with certain modifications and variations, you have no objection to the name "managing agent" remaining there.

Answer: What is there in a name? Let them be called managing agents.

Chairman: Somebody should be there to manage things.

Question: As regards the appointment of officers drawing a salary of over Rs. 500 p.m., sale and purchase agents, etc., you have said that they should be appointed by the general body. Do you think that that will be manageable really?

Answer: Because I find that as soon as a man becomes the brother-in-law of a managing agent.....

Question: I have not completed my question yet. You say that these responsible people should be appointed by the general body of shareholders in their general meeting. Do you think that in this big meeting, it shall be possible to have proper persons appointed? Of course, the other suggestion regarding recruiting boards might, however, be of some use.

Answer: I accept that.

Question: Do you want to leave such important things to the general body of persons who are not in a position to manage and control their own industries and affairs, and are incompetent?

Answer: If that does not appeal to the Committee, then the appointment may rest with Government. I have put it before the Planning Commission, and I have raised this question in the Central Advisory Committee also, that Government must have a list of people who can serve these industries. And the industrialists should be persuaded

[Shri Vasavada]

to select their officers, technicians, managerial personnel etc. from among that list. That will be the fittest manner to equip the industry with the proper type of personnel.

Question: But there is one lacuna in that.

Shri C. D. Deshmukh: You are aware that most government appoint ments are made with the advice of the UPSC. Would you want the same system to be operative in regard to these other appointments? It will take seven years to have one appointment made on this basis.

Shri Vasavada: I have never said that. You are aware that you are not making all your appointments in the industries in the proper sector, through the UPSC.

Shri C. D. Deshmukh: Mostly, we are.

All new appointments are made through the UPSC.

Answer: Not in the public sector of industry.

Question: If people are in the service already, they are promoted, but when new appointments have to be made, they have to be made through the UPSC.

Answer: No.

Shri M. C. Shah: Yes.

Answer: What about the public corporations and companies?

Shri C. D. Deshmukh: They are already in the service.

Shri Vasavada: Even outsiders are being taken directly by the corporations, for posts of managers, technicians etc.

Shri C. D. Deshmukh: That is because they are companies.

Shri Vasavada: It applies to these companies also. They need not go to the UPSC.

being taken directly by the corpora- in your memorandum one suggestion. But I find one lacuna in that regard. The managing agents enter into certain transactions, and if they find that a transaction is not profitable, they put it in the accounts of the company. You said that they should be registered immediately after the transaction...

Shri Vasavada: And those forms should be filled.

Pandit Upadhyay: After the transaction is entered into. I would suggest that by the time they go for registration, they must make up their mind whether it is profitable or not. So, there should be some other way. It is not satisfactory to say that immediately after a transaction, they should register it. Probably they might be asked to declare it beforehand that they were either entering into the transaction on behalf of their own selves, or that they were entering into the transaction on behalf of the company.

Shri Vasavada: If they enter into a transaction, it is certainly on behalf of the company. A managing agent, according to me, is not supposed to do any other work.

Chairman: What is suggested by Shri Vasavada is that as soon as a transaction takes place, it should be entered in the register.

Shri Vasavada: Simultaneously, and not after that. I have never said after. Not only that. If it helps the Committee, I would suggest that a managing agent drawing remuneration from the company should not do his own transactions. He is paid for by the company, and he can exercise his talents and intelligence only on behalf of the company.

Shri Achuthan: You have paid homage to the pioneers in industry. You have also said that among the managing agents, there are dishonest, tax-evading and useless people. Am I right in believing that ninety per cent. of those people belong to the undesirable section, and only ten per

cent. to the desirable section? You should give us some percentage.

Shri Vasavada: While placing these facts before the Committee, I said.....

Shri Achuthan: Your personal experience also—some percentage roughly.

Shri Vasavada: I have said that the Income Tax Investigation Commission alone can say, what is the exact percentage of such dishonest people and what is the exact amount actually defalcated by way of black-marketing.

Shri Achuthan: Do you believe that the majority are the good section or the undesirable section? You say something about it; it must be carried to our mind.

Shri Vasavada: We can find out a rough idea, and at one time or the other 99 per cent. will be guilty of that. But if the standard is to be fixed, I think 50 per cent. belong to that category.

Pandit C. N. Malviya: There is a suggestion that a workers' representative should be on the board of directors. Is it because his bonus, increment, wages etc. depend upon the balance sheet? Do you want to suggest that he should be on the board because he will be able to check the balance sheet and know the existing capacity of the industry to pay?

Shri Vasavada: I believe that industry has to be democratised. I also believe that workers are partners in the industry. I further believe that they must know all the technique about running of the industry. This can be achieved only with their representation in the management of the industry. I wonder why the question of bonus or wages is introduced. I want to inform this Committee that if the workers know, the exact position of the industry, they will also begin to think as to what should be their wages and bonus. It is in the interests of the industrialists to enable the workers to judge what is the condition of the industry and how it has to be run effectively and it is also in the interest of the consumers. Any prolongation of the present system may provoke sectarian interests to combine. Sir, as a representative of labour, I was actually once approached by the industrialists of this country to enter into an unholy alliance whereby I may curtail the production of the industry so that prices may go up. Such a thing can happen only when the board of directors does not contain a representative of labour and when things are not placed before the public. I do not want any such mishap to happen to the industry, where such an unholy alliance can take place.

Pandit Malviya: May I draw your attention to page 10 of your memorandum under the heading 'Existing arrangements'?

Shri Vasavada: I am going to submit a note as required by the Finance Minister. It will come in time, before the Committee finishes its labours.

Pandit Malviya: I want light to be thrown on one particular portion—para 4—where you say 'Certain arrangements made prior to 1st January 1937 .....etc.'. Will you please tell us what arrangements you refer to and what are your fears about those arrangements?

Shri Vasavada: Regarding commission and contract that the managing agency system will continue. You know, just on the eve of the amendment of the Companies Act, some of the managing agency firms had actually entered into contracts with their shareholders which would last for another 20 years. All such steps taken to contravene or circumvent the provisions of the amended Act have to be considered null and void. Anything that comes in the way of the implementation of the new Act is to be considered as null and void.

Shri Kanungo: I want to know whether all the points which are now placed before this Committee by you were placed before the Bhabha Committee.

Shri Vasavada: We have. Actually in our memorandum, we have mentioned some of the suggestions and recommendations made before the Bhabha Committee. As regards others, as I told you, more light dawned upon us and because of our close proximity with the managing agency system, we have found out something more and therefore, these suggestions have been given.

Shri Kanungo: Do you envisage that the company-form of organisation will be helpful in the cottage industry sector? Do you visualise that the joint stock company method of organisation will help?

Shri Vasavada: I will be very happy to learn by experience. I would therefore appeal to them to leave the urban areas and go to the villages and apply their talents, organisational skill and experience for the development of cottage industries. We will learn by experience.

Shri Kanungo: Do you think that more finance or less finance will be required to organise cottage industries taking the nation as a whole?

Shri Vasavada: If I have learnt how to read the balance sheets, I find that there has been so much waste of finance in the large scale industries that I think in cottage industries we may not require all these finances.

Shri M. S. Gurupadaswamy: Could the witness tell us how many managing agency firms are operating in the country today?

Shri Vasavada: I cannot give the total number. I can give you some idea about certain industries. But if government records are made available to me, I will find out for the Committee as to how many firms are actually in existence.

Shri Gurupadaswamy: Could you tell us as to how many managing agencies have failed to run industries properly since the war?

Shri Vasavada: The question was put to me: how many managing agency firms are actually today in existence? I will be very grateful to give it, if the Committee is interested. It is all a question of seeing the government records.

Chairman: We will collect the information.

Shri Gurupadaswamy: He suggested that some qualification should be prescribed for managing agents. So far he has not suggested anything as to how to deal with delinquent managing agents. For example, if certain managing agents go wrong in managing the concerns properly, would he prescribe any penalty? Should there be a penal clause in the legislation similar to the one that prevails in England?

Shri Vasavada: There will have to be a penal clause.

Shri Gurupadaswamy: What is the method you suggest? Will you prescribe any penalty, would you say that the shareholders should proceed and prosecute the managing agent?

Chairman: The memorandum deals with the prevention of such things, rather than dealing with them.

Shri Gurupadaswamy: Suppose...

Chairman: That is for us to decide So far as he is concerned, he wants to prevent it.

Shri Gurupadaswamy: You suggest that there should be a representative of labour in the Board of Directors—at least one to represent Labour, and the question was raised by Shri Upadhyay—

Shri Vasavada: And 3—consumers.

Shri Gurupadaswamy: Shri Upadhyaya pointed out that shareholders were the owners of the company and he wanted to know whether it was appropriate to have labour representation in the board. May I ask whether it would be proper, if a labourer puts in a service of five or seven years

in a particular concern and he becomes entitled to certain amount of shares and becomes a shareholder?

Shri Vasavada: I have said that so far as the consumers' directors who are to be nominated by the Government as well as the labour director are concerned, there should be no shareholding qualifications.

Shri Gurupadaswamy: You say that the managing agency system may be there provided certain evils attached to it are removed. Am I to understand that since you already made a statement that the managing agency system has permitted monopolies in finance capital and if you still hold that view...

Shri Vasavada: I do not hold that view. I have made it amply clear that it is not now performing that function.

Shri Gurupadaswamy: You say that the managing agencies encourage monopolies in the field of finance capital. If you hold that view, is it advisable to have the system even after eliminating certain other evils? Concentration of power in the hands of a few, is itself a major evil.

Shri Vasavada: You are assuming certain things. I never said all these things about monopoly.

Shri Gurupadaswamy: Concentration of power in the hands of a few is bad.

Shri Vasavada: Yes. I am therefore attempting to see that even though there is money, there is no power, and money is utilised in the interest of society. If money and power have to go together, then I am afraid democracy will not survive.

Chairman: You are asking general questions and he is giving general answers.

Shri Gurupadasyamy: Would you advocate the right of shareholders to prosecute the managing agents in a court of law in case there is any specific case of mismanagement?. Will you also advocate that the Board of Directors should be prosecuted in a criminal court for gross mismanagement.

Shri Vasavada: It must be the managing agent or managing director who should be prosecuted.

Shri Bansal: You have suggested that the term of the agreement should be for seven years. There are certain industries of a basic type which take a long time before coming into being. For example, the Sindri took about six or seven years and similarly the Tata Chemicals took a number of years. Do you think that for certain specific cases of this type there should be a relaxation of this period, say up to ten or fifteen years?

Shri Vasavada: I have already said that it is from the time they come into production. I said seven years from the date of production.

Incidentally, I may also say that Sindri did not take seven years. It came into production after only four years and I do not know about the Tatas but so far as the contract entered into by the Government of India for the Steel Company is concerned, I do know that within four years they came into production.

Question: You say that the company should be managed by managing directors or managers. I can understand that once the company comes into being, but before it comes into being, during the time of promotion, there have to be certain entrepreneurs. For that purpose do you think that the managing director will be the proper person?

Answer: Whatever name you may give them, provided all the qualifications that I have suggested are fulfilled, I do not mind whether it is the managing director or the manager or the managing agent.

Question: The managing agent at the promotion stage has different functions—other than management. What sort of machinery would you prefer so that industrial promotion does not suffer? What is the proper agency in your opinion for the promotion of the industries?

[Shri Vasavada]

Answer: I do not understand why industrial promotion should suffer at all.

Question: I can give you a small instance. We have no industry in my constituency. We can establish a sugarcane factory. I collected a number of businessmen and asked them why should they not start one. They say that they have the money, the courage and all that, but they do not know the knowhow. They want some industrial entrepreneur to come there. It is not merely lack of management that stands in the way but it is lack of industrial entrepreneurs. Have you any more suggestions to make in addition to what you have already said?

Answer: I am accepting the illustration. My only suggestion will be this. You mentioned the sugar industry. If he is a real entrepreneur he should know what is going to be the sugar percentage and all that. The Government protection is there. I do not understand what is the meaning of risk there. He (Shri Bansal) can certainly float a company and having floated the company, if he actually wants to get into the process, he can become the managing director or managing agent.

Question: My other question is about auditors. You have suggested that the auditors may be appointed by the Government. I suppose you are aware that there is the Institute of Chartered Accountants now.

Chairman: His objection is that because the auditors are appointed by the shareholders or the managing agents they are under a sort of obligation which does not enable them to work as freely as they should. That is why he wants that Government ould appoint them.

Shri Vasavada: I want them to be responsible to the company. The situation today is not as it was sometime back.

Question: Today there is the Association of Chartered Accountants to check competition. Will that not be a sufficient safeguard?

Answer: It is not because the managing agent of the company has got complete freedom to select the one or the other auditor. As the Chairman very well put it, it is the obligation under which the auditor is that prevents him from being as independent as he ought to be. His continuance or re-election depends upon the good wishes of the managing agent.

Shri Bansal: I do not agree with that.

Shri Vasavada: I do not want him to agree. I want him as a member of the Joint Committee to go through the Chopra Report—who was appointed by the Government of India under the Industrial Development and Regulation Act to investigate into the affairs of certain companies.

Shri Morarka: You said something about the qualifications of managing agents. Besides this, would you like the idea of prescribing some share qualification for them? That is, during the managing agent's office, the managing agency firm must hold a minimum number of shares of the company they manage.

Answer: I will not say anything about the share-holding qualification of the firm.

Question: If an individual is appointed as managing agent, would you prescribe such a qualification?

Answer: I think something has been prescribed. Whatever is provided for in the Act is acceptable to me.

Question: Under clause 310, the reappointment of the managing agent is by an ordinary resolution. Do you agree with that provision or would you suggest that it should be by special resolution?

Answer: I will refer you to my memorandum.

Shri T. Subrahmanyam: There is nothing in that.

Shri Vasavada: I am not aware of the loopholes of the Companies Act. If some of them are pointed out to me I will apply my mind to them.

Chairman: It is for the Joint Committee to find out.

Shri Morarka: You have gone through the Bill. May I enquire whether the existing provisions are sufficient or whether you like to make any additions to them?

Answer: What you want I am going to say in my note which I will submit to the Committee.

Question: Would you like to prescribe the maximum commission payable either for buying or for selling of different commodities?

Answer: I do not want.

Chairman: It is his view that it is the duty of the managing agent.

Shri Morarka: I want to know whether he is against the appointment of any buying or selling agents, or only against the managing agents being so appointed.

Answer: I am against them. I want all selling agents to be abolished immediately.

Question: Under the Bill, a company is authorised to give loans to its workers and officers to the extent of three month's salary for purchasing shares of the company. Do you think that this is enough or do you want to increase it to six months' salary?

Answer: I am very indifferent to that.

Shri Subrahmanyam: On page 9 of your memorandum you say with strong feelings—

> "We must refer here to one known abuse of the powers of the Managing Agents and suggest a remedy for its removal. Instances have been found of mill-agents speculating in cotton or shares on a large scale. If the transaction is profitable, the margin is pocketed by the agent and not credited to the concern, but if it entails a loss the purchases is transferred to the company."

Do you approve of the provisions of clauses 351 to 359 in the present Bill regarding the restrictions placed on the managing agent on making any purchases either directly or otherwise that are likely to compete with the business of the company? If the managing agent is prohibited from carrying on any trade or making any purchase directly will it serve your purpose?

Answer: Normally it is all right. If you see the Chopra Report you will find that all these provisions are not going to help us.

Shri Vasavada: We have come to the conclusion that the only effective suggestion that can be made before the Committee is that all transactions should immediately be recorded in the register of firms.

My second suggestion is that as suggested in our memorandum, Government can prepare a list or panel of eligible persons who, in the nature of things, are qualified to be directors of companies in different industries.

Shri Subrahmanyam: Do you think that a manageable list can be prepared and is there any parallel to it any other country?

Shri Vasavada: Yes, Sir, it can be done and this Government will have to do it because we are starting more and more industries in the public sector where you have to find directors. Today we are drawing them only from the Civil Service but we will soon have to go outside the governmental sphere to find out directors. What is good for the public sector is bound to be good for the private sector.

Shri Subrahmanyam: Is there any parallel to it in any other country?

Shri Vasavada: I think in the nationalised industries in other countries public men are being appointed on the Board of Directors.

Shri Subrahmanyam: Have other Governments prepared a list like the one you suggest?

Shri Vasavada: This is only a physical process. I think, in this respect we may set an example to other countries.

Chairman: Shri Vasavada, you have been subjected to a very long and severe examination for which the Committee is really thankful to you. It was very good of you to have stayed over for today; yesterday it was almost impossible for us to examine you. I really appreciate the patience with which you tried to answer our questions and on behalf of the Committee I thank you.

Shri Vasavada: My thanks are due to you, Mr. Chairman, as well as to the other honourable Members of the Committee for having given me so much of latitude. As I made it clear at the beginning, my background is that of a labour leader, and as such, I am aware of my shortcomings to guide this August Committee. I am particularly thankful to the Finance Minister who has made certain constructive suggestions, which we shall certainly take note of.

(witnesses then withdrew)

(The committee then adjourned)

THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953

Minutes of Evidence taken before the Joint Committee on the Companies Bill.

Monday, the 5th July, at 9 A.M.

PRESENT

Shri H. V. Pataskar—*Chairman.*

MEMBERS

LOK SABHA

Shri Chimanlal Chakubhai Shah.
Shri Awadheshwar Prasad Sinha.
Shri V. B. Gandhi.
Shri Khandubhai Kasanji Desai.
Shri R. Venkatraman.
Shri Ghamandi Lal Bansal.
Shri Radheshyam Ramkumar Morarka.
Shri B. R. Bhagat.
Shri Nityanand Kanungo.
Shri T. S. Avinashilingam Chettiar.
Shri K. T. Achuthan.
Dr. Shaukatullah Shah Ansari.
Shri Tekur Subrahmanyam.
Col. B. H. Zaidi.
Shri Mulchand Dube.
Pandit Munishwar Dutt Upadhyay.
Shri Radhelal Vyas.
Shri Ajit Singh.
Shri Kamal Kumar Basu.
Shri C. R. Chowdary.
Shri M. S. Gurupadaswamy.
Shri Amjad Ali.
Shri N. C. Chatterjee.
Shri Tulsidas Kilachand.
Shri G. D. Somani.
Shri Tridib Kumar Chaudhuri.
Shri C. D. Deshmukh.

RAJYA SABHA

Dr. P. Subbarayan.
Shri Shriyans Prasad Jain.
Shri Somnath P. Dave.
Dr. R. P. Dube.
Shri Braja Kishore Prasad Sinha.
Dr. Nalinaksha Dutt.
Shri R. S. Doogar.
Shri S. C. Karayalar.
Shri Amolakh Chand.
Shri M. C. Shah.
Shri V. K. Dhage.
Prof. G. Ranga.
Shri B. C. Ghose.

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICES.

Shri D. L. Mazumdar, *Secretary, Department of Economic Affairs, Ministry of Finance.*

Shri K. V. Rajagopalan, *Officer on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*

Shri A. L. Rai—*Under Secretary.*

WITNESSES EXAMINED

The Bombay Shareholders' Association, Bombay.

Spokesmen:

Shri Dhirajlal Maganlal.

Shri H. T. Parekh.

(*Witnesses were called in and they took their Seats.*)

Chairman: I would first of all like to ask you a question with respect to some information which you have supplied in para. 2 of your memorandum. You mention there that at the present moment there are individual managing agents, there are firms of managing agency, there are private limited companies who are managing agents and there are some public limited companies also who are managing agents. Can you give us an idea of the percentage in each category?

Shri Maganlal: We have no statistical data worked out for this purpose. But private firms as managing agents are very few, private limited companies are in greater number and public limited companies, except for two or three which are in Bombay, are largely in Calcutta.

Chairman: Is the number of individuals who are managing agents larger than the rest or smaller?

Shri Maganlal: I believe they are very few.

Chairman: Firms are the largest in number?

Shri Maganlal: Private limited companies.

Shri Dhage: I suggest that we follow the same procedure as we followed for the last two days. We ask witness to state the main points which he has to make out before us and we shall go into details later.

Chairman: That would be better, I only wanted to know the information about the numbers which are available with them.

Now, before we go into a detailed examination of this memorandum, you may emphasise any of these points or state points in addition. Then members will ask questions about the contents of this memorandum.

Shri Maganlal: In our memorandum, we have first dealt with the question of the managing agency system. As already stated in the memorandum, we are for mending the managing agency system at present and not ending it. The reasons which we have for this are that in India today, there is an absence of an organised investing class. There is an absence of an integrated capital market and there are no issue houses as there are in other Western and more industrially advanced countries, and the investor in India has to be led into making investment and then only he is able to take a decision for himself. For these reasons—as India requires

today rapid industrialisation, it is in the interest of the country to continue the managing agency for the time being and particularly upto the year 1959 when, it is provided in the Act, the managing agency contracts will come up for renewal. At that time, we would urge that an inquiry as to the services rendered by the managing agency system may be launched and after such inquiry, the system may or may not be allowed to be continued. If anyone is against the managing agency system, it is largly because in the last few years, after the war, evils and abuses have crept into the system. Malpractices have been reported from different places in regard to working of joint stock companies and examples are quoted. It was once reported in the year 1951 that 40 groups of managing agencies were involved in malpractices involving 80 crores of rupees of capital. If we are at all against the managing agency system, it is also because of the high remuneration that is paid to them in this country. We have some figures to substantiate this. The remuneration of managing agents as compared to that of other countries also is very high, and compared to what even the shareholders get, the remuneration is very high in this country. Here I am referring to a memorandum of the Bombay Shareholders Association on managing agents that we submitted in 1949. We have taken out certain statistical figures in regard to the various managing agencies.

Shri N. C. Chatterjee: You submitted them to the Bhabha Committee?

Shri Maganlal: Yes. Here we have made an analysis of the working of 39 Bombay cotton textile concerns under representative firms of managing agents, most of whom are remunerated on the basis of commission on profits plus an office allowance in some cases. Here we have found that the percentage of managing agents' commission and office allowance to net profits works out at 38·8 per cent. These are figures from 1940—47 *i.e.*, for 8 years. In regard to another group taken from Ahmedabad—22 Ahmedabad cotton textile concerns—under representative firms of managing agents, most of whom are remunerated on the basis of commission on sales, the percentage or managing agents commission and office allowance to net profits comes to 70·5 percent. The period is 1940—47 in this case also.

Shri K. K. Desai: Is it average from 1940—47?

Shri Maganlal: Yes.

Shri Desai: That would be maintained even now?

Shri Maganlal: I have one statement which I will read later. Then in regard to 30 jute mills in Calcutta under representative firms of managing agents, the percentage of managing agents' commission and office allowance to net profits comes to 36·9 per cent—same period. We have also worked out figures to gross profit. The percentage of managing agency commission and office allowance to gross profits in the case of the Bombay textile concerns is 9·14 per cent. in the case of the Ahmedabad textile mills 13·71 per cent. and in the case of another 16 Calcutta jute mills 12·3 per cent. and in regard to another set of 14 Calcutta concerns on sales it works out to 15·05 per cent.

Shri Desai: Is it in relation to dividend?

Shri Dhage: Would you give us copies of that memorandum?

Chairman: You supply us 60 copies of more so that we can circulate it.

Shri Maganlal: I will try to supply as many as I have at Bombay. If you so desire, I can have the statistical portion cyclostyled and sent over.

Members: Yes.

Shri Maganlal: The anomaly of the whole thing is this. In regard to remuneration to managing agents

[Shri Maganlal]

in some cases it is provided that the commission is on sales. Now, this commission amounting to a few lakhs —3 or 4 lakhs—in some cases has been taken even when the company has incurred less. I have got some cases and if you desire to have them, I can give the balance sheets.

Shri K. T. Achuthan: Give at least a few cases.

Shri Maganlal: Here I have the balance sheet of the Nutan Mills Ltd., Ahmedabad where the managing agents have taken a commission of Rs. 4,56,807 for the year ended 31st December, 1953 and the company has shown a loss of Rs. 3,289.

Shri Tulsidas Kilachand: Possibly you know that if this commission was not taken, even then the income-tax department would not have waived the tax.

Shri Maganlal: I am referring to the relation of the shareholders of the company; as such, some provision ought to be made to safeguard their interests.

Shri Tulsidas Kilachand: In many cases the managing agents would be prepared to waive the commission but the income-tax authorities would not allow them. They would be taxed.

Chairman: The witness may proceed. I would like that he puts forth all his important points. Afterwards I will allow the members to put questions. Let there be no discussion across the table.

Shri Maganlal: First I referred to the points against the managing agents in the shape of malpractices which are contemplated to be largely restricted by the present Bill. Then I come to the question of remuneration.

Under section 338 to 340, the managing agents are debarred from having any selling or buying commission, unless they have their organisation outside the State and secondly, unless they have it passed by a special resolution.

Here we have to submit that this is likely to create a cleavage between the owners of the company and the managing agents, because this will provide a lacuna for the managing agents to take some commission by keeping offices outside the State. Therefore, our submission in this matter is that the Bill must provide that no commission on sales or purchases should be payable to the managing agents in any form either in or outside the State. I have examples where as soon as people have been appointed managing agents, they have appointed their companies as nominees in England or other places or some other companies for the purpose of purchasing goods and similarly also for selling. If an industry is situated at Ahmedabad they would create a selling agency in another State and sell the goods through that particular agency. This will again create a position wherein the interests of the shareholders would be jeopardised. No selling or buying commission should be allowed in or outside the State.

Shri H. T. Parekh: The Bill itself provides that there shall be no buying or selling commission within the State. We will go further and say even outside the State.

Shri Maganlal: In the case of the managing agency, inefficiency creeps in when the managing agents are hereditary. We have seen inefficiency creeping in some of the concerns where on account of the previous managing agents not being there, those who came after them have mismanaged the concerns.

As regard managing agents and the issue of prospectuses, in some of the prospectuses it is provided that the promoters get a particular permanent and perpetual interest in the profits of the company. In the articles of the Chand Deva Sugar Company, it has been provided that the promoters will perpetually get 6½

per cent. out of the profits of the company over and above the managing agency commission that the managing agents would get. This is also one of the things that I would like to be amended.

Shri Dhage: Were the managing agents different from the promoters?

Shri Parekh: Different in all these cases.

Shri Chettiar: Have you got many companies where the promoters' interests are provided in perpetuity?

Chairman: Let the witness bring out his points and let us ask questions later on.

Shri Maganlal: I would like to state that we are at the moment not doing away with the managing agency system. We would prefer the system to continue in the present economic context for the period up to 1959 when all managing agency agreements will be due for renewal. At that time a fuller enquiry may take place and a decision arrived at as to whether the system should continue or not.

I next refer to paragraph seven of our memorandum; about, remuneration to the managing agents.

I now come to the question of the Central Authority. It is proposed that the administration of this Act will be under a Government Department. We are in favour of an independent commission to act as the Central Authority for certain reasons. If an independent commission consisting of various people from the trade and profession is there, the application of the Act would require some relaxation from time to time in suitable cases. From time to time, as the evils become apparent and there is a desire to change the provisions of the law, if an independent commission is there, they would be better judges of the various evils which come to light and they might be able to suggest immediately the various changes that may be necessary. One of the functions to be performed would be to examine the prospectuses issued by new companies. In that case also, an independent commission, with its vast experience and probably with an insight of business might be able to find out things better for the investing public and might create greater confidence in the investing public by asking for suitable amendments in the prospectuses, if they are found necessary.

Under the Bill it is provided that the question of refusal of transfers should also be referred to the Central authority. Refusals of transfers are done by various companies under two heads. One is that in the last few years after the war some people captured the shares of the various companies and ultimately brought about a change in the management. To stop that, transfers are rejected. But there are cases where the managing agents or the managers of the companies refuse transfer for reasons best known to themselves. They want to get all the control to themselves and to some extent they destroy the negotiability of shares. Therefore, it is desirable, even if the Central Authority which has got to determine this question of refusal of transfer would be the Government, that red tape should not creep in, since the result would be delay which destroys the negotiability of shares. It will take time and therefore impair the flow of capital.

The next point that will have to be looked into is minimum subscription. In various cases, on account of this figure being kept at a very low amount, the result has been that companies started in the years between 1947 and 1951, have found themselves faced with dearth of capital. This is also a very important aspect which has got to be looked into and the Central Authority—an independent commission—constituted with independent people might be able to look into this matter better than a Government Department. These are the reasons for which we would prefer an independent comission than a Government Department.

[Shri Maganlal]

Under section 105, there is a power to refuse transfer. The power has been given to refuse transfer by the managment subject to a right being given in the articles of association. If a transfer is refused a shareholder has got a right to make an appeal to the Central Government and get a decision within two months. I would here like to refer to paragraph 43 of the Company Law Committee Report.

> "We are aware that in some cases the right to refuse to register transfer has been misused by the Directors and the argument about the negotiability of shares is not without force. We would also add that the London Stock Exchange and the leading Stock Exchanges in India themselves, Calcutta, Bombay and Madras, do not wish to grant protection.....in favour of retaining the directors' power to refuse transfer of fully paid up shares is not strong."

Shri Dhage: Please read the next sentence.

Shri Maganlal: Their opinion has been, of course, according to the Bill. What they say is that the argument in favour of refusal to transfer fully paid-up shares is not strong.

Shri Desai: You say that they do not come to the logical conclusion.

I have got a few instances here, where transfers have been refused for no reason, except that none should have any large, or even a little interest in the company.

The first is the Warden Insurance. The shareholders of this company have told us that the management of this company does not transfer shares and keep on buying shares in the market. As they would not transfer the buyer has to sell shares in the market at lower prices. The other is the case of the Khandesh Spinning and Weaving Company, where the same practice is being followed. The third is the case of Western India Insurance Company. A shareholder of this company has got nine shares. Ownership of twenty shares is the qualification for a Directorship of the company, but the company would not transfer 11 shares to the name of the same party who has got nine shares, because the Directors are afraid that he might become a Director. The same is the case with Maharashtra Sugar Co. I know from authentic sources that this company does not allow transfer of shares to people outside, or who are not within the circle of the management.

Therefore, our proposal in this paragraph is this that the onus of refusing the transfer should not be on the company itself. If the company refuses a transfer they should approach the Central Government, and Government may give a decision. If they are convinced with the explanation of the company then the share may not be transferred. A single small shareholder is not in a position to fight out for his rights.

Under the articles of association the managing agents are not expected to give the reasons for refusal of transfer. In these circumstances the onus of refusal should not be on the managing agents and they should approach the Government if they want to refuse transfer.

Pandit Upadhyay: Why not suggest that they should give the reasons?

Shri Maganlal: I now come to section 199, regarding rights of members of Holding Companies. We have cases where a holding company is a hundred per cent. holder of equity capital of a subsidiary one. In the meeting of the holding company, shareholders require the managing agents to give explanation about the hundred per cent. investment of their capital in subsidiaries and cases have happened where such explanations have been refused. I have before me a suit filed by a shareholder of a holding company, Mr. R. K. Motishah against the Premier Construction Company where, in 1952, he

says the Chairman refused to supply information relating to 1952. In the year 1953 the Chairman of the same company in his opening remarks told the shareholders that he would not give any information beyoned what is given in the annexed balance sheets of the subsidiaries. I may add, for the information of the Committee that Shri Parekh, my colleague, was present at the meeting when this refusal to give information was made.

We, therefore, submit, that it should be provided that it should be within the rights of the shareholders of a holding company to ask for information from the managing agents at the time of the annual general meeting about the subsidiaries and the managing agents should be bound to give this information to the shareholders. I think this is a legitimate right. If this hundred per cent. subsidiary of the holding company was not a separate unit and had been a part and parcel of the parent company, any information asked for would have been given. If the device is used to create subsidiaries with a view to give no information to the parent company shareholders, I think it would defeat the very object of annual general meetings, where the owners of the company are to be supplied information about the working of various concerns. We have, therefore, suggested that a provision should be made to the effect that the holding company should give all information about the subsidiaries to the shareholders of their parent company.

Clause 220: Investigation of affairs of a company by members.

We have only asked for a small change. We have suggested that the number should be reduced to 100.

Clause 307: Managing Agency of a subsidiary.

I wish to submit here that the main function of the managing agents is, besides management, to provide finance to the company. When a holding company starts a subsidiary company, a large part of the finance is procured by the holding company for the subsidiary company. So, the main function of the managing agents acting as financier ends. Therefore, we have submitted that the managing agent of a subsidiary should be the holding company and not a separate managing agency firm.

To cite a small case, a company called the Premier Construction Company has a number of subsidiaries. The managing agents in the year 1953 have drawn from all the subsidiary companies a commission to the extent of Rs. 7 to 8 lakhs. Besides that, it is provided that they get one-third out of the reserves which are provided in the companies. While the managing agents get such a large amount, the shareholders of the Premier Construction Company on their equity capital do not get even 3½ to 4 lakhs of rupees. That point aside, I want to emphasise that loans given to Hindustan Construction and Indian Hume Pipe Companies which are subsidiaries of this company, are given by banks on the guarantee of the Premier Construction Company. A sum of Rs. 80 lakhs have been borrowed by the subsidiary companies of this holding company and the finance procured is by a guarantee of the holding company. Therefore, we want to submit that the managing agents of subsidiary companies should be the holding company itself and not another set of managing agents.

Shri Gandhi: What commission do they charge for this guarantee? Do they charge any commission on it?

Shri Maganlal: They charge no commission on it, but they are managing agents of the subsidiaries and as such they get 10% commission on profits.

Clause 296: Calculation of Commission.

The period provided is two years, we want it to be reduced to six months.

[Shri Maganlal]

Clauses 338 and 340.

We have the strongest objection to these sections.

Special Resolutions

In various sections it has been provided that special resolutions are a necessity. Our firm view is that as these refer to very vital matters like appointment of directors, contracts between a company and directors, holding offices of profit, etc., the provisions in these clauses should not be whittled down.

Clause 44 requires the holding company to hold shares in its own name. In some companies, shares are held in the name of the directors of the company, and this is sometimes abused in the sense that the votes are used for personal purposes. I would not be able to give you a concrete example where this misuse has been done, but I can indicate to you how it could be misused.

In the case of the Premier Construction Co., and its subsidiaries, there is a very large holding of shares in respect of the Scindia Steam Navigation Co. If the shares are not held in the name of the holding company, *i.e.*, the Premier Construction Co., and if the shares are held in the name of the directors of the Premier Construction Co., the directors may be able to use these votes otherwise than for the interests of the Premier Construction Co., and therefore we believe that the holding company should have the shares in its own name except for qualification purposes which is provided in clause 44.

Clause 330 of the Bill provides that excess profits tax and business profits tax should be deducted for the purpose of calculation of net profit. From certain quarters it has been contended that this should be deleted. We are strongly of the view that these should be deducted. Of course, the excess profits or business profits tax would come only in times of emergency. When the excess profits tax was introduced, agents like Tatas, Killick Nixon etc., even during those periods, did not deduct the excess profits tax. If the excess profits tax is not deducted, the shareholders would get a very small portion. So, we want to emphasize that for the purposes of net profits, excess profits or business profits ought to be deducted.

Then, some people have submitted that debenture interest should not be deducted. We very strongly want to put it that debenture interest is a charge on profit and it is from the debenture money that the company makes further investment into its block account. If that interest is not deducted from the profits of the company, then the amount earned would be fictitious to the extent the reduction is not made. Therefore, the amount of interest paid to debenture holders should be deducted for the purpose of arriving at the net profits.

I would ask my colleague to deal with the point about voting rights.

Shri Parekh: I will very briefly deal with one or two points my colleague has not referred to and I would like to emphasize one or two points he has referred to.

The first point deals with clauses 79—83 which deal with voting rights of shareholders. These clauses emphasize that in the case of ordinary capital voting rights, rights should be in the proportion subscribed, and they state that in the case of existing companies within three years of the commencement of the Act the voting rights should be altered and brought into line with the requirement of the Act. We fully agree with this. But the Bill is inconsistent when it says that while voting rights should be brought into line, other rights in respect of dividend or capital may remain unaffected in the case of existing companies. This is inconsistent and in some cases it results in some great injustice to the shareholders of certain companies. That is why we have suggested modification in clause 82 (1), where we would also like the right in respect of dividend, capital and other things to be modified equitably along with the right in respect of voting; and that would require abolition of clause 83 where it is specifically stated that

the other rights may remain unaffected. There are several instances available, but I will give two instances of companies which will remain unaffected by the Bill as it stands. I have got the figures with me of the capital structure, voting rights, etc., of the Bombay Burma Trading Company. It has got a capital of Rs. 94 lakhs; out of which the promoters hold about Rs. 2,50,000 just about 3 per cent. or something like that. The promoters obtained these voting rights in 1864. It is one of the oldest companies on the Bombay side. According to the Bill as it stands, these holders of one hundred shares of Rs. 2,500 each have a right to participate by way of preferential dividend after 12 per cent. is paid. That right amounts to a substantial figure, if the company is a prosperous one, but that right will remain unaffected. The voting right will have to be altered; but this right which in our opinion is very unfair will remain untouched lest the suggestion that we have made is adopted.

There is another instance. The Premier Construction Co. has got Rs. 1,31,000 in promoters shares out of a total capital of Rs. 105 lakhs. Under the Billl, the voting rights in respect of these promoters' shares will have to be altered, but these promoters' shares are entitled to 1/6 of the surplus profits and one-third of the reserves. We would like that when the company alters the voting rights of these shares, the other rights which are unfair or inequitable should also be altered correspondingly. In the Bill, as provided at present that provision is not made, and we are therefore of the view that it is of very great importance.

In the Bill as it stands, there is sufficient provision for restricting the remuneration of managing agents, but the definition of managing agents, in our opinion, is very narrow. For example, Mr. A promoted a company. He is no longer there either as director or managing agent, but he has a perpetual agreement with the company to a share in its profits. That agreement will remain unaffected even though the managing agency agreement will have to be revised in 1959, so that that goes very deeply. If some one who today calls himself a managing agent, calls himself a promoter under the new Bill tomorrow, probably the section requiring revision in 1959 will not apply to him. That means anybody calling himself by any other name than managing agent, will probably get the benefit even if that is not the spirit of the Bill. That is why the definition of managing agent requires to be broadened, and clauses 287, 290 and 329 so worded that other agreements also fall within the scope of the Bill.

We have suggested in the managing agency agreement clause specifically that the ceiling for managing agency remuneration should be 10 per cent. instead of 12½ per cent. of the net profits as provided in the Bill. We have suggested this because the current practice in many cases is to charge roughly 10 per cent. of the net profits. If we now provide for 12½ per cent. even good and sincere managing agents would like to be within the law and still raise their remuneration from 10 to 12½ per cent.

There is another point to which reference has just now been made by my honourable friend: that is about the figures given by him. I would like to add one figure to supplement those figures because that happens to be a more recent figure. That figure refers to the memorandum prepared by the Textile Labour Association of Ahmedabad. They have collected figures from 1941 to 1951, for 11 years. The total profits are Rs. 125 crores for the 11 years. The agent's Commission is Rs. 22 crores; dividends Rs. 9 crores and bonus paid to labour Rs. 14 crores. What I am trying to emphasise is that the managing agents have got the first preference in the way of commission, labour comes second and the dividends come third and last. The distribution indicates that the allocation for dividend is the least. In fairness, I would like to point out that in the Bill considerable amendments have been made eliminat-

[Shri Parekh].

ing remuneration on production or sales and therefore, this large figure will automatically go down considerably. We have also recommended that in the course of 5 or 10 years before 1959, a fuller enquiry be made into the contribution of the managing agents to find out the role they are playing in respect of capital, management and other things and that the question be examined and suitable modifications made.

I would again emphasise what my friend Shri Dhirajlal Maganlal has said that the managing agency of a subsidiary company cannot rest with outside parties because the holding remains with the principal or the parent company. That is the point we have made in dealing with the revision of section 307. We feel somewhat strongly about it.

Pandit Malviya: He has suggested a special resolution and says that he is satisfied with the other provisions. Would he suggest some other matters? There is a suggestion that special resolutions come in the way of speedy business and the efficiency of directors, and that it will affect the business also. Would he throw some light on this suggestion?

Shri Maganlal: Under section 334, we have suggested, instead of an ordinary resolution a special resolution for minimum remuneration in case of no profits. The other point is about the speediness in business being affected. I would like to point out that the special resolution is necessary in matters where probably greater consideration is required by the owners of the company and speed is not required. It is a case of directors holding a place of profit. I do not know how speed of business will at all be affected if the case is examined by the shareholders and a special resolution is passed. Similar is the case in the matter of special remuneration to directors, transfer of office, and contracts with the managing agent. In all these cases where special resolutions are provided, we do not believe that the speed of the business of the company is likely to be affected.

Shri Jain: You have advocated that the managing agency Commission should be reduced from 12½ per cent. to 10 per cent. With the change in the definition of net profit, may I know, if the quantum of profit, even if the Commission rate is increased from 10 to 12½ per cent, will go beyond what the managing agency is getting at present?

Shri Maganlal: I may state for information that in other advanced countries, the remuneration to managing agents varies between ½ to 2 per cent. I have cases of various foreign companies where the managerial charges come to ½ to 2 per cent. I think that 10 per cent. with the various deductions would not be a small figure.

Shri Jain: Is it on the gross profit or net profit?

Shri Maganlal: I have a balance sheet here which shows a net profit of £ 17,50,000 and the managing agency Commission is £ 26,000. I refer to the Lancashire Cottons. This amount represents the managerial charges.

Shri Jain: That is in the case of an individual.

Shri Maganlal: Whether a managing agent or a managing director, he is the person managing the company.

Shri Jain: You have advocated that the present clause 44 should remain as it is. If in the clause it is added that a disclosure may be made in the balance sheet as to who are holding the shares, what would be your reaction? Because, there may be some procedural or working difficulties.

Shri Maganlal: Disclosure and non-use of voting rights except with the consent of the company?

Shri Jain: Of course, with the consent of the company.

Shri Maganlal: If the shares are held in some other name, it should be understood that the votes are not to be exercised in anybody's favour except the company itself. If this is provided, it makes no difference. It should not carry with it the right to vote.

Shri Jain: At present the vote is exercised in the interests of the holding company.

Shri Maganlal: I cannot cite any case at the moment. But, in certain cases, we have the apprehension that holdings are accumulated for the purpose of having certain power in other companies.

Shri Somani: In page 2 of the memorandum you have said:

> "In this direction also great changes are now taking place because Government is increasingly extending various types of finance both directly or indirectly....etc."

Are you aware that so far as the Government finances are concerned, from the I.F.C., they are more or less confined to the long term needs of the company and that so far as the working funds for the various companies are concerned, the managing agents have to arrange them with banks or through depositors?

Shri Maganlal: Short term finances are generally procured on stocks and these finances can be easily procured through banks. We may at present give the instance of the shipping companies. Today, large finances are being given to them for the mere asking, by the Government, to procure their requirements. I may tell you that the commission to the shipping companies comes to such a large amount. I may give an instance. In the case of the Scindia Steam Navigation Company, the commission is Rs. 16 lakhs or Rs. 18 lakhs. I think they have no financial responsibility at all. In various other companies also, the finances are largely being given by the Government through the I.F.C. and various other agencies which are being proposed like the Industrial Development Corporation. With larger finances coming from the Government, the main function of the managing agents would diminish to a considerable extent. That is our arguments.

Shri Jain: Are they not giving any guarantee to secure these finances from the Government?

Shri Maganlal: I am not aware whether the managing agents have given any guarantee. These loans are given for the purpose of their block account. In the case of the I.F.C., the answer is yes. They take the guarantee of the managing agents.

Shri Somani: Even when finances are procured from banks, are you aware that the banks insist on the guarantee of the managing agents? When the banks advance finances on the liquid stocks of the companies, they take into account the creditworthiness of the managing agents.

Shri Maganlal: We give credit to the managing agents for this.

Shri Somani: Even if they get advances to the extent of 50 or 70 per cent., still, they have to find the remainder 30 or 40 per cent.

Shri Maganlal: In Ahmedabad and Bombay, etc., formerly the practice was to get deposits from outside. Six monthly or yearly deposits used to bring large amounts. This served as the margin.

Shri Somani: Even in the case of deposits, the reputation and creditworthiness of the managing agents used to play a large role.

Shri Maganlal: The reputation of the company firstly and then secondly, the managing agents. If the company is not creditworthy, I do not think anybody would lend to the managing agents.

Shri Parekh: In good many cases, the guarantee of the managing agents has been asked and given. We have

[Shri Parekh]

also instances where banks have refused the guarantee of the managing agents and preferred the guarantee of some others. For example, take the Premier Construction Co., Walchand Co., are the managing agents. The guarantee for the loan raised by the Hindustan Construction Ltd., is given by the Premier Construction and not by Walchand and Co.

Shri Somani: I am familiar with the particular case mentioned by the witness. You have said that a certain company charged this commission in spite of the fact that the company had incurred a loss. Are you aware that in this long period, several managing agency houses have foregone their commission and other remuneration to which they might have been entitled in cases where the companies had been in difficulties?

Shri Maganlal: I am aware of these cases. We are prepared to give credit to them. I have on record cases where the managing agencies have acted well. Tatas gave a loan to the company when it was on the brink of liquidation, and kept up the company. There are the Tata Oils and Tata Chemicals. It is the managing agencies that have helped the companies to survive.

Shri Somani: There are various companies like that.

Shri Maganlal: There may be.

Shri Parekh: We have no desire to minimise the contribution of the managing agents. In the changed circumstances, some amendments have to be made in respect of their remuneration.

Shri Maganlal: When the Tata Steel Co., was on the brink of liquidation, the Tatas have foregone their commission and have given a loan of Rs. 1 crore.

Shri Somani: With regard to section 44, you have said that they should be immediately transferred in the name of the company. Are you aware of companies dealing in shares? Don't you think that it would be difficult where the companies dealing in shares are required or forced to get their shares immediately transferred and not keep them on blank transfer, incurring unnecessary expenses? Don't you think that in the case of companies dealing in shares it is not desirable to ask them to transfer immediately?

Shri Parekh: We are dealing with investment companies who happen to hold shares in subsidiaries. We should like that they should be held in their own names.

Shri Somani: The point is this. Where any limited company is dealing in shares, section 44 says that immediately they purchase any shares, they must have them transferred in the name of the company and not keep them as blank transfers. Don't you think that certain difficulties will be experienced in these cases if they have to get the shares immediately transferred?

Shri Maganlal: I think they will have to incur transfer charges; that is all. Also blank shares transfer would not be even advisable for a limited company.

Shri Parekh: This section is on the lines of the Company Law Committee's recommendations; they have dealt there with the danger of shares being held otherwise.

Shri Somani: Regarding clause 105, you just now quoted from the report as well as your own views about several companies having refused transfers. In view of that, would you not agree that so far as fully paid shares are concerned, there should be free transfer of shares without any restriction.

Shri Parekh: We entirely agree.....

Shri Somani: You have agreed that in case it is decided that the restriction on transfer should be applied, government permission should be taken. Do you not think that it will be better so

far as fully paid shares are concerned that there is no restriction whatsoever on the transfer.

Shri Maganlal: No. Here we want to retain the right in the hands of the managing agents to appeal to the Government not to transfer, for one reason. During the years 1947-51, there were various inroads made by certain people; by cornering the shares, by acquiring more than 51 per cent. of the shares, they compelled the managing agents to resign. Such cases have happened in Calcutta and, therefore, if restriction is to be applied, the government and the managing agents may do so. We have no objection. I think it is desirable that this right be retained by the managing agents so that they can apply to the Government if they want to refuse transfer.

Shri Somani: You just now said something about commission on sales which in the Bill itself has been restricted to 'outside the State'. Are you aware that certain very well known textile companies in Bombay have for genuine purposes of their business selling agents to whom they give commission. In spite of the fact that their managing agents are very big houses, they have got their usual machinery; they still require the services of selling agents for their day to day business. In that case, suppose the selling agency commission does not form part of the managing agency arrangement, but if the managing agents do the additional job of selling agency, what is your opinion?

Shri Maganlal: What we apprehend is this. Selling is a part of the duty of the managing agents, whether they do it in the State or outside the State. What we are afraid of is that if a provision as made in the Bill 'outside the State', if a sales commission is paid to the managing agents by a special resolution, it will be a lacuna by which many of the people who want to take advantage of it will establish offices outside and earn commission on all the sales. Therefore, there will be a cleavage between the shareholders and the managing agents once again on this point. So if this is once for all removed that there will be no selling or buying agency commission to the managing agent or his associate, it would solve the trouble very much.

Shri Basu: Even outside the country?

Shri Maganlal: Yes. No selling and buying. After all, the function of the managing agency includes the function of buying and selling.

Shri Desai: Otherwise, what other function remains?

Shri Somani: I was only just trying to clarify the point by drawing the attention of the witnesses to the fact that several very long established companies have selling agency business outside the scope of the managing agency agreement; this involves certain obligations other than those included in the managing agency agreement. In such cases, the managing agent has to do something more than what the managing agency agreement requires, where such a managing agent is allowed to act as selling agent. I was just inviting his views on that.

Shri Karayalar: In your memorandum under the heading 'voting and other rights' you say:

> "Any other rights in respect of dividend, capital or otherwise shall also be suitably modified".

In what form should it be modified? You have only put it vaguely.

Shri Parekh: It has already been provided that the voting right should be modified.

Shri Karayalar: Do you suggest that the dividend etc. should be there? It is now provided that they should remain.

Shri Parekh: It is specifically provided in clause 83(a).

Shri Karayalar: But I want you to suggest in what particular form it may be done.

Shri Dhage: Same as the present Act provides.

Shri Parekh: No. In the existing Act, there is no provision. In clause 81 it is clearly stated that for new companies there should be no disproportionate voting rights, no disproportionate rights in respect of dividend or capital. We want something to be incorporated in section 82 in respect of existing companies. In section 82, while you require voting rights to go and to be made proportionate, you require other rights to be unaffected. We want to modify that also.

Shri Karayalar: Please refer to clause 334 which provides for payment of a minimum remuneration of Rs. 50,000, in case of no profit or inadequate profit. Would you advocate this to be retained in respect of all companies irrespective of the capital structure—say a company with Rs. 5 lakhs or with Rs. 2 crores paid up capital?

Shri Maganlal: Here it is the outer limit that is fixed, minimum remuneration—such sum not exceeding Rs. 50,000, as considered reasonable. The company has to consider it reasonable. If it is not considered reasonable, the company will fix a lower sum.

Shri Karayalar: You leave it to the discretion of the company?

Shri Maganlal: Yes.

Shri Parekh: Usually that provision is made in the articles.

Shri Karayalar: It would be perfectly legitimate for the managing agents to take Rs. 50,000 if the company allows?

Shri Parekh: That would be legitimate. In the case of smaller companies, the provision would also be smaller.

Shri Karayalar: Suppose shareholders are prepared to sanction Rs. 50,000 in the case of a company with a capital of Rs. 5 lakhs?

Shri Maganlal: The provision about this remuneration is in the articles of association at the time of subscription. If a company with Rs. 5 lakhs as capital allows a minimum remuneration of Rs. 50,000, how will the shareholders subscribe to such a capital? If a company with 5 lakhs makes a profit of Rs. 2 crores or a crore, then naturally the shareholders might provide even that. I have some cases, of some Ahmedabad mills where the equity capital is very small, Rs. 5 or 6 lakhs. In spite of that, the companies have now become very big and, therefore, such provision by the shareholders would be quite legitimate.

Shri Karayalar: This section provides for payment in case of no profit or inadequate profit.

Shri Maganlal: The company may have the capacity to make profit; it may have no profit in one year. That is a different thing.

Shri Karayalar: Do you think it advisable to relate this payment of minimum remuneration to the paid up capital of the company?

Shri Maganlal: I think the shareholders of the company may be the best judges of that.

Shri Karayalar: We are trying to protect the shareholders in spite of themselves.

Shri Parekh: May I say that this provision of Rs. 50,000 is the ceiling and not the floor. So that is the maximum, as is considered reasonable. These are sufficient safeguards in our opinion.

Shri Dube: Please refer to page 4 of your memorandum where you say: "...several other companies have classes or types of shares carrying highly disproportionate rights in respect of dividend, capital etc." Have

these rights been ordinarily given because of certain considerations or without any consideration?

Shri Parekh: In some cases there may have been considerations. In many cases the voting rights at the start are so adjusted in respect of some people who promoted the concern; in many cases there may not have been any consideration.

Shri Dube: In case there was consideration, would it be proper to alter the terms agreed upon at a time when the company being in need of finance offered favourable terms with the consent of the general body of shareholders. I believe at one stage, the company with the consent of the general body of shareholders agreed to give special terms to certain classes of shareholders. Would it be proper to alter that?

Shri Parekh: Our attitude is that even a vote attached to a share is a special right. We are altering that provision, though some people might regard such a vote as sacred and that it should not be affected. As we are altering voting rights, we think, at the same time other rights should be altered. Secondly, you talk of agreement. I gave an instance of the Bombay Burma Trading, Corporation which entered into an agreement with the company in 1864. Since 1864 this right in respect of preferential dividend has been in existence. Granted that it was in consideration of some rights which the old people gave up to the company, even then much too long a period has elapsed so that the value of that right has already been exercised. In this particular instance, in addition to this right, the managing agents have a right which they are exercising to draw 50 per cent. of the net profits as their commission. They are doing it even today. In addition they are drawing upon this right and that is why we feel that that right ought to be modified when a modification is sought in other respects.

Shri Dube: Am I to understand you to mean that in special cases this should be modified and not generally?

Shri Parekh: There are only a few instances of companies where this discrepancy is in existence. We tried to compile a list and we got something like 15 or 20 companies.

Question: I am talking of a general principle. Would you have these terms revised in special cases where hardship is being expected or will you have it as a general rule?

Shri Parekh: In special cases. Each case has to be examined on its own merits. In some cases the promoters' share extends to part of the reserves also. In such cases, up till that date the shareholders of the company would be entitled to that part of the reserve. Therefore some adjustment will have to be made only for the subsequent period.

Question: Another point I wanted to ask was in relation to section 199, at page 5 of your memorandum. Don't you think that clause 197 of the Bill meets your requirement?

Shri Maganlal: The point is that this requires the balance sheets of the various subsidiaries to be attached to the balance sheet of the holding company at the time of the general meeting of the holding company. There may be a particular information about the working of the subsidiary company which the shareholders desire to have and which is not supplied.

Shri Dube: If you read the entire clauses, I think many of the points on which a person seeks information are given and I suppose it is provided for giving all reasonable information that may be required.

Answer: No clause provides that the Chairman of the holding company is required by law to give the information at the time of the general meeting.

Question: Do you mean to say that the Chairman of the holding company should be present at the time

of general meeting to give the information?

Answer: At the time of the meeting of the holding company, if the shareholders of the holding company desire to have any information on the subsidiary company, the Chairman of that company should be compelled to give the information. He is bound to be present.

Question: How would the Chairman of the holding company be in a position to know all the facts?

Answer: They have a hold on the subsidiary company and the management is supposed to know all about the subsidiary company.

Shri Amolakh Chand: Can you give us an idea as to how many subsidiary companies are held by individual companies as holding companies?

Shri Maganlal: We have no list of this. There are a very few. In Bombay I may give you the example of two or three companies only like the one to which reference has already been made a number of times, the Premier Constructions. The Tata Iron and Steel Company holds the West Bokhara Coal, which is a subsidiary company of the Tata Steel Company. There, if information is asked for it is generally given, but if some people do not give, the law does not require them to do so.

Question: If there are only a very few cases, why are you particular about some specific law?

Answer: Because we are shareholders of this company and we think it is necessary for them to give the information. It may be that these cases are very few.

Question: At page 6, you say—

"This is suggested because there are instances where a Holding Company owns even the entire share capital of Subsidiary and yet managing agency rests with an outside firm. For instance,

[Shri Dube.]

Indian Hume Pipe Co. and Hindustan Construction Co. Ltd., are wholly-owned subsidiary companies of the Premier Construction Co. Ltd., and yet the Managing Agency of these two companies rests with Walchand & Co., Ltd., Shareholders of the Premier Construction Co. Ltd., therefore suffer very great loss."

What is the loss to the Holding Company?

Answer: In the case of the Indian Hume Pipe Company, certain allegations were made and an investigation was launched by the Government of Bombay—I think under instructions from the Central Government. The Auditors made an investigation and certain revelations were made wherein it was alleged that certain transactions were not to the advantage of the Indian Hume Pipe Company. Because the Hume Pipe Company is a subsidiary company of the Premier Construction Company, in that sense it suffered a loss.

Question: For refusal to register the transfer by the Company, you want the company to go to the Government and get an order. Can you give us an idea of the figures for the refusal of transfer of shares being registered?

Answer: I cannot give you the exact figure. There are 5 or 6 instances where these refusals have been made.

Question: Is it a matter of convenience or is it a matter of policy?

Answer: At a certain period it may so happen where so many outsiders may want to get into the company. At that time these appeals may be many. Today they may be few but the number will vary with the times.

Shri Dhage: Please refer to your memorandum page 1, in which you say—

"....We must also set against such contribution the numerous fraudulent and anti-social activities of several Managing Agents

which have done much to discredit the entire system."

Then again you say that sudden termination of the system is undesirable because it may disorganise the entire management. How do you reconcile that with your statement in paragraph 6, where you say

> "Government is increasingly extending various types of finances both directly and indirectly to industrial units and to that extent the responsibilities of raising capital is removed from the Agents. Industries are also heavily protected by the Government through high tariffs and import quotas. In providing managerial skill also modern industrialisation involves increasing dependence upon scientific accountants and other experts and to that extent limits the utility of the class of managing agents to whom the country has been accustomed so far."

Why do you not then say that the managing agency system should be abolished, because, there seems to be, from your own memorandum, not many benefits accruing therefrom?

Answer: I have already stated it before and I want to state it here also that for the rapid industrialisation of India, the abolishing of the managing agency system today is not to the advantage. The reason for stating it is this. Though there are malpractices which we want to end and evils which we want to remove by means of this Bill, it is not to the advantage of the country to remove the class as such. I will give you the reasons. In Bombay, recently, two companies have been started, one called the Indian Dyestuff Industries and another is about to start, Empire Dye Company Ltd. Each one is floating a capital of Rs. 30 lakhs and Rs. 50 lakhs respectively. Half the capital of this company is provided by the managing agents and their friends. In India, as I have already told you, the investing class is not yet so intelligent or so organised or the capital market is not such that it would be proper to remove this class of people or disorganise them, because we want industrial development. For that their assistance is to some extent necessary.

Question: But the capital can still come from them without their being managing agents.

Answer: I do not know if the system is removed, they would be inclined to start industries to the same extent, and by putting the amount of money they put in today. With their Rs. 15 lakhs there is a certain note of confidence attached and the people come forward to invest the capital. Today the Indian investors are like a flock of sheep. Therefore the managing agency is necessary.

Shri Parekh: Our submission is that the managing agency system will deserve to be more fully examined at some future date and whatever conclusions government wants to arrive at after a proper and thorough enquiry may be done then. That is why we have suggested that the whole question should be more thoroughly gone into.

Question: With regard to section 211(1)(b), may I know why you want foreign qualifications to be discredited?

Shri Parekh: There is a Chartered Accountants' Institute now. We really do not see any reason why Government should recognise people with foreign qualifications. If they really want to do work as auditors, let them get themselves enrolled as members of this Institute and come through the Institute instead of trying to get recognition directly from government. I do not know why we have a desire to recognise foreigners this way

Question: Foreign qualification does not mean he is a foreigner.

Answer: When equivalent qualifications can be had in India, we do not know why there should be a lure for foreign qualifications. Even if foreign qualifications are obtained, these

[Shri Parekh.]

people can get themselves registered as auditors with this Institute.

Question: But in cases where the Institute of Chartered Accountants is doing a little injustice and the government feel that they must be remedied, are you opposed to it?

Answer: We have no objection.

Question: Please also refer to 209(7), regarding removal of auditors. Why do you think that the power of the government should be dispensed with?

Shri Maganlal: Because the appointment is made by the shareholders, the right of removal should also be with them.

Question: Supposing an auditor is inconvenient to a large number of shareholders or to a certain group they remove the auditor. Do you think that it is in the interests of the company or the other shareholders?

Answer: This is by a 75 per cent. special resolution. If 75 per cent. of the shareholders of the company want a particular person to be the auditor, then they should be able to appoint him. The other shareholders have a right under section 22 to call for inspection.

Question: How do you protect such shareholders as may not be able to come to the meeting?

Answer: This refers to the removal of auditors.

Question: Because the strength of the managing agent and the director is such that at any time they can have the auditor removed if they wish to. If you do not give the power to government to interfere—even though it is by a special resolution—the managing agents and the Board of Directors can contrive to get the auditor out if he happens to be inconvenient to them.

Shri Ghose: How do you protect an honest director, then?

Shri Parekh: We are thinking of the other cases where the shareholders should have the power of removing a director.

Shri Ghose: In regard to your argument for the retention of managing agents, you say that they are still providing a lot of capital and in the present state of the capital market in the country the system should not be done away with. Have you any figures, say for the last three or four years, of the risk capital provided by managing agents in respect of companies which have not been started in collaboration with foreigners.

Shri Parekh: I am afraid I am not at the moment able to give you capital invested in companies started without foreign collaboration and where the investment of the managing agents is large.

Shri Ghose: Of the few companies you referred to, at least in the case of one, there is foreign collaboration, or is there foreign collaboration in both the cases?

Shri Maganlal: Not in the Indian Dyestuffs; but even if there is foreign collaboration, the managing agents in the second company take 50 per cent. of the capital.

Shri Ghose: The argument was that the managing agents in addition to their managerial functions provide finance. In the case of companies started with foreign assistance, the latter provide managerial ability, as well as a part of the finance. Have you any figures to give us an idea about it?

Shri Maganlal: Many new companies have been started since 1948. To my knowledge, in some of them the managing agents, besides the initial capital that was given, have contributed to a large extent to the working of the company. I have intimate knowledge of instances where the managing agents themselves borrow money on their own and give it to the company.

Shri Ghose: But you have no figures of the type I ask for.

Shri Parekh: I am unable to give the actual figures at the moment.

Shri Ghose: You have said that in respect of companies where the system of payment on profits obtains the remuneration of managing agents has amounted to about 36 or 38 per cent. what would be the actual amount, not per centage?

Shri Maganlal: In the case of Ahmedabad Mills where remuneration is calculated on sales.....

Shri Ghose: I would like to have it on the basis of profits, not sales: have you got it in lump?

Shri Maganlal: The net profits of 39 Bombay textile concerns, were Rs. 31·48 crores, of which the managing agents got a commission of Rs. 12·24 crores, which works out to about 38 per cent.

Shri Tulsidas: You have pointed out that there are a number of evils in the managing agency system. You have also pointed out that in spite of these evils there is a necessity at the present time to have this system. I would like to know whether, in your opinion, any other system could be evolved, to get rid of these evils?

Shri Maganlal: As in other countries, we could have managers or managing directors without the hereditary rights of the managing agents. But the main point to which I have referred is that they should come with the necessary finance.

Shri Tulsidas: You have said that there are a number of evils in the managing agency system. Do you think that if we have a managing director instead of the managing agency system, these evils will be removed?

Shri Maganlal: The tenure of the managing director will be specified, in the agreement, subject to its renewal.

Shri Tulsidas: That is provided for in the Bill, I know. What I would like to know exactly is whether the evils which you have pointed out can possibly be avoided in the other system?

Shri Maganlal: There is one evil to which we have referred particularly, that is the evil of inefficiency which comes in by inheritance. If a managing agency of a private limited company goes from father to son, there is no certainty that the son will be as efficient as the father.

Shri Tulsidas: How do you expect the heriditary nature to be avoided where a managing director's family holds a controlling interest in the total shares?

Shri Maganlal: If 75 per cent. of the shareholders of a company desire A, B or C to manage their affairs they take the responsibility for that.

Shri Tulsidas: You say that the heriditary nature should be stopped. How do you avoid a system where there is no managing agent, but still because a family hold a controlling interest, they have a decisive voice?

Shri Maganlal: In the case of banks and insurance companies they are not managed by managing agents. In many instances the institutions are controlled by large families. But the day to day management rests with a body of managers and to that extent we feel that the system of paid managers is somewhat of an improvement on the managing agency system. At any rate in the case of banks and insurance companies it works well and in due course it could also be extended to industries.

Shri Tulsidas: I know of the working of the insurance companies and banks. Excepting perhaps in a few instances, the evils prevalent in these two types of companies are much more than under the managing agency system and in many cases Government had to take action.

Shri Maganlal: If the evils still remain, there are various other ways by which they can be checked.

Shri Tulsidas: You have come to the conclusion that the system by itself is not responsible for all the evils and there are a number of other causes which have to be removed.

[Shri Tulsidas]

I now come to the next issue. In paragraph 6 on page 2, you say that assistance has been given by Government in a number of ways. Do you realise that, particularly when finances are given by Government or institutions, they are given not merely looking to the company, but on the fact that the company is being managed by certain individuals or managing agents? Is it not a fact?

Shri Maganlal: I know of certain cases myself. From my own experience I can state that lendings by institutions like the Industrial Finance Corporation is done with the background of the management, the persons managing the thing. To my knowledge they lend on the safety of the assets, the working of the company, etc.

Shri Tulsidas: As a banker I have a certain amount of experience. Even if the assets are there, a banker would see whether these assets would be properly utilised.

Shri Maganlal: In the case of a company where the managing agents' signature would probably not be worth much, the Industrial Finance Corporation has lent 50 per cent. on the assets.

Shri Tulsidas: You have argued in your note that because of the import restrictions and tariff protection that is now afforded to industries, there is no longer any necessity for the managing agency. Do you at the same time realise that all the capital that has gone into the building up of these industries has been raised by the managing agents?

Shri Maganlal: What we suggest is that industries now enjoy a greater safety of preservation than it was under the foreign yoke.

Shri Tulsidas: You gave the instance of a shipping company where the managing agency drew a large sum. Do you realise that it is because of that managing agency that that company could exist in this country; otherwise; it would not have existed?

Shri Maganlal: Of that I am not aware. If a shipping company was here in India, no Government will allow it to languish.

Shri Tulsidas: But before the war and during the war this company could not have existed if the managing agency system was not there.

Shri Parekh: We are not underestimating the contribution which managing agencies have made in the past, but today some modification is required.

Shri Tulsidas: When you say that they took a large sum as remuneration, do you know that for many years continuously they could not get one rupee as remuneration?

Shri Maganlal: I believe there was some remuneration. Is there no minimum?

Shri Tulsidas: There is no minimum, I know it, that is why I am telling you.

Shri Maganlal: The commission is on gross profits. That is what we object to.

Shri Tulsidas: The next point is, with regard to waiving of commission you have mentioned that the amount of commission was drawn even though the companies were suffering. Do you know that the Income-tax Act provides that even if the managing agents waive the commission, the managing agents would still have to pay the income-tax, because the commission is due to them? And do you know that representations were made to the Income-tax authorities but in many cases decisions have not been arrived at?

Shri Maganlal: I am also aware of this fact that in one company the waiving of commission was allowed by the Government on an approach being made by the managing agents to the Government.

Shri Tulsidas: And then they waived the commission?

Shri Maganlal: Yes.

Shri Tulsidas: So the reason why they did not waive the commission in many cases was because the Income-tax authorities were not allowing?

Shri Maganlal: I believe they did not approach the Government.

Shri Tulsidas: There may be a few. But in most of the cases they did try to waive the commission when the companies were not doing well, but the Income-tax Act came in the way.

Prof. Ranga: As the Finance Minister is also with us we would like to know whether this is a statement of fact that in many cases many of the companies had approached the Income-tax Department and the Department was not prepared to accommodate them by waiving their Income-tax payment even though they were willing to give up their managing agency commission?

Chairman: That is the information of Shri Tulsidas Kilachand. I will verify it later on, if necessary.

Prof. Ranga: We would like to know the position, if not now, later on from the Finance Minister.

Chairman: I do not think it will be proper to ask anything off hand from the Finance Minister. He is not under examination here. But may I bring one aspect of the matter to attention? What the witness is saying is that the managing agency system had done something wrong in the past. That is a broad point. But they still say that in view of the present circumstances it should not be replaced for five years. So all those little questions about the difference etc. we may not go into here. Otherwise it will launch us into further enquiries and further information. So you may stick to definite points about the amendments, etc. in the interest of all.

Shri Tulsidas: I quite agree. I do not want to ask questions on matters which will take more time of the Committee.

Shri C. D. Deshmukh: While it would take us some time to give a statement in regard to the point raised, there are points to the contrary to be considered: Whether income accrued or not? What is the definition of 'accrual'? In regard to the managing agent's commission is it open to any one to say 'I just surrender'? When he says that, whether there is any attempt to evade Super Tax? Those matters have to be considered. Therefore, in view of both the legal interpretation and the possible effect on revenue, we have discouraged these things. Because, we say that if some managing agents found that their old terms were too onerous, there was nothing to prevent them from going to the Companies and asking for a change in their terms of remuneration. But they wanted the old luscious basis to go on and occasionally to make a sacrifice.

Shri Tulsidas: With regard to the percentages which the witness has mentioned on the question of commissions *vis-a-vis* dividends. I want to know whether he has taken note of the period when there was restriction by the Government on the giving of dividends. Because, there were certain amount of restrictions on payment of dividends, and Government was discouraging the payment of dividends. Perhaps the percentage which he has worked out may be on that basis.

Shri Maganlal: This is worked out from the figures of 1940 to 1947. If my memory serves me aright, the limitation of dividend came after 1947. It was only for a year.

Shri Tulsidas: With regard to page 5 of their memorandum relating to clause 105 (power to refuse transfer), I want to know this. In regard to shareholders, there are certain persons who have the profession of holding one, two or five shares in each company for creating unnecessary trouble in the companies, thereby increasing the expenses. I want to know whether in some of the instances, refusal for transfers was not due to such shareholders.

Shri Maganlal: If one, two or five shares are taken by a particular shareholder to attend the meeting and say a few words about the working of the management, I do not know how it would affect thereby the general benefit of the company. And what we want to debar by this is a kind of general restriction that could be exercised by the managing agents in regard to transfer of shares, as they want. If every single individual shareholder has to approach Government he would find it very difficult to make an appeal to Government and get a judgment on it. It is better for the managing agents themselves to apply to the Government and then give the refusal. I will give one instance. I wanted transfer of certain shares of the Colaba Mills Company to be made in my name. It has come to the knowledge of our Association that this company is mismanaged. I in my personal capacity wanted the transfers to be made in my name. The Company has refused. The law should not allow this.

Shri Tulsidas: You know for instance in regard to the Central Bank, there was one gentleman who used to create trouble and the Bank had to file a civil suit and incur a lot of expense. In one other case there was a person called Shri Subedar who also created trouble in some of the companies unnecessarily and without any reason. There are cases of such a nature where the companies had to incur large expenses on defending suits where there was no purpose in bringing such a suit. In view of that don't you think that such refusals should be allowed to the directors themselves instead of explaining all those points of view to the government authorities? In view of such instances, I feel the Company Law Committee made certain recommendations. Now you want to change the whole thing. Anyway, that is the view that I hold.

With regard to the holding of shares under clause 44, do not the Board of Directors of the holding company pass a resolution giving proxies to whatever persons they like? Therefore, even if the shares are held on behalf of the company in the name of a particular person, either director or manager, is it not the position that when the proxies are given, the Board's resolution is required?

Shri Maganlal: I am afraid there is no provision in the Act by which, if the shares are held in another name, the voting would be directed by the directors of the holding company. There is no such provision. It may be a convention.

Shri Tulsidas: It may be held in the name of other persons. But whenever proxies are given, the holding company has to pass a resolution in the Board as to whom the proxy is to be given and instruct the persons in whose names the shares stand that the proxy should be given to a particular name.

Shri Maganlal: May I point out one other view? Apart from the question of voting, is it not right that if a company makes an investment, the shares ought to be in the name of the said company? Why should others hold the share when the holding is in the name of the company? Is there anything desirable in it that the share should be in the name of a third party?

Shri Tulsidas: It is their nominees, either director or manager.

Shri Amjad Ali: On page 3 of your memorandum, regarding administration by Central Authority you say "One of the most important recommendations of the Company Law Committee related to the setting up of a Central Authority for the administration of the Company Law and allied matters. The Government has not accepted this recommendation and has provided in the Bill for administration of the Act under a Government department" like that of the Registrar of Joint Stock Companies. Except that you say that it will avoid red-tapism, have you any other points to offer for persuading the Committee to take up your point of view?

Shri Maganlal: As I have pointed out previously, various matters would be held up if they are not dealt with in a businesslike and independent manner. That is why we suggest that there should be an independent Commission.

Shri Amjad Ali: Would not the proposed set-up satisfy the requirements?

Shri Maganlal: I am afraid Government Departments will not be able to do the things because they will have to acquire knowledge of things happening outside and then act, while we want independent people on the Commission who have the knowledge of things happening outside to deal with these things.

Shri Amjad Ali: Do you agrée with the views of the Finance Ministry on this point that there is lack of personnel in the country and that is why they do not like to set up such a committee?

Shri Maganlal: Of course, we cannot be agreeable to that view. Independent persons to administer an Act of this nature would be found if efforts are made.

Shri Amjad Ali: What is your reason to think that the establishment of such a commission would help in speeding up the growth of industries in this country?

Shri Maganlal: The reason is this. If there are some evils still persisting after the passing of this Act, they should be speedily dealt with and for that purpose an independent commission would be more competent than Government machinery.

Shri Amjad Ali: Why is a central authority needed for that purpose?

Shri Maganlal: The Government is also proposing to administer the whole thing from the centre. There is no dispute on that point. The dispute is whether we should have an independent commission or Government machinery.

Shri Amjad Ali: Would it be on the same line as the Board of Trade in England?

Shri Maganlal: Yes, or the Security and Exchange Commission in the U.S.A. If we develop on the lines of these bodies, I believe the Act would be better administered and development of industries might be speeded up to the extent that evils will be eradicated quickly.

Shri Amjad Ali: Would there not be much delay in working if it is done in the Centre and then in the Provinces?

Shri Maganlal: But this Act is going to be administered from the Centre. It has got to be done by some central authority, either by Government or an independent commission.

Shri Parekh: Just as we have Forward Markets Commission or the Tariff Commission, a commission of this nature independently working could be more effective and could also integrate other matters such as capital issue on the one hand and stock exchange regulation on the other.

Shri Amjad Ali: Is it your view that the whole object of this Act would be nullified if such a central commission is not established?

Shri Maganlal: We would prefer the one to the other.

Shri C. D. Deshmukh: You referred to the Tariff Commission. The Tariff Commission does not decide finally but only makes recommendations to Government, whereas the powers that are vested or could be vested would be for final decision. Don't you think that there is a distinction there?

Shri Parekh: That is true, but I suppose even the Forward Markets Commission would refer the matter to Government before taking a decision.

Shri C. D. Deshmukh: I am only making a distinction between those powers and the powers which are to be exercised finally by this Central authority.

Shri Parekh: So far as the Central authority is concerned, all that we suggest is that where there are matters in which the Central Government's censent is required, probably the Act could be so worded that reference may be made to them before a decision is taken.

Shri C. D. Deshmukh: I would come to that later, but because you drew the analogy I say the Tariff Commission is really not the final authority.

Shri Chatterjee: You know the Bhabha Committee has recommended that a central authority should be constituted which should be called Corporate Investment and Administration Commission and that central authority should have the general power of supervising the administration of the entire Indian Companies Act. I take it you are asking this Committee to implement that report.

Shri Maganlal: Exactly.

Shri Chatterjee: The Bhabha Committee has also pointed out that although there were stringent provisions made in the existing Indian Companies Act—for instance, there is section 87H:

> *"Managing agent not to engage in business competing with the business of managed company.*—A managing agent shall not on his own accounts engage in any business which is of the same nature as and directly competes with the business carried on by a company under his management or by a subsidiary company of such company."

—although this salutary provision was there in the Act (and it should be repeated also in the new consolidating Act), still this has been completely obsolete and practically nugatory because there is no agency to endorce it, and, therefore, they have recommended that some central authority should be constituted which will look into these matters and enforce them. From your experience, can you say whether the Bhabha Committee's statement is correct?

Shri Maganlal: A provision has been made in the present Bill that in case competitive business is started by the managing agents, then they are debarred from doing so, and a central authority would naturally be a better authority for doing this.

Shri Chatterjee: They have pointed out that our Central Government has not got the requisite staff, nor is the Department properly equipped for the purpose of having a continuous survey and continuous investigation in the affairs of the company and therefore they have recommended a central authority. Is it also your experience that in the working of the Act so far, these safeguards have not been really enforced because there is no central authority or an independent commission on statutory authority which can look into the matter?

Shri Maganlal: It is true that several breaches of the Act have been committed by managing agents and they have been pointed out by bodies like the Bombay Shareholders' Association before they were brought to book.

Shri Chatterjee: In the present Bill we are taking larger power of carrying out investigation. Take for instance, the actual ownership of the shares of companies. Do you think that the Central Government or a Government Department without the necessary experience or the resources or the capacity can really enforce the provisions of enquiring into these matters?

Shri Maganlal: It is very difficult to say at this moment what set-up the Government will make for the purpose, but to our mind if an independent body of experienced people in trade and business are taken on this central authority, they would be able to exercise these powers better.

Shri Chatterjee: The Bhabha Committee has pointed out that the powers of investigating and inspection, which we are now incorporating in the Act on the basis of the English law can be made effective only if a proper com-

mission or statutory authority is set up. Do you agree with that view?

Shri Maganlal: Yes. We agree with that.

Shri Chatterjee: Clause 44 lays down that all investments made or held by a company shall be registered or held by it in its own name. It has been pointed out to us by Shri Choksi and other people that this will paralyse companies from getting short terms loans and bank overdrafts. Is that correct?

Shri Maganlal: We are not able to understand how it will impede getting of loans.

Shri Chatterjee: I am just reading out one portion.

> "Manufacturing concerns have quite often to arrange for overdraft from banks in connection with the purchase of raw materials or in connection with the manufacturing programmes. To secure such advances, companies have to deposit with banks by way of security shares or debentures or Government securities or the like. These are held by banks in their own name. If clause 44 were to become law, then it will be no longer possible to obtain advance from banks in this way and business will come to a standstill."

That is what one association has said.

Shri Maganlal: If the shares are held in the name of the company and advance got by pledging those shares, I do not understand how this will become difficult. If an individual can borrow giving security, the same should apply to companies.

Shri Chatterjee: They pointed out that from the day clause 44 becomes law, companies will be prevented from holding any shares on blank transfer, and you know, generally shares are held on blank transfer. Therefore that will be made impossible. That is what they are pointing out. Even for a short period you cannot hold any shares on blank transfer.

Shri Dhage: Securities have to be transferred in the name of the bank. How can that be done?

Shri Maganlal: We do not know if banks require the security to be transferred to their own name for lending, because in all cases they require the shares to be in the name of the person who borrows.

Shri Gandhi: Usually banks do require that the shares are transferred to their name.

Shri Chatterjee: They have pointed out that first of all the company has got to register the shares in its own name and then borrow money. That will make impossible short-term loans or overdraft, and that will paralyse ordinary business activity of the company.

Shri Maganlal: We are unable to agree to this view that it will hamper business and that loans would be difficult to obtain, but we have no objection if a provision is made that in such cases the transfer may be made to the bank's name.

Shri Chatterjee: Supposing a full disclosure is made of all the holdings, then would you still insist on clause 44?

Shri Maganlal: The disclosure has no charm at all. It is the vote that counts.

Shri Chettiar: Would you like to provide any safeguards for small shareholders?

Shri Maganlal: There are provisions by which minority shareholders are protected against even a big majority. Ten per cent. of the shareholders can ask for inspection. I think that is a sufficient right for the small shareholders

Shri Chettiar: How will you react to the suggestion that in the directorate by some way of election or representa-

[Shri Chettiar.]

tion a minority shareholder may also get a seat?

Shri Maganlal: I believe then the minority-majority question will go on. After all, election of a director is on a majority basis and I do not know if that principle should be vitiated.

Shri Chettiar: You do not like to introduce proportionate representation for minority shareholders in the Board?

Shri Maganlal: No.

Shri Chettiar: Clause 167 provides that proxies can be given to non-shareholders. How do you like that?

Shri Maganlal: This has got to be provided. If the proxy holder cannot remain present, he should be empowered to give the proxy to some one else.

Shri Chettiar: Originally the provision was that it could be given to another shareholder. Now the clause says it could be given to a non-shareholder. Do you think it advisable?

Shri Maganlal: It is advisable.

Shri Chettiar: A suggestion has been made that since all sorts of things are being discussed in a general body meeting, the importation of proxies means getting in a lot of undesirable elements.

Shri Maganlal: They have only the right to give the proxy. Beyond that they are not allowed to do anything. He can vote.

Shri Chettiar: Do you mean to say that they will have no other right except to vote and they have no right to speak? Are you sure?

Shri Maganlal: Yes; I should think so. That is my strong impression.

Shri Chettiar: I think the clause is very clear. It says:

> "and a proxy so appointed by a member of a private company shall also have the same right as the member to speak at the meeting."

So, you would like to discriminate between a private company and a public company in this matter.

Shri Maganlal: Yes.

Shri Chettiar: If he has merely to vote, what is the difficulty in limiting it merely to members? Why do you want outsiders?

Shri Maganlal: If a person who wants to give his vote in a particular direction is unable to come himself, he appoints some one to vote for him. That would be an advantage to the shareholder himself.

Shri Chettiar: Clause 60 imposes a restriction on canvassing. It says:

> "No person shall go from house to house offering to the public or any member of the public.....etc."

Is all share-canvassing done through share markets now?

Shri Parekh: Clients are approached through brokers and sub-brokers. There is no house to house canvassing in that sense.

Shri Chettiar: Where is the canvassing done? In our part of the country, each person is approached and share canvassing done.

Shri Maganlal: Canvassing is done by going from house to house.

Shri Chettiar: You do not think that this is an unnecessary ban.

Shri Maganlal: This is rather vaguely worded.

Shri Chettiar: You have no opinion on this matter?

Shri Parekh: We feel it is vaguely worded.

Shri Maganlal: As a matter of fact people go from house to house. This is against the practice obtaining today.

The provision refers to going from house to house for the purpose of canvassing shares of a company. We are unable to understand the actual implications of going from house to house. For selling shares or for getting capital for a new concern, even brokers have got to go from house to house.

Shri C. D. Deshmukh: You have not included it in the clauses to be modified. You have not included this in the clauses to be retained. Your attitude seems to be neutral. That is why we are asking what your view is in regard to this particular clause because you are interested in the investment market. Do you think it is possible to float shares while this prohibition remains. That is the question that has been raised.

Shri Maganlal: We believe that it should be amended in the sense that the prohibition on going from house to house should not remain.

Shri Deshmukh: You want elimination of this clause?

Shri Parekh: While we have not expressed any views in our memorandum, now that the question has been raised, we feel that the clause is so generally worded that we do not know what is the interpretation to be put on it or can be put upon that clause. We feel that some amendment would be desirable. Otherwise, it would make the position of the people canvassing new shares difficult.

Shri Deshmukh: It may be that the Committee thought that canvassing should be done by means of prospectuses which speak the whole truth and nothing but the truth. But if a canvasser goes from house to house, you do not know what he is going to add to the prospectus. There might be a kind of undue influence or misrepresentation instead of a printed prospectus which will only have a limited circulation in this country with such a large illiteracy. Do you think that that could be left free?

Shri Parekh: Even when a person or canvasser takes the prospectus including an application form and goes from house to house, his position would be difficult under this section.

Shri Maganlal: He can go with the prospectus from house to house. House is defined here and it does not include an office.

Shri Deshmukh: You may think a little more over it. If you think it worth while to forward to us a kind of draft modification which you consider necessary, you may send one as a supplement to the memorandum.

Shri Maganlal: We shall do so.

Shri Basu: In reply to some questions, you suggested that by 1959 the managing agency system should be reviewed Does it apply only to the new system that may be coming after the passing of this Act?

Shri Maganlal: It will apply to all the managing agencies existing on that date.

Shri Basu: Including the new managements that may be formed after this Act?

Shri Maganlal: Yes.

Shri Basu: You have suggested that inspite of the malpratices, there should be limitations on the free transferability of shares. There are provisions already where there are restrictions imposed by the Central Government. Don't you think that the shares of the public companies should be freely transferable? There should be no restrictions.

Shri Maganlal: We are not asking for restrictions. If the managing agents or management desire to refuse to register a transfer, they should take the permission of the Central Government.

Shri Basu: In view of the fact that there is limitation and restriction as to the change of management, what is your idea in adding this restriction? You say that the company shall obtain the consent of the Central Government. After all, the shares of a public company should be freely transferable. What are your special reasons?

Shri Maganlal: Any undesirable elements who want to take control of the company would have to take the majority with them. Then they can appoint

[Shri Maganlal]

their own directors and create chaos. If in the opinion of the managing agency or management, the people who want to come in are undesirable elements, it is better the shares may not be transferred to their names.

Shri Basu: To guard against such a contingency, your suggestion is that the onus should be on their part to prove that they are undesirable.

Shri Maganlal: Yes.

Shri Basu: You have suggested in spite of all the defects the managing agency system should continue on the ground that they have been able up till now to organise finances for new undertakings. In view of the growing banking facilities and improving conditions of capital and the better working of stock exchange organisation, don't you think that it would be desirable for the investors to come through them instead of relying entirely on the qualities and credit-worthiness of these managing agencies?

Shri Maganlal: We believe that for the promotion of new industries at the present moment, it will not be proper to abolish this system. That might disorganise the spirit behind the whole thing. The finances that may come forward may not be very much: finnaces which are badly needed for industrialsation.

Shri Basu: In view of the growing interest of our people in industrial investment and also in view of better banking facilities and stock exchange, don't you think it would be easier today than in the past to get finances for the organisation and establishment of new industries in the country?

Shri Maganlal: Of course, conditions are better than they were previously. Still, the conditions are not such as would enable speedy development.

Shri Basu: You have said that in many cases, the managing agencies have guaranteed the loans advanced to the company. Could you give us an idea as to the percentage of the working capital, in the present context, supplied entirely on the personal guarantee of the managing agencies and not on the stocks lying with the particular concern?

Shri Maganlal: It is very difficult to give any figures of actual amount because they vary from time to time. Even in one year, the amount financed by the managing agency would vary. It is very difficult for the shareholders to find the amount financed by the managing agencies. There are cases of industries to which in times of necessity, the managing agencies have given facilities.

Shri Basu: Is it not true that in guaranteeing a loan, the managing agencies charge a sort of commission?

Shri Maganlal: No commission.

Shri Basu: You have stated that one of the greatest evil of this system has been the hereditary character. Do you suggest that in all public companies, only public companies should be appointed managing agents? Will that minimise the dangers of the managing agency system?

Shri Maganlal: To eradicate the evil, if the managing agencies have to come for renewal after shorter periods, a check will be exercised by the shareholders and if inefficient people come up, they will see that they are ousted.

Shri Basu: If it is made mandatory that only a public company can be appointed a managing agent, will it not help matters?

Shri Maganlal: It will to some extent. But, that would not meet the point.

Shri Chaudhury: I would like to draw your attention to your observations on section 82 of the Bill which proposes termination of the disproportionate voting rights attached to certain shares. You say that not only the disproportionate voting rights, but also

the rights with regard to dividend, capital or otherwise should also be suitably modified. You say that you have suggested 'suitable' revision deliberately, because of the character of such rights. What does this term "suitably modified" exactly mean? Do you want a complete termination of these rights within the period of 3 years or 1 year or a continuation of these rights as envisaged in section 83?

Shri Parekh: No, Sir. We want termination of these rights.

Shri Venkataraman: You are aware that in some British companies there are whole-time directors. Would you like to make a provision in our Companies Act that a particular proportion of directors shall be whole-time servants of the company? Would that not lead to increased efficiency?

Shri Maganlal: As long as managing agents who are paid for whole-time work, are there, it will be duplication. Only when they are removed will this be desirable.

Shri Venkataraman: Suppose you have that clause about whole-time directors. Would that not reduce the importance and usefullness of the managing agency system as such? What, in your opinion, will lead to greater efficiency of the system of whole-time directors or the system of managing agents.

Shri Maganlal: The system of whole-time directors is not yet tried. But in foreign countries we have found that they have whole-time directors and there is no managing agent there.

Shri Venkataraman: That, in your opinion, is a far sounder system?

Shri Maganlal: Probably yes.

Shri Venkataraman: In India also in some of the British companies, they have whole-time directors. Have you any opinion to express?

Shri Parekh: Some have whole-time directors.

Shri Venkataraman: They also have managing agents.

Shri Parekh: Some of these companies have whole-time directors, but no managing agents.

Shri Venkataraman: What you said about England is correct. But in India some of these British companies have whole-time directors as well as managing agents.

Shri Parekh: So far as British companies working in India are concerned, they might have whole-time directors, but they have no managing agency system. These companies are run by managers or managing directors. For example, companies like the Dunlop Rubber and Indian Aluminium have no managing agents, but have full time directors.

Shri M. C. Shah: Killick Nixon & Co. They have got managing agents as well as whole-time directors.

Shri Parekh: No. Killick Nixon have managing agency. They are themselves a managing agency firm; they have no managing agents of their own.

Shri Venkataraman: Would you think that the introduction of this whole-time director clause will serve efficiently the interests of the company better than this system about which there is a difference of opinion at any rate?

Shri Maganlal: The point is whether they would be able to substitute them in the management of the company?

Shri Venkataraman: We do not know when the managing agency system is going to end but along with that would you prefer to have a clause in the Act so that you might introduce a system of whole-time directors so that when the time comes for the managing agency to go, they will be in a position to run the company?

Shri Maganlal: There is already a clause by which directors can be appointed if the company so chooses by giving certain remuneration.

Shri Venkataraman: Would you like to make it obligatory that a certain proportion of the directors should be whole-time?

Shri Maganlal: Not necessary; because it will increase managerial charges for the time being.

Shri Venkataraman: You can reduce the remuneration.

The next point is this. It was said that the managing agents should be continued for the purpose of drawing capital and all that. In view of the recent history of losses due to managing agency, don't you think that the very existence of the managing agents is itself one of the causes for the shyness of capital?

Shri Maganlal: It exactly happened like that, that it acted as a cause for capital not to come out and people would not touch with the smallest finger capital floated or wanted by certain class of people. But that does not apply to all and, therefore, I think it is not right to generalise. It does not act as a bar against capital coming out for people who are genuine.

Shri Venkataraman: Nor is it right to generalise that it is because of the managing agents only that capital is being found. Therefore it comes to this, that it depends on the persons who are responsible for the floating of the company, by whatever name they are called—managing agent or director?

Shri Maganlal: Yes.

Shri Venkataraman: So there is no particular efficiency about the managing agents. It is the individual who matters.

Shri Maganlal: The individual or a business house or firm.

Shri Venkataraman: So it is the reputation of that individual and not that of the maanging agency that is responsible for bringing capital.

Shri Maganlal: As a matter of fact, if a managing agent or managing director or director-in-charge is reasonable over certain number of years, then it does not make any big difference.

Shri Venkataraman: Would you like to put a restriction on the number of companies a managing agent can manage?

Shri Maganlal: I do not think it is necessary at present.

Shri Venkataraman: How can he manage all the 20 companies? Where is the time that he will devote. If you say that it should be reviewed in 1959, would it be a step in that direction to say that before that date certain restrictions should be placed on the number of companies managing agents can manage?

Shri Maganlal: We have no statistical data today as to the number of companies managed by managing agents. We have yet to find out that one business house is managing so many companies and hence there is mismanagement. On the contrary, some of the big business houses have many industries at their command and they have been doing well because they have that organisation.

Shri Venkataraman:. So your view is that while there should be a restriction on the number of companies in which a person can be director, there should be no restriction on the number of companies a managing agent can manage?

Shri Parekh: No, Sir. Our point is this. On this, we have kept the whole issue open, This issue of whether they can manage such a number of companies and every allied issue needs to be examined in detail and for that a separate inquiry is nece-

ssary. Before that, we cannot say anything. While there is substance in what you say, the point needs to be gone into in detail.

Shri Venkataraman: Did the Company Law Committee inquire into this?

Shri Parekh: No.

Shri Venkataraman:.. It has received evidence for and against. What further investigation do you want?

Shri Parekh: The investigation of this problem relates first to capital; to what extent managing agents hold capital at the start and in the process of the company's working, how many companies managing agents are able to manage, to what extent they employ other people to manage? Some managing agents have a much larger organisation and some have smaller organisation and yet they manage many companies. We have to see whether the organisation is adequate for them to manage the required number of companies.

Shri Venkataraman: You say that has not been investigated.

Shri Parekh: That has not been investigated.

Shri Venkataraman:. Now let us go to directors. Would you say that a person should be allowed to be director in 20 companies? Will he find the time to devote to the company's affairs, to attend meetings or to go through the proceedings?

Shri Maganlal: Today some directors hold office in 60 companies, others in 43 companies. In other countries, the maximum is 11. But in view of the lack of personnel, I think the figure of 20 is fairly reasonable.

Shri Venkataraman: They are not born. If you restrict the number, new personnel will be coming.

Shri Maganlal: If each company holds a meeting once in two months, it means 10 meetings a month. It will not be beyond the capacity of the directors.

Shri Venkataraman: What is the number of meetings held in each company every month? One or two.

Shri Parekh: Every two months.

Shri Venkataraman: Average will be one meeting every month. The Bill only gives the outer limit saying that they shall not refrain from holding a meeting for two months. But actually if you are to run a company efficiently, you must meet at least once a month. If you have 20 companies, where will they find time? They have other business also.

Shri Maganlal: 20 meetings in a month comes to almost one meeting a day.

Shri Venkataraman: They have other business also.

Shri Parekh: A meeting lasts an hour or so.

Shri V. B. Gandhi: On page 3 of your memorandum, you have a paragraph on 'Administration by central authority' and there you have referred to an independent Commission which functions as a central authority in the United States. Could you give us some more information about this independent Commission in the United States? For instance, who selects it, what is its composition, what is its term of office, and what kind of authority it has for taking final decision? If you cannot give us this information now, would you consider sending us a comprehensive note on this subject? I would particularly suggest that you keep in mind what the Finance Minister has just now said by way of information because the analogy drawn by you in your paragraph of the Tariff Commission is not very helpful since the decisions of this Tariff Commission are not final. I believe

[Shri V. B. Gandhi]

you propose that this Independent Commission will have the authority to take final decisions.

Shri Parekh: In Appendix V to the Company Law Committee's report—page 473—all the details are given.

Shri V. B. Gandhi: Thank you.

Shri Somnath P. Dave: In para 6 on page 2, you refer to 'managerial revolution' whose advent must also be inevitable in India. Do you thereby mean that in future, joint stock companies will require more persons with industrial knowledge, with knowledge of the arrangements rather than the emphasis being on their finance securing capacity?

Shri Parekh: Yes, that is the position in the advanced countries where the experts have come into greater and greater prominence because of the complexity of the new industries which are developing.

Shri Dave: That you consider to be a welcome feature even in India in future?

Shri Parekh: If we want to industrialise.

Question: Therefore you would agree to putting in the Company law certain qualifications for those who are in charge of industry by whatever name we call them?

Answer: That would not be practicable, in my opinion, at the moment.

Question: Would it be well advised or contradictions?

Answer: Nowhere in other countries such specifications are given as to qualifications of people who can manage. It all depends upon the people who can do it. Each case has to be separately dealt with. No statute can help it.

Question: I am suggesting to you whether in view of what you yourself have stated, would it not be advisable that those who are in charge of industry should have certain specific qualifications to run the industry and not take it to ruin?

Answer: It would be advisable no doubt, but it cannot be brought about by having any stipulation in the Bill. It has to grow of its own, as it has done elsewhere.

Question: I understood you to say that you are already against the hereditary character of management. Did I understand you correctly?

Answer: Yes, we are.

Question: In that case, individuals should play a greater part and that greater part shall not merely be because of their capacity to finance but because of their capacity to manage?

Answer: Yes, in the future set up.

Question: In that case we should lay down certain qualifications for capacity to manage; otherwise how are we to judge that capacity?

Answer: It cannot be done by laying down qualifications. In several managing agency houses today—public limited companies and others—they are taking up people who are experts, who are accountants, lawyers and so on on their own. It is growing to a certain extent even now. The fact that there are numerous managing agency public limited companies who do not depend upon the hereditary character of the personnel but depend upon people who are selected from the ranks, that itself is a proof that that tendency is already developing and in many cases it has grown to a greater extent.

Question: I think, you, as representative of the shareholders, must have been a witness to a number of winding up and liquidation proceedings in the course of the last 30 or 40 years. Is it not so?

Shri Maganlal: Members of our Association might have been witnessing certain liquidations.

Question: Would it be possible for this Association to help the Committee by detailing the number of jointstock companies that have gone into liquidation during the last 3 decades and analyse the causes therefor?

Shri Maganlal: We have not done so and it would require some time.

Shri Somnath P. Dave: Being a patriotic duty, would you do it?

Answer: It will take some time.

Question: So far I know, you have stated nothing with regard to the changes to be made to expedite winding up proceedings in the interests of the shareholders. Our present Speaker, Shri Mavalankar has been writing that the charges in liquidation proceedings being based on English Solicitors' Firms fees are abnormally high in India. Do you hold that view?

Answer: The charges for liquidation are being fixed in a general meeting. They are generally passed by a resolution.

Question: I am talking of winding up through courts, compulsory winding up.

Shri Parekh: We will go into it.

Shri Maganlal: We are unable to give an opinion on that.

Question: The Bhabha Committee has made a recommendation that the ordinary shareholder's position should be protected. Have you any suggestions to make to protect the minority shareholders?

Shri Maganlal: Section 220 provides that 10 per cent. of the shareholders can at any time ask for investigation.

Question: Do you think it practicable to get 10 per cent. signatures?

Answer: In some cases, in Calcutta and even in Bombay, it is not difficult to get the signatures of 10 per cent.

Question: Calcutta and Bombay may be more alert than mofussal towns like Ahmedabad. Do you like that right being given even to two or three shareholders?

Answer: We are asking for one hundred.

Question: I am asking whether you would like to have the right given to one or two?

Answer: It will become a nuisance to the company.

Question: He may be asked to pay a deposit to prevent fraudulent applications?

Shri Parekh: It is already existing in the Bill, because an individual shareholder or a group of them can approach the government in a proper way. That protection is given to the individual through government.

Question: It was your opinion that it should not be in the hands of the people of government but in the hands of a Commission, because you thought that government machinery moves rather slowly.

Shri Parekh: We do not imply any criticism of the government from this angle.

Question: Why do you want five years' time to pass a judgment on this system?

Shri Maganlal: According to the Bill all the managing agency agreements are to be renewed in 1959. That is why we have selected 1959.

Question. They can be renewed now by the operation of law.

Shri Maganlal: Five years is a very reasonable period. If we fix a shorter period, then the starting of new firms would become difficult.

Question: If the lease of life of those whom you characterise as full of malafides etc. is allowed deliberately to be lengthened by a measure of this kind for a period of five years, then during the rest of their lifetime they

[Shri Maganlal]

will not do anything better but rather speed up the course of their malpractices and ruin the shareholders.

Answer: Restrictions are placed by the Act already on their activities. They cannot do many things. We must see the working of the Act. Let us see how it works before we pass any verdict.

Question: You quoted certain figures as having been compiled by the D.L.A. The figure represents the share of dividends paid in cash and does not represent the value of bonus shares given. Is that correct?

Shri Parekh: Our approach is that of dividend distribution. Capital reserve is something very different.

Question: I do not question that. I merely say that the figure of Rs. 9 crores as dividend distributed as against 14 crores as bonus and 22 crores as agents' commission, is the amount of cash dividend distributed and does not include the amount of bonus shares.

Shri Maganlal: Cross.

Question: I wanted to show that depreciation has not been taken up.

Answer: They have taken depreciation of Rs. 2·98 lakhs.

Shri Shah: One of the reasons given by you is that they provided opportunities where you have come across managing agents, that instead of using the funds for the advantage of the company they had turned it to their own advantage.

Shri Maganlal: There are various types of malpractices.

Question: Is it not correct that instead of providing finances for the company they manoeuvred to become managing agents only to utilise that position to their own advantage?

Answer: That is shown by facts.

Question: Their holding the position, instead being useful in providing initial finances, has been a curse rather than a benefit to the country? I will read your memorandum.

> "Time was when the substantial holding of the managing agent was considered to be a blessing.....such holdings instead of becoming a blessing have proved a curse."

Do you hold the same view even now?

Answer: In some cases, of course.

Question: You have led us to the conclusion by the case you have made out that the managing agency system must be abolished and cannot be amended. Now, you say that they may be continued for a period of five years. You say that another evil of the managing agency system is that the Board of Directors instead of exercising control over the managing agents are nominees of the managing agents.

Answer: That is true and therefore, I think, it is provided that one-third of the directors should be elected.

Question: But in cases where there are managing agents, the Board of Directors are almost nominees of the managing agents instead of reflecting the views of the shareholders.

Answer: Yes, in some cases.

Question: Has it not always happened in every case where there has been a transfer of managing agency from one firm to another, that the Board of Directors has invariably resigned and the nominees of the incoming purchaser always came in in the Board of Directors?

Answer: That has largely happened.

Question: Therefore, the Board of Directors are not the nominees or chosen representatives of the shareholders but merely the nominees of the managing agents. The Board of Directors instead of exercising control over the managing agents really becomes a tool in the hands of the managing agents. Is it correct?

Answer: It is quite true in many cases.

Shri Parekh: The Bill, as it stands today, increases the responsibility of the directors so very much that the directors in future cannot be nominees to the same extent as they were in the past.

Question: If the managing agency system has to be put an end to some time, why do you envisage it abruptly? Is it not better that we should proceed about it stage by stage right from now? As we have abolished it in the insurance industry, why not we proceed with some other industry, textile or jute?

Answer: Our view would be to first look to the shipping and transport industry where we do not think there is much of utility.

Question: Can I say that there are industries even today in which the managing agency system can be abolished altogether? You have named shipping and transport. If you wish to name others, we shall be obliged to hear.

Shri Shah: You would agree with me that the auditor occupies a very important position under the Act and under the Company law. He is there to protect the interests of the shareholders by making proper disclosures. Is it your experience that the auditors, like directors, are also under the control of managing agents, when the appointment is left even to the general meeting?

Shri Maganlal: Such cases there might be. but they are very few.

Shri Shah: Do you think that in order that the independence of the auditor may be fully preserved, it would be better if he is appointed by Government, in the interest of the shareholders?

Shri Maganlal: We would like this right of the shareholders to be taken away from them.

Shri Shah: Do you suggest that the shareholders when they have not been able to choose even directors, are able to choose proper auditors? Is it not your experience that at the general meetings the management comes right with the names of auditors and they are always appointed? Have you ever found shareholders appointing auditors other than those suggested by the managing agents?

Shri Parekh: Sir, by and large, whether the auditors are appointed by the managing agents or otherwise, they have acquitted themselves reasonably well and it is not fair to call them "nominees" of managing agents.

Shri Shah: Would it not lead to greater independence of auditors if they are nominated by Government?

Shri Maganlal: On the contrary, it is on the disclosures made by the auditors that many malpractices have been found out.

Shri Shah: In paragraph 2 of your memorandum you have said that during the last twenty years or so, the form of managing agency has undergone a great change. You also gave some figures in answer to the Chairman's questions. You will agree that the essence of managing agency is that there is close personal contact and devotion to the company. Do you also agree that an individual, if he is a managing agent, will keep greater close and personal contact with the company than a private or a public limited company?

Shri Maganlal: A private or public limited company have also on their directorate people who look after independent companies. I will give you an instance. Messrs. Killick Mixen and Co., are a public limited company, but they have got certain directors who are assigned to certain part of their business, *e.g.*, electric companies are managed by one person called Mr. Miller. In Tatas, Mr. Tata is in charge of the steel company.

Shri Shah: Therefore it is not a private limited company which acts as the managing agent, but an individual.

Shri Maganlal: Yes, through the company.

Shri Shah: Therefore even if an individual is appointed as the managing director, it will make no difference.

Shri Maganlal: If A, B or C is appointed a Managing Director who does not command the financial backing, he will not be able to give a guarantee to the banks.

Shri Shah: How much finance the managing agents bring we know. You yourself have said that in the changed circumstances and particurarly in view of Government protection, and governmental investments and government loans, there is very little finance that the managing agents themselves bring. Can you give us a statement showing the capital brought in by the managing agents of the company.

Shri Maganlal: In the case of tottering companies for instance, the Managing Agents have given large finances. I will give you the simple instance of Tata Chemicals.

Shri Shah: I shall draw your attention to sub-clause (2) of clause 80 which reads:

> "The holder of any preference share capital shall not, save as provided in clause (b) have a right to vote on any resolution placed before the company, which does not directly affect the rights attached to his preference shares."

I do not know whether you have considered it.

Shri Maganlal: Except under liquidation and arrears of dividend, they cannot vote.

Shri Shah: There are articles of several companies which give right of voting to preference share holders. Do you or do you not want to protect those rights?

Shri Maganlal: We are for giving right of vote to preference shareholders only when there is arrears of dividends and in the case of liquidation. Preference share holders are mostly like creditors. They have their money which will be jeopardised in case the company does not do well.

Shri Shah: Suppose the company ventures into some undertaking which wipes away the capital?

Shri Maganlal: On the contrary, it is the preference shareholders who will check development, because they will also like to preserve their capital; it is the equity capital that will try to venture.

Shri Shah: On the other hand, is not preference shareholders entitled to security of his share holding? As a shareholders Association I would like you to consider this matter.

Shri Khandubhai Desai: You remember that in your original memorandum you suggested that the managing agents' remuneration should not exceed 7½ per cent. maximum and Rs. 24,000 per year minimum. Have you changed that view now?

Shri Parekh: The point is this. Shri Kapadia who was the previous Secretary may have suggested 7½ per cent. then. He was a Member of the Company Law Committee. It seems that after proper deliberation, they came to this conclusion of 12½ per cent. So far as we are concerned, we have taken that as it is and have only suggested a revision of 12½ per cent. to 10 per cent, because that falls more in line with the present practice. If it is brought down to 7½ per cent. we, on the face of it, have no objection. But we suggested 10 per cent. as against 12½ per cent. because of this particular reason which is to bring it into line.

Shri Kanungo: You have expressed your preference for an independent authority—what would be the composition of that authority?

Shri Parekh: As suggested by the Company Law Committee—a Chairman and four members.

Shri Kanungo: What sort of qualifications are they supposed to possess?

Shri Parekh: It is provided here—an accountant, a lawyer, etc.

Shri Kanungo: Government has that type of men under employment?

Shri Parekh: Yes.

Shri Kanungo: What is the advantage of having an independent authority?

Shri Parekh: It will avoid some of the delays which take place and which appear to be common in Government Departments.

Shri Kanungo: That means all decisions on company matters should be delegated by Government to that authority?

Shri Maganlal: Yes.

Shri Kanungo: So, it will be independent of Government?

Shri Maganlal: Not independent of Government. There will be some relationship between it and Government on certain matters, where Government consent would be required. Some functions will be delegated to the authority for being exercised on its own accord and some functions would be reserved for Government.

Shri Deshmukh: Beginning with the last point, have you read the press report of the debates in Parliament when the Select Committee motion was moved, particularly in regard to Central Authority?

Shri Maganlal: Yes, we have gone through them.

Shri C. D. Deshmukh: The case that was put forward in favour of the Central Government rather than a Central Authority—that has been noticed by the Shareholders' Association?

Shri Maganlal: Yes.

Shri C. D. Deshmukh: Because there is no evidence to that in your memorandum. It was pointed out in the House that this was just experimental, that we wish to find out how it works, and that you might create a machine but may not have the men to man the machine with. These disadvantages might easily arise and I want to know whether these arguments have been taken into consideration?

Shri Maganlal: We have taken these arguments into consideration.

Shri C. D. Deshmukh: There are certain sections under which it is only appropriate that the Central Government should pass orders, because they concern the whole economic interests of the country, like, say clause 196. You have already agreed that a distinction would have to be made between functions in which the final decision must be taken by the Central Government and others in which the matter might be left to be decided by the Central Authority: is it right?

Shri Maganlal: Yes.

Shri C. D. Deshmukh: That is to say, you are not for a wholesale substitution of Central Authority for Central Government?

Shri Maganlal: No, Sir. The Central Authority may, on various points which are absolutely necessary, take the final sanction of Government before they act. It could be so arranged that the Central Authority would act after consent from the Government.

Shri C. D. Deshmukh: So, you make a distinction between certain matters which the Central Authority could decide without reference to Government and other matters where they may have to make a reference to Government. If the number of matters in which this reference to Government are larger, then, perhaps, there will

[Shri C. D. Deshmukh]

not be much to be gained by creating a Central Authority which will have to refer cases to Government.

Shri Maganlal: In that case the Central Commission having gone through the case first and come to a particular decision may place the matter before Government and it will be easier for Government to take a decision.

Shri C. D. Deshmukh: Could you tell me something about the Shareholders Association? Everyone who is a shareholder can be a member and every member must be a shareholder?

Shri Parekh: He is required to be a shareholder, though we do not scrutinise it.

Shri C. D. Deshmukh: So, managing agents are excluded?

Shri Parekh: They can be members, but they cannot be on the committee.

Shri C. D. Deshmukh: So the opinion expressed by you is the genuine opinion of shareholders?

Shri Parekh: Yes.

Shri C. D. Deshmukh: So, your position seems to be that we do not really know enough about the advantages and disadvantages of the managing agency system: therefore, for the time being, let us content ourselves with mending and in the light of our experience take a fresh decision after further statistics, facts and figures are available?

Shri Parekh: Exactly, Sir.

Shri C. D. Deshmukh: Therefore, you would not be able to elaborate what you mean by saying that industry will be disorganised if the managing agency system were to be abolished?

Shri Parekh: What we say is that such termination would upset the present organisation.

Shri C. D. Deshmukh: Sudden termination may be avoided by fixing a time-limit. But you feel that the area covered by the utility of the managing agency system might be so large that at least five years are necessary for the review of the whole position.

Shri Parekh: Meanwhile we will get an idea of the extent to which the present Act can check the malpractices.

Shri C. D. Deshmukh: You said the managing agents are able to provide finance, and that is a useful function. Do you think there has been concentration of wealth as a result of the existence of the managing agency system itself? In other words, would it not be an argument which could be used continuously? How do you contemplate the termination of a system if it is continued in the meanwhile with hardly and check on concentration of wealth—so that every time the question arises you could say "Look at the finance the managing agency has furnished". In other words, do you think that banks could gradually take over the functions of managing agents or not? I am asking the question without any tendentious meaning in it, in a search for truth.

Shri Maganlal: From experience we know that on account of the large remuneration that accrued to the managing agents under the system that exists today, there has been much concentration of wealth and drainage of wealth in one direction. With the present amendments coming in, I believe, there will be a large check to that extent.

Shri C. D. Deshmukh: By the same extent the power of managing agents to finance industries will be contracted, is it not?

Shri Maganlal: Yes.

Shri C. D. Deshmukh: And that might be an argument for saying now that it is not so important as it was in the past?

Shri Parekh: Quite.

Shri C. D. Deshmukh: One could say that, is it not?

Shri Maganlal: Yes.

Shri C. D. Deshmukh: In the same connection, you know that in some cases as many as 128 concerns are managed by, not the same firm, but the same sort of people. Do you conceive there is any kind of maximum economic or industrial unit beyond which no single organisation can undertake to look after industrial concerns?

Shri Parekh: I would not say any limit, for the simple reason that the organisation itself is capable of growing—just as several limited companies are taking up the functions of managing agents; they are assuming larger and larger powers. For instance, in foreign countries there is no limit. For instance the Imperial Chemical Industries are taking up newer and newer lines of development. In a modern company there is no limit to the scope for development. Similarly, with an adequate organisation there can be no limit in being able to manage a number of concerns. By the new personnel that it is able to take—and the public limited company today very much does that—to that extent it keeps a check on the hereditary system.

Shri C. D. Deshmukh: Are you aware that in many Calcutta houses the managing agency itself includes some pay, like executive directors?

Shri Parekh: Most of them are paid officers.

Shri C. D. Deshmukh: Would you say that that is a reason why they are managing fairly well?

Shri Parekh: We would say that.

Shri C. D. Deshmukh: Would you like the advantage of a provision of law in this respect?

Shri Parekh: There are several Calcutta firms, big managing agencies, which are public limited companies. There are private ones like Tatas. But even though it is constituted as a private agency firm, it is able to absorb newer people, and so it is taken care of.

Shri C. D. Deshmukh: In regard to the question whether the managing agency should be an individual or firm, do you think it is an advantage that a number of people should get together, bringing different talents for the consideration of broad questions of policy, although they might be in charge of individual subjects or individual departments? In other words, would you accept the policy or the feasibility of managing agents being continued on the basis of individuals alone?

Shri Parekh: We do not see any particular advantage in its being managed by individuals.

Shri C. D. Deshmukh: Do you see any disadvantage in its being made obligatory that all managing agents shall consist only of individuals?

Shri Parekh: We see the disadvantage.

Shri C. D. Deshmukh: What struck me was, when four or five people—one a technician, another an administrator, a third a financier, as in Tata, say—get together, broad questions of policy can be determined by all of them, and yet individually they can manage different sectors of their manifold activities. That advantage would be lost if you insisted on a managing agency being always an individual.

Shri Maganlal: That is quite true.

Shri C. D. Deshmukh: Would you think it feasible to legislate that in future there shall be no managing agents?

Shri Parekh: It is feasible.

Shri C. D. Deshmukh: That is to say, that so far as new companies are concerned there shall be no managing agents—because nobody has made a suggestion to that effect.

Shri Parekh: It is an approach.

Shri C. D. Deshmukh: In regard to clause 80 you say that the preference shareholders could come in with their voting rights when they find that their dividends have not been paid. That means you must wait for things to be made worse before they can get better! Is it not an advantage for them to exercise rights in accordance with their holdings? Because, you said that if there is any development to be made, it should be made by the ordinary shareholder. Now, that is all right if the ordinary shareholder is in a majority; he can take a decision. But if he is in a minority, people who have put in a lot of money are entitled to take a view. In your opinion that may not be a sound view. But in their opinion it may be a good view, because it will conserve their money or their resources. Don't you agree that people who have put in 60 or 70 per cent. for a particular concern should have a right to decide the policy?

Shri Parekh: Yes.

Shri C. D. Deshmukh: In regard to this question of proxies, do you fear, or do you not fear, that outsiders who are bent on creating mischief might be able to do so even if they are not allowed to speak, and that if it was a shareholder, an ordinary shareholder would at least refrain from spoiling his own nest, and if an outsider wants to create disturbance he would lay out a certain amount of money in order to purchase that right? Have you come across any instances where people have created disturbance as a result of the exercise of proxies of this nature?

Shri Parekh: We have not heard of it. Actually the trouble comes from shareholders. First you take in a shareholder, then he plays mischief.

Shri C. D. Deshmukh: In regard to clause 82 you cited the instance of Bombay Burma Trading Company, and you said that the promoters have certain special rights. And you suggested that whatever their equity at that time, now they should be modified. Well, that may not be the case everywhere. There may be a company started five years ago. Would you suggest that where this right is taken away, its equivalent in additional shares should be issued to those people? If in a new company a promoter would be conferred a certain advantage, suppose it was prohibited. his contract with that firm would be that in lieu of all that he has contributed, 100 shares should be assigned to him. Don't you think that kind of equitable arrangement would be necessary to wipe out all the previous contracts?

Shri Parekh: We want them to be suitably modified.

Shri C. D. Deshmukh: That means judgement in every individual case?

Shri Parekh: In each case.

Shri C. D. Deshmukh: It will have to come to the Central Authority.

Shri Parekh: If it is provided we do not mind that. We would agree to that because that would be the best way.

Shri C. D. Deshmukh: Otherwise, there would be some injustice to promoters.

Shri Parekh: We do not want that promoters should be deprived of their normal rights.

Shri Chatterjee: You do not suggest confiscation?

Shri Parekh: No, they may be compensated.

Shri M. S. Gurupadaswamy: About managing agency I want one more clarification. The Finance Minister just now asked you whether, instead of a private limited company or a public limited company functioning as managing agents, it would not be better to have a firm of individuals possessing different qualifications and whether it would not help industrialisation much better. I want to know from you whether the managing

agency system itself is considered to be an evil from your point of view or whether it could be bettered. I want also to know from you whether it is not a fact that the industrialisation of a company or capital formation of investment or the nature of the capital market all depend upon the financial policy of the Government and not upon a group of individuals who are functioning in the field of industry?

Shri Maganlal: If flotation of companies, besides the policy of the Government and various other circumstances, the persons starting it—that also has an effect. And it would always be preferable if instead of individuals public limited companies act as managing agents.

Shri Gurupadaswamy: Is it not the position that the raising of finance, the nature of the capital market all depend entirely on the financial policy of the Government?

Shri Parekh: Not entirely upon it.

Shri Gurupadaswamy: You have suggested a Central machinery for administering this Act, and you have cited the instance of U.S.A. where this type of Commission exists. And you have said it is very satisfactory. Does it mean that by your experience you have found that the present administration of the Act is very unsatisfactory, that the Government has failed to administer the Act in a proper manner?

Shri Maganlal: We do not allege this. But we say, what we have suggested would be relatively better.

Shri Gurupadaswamy: You represent shareholders' interests. There is a suggestion from somebody that labour also should get representation in the Board of Directors. Will you approach that idea?

Shri Maganlal: Individual companies may make any such decision if they so desire. But we as shareholders do not want to make a plea, as representatives of shareholders, to include labour in the Board of Directors.

Shri Gurupadaswamy: You have said in your memorandum that 10 per cent. may be the limit for commission to managing agents. You have said that in foreign countries the commission ranges between half and two per cent. Will it not be better if a similar percentage in adopted in this country also? What is the reason for your suggesting that it should be 10 per cent?

Shri Maganlal: As a matter of fact, the Bill restricts managing agents from receiveing various emoluments they were getting all this time by way of selling commission, buying commission etc., and it suggests a ceiling of 12½ per cent. We have modified it to 10 per cent. because it will be in line with the existing practice.

Shri Gurupadaswamy: But I want to know the reasons you advance against fixing this commission at 2 per cent. or less than 2 per cent. What is your objection to reducing it still further? Will it not be sufficient and adequate?

Shri Maganlal: We shall have to examine the exact figures as to what they will get on the basis of 10 per cent. Only then we can say it should be reduced further to 2 per cent. We have already said an enquiry should be made after five years.

Shri Gurupadaswamy: You have said 40 groups of managing agencies have mismanaged the affairs of companies involving nearly Rs. 80 crores. May I know what is the number of managing agencies which are operating in India? Can you give the figure?

Shri Maganlal: We have no figures on hand. We might be able to give you later if you want.

Shri Jain: You seem to be of the opinion that the continuance of the managing agency system is necessary because of the absence of an integrated capital market or issue houses or investment houses in this country. May I suggest to you that these institutions have not grown in this country just because the managing agency system

[Shri Jain]
has been there; to put it more clearly, that the managing agency system has inhibited the growth of such institutions?

Shri Maganlal: It is possible. We think that if issue houses or underwriting houses come into existence, they can substitute the financing part of the managing agency system. As far as we know the Industrial Finance Corporation, for example, is probably thinking of incorporating into its memorandum the underwriting of issues. If underwriting is taken on by such institutions, it might ultimately result in individual industries getting finance from them.

Shri Jain: My view is that unless this system goes, the alternative agency will not grow up.

Shri Maganlal: We are unable to agree to it.

Shri Jain: You have suggested an independent or autonomous central authority. You have given two reasons, that they will be more efficient and suffer less from red-tape. As regards red-tape, that is a question of rules of business or procedure. If Government were to develop a distinct or separate set of rules for this department, would not your purpose be served?

Shri Maganlal: If they come to the line, it is all right.

Shri Bansal: Some witnesses who have appeared before us said that one of the defects of the managing agency system is that it is of a hereditary nature. Managing agencies have also passed hands by sale and transfer. May I know from the witnesses if they know how much mismanagement there is in inherited managing agencies as compared with those managing agencies which have passed hands by transfer?

Shri Maganlal: This trafficking in managing agencies has been a feature only since 1947 onwards. Some cases of mismanagement in inherited managing agencies have come to our notice in Ahmedabad. Their industrial units are not efficiently or well-managed.

Shri Bansal: How many cases do you think have come to your notice in Ahmedabad?

Shri Maganlal: There are groups we are told, and actually in some they show losses and in others they show profit.

Shri Bansal: I was trying to suggest that considering that industrial development in our country is not, by and large, more than a generation old, the defects in the managing agency system of inheritance might not have come to light so much and there does not exist a *prima facie* case to run away with the conclusion that the managing agency system is defective simply because it passes hands by inheritance. Excepting a few cases in Ahmedabad, I personally do not know of any case where a big managing agency house has passed hands and has become inefficient. If the Shareholders' Association has come across any such case, I would be glad to know so that I may revise my opinion.

Shri Parekh: That means you are assuming that heriditary management is bound to be efficient. We feel that if better selection of personnel is made, it is bound to be more efficient.

Shri Bansal: In America all these central commissions are constituted on a bi-partite basis. There are two parties there, the Republicans and the Democrats and they nominate according to some formula on these commissions and the Chairman of the commission has almost the same powers as that of a Minister. That is my understanding of the working of commissions in America. And therefore, what can hold good there may not necessarily prove useful here, because, after all, here it is such a large field and such an important sector of our economic life that you will not expect Government to divest itself of all power and give it to the commission, because in that case Governmental authority will come to nought.

Shri Parekh: We do not want Government to be divested of all its powers.

Chairman: They do not want an exact imitation of the American system, but they suggest that there should be some sort of commission with less red-tapism than the department itself.

Shri Morarka: The witness said that in foreign countries the remuneration of managerial personnel is from half to two per cent. With your permission, I will give some figures here and I would request the witness to contradict me if he thinks that I am wrong. For example in the American Tobacco Co., the percentage paid to the President and Vice-President alone is ten per cent. of the profit and the income of the President in one year alone was 11,10,500 dollars, or a little over Rs. 50 lakhs. Similarly, in the National City Bank of New York, 20 per cent. of the profits in excess of 8 per cent. of the capital employed at a particular time is payable to the President, and his income in one year alone was 14,17,000 dollars, or slightly over Rs. 70 lakhs. There are many other similar instances which I may quote.

Shri Parekh: We have no desire to contradict these figures. We think they are quite in order. We quoted the figure of Lancashire Cotton Mills, which is a British concern. So far as the American practice is concerned, we know, heavy salaries are paid to the President, Chairman etc.

Shri Morarka: In the opinion of the witness what should be the maximum underwriting commission permissible under this law? The Bill provides for 10 per cent. in clause 70.

Shri Maganlal: It is the ceiling after all. We would suggest 5 per cent.

Shri Morarka: May I draw your attention to section 85 of this Bill? I would like to know whether they would like to retain this clause in view of clause 80, as I am afraid that a person in charge of company may by accepting more money from a particular section of the shareholders give them more voting power. That would be discriminatory.

Chairman: If the witnesses have not applied their mind to this question, they may communicate their view later.

Dr. Dube: It is not in their memorandum. I do not think that we are fair in asking this question.

Shri Morarka: In page 8 of the memorandum it has been stated that clause 243 should be retained. I would like to know whether the retention of the clause in its present form is not likely to create a deadlock.

Shri Parekh: No, Sir. We would like to know how a deadlock would be created.

Shri Morarka: What is your opinion?

Shri Parekh: We do not know how a deadlock would be created.

Shri Morarka: In regard to the appointment and re-appointment of managing agents, I would like to know whether the witnesses would like to have an ordinary resolution or a special resolution.

Shri Maganlal: The provision is for an ordinary resolution.

Shri Morarka: What is your view?

Shri Parekh: We are in favour of the present provision in the Bill.

Shri Maganlal: For transfer of office of managing agency, a special resolution is required. But, this will not affect the rights of shareholders. Appointment and re-appointment may not require a special resolution.

Shri Morarka: According to the witness, I would like to know how many proxies a single shareholder, who may be holding more than one share, should be entitled to appoint in a public company.

Shri Maganlal: He should have one proxy.

Shri Morarka: I am putting this question because, under the provisions of the Bill the number of proxies is unlimited.

Chairman: Even under our rules, when witnesses come in for examination before us, what is contained in the memorandum is to be examined, and anything arising out of it. I would advise Members not to put forth their difficulties to the witnesses. We do not call them as experts. Their opinion is not binding on us. We need not spend our time in getting their opinion on all matters.

Shri T. Subrahmanyam: As you represent the interests of shareholders, I wanted to have your suggestions in respect of certain points. In a certain memorandum received by us, it stated that instances have been found of mill agents speculating in cotton, etc., in a large scale, and if the transaction ends profitably, the profits are pocketted by them and not credited to the company, and if the transaction ends in a loss, the burden is transferred to the company. I would like to know whether you can suggest some concrete steps to stop this.

Shri Maganlal: The directors in their own supervisory powers may require the managing agents to keep a register of all their transactions. That would be a matter of internal management of the company. The directors may do so. I do not think it can be done by an Act.

Pandit V. Upadhyay: As the question of the managing agency is agitating the mind of the Joint Committee as well as the witnesses, I would like to know what exactly are the functions of the managing agency now. Formerly they were entrepreneurs. Is it their function to provide all the expert knowledge in the different branches, accountancy, scientific and technical work that may be involved in the work of the company or their business is only to organise and bring all the experts together so that they may collaborate and produce certain results?

Shri Parekh: Primarily to organise and bring the different factors together.

Pandit V. Upadhyay: Formerly it was their function. That would be their function in the future also?

Shri Maganlal: Yes.

Pandit V. Upadhyay: In page 2 of the memorandum you have stated:

> "In providing managerial skill also modern industrialisation involves increasing dependence upon scientific, accountancy and other experts and to that extent limits the utility of the class of managing agents to whom the country has been accustomed so far."

Government have themselves taken up certain industries. I would like to know whether this function of organisation is to be left to certain agencies in the private sector or not?

Shri Parekh: The point is that in new industries, more and more new talent is required in the scientific and other departments.

Pandit V. Upadhyay: This work has to be left to some one. Your proposal is that after five years you will consider whether this sort of agency should remain or not. Don't you think that in some modified form, some sort of an agency shall remain?

Shri Parekh: The point which we would like to consider would be the scale of remuneration that they would get and whether that would be excessive. That is probably the main thing.

Pandit V. Upadhyay: The managing agency system would be modified by the Bill before us when it becomes an Act. Don't you think that you will have to see whether the modified system should remain or not?

Shri Parekh: It is a question of remuneration. That is the most important thing. At the moment they get 10 per cent. or 12½ per cent. The question is whether that could be regarded as excessive or not.

Pandit Upadhyay: You have suggested that you want to consider certain things before you can determine whether this system should remain or not. The other question is about the Central authority. As regards this point, I think that after your discussions with the Finance Minister, you may have made up your mind clearly. Do you think that a Department of Government would be better than an independent Commission or do you still think that an independent Commission is better?

Shri Maganlal: We believe that the central authority should be an independent Commission. The Commission may refer certain matters for the consent of the Government.

Pandit Upadhyay: You have referred to the Forward Markets Commission and the Tariff Commission. Do you see the difference pointed out by the Finance Minister? Or do you see other differences also? In this case, the Government is finding the money also. In certain forms, they help these industries. There is no such element in the other Commissions.

Shri Parekh: There are several aspects of this problem. The Bill deals with company administration, stock exchange administration, capital issue control. We want all that to be integrated.

Shri Maganlal: Yes.
Independent Commission?

Shri Maganlal: Yes.

Pandit Upadhyay: You said that the consent of the Central Government should be taken before they refuse to register transfer of shares. Don't you think that that would be a cumbersome procedure?

Shri Maganlal: On the contrary, it will be very difficult, as provided in the Bill, for individual shareholders to approach the Government.

Pandit Upadhyay: Before refusing, in every case, they have to approach the Government and take their opinion and then refuse. Don't you think that it will be cumbersome?

Shri Maganlal: Such cases would be very few.

The procedure would not be cumbersome.

Shri Parekh: That would be a check on refusal.

Pandit Upadhyay: You said with reference to clauses 338 and 340 that no commission should be given when the transaction is outside the State and that in that case they would try to establish office in places outside the State and thus defraud the company. Don't you think that it would be proper to pay them the actual expenses that they incur?

Shri Maganlal: In the case of setting up of selling organisations for the company, naturally, it will be done at the cost of the company.

Pandit Upadhyay: You propose that the actual expenses incurred may be charged?

Shri Maganlal: Yes. That is allowed in the Bill.

(Witnesses then withdrew)

THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953.

Minutes of Evidence taken before the Joint Committee on the Companies Bill 1953.

Tuesday, the 6th July, 1954, at 9 A.M.

PRESENT

Shri Hari Vinayak Pataskar— *Chairman*

MEMBERS

LOK SABHA

Shri Chimanlal Chakubhai Shah
Shri Awadheshwar Prasad Sinha
Shri V. B. Gandhi
Shri Khandubhai Kasanji Desai
Shri R. Venkataraman
Shri Ghamandi Lal Bansal
Shri Radheshyam Ramkumar Moraka
Shri B. R. Bhagat
Shri Nityanand Kanungo
Shri Purnendu Sekhar Naskar
Shri T. S. Avinashilingam Chettiar
Shri K. T. Achuthan
Pandit Chatur Narain Malviya
Dr. Shaukatullah Shah Ansari
Shri Tekur Subrahmanyam
Col. B. H. Zaidi
Shri Mulchand Dube
Pandit Munishwar Dutt Upadhyay
Shri Radhelal Vyas
Shri Kamal Kumar Basu
Shri C. R. Chowdary
Shri M. S. Gurupadaswamy
Shri Amjad Ali
Shri N. C. Chatterjee
Shri Tulsidas Kalichand
Shri G. D. Somani
Shri Tridib Kumar Chaudhuri
Shri C. D. Deshmukh

RAJYA SABHA

Dr. P. Subbarayan
Shri Shriyans Prasad Jain
Shri Somnath P. Dave
Shri Braja Kishore Prasad Sinha
Shri R. S. Doogar
Shri Amolakh Chand
Shri M. C. Shah
Shri V. K. Dhage
Prof. G. Ranga
Shri B. C. Ghose
Shri S. C. Karayalar

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS.

Shri D. L. Majumdar, *Secretary, Department of Economic Affairs. Ministry of Finance.*

Shri K. V. Rajagopalan, *Officer on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj, *Deputy Secretary.*

Shri A. L. Rai, *Under Secretary.*

WITNESSES EXAMINED

The Federation of Indian Chambers of Commerce and Industry.

Spokesmen—

Shri B. M. Birla

Shri Shantiprasad Jain

Shri Shantilal Mangaldas

Shri P. D. Himatsingka

(Witnesses were called in and they took their seats)

Chairman: Before we begin with your evidence, I may say that I am really very thankful to you for the exhaustive memorandum which your Federation has submitted. We will go through it very carefully. But, we have given you the trouble of coming here in person for the reason that we would like you to concentrate on the rather salient features of the proposals that are contained in this book. We would like to hear you on the points in detail—not on the detailed ones of the memorandum, which, of course, we will go through, but the fundamental issues. There are certain fundamental issues and certain important factors both in the matter of principles and on drafting the sections. I would, therefore, suggest that you should concentrate on some of those points.

Shri B. M. Birla: Sir, we are very grateful for giving us this opportunity to place some facts before you in connection with this company law. As you would realise, we are only businessmen and we can only put the aspect of business before you. We may not be able to do full justice in presenting our case before this Committee because we can put it in the layman's language and not in the lawyer's language. We would, therefore, request your indulgence if we are not able to do full justice to our case.

This Company Bill has been under discussion for the last four or five years. A Committee was appointed originally to go into the various questions and they made a report. At that time, when the report was made, we had made certain observations on that and somehow the report was delayed or rather action on that was delayed. Again, another Committee was appointed to go very carefully into the matter and then also we had the opportunity to make our representations to them. The results of that Committee and various other deliberations have been now introduced in the form of a Bill before Parliament.

The main purpose of the Company Bill is to regulate the relations between one shareholder and another. In the private sector, the development of industries had been taking place in the original instance through the medium of individual enterprise by forming certain associations or partnerships. Later on, it developed into bigger partnership, that is, into the greater sector. That is how company formation started. Therefore, any action which the government take should be such that it encourages the formation of companies and not hinders that formation.

If I may be allowed to take you through the procedure, the main procedure for the formation of a company is this. You start firstly with the issuing of a prospectus. Secondly, you ask for the shares to be issued; then the management of the company and ultimately it goes to the point of liquidation.

[Shri B. M. Birla]

We feel that the Bill, as it is drafted, will hinder very considerably the formation of companies. Not that it is going to make it impossible, but, I think, in the case of people who are not sufficiently conversant with the complications of this Bill, the Bill makes it more difficult for them. In fact, the newcomer will find it more difficult than those who are already in the business or who are managing companies. It may be slightly easier for them, but it will be made more difficult for the newcomer.

For instance, when you start, in the initial stage, the prospectus has to have so many details such as what are the amounts necessary to float the company, for purchasing certain assets, how the money has to be arranged and whether the money has to be borrowed, and if it is to be borrowed, from whom it is to be borrowed and so on. You can very well realise that for any new person who comes into the picture to start a new company, it is very difficult to arrange a loan at a very early stage when the company is not formed. You can very well visualise how difficult it is going to be for the newcomer to give all these things in complete detail. These are some of the salient problems which the newcomer will be faced with.

If the newcomer is able to overcome these difficulties, then what is he expected to do? He is expected to get the applications for shares from the general public by remaining in his own house. He is expected not even to canvass for the shares. The Bill says that he should not canvass from door to door. I do not know what house to house canvassing is. It presupposes that most of the people who want to start new companies have got some sort of office because there is an exemption that you can approach the shareholders in their offices. You can very well understand that every body in this country does not have an office. Millions of people are like that. If there are more companies to be started, they will not be sitting in their offices where they can be approached for subscribing to the shares. It is a common practice in places like Calcutta and Bombay. Even in cases of established houses, where a company has to be floated or shares have to be sold, then the broker goes from house to house or from office to office and canvasses five, ten or twenty thousand shares.

In the United States, I think this art has been perfected so well that some of the brokers have millions of canvassers and through them they sell shares to a great extent. I could not say in great detail about it. But I know that in the United States when the applications for shares come they come in several millions and it is through the agency of the brokers or canvassers that they are able to collect funds. Even in India, in the case of a perfectly safe investment such as government securities, as you are well aware, canvassing has to be done. Even today there is canvassing going on for the National Development Loan. In fact, a sort of propaganda is being carried on and they are trying to canvass for the loan. Do you expect that a newcomer or a more established firm or industry, where the company is risky in the beginning—and possibly may not be able to pay dividend for a long time—that they can get applications from shareholders by sitting in their offices. I think that will be expecting a little too much. This is another difficulty which the newcomer will have to face.

In the case of newcomers there are various other difficulties which may have to be faced later on. For instance, you have suggested that a person should not hold more than 20 directorships in various companies. Similarly, you have said that the age of a director should not be above a certain number of years—65. As far as the directorships are concerned, generally, it is only those people who are supposed to be influential that have more directorships. In the case of the established managing agents or established companies it may not be necessary to retain the directorship

of those people who are supposed to be prominent in the business world. But, if a newcomer wants to start a business, he does not easily get the money. In fact, it is he who goes after these important directors and canvasses them to become directors of his concern so that under their influence and under their good name he may be able to attract some capital. If you were to say that these directors should not be allowed to be directors of that new company then the new entrepreneur or the small man will not be able to form a company as easily as he should. In fact, the lending of the name of an important person to the new enterprise will altogether cease. To that extent, he will be suffering a disadvantage. If capital were easily available and if it could be easily raised, I am sure many people would have tried to form companies and they would have floated many companies and would have been successful. But, it is not so easy. Money is very difficult to get. It is only due to the prestige of some well-known people that you can attract funds and you can attract a number of shareholders. It is for this reason that the new entrepreneur wants to get a good director so that he may be able to instil confidence in the public that it is going to be a sound concern. The charge has been that if a person is a director of more than a certain number of companies he is not able to do full justice to the shareholders. That charge may be reasonably correct. But, you have to look at the other side of the picture also. It is these directors that step into the picture when the difficulty arises and they try to save the shareholders and the concerns by their sound advice. It is not that they are dummy directors. It may be that they are dummy directors so far as the day to day working is concerned but when the company is in difficulty, it is these people who help the company, and who are in a position later on to lend money to these companies and thereby save the companies.

For instance, the Tata Steel, which was the largest Indian concern in the past and possibly today also, when in 1924 or 1925 it was in difficulty, the directors did render a great deal of service to the company, though they were not interested as such. This enabled the company to survive and it is today the foremost Indian concern rendering great service to the country. On various occasions one of the directors, who was associated with it ever since the beginning, had arranged a big loan for the company. At that time, nobody would be prepared to lend a big sum of two crores of rupees. Because of that difficulty they had to fall back on the help of one of the directors who arranged the loan of one crore of rupees from one of the native States and in consideration of that the State had to be paid a certain managing agency commission which was paid up to a few years back. I do not know whether it is being paid now. These are the services which are rendered by the directors. It is only possible because these directors hold posts in various companies and they are able to influence the other companies to invest, to invest in those sound concerns which may be in difficulty today. The terms of advances are fairly stiff; but this is the type of help which they give. If you debar the directors from holding more than a certain number of directorships it may come in the way of some of the newcomers being able to float companies.

Chairman: Is not the number 20 reasonably large?

Shri Birla: It is reasonably large, I would say, in the ordinary case. But there are certain directors who hold directorships of 50, 55 or even 60 companies; and I do not say that those directors holding 55 directorships or 60 directorships are absolutely necessary. It is only in course of time that they have been elected to all these companies and their help has been sought by various people and they have been able to render help. It may be that their position will be taken up by somebody else tomorrow but it will not come overnight. In the world, of course, nobody is indispensable; everybody comes into the

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picture and then fades away. Similarly, some of these also will fade away. There is no use forcing the pace. We feel that the pace of industrialisation in this country is very slow and we want to expand the growth of the industries. When we have got such a shortage of men you want to dispense with these people.

Similarly, when it comes to the question of persons beyond a certain age not being allowed to serve as directors of the company it may be pointed out that quite a few of the States of this Union are being governed by Chief Ministers who are above the age of 70. If they can govern and look after the destinies of the people comprising those States numbering 6, 7 or even 8 crores, I am sure that a director can at least look after the destinies of some of the shareholders and look after their interests much more easily.

Chairman: Reasoning by analogy is not always correct.

Shri Birla: Though the analogy is not correct, I can assure you that the work which the director has to look after and the advice which he has to give in such instances is not so much. Lala Shri Ram is an example. He is, I think, over 70. He is one day in Bombay, another day in Calcutta and a third day in Delhi. He is as active as he ever was. Besides it is the experience that counts in these matters—experience gained over a period of thirty or forty years. If the man is experienced you surely do not want the country to be deprived of his sound advice. It is not only in business you take the advice of such experienced men: in your departmental committees you ask them to help you. Why do you do it? It is because they have experience gained over a period of years and in the case of Shri Ram it should be over fifty years. I am sure Government does not want to deprive the industry of their valuable experience.

Shri C. D. Deshmukh: It is not an absolute prohibition.

Shri Birla: But you want it to be passed by shareholders.

Shri C. D. Deshmukh: Ministers have to be appointed by a far more difficult process. Here you only want an ordinary resolution.

Shri Birla: But why should you make it necessary for a resolution to be passed. Either a thing is bad or it is not. If it is not bad why do you create another difficulty. I do not say it is going to be impossible because nothing in this world is impossible. These are only certain difficulties which I am pointing out. If you feel that these difficulties are such that they should be removed, you will try to help us.

Our aim is to industrialise our country as rapidly as possible. That is the aim of the Government as well as of the public. We do not want only a few managing agency houses. We want thousands and thousands of managing agency houses to be created and thousands and thousands of companies to be formed, and the manpower which is available in the country should be utilised to the fullest possible extent.

As far as the role of directors is concerned, after the company is formed they become somewhat important. The system of managing agency has been the target of criticism and attack by politicians and various others. It has been argued that the system is unnecessary and should be liquidated as early as possible. I do not wish to say anything about it. But any type of management anywhere in the world, whether in India or outside, has to have somebody at the helm of affairs. In the Continent, for instance, there is no such thing as managing agency houses. But the combines you have there are worse than the managing agency houses of India. A cartel of which one is a bank, the second is an insurance company and the third a manufacturing concern, has been working for generations and they still continue. One of the examples is that of Krupps. There are various other similar combines. The same is

happening in England. A person who controls the shares, whether in one name or another, controls the firm. The same sort of controlling interest obtains in the United States as well. In the United States, I may tell you from memory, that nearly 70 per cent. of the entire industrial production is controlled by two hundred houses. I am sure you would not be surprised to hear that, because that is a fact. Let us take Dupend. There is no managing agency system, but Dupend control quite a large number of business. Again 6 per cent. to 7 per cent. of the total industrial production of the United States is controlled by the General Motors. They have a controlling interest in several companies, manufacturing chemicals, fibres, varnishes, etc. They do not give it any name, they do not call it managing agency, but they do control a certain portion of the shares of companies. For instance, after the war when the American disposals in the U.K. had to be disposed of and they could not find any buyer in the market, a deal was struck with Dupend. Most of the American companies are controlled in this manner.

When the Government of India had to establish oil refineries in India they had only to approach one or two British and American companies and they straightaway agreed to instal refineries. They did not have to start any managing agency. But whatever be the name, it is a fact that Stanvac, Caltex or Burmah-Shell are interconnected. One company controls another, the second the third, with the result you do not know where it starts and where it ends. They are so interconnected with each other that we cannot find out what it is.

Lever Brothers which is connected with various factories in India is another combine, but of a different nature. There is a company called Lever Brothers in England, there is another company called Unilever in Holland. One has no connection with the other, but they have an arrangement by which the profit and loss of both the companies are shared, so that they have got an arrangement by which the shareholder of one is able to get the benefits of the other. These are different types of combines. The directors of both companies are identical; the Board meets either in England or in Holland and they control the company.

So this is not a peculiar system: you may give it a peculiar name, but a system in one form or another prevails throughout the world and it is through this system that industrialisation has taken place. When you start a company somebody has to promote it, whether you call him a director, a manager or a chairman. When railways had to be laid in India we had to promote companies. A company was floated which used to control and manage the railways. For instance the East India Railway Company had a managing company to construct and manage the railways. They were able to raise capital with the help of the public and of the Government. In that way they were able to lay railways in India. Of course, if we had not had that system in India, we would have had some other system, by which we would have achieved the same results. If the system is a bad system, by all means replace it by some other system. But you must not forget that whatever be the system, somebody will have to control the affairs of the company because then only can it be managed.

In that respect the present Bill puts various checks and various controls over the managing agency, and it goes beyond any law, as far as I know of, in other countries. Not only are there checks on the managing agents, but restrictions are also sought to be put on the actions of Directors. A peculiar feature of the measure is that the majority is going to be converted into, or allowed to be dictated by, the minority. As you know, Sir, there is a paper called Amrita Bazar Patrika in Calcutta which is controlled by Shri Tushar Kanti Ghosh. Shri Ghosh controls something like 80 per cent. of the shares of the company; some

[Shri Birla]
other people control the remaining shares. If the majority is not able to elect the directors, who is going to put the money in a concern of that nature? How is he going to work the concern?

It would be tantamount to saying that the Congress Party, in spite of the fact that it has got 75 per cent. majority in Parliament should be allowed to be dictated by the minority as to what number of cabinet seats should be given to the minority.

Chairman: We understand that the minorities should not be allowed to control the majority but what is the provision in the Bill which leads you to this conclusion?

Shri Birla: Clause 243; which says that when you appoint directors, one-third of the directors should be appointed by the managing agency. That means appointment of two-thirds of the directorate will be in the hands of others. The managing agents and their associates control the majority of the shares. But they cannot appoint the remaining directors. They have to be appointed with the consent of 26 per cent. minority which is supposed to be a controlling interest in this manner. If the managing agents appoint any associates from their group as directors, then the minority can veto it. The result is, ultimately, 26 per cent. minority will control the company. Who is going to put money in a company where 75 per cent. of the money is going to be controlled by a 25 per cent. minority? I cannot understand a democracy of this nature.

Chairman: Don't you think there is the other danger of the directorate being packed by the nominees of the managing agents?

Shri Birla: They are the nominees of the shareholders. I do concede that provision should be made to safeguard the interests of the minority. But if 25 per cent. of the shareholders are going to decide matters on behalf of 75 per cent. shareholders, nobody would put his money in a company of that nature. It is the fundamental principle of democracy that a man who has majority has a controlling voice. This is a matter which has to be seriously considered.

Suppose there is a difference between the managing agents and the minority. The managing agents nominate a person; the minority say they would not accept him. There is no firm, or board and the affairs of the company come to a deadlock. I was giving you the instance of Amrita Bazar Patrika. There the minority has been giving a lot of trouble.

Chairman: We can go into details later. because I am sure some questions will be put to you on that subject.

Shri Birla: There are various other clauses in the Bill about investment. When the stage comes, a company expands and the money available is invested; because, you do not want money to remain idle. It has to be put in a bank. It has to be put either in government security or other investment. There are two courses open to the concern. Either it can expand its own activity, or, if it finds that the risk may not be commensurate or it may be much, it may join hands with somebody. The result is, you create another manufacturing establishment. In this Bill it is said that you can invest only a small fraction of your resources by the resolution of the Board. For the remainder you have to go to the shareholders and pass a resolution with a 75 per cent. majority. It amounts to this that whenever the Government of India has to pass its budget it should go to the general public and ask their vote. In a company the Board of Directors occupy the position of the Government. It is only when they have got a majority, that is 51 per cent., that they are there. If the majority do not want them they go out at any time. Yet they are unable to get passed what they think fit but have to go to the electorate and get it passed, and by a 75 per cent. majority. 75 per cent. majority means that any 25 or 26 per cent. can hold up the pro-

gress. In regard to the oil companies which I mentioned earlier, it would not have been possible for them to establish themselves if they had to go to their shareholders and get a resolution passed with a 75 per cent. majority. Imagine the way in which you will be putting the Indian industries to a disadvantage. Because, any foreign company can invest their money in India. But the Indian company will have to go to its shareholders, and somebody will take it into his head otherwise and the investment will not be allowed.

Please consider also this anomaly. You can allow the whole money of the company to be invested in its own name. But if the director wants to share the risk with somebody or reduce the risk, you say no. It is common business principle that you should reduce the risk as much as possible.

Shri N. C. Chatterjee: You are making a point that Indian companies will be discriminated against foreign companies. Kindly explain that.

Shri Birla: For instance a company registered in England, America or any other country has no such restriction imposed by their own Constitution or by their Company Law. To illustrate the point, if the Standard Vacuum Oil Company wants to establish a company in India, they do not have to go to their shareholders. They can join with any concern, whether of the Standard Oil Group or Burma-Shell or Caltex. For instance in Saudi Arabia when the oilfields were to be taken over, there was a company formed composed of Standard Vacuum Oil, Royal Dutch Shell, Caltex and one or two others. They did not have to go to their shareholders for getting any resolution passed. They decided to purchase the shares in proportion, and the company came about. Similarly, the Standard Oil Company or Caltex, which was started in Bombay, did not have to go to their shareholders. They floated the company, took the shares partly themselves, gave partly to the Indian public, and they agreed to sell some more if the Indian public came forward. They did not have to go to their shareholders because they are not required to do so under their Company Law.

But in India if we have to do something of that nature we will have to go to the shareholders and get it passed with a 75 per cent. majority. For instance, the Government of India has given sanction to the floatation of a company to manufacture dyes. That company is going to manufacture dyes at Bulsar. It is controlled by Atul Products which is owned or controlled by Shri Kasturbhai Lalbhai. It is going to join hands with Imperial Chemical Industries and establish a dye factory. It is already doing the business of dyes manufacture. The example will give you the aspect of competitive business also which you are mentioning in this Bill. That company, as I said, is going to make dyes in cooperation with the Imperial Chemical Industries. The other shareholder will be the I.C.I. who will control 50 per cent. of the shares, Atul Products controlling 50 per cent. If this Bill goes through as it is, Atul Products will have to go to their shareholders for getting consent that they will manufacture dyes in another company and invest 50 per cent. of the capital of that company. But so far as I.C.I. is concerned they do not have to do any such thing. They can simply straightway purchase the shares. But Atul Products must go to their shareholders and get their consent by a 75 per cent. majority.

Another complication arises. Under the Bill you should not enter into competitive business of the same industry, and competitive business means if it is of the same type controlled by the same company; if it is a public company, 70 per cent; if it is a private company, if you hold even 20 per cent., it becomes competitive business. I do not know what it is going to be, but I believe it is going to be a private company. So if 50 per cent. of the shares are purchased by Atul Products it means competitive business. So they

[Shri Birla]

cannot, or the other Company would not allow Atul Products to compete. I.C.I. can purchase the shares and establish the company. But if an Indian enterprise wants to produce dyestuffs, which is a very difficult proposition, they themselves cannot do it, they have to join hands with somebody, and if they join with the I.C.I. they are debarred, they cannot do so under the Bill if it is a private company. You have defined it in such a way that it is impossible for established concerns to produce these complicated articles. They cannot produce it themselves, and if they join hands with others they are debarred.

Shri Chatterjee: What is the clause?

Shri Birla: The clause is No. 357.

Shri Chatterjee: It is already there in the Companies Act.

Shri Birla: It is not there. The present law is this, that if the managing agents start any competitive business in the name of their own company then it is prohibited. But there also I would say that when that clause was made the framers of the law did not realise that such a situation would arise. But in this competitive world these situations are arising. At the present time, when India has to progress industrially, to put in a clause like this saying that it becomes competitive business not only when a company starts such business in its own name but in association with another company if it holds more than 20 per cent. shares in the case of a private company and more than 70 per cent. shares in the case of a public company, I think is very wrong. This is an important aspect which I want to put before you.

It goes beyond that. It does not even allow your associates to own shares. That means if I am a managing agent and if the shareholders of my managing agency company purchase or if my manager purchases shares in that company, even then it is debarred. 'Associate' is such a wide term that we do not know whom it would not include ultimately. Anybody who is a friend of the managing agent, etc. cannot put his money in the other concern, because it will be regarded as competitive business. If for instance Dunlops or Lever Brothers or I.C.I. can start a company in India even though it might be competitive business, why should an Indian company be debarred from doing so? This is a matter which requires your very careful consideration, because otherwise you will be putting a check on Indian industry particularly where they have to go into new fields.

Then you say that if the managing agent purchases somebody else's shares you don't mind, but you object to associate companies' shares. Shareholders entrust their money to the managing agent, and if he goes to somebody else, is it going to be a feasible proposition? If the managing agent under his own managing agency invests it is objected to, but if he goes and buys somebody else's share there is no restriction on it. I believe that the managing agents are trusted by the shareholders, and as long as they invest in their own managing agency there should be no objection and the restriction should start when they do it elsewhere. But it is the other way about here. What will be the effect of this clause should be considered.

Shri V. K. Dhage: Is there a similar provision in the present Act?

Chairman: I think we will discuss it later.

Shri Birla: In regard to competitive business, under the present Act, if it is started by the managing agents themselves in their own name, then it is considered as competitive business. If the proposed definition were there about competitive business, all the mills in Ahmedabad would not have been there, because every managing agent has started two or three mills. He took a number of shares from outside, and most of the mills were started in that way originally. The capital of those companies was very small in the initial stages, but that is how they were able to develop.

There is another aspect. You have said that when you start a company you must be assured of the full capital of it. I am referring to clauses 63 and 67.

Shri Chatterjee: With regard to associates of managing agency, I do not know whether Shri Birla has seen the proposed amendments. It is only fair that they should be given copies of the proposed amendments so that they can come prepared.

Shri C. D. Deshmukh: I do not think it is proper to circulate them to witnesses.

Shri Chatterjee: Suppose I want to examine or cross-examine the witness with regard to associate of a managing agent. Would it be fair to examine him on the provisions of the Bill as it stands?

Shri C. D. Deshmukh: That is for the Member to consider. If he finds that the point has been made or is likely to be considered by the Select Committee, he need not examine him on that.

Shri Chatterjee: Is it not fair that when we are proposing to make an amendment.

Chairman: So far as amendments are concerned they are confidential at this stage. You can hypothetically ask him certain questions.

Shri Chatterjee: I only wanted that he should come prepared, especially on matters like this which are of a fundamental nature.

Chairman: You can find a way out as I suggested.

Shri Birla: Sir, I was referring to the question of business being started by a new company under certain clauses. The company must be assured of the full capital enterprise. That is what is said. You can well understand that in the initial stage when the company is not formed, the estimates etc. of such concerns are not so true as they would be after the company is formed. Leave aside a company of twenty or fifty crores, if a company of, say, two crores is to be started, generally the estimates are out by 5 or 7 per cent. If information is given in the prospectus that so much money is required for the company and if the estimate is out by 5 per cent. or 7 per cent., it would be a sort of an incorrect statement, and if it is an incorrect statement, you are liable to go to jail for two years.

This is only one aspect. You cannot float a company unless you are sure of getting all the funds which you need to start that company. Let us say that the estimate is fairly correct and a company with a capital of one crore is to be started. When you float the company, you get applications for 30 per cent. of the shares, depending on the market conditions at that time. If you are not assured of the entire money, you say you refund the money and do not proceed. If this situation were to prevail 20 or 30 years ago when all these Ahmedabad mills were started, none of these mills would have been started. As you know, they started with very small capital of Rs. 5 or 7 lakhs. They gradually borrowed money from various people and the industry was gradually built up. The man may be able to borrow money. If you say that if he is not able to say from the beginning the sources from which he is going to borrow and raise all the capital, he will have to refund the money, that creates difficulties. Suppose a man thinks that his shares will be listed in the Stock Exchange, that is, will be quoted in the Stock Exchange, but the committee of the Stock Exchange does not come to any decision on that matter within three weeks. You say, refund the money to the shareholders. You do not realise how many restrictions you are putting.

Shri M. C. Shah: This provision is in the present Act also.

Shri Chatterjee: There is no such corresponding provision.

Shri Birla: We are discussing the whole Bill afresh. I am only pointing out the difficulties.

Chairman: Even if it is in the present Act, it should not be there. That is your point.

Shri Birla: Yes. You can circumvent these provisions. You say that these managing agents have tried to contravene the law. Why make a law to be circumvented in the future? The law should be framed in such a way that it is easy to understand and easy to apply. It should not be of such a nature which will put the shareholders at a disadvantage. I do not see how the shareholders will be at a disadvantage if the company is allowed to be floated and in course of time, they are allowed to raise the funds. We are asked to prepare estimates and that would cost a lot of money. When the company is not formed, who is going to find all this money? That is another aspect. There is not always a managing agent. There are companies which are started by directors. I request you to go into the implications of all these matters so that you may know all the difficulties in the way of forming a company. There are several provisions which say, refund the money, or you should not do this or that.

There is a clause in connection with associates. Somebody is supposed to be an associate of the managing agent. These associates have so many disabilities attached to them. If these associates were to go to foreign countries to purchase some machinery for the concerns, they are not expected to get any expenses which they may incur. Not only going abroad. Take a big city like Calcutta. A mill may be situated in Barrackpore. If the man goes by taxi to Budge Budge to buy an article he is not expected to get the taxi hire. I do not think that this could have been the intention of the framers of the Bill. It must have crept in by inadvertance. These are provisions which you have to rectify so that they may not come in the way of the progress of the company. There is no difficulty in his going abroad; his expenses could be met by the company. But, the moment he purchases any machinery, he would not get any money. If he does any work, he will not get the expenses. After all, when we are hoping for greater industrialisation, there should be greater contact and if a machinery is to be purchased, it has to be purchased quickly and after inspecting the working of the machines in other countries the man would like to purchase the machines on the spot. If he does so, he has to be paid his expenses. You can say that he should not charge any commission. But, if you say that he should not be paid his expenses, it will create difficulties. Because, the man would not like to go abroad and the expert advice that the managing agent is to render to the company may not be available and to that extent, the company will suffer.

Prof. G. Ranga: That clause (340) refers only to appointment of managing agent or associate as buying agent for the company. He does not take Commission.

Chairman: Whether that interpretation is correct or not, we will decide at a later stage. Let us cover the whole ground first and then proceed.

Shri Birla: There are clauses with reference to preference shares, voting rights, etc. The clauses as drafted are a little bit rigid in all these matters. Preference share holders do not have the right to vote and that is a principle accepted throughout the world. When a borrower is in need of funds and he wants to borrow, it is not the borrower who dictates; it is the lender who dictates. It often happens that the lender says that he will lend only on such and such terms and conditions. Firstly, lending is done in the ordinary course and secondly it is done in the shape of debentures. The debenture purchasers often ask, what guarantee is there that you will run the mill properly. He asks for a seat on the Board of directors. It is an unusual thing for an outsider to be elected as a director. But, such cases have happened. The Industrial

Finance Corporation also insists that they should have a director on the Board. Under these provisions, you cannot have a director. This is an anomaly. As far as the debenture holders are concerned, you may say that this is a matter which we will amend possibly. The next category of lenders are the preference shareholders. It is said that the preference shareholders will only have a right of voting in case their interests are affected. Normally, this provision is all right and there is nothing to be said against it. In fact, we are in favour of it. But, cases may arise where the lenders will say, unless you give us some sort of a voice in the concern, we are not going to lend the money. Such cases have happened. For instance, in the case of Tata Steel Co., the position was shaky and preference shares were issued. They had to be given the right to vote. There are various types of shares. The preference shareholders sometimes say, that they should have the right to convert their shares into ordinary shares. They say that they should have the right to convert the shares into redeemable shares. All these categories are there. We would suggest that we should not make it a hard and fast rule that either he should have or he should not have voting right. At the moment, there is no such law which says that the preference shareholders should have or should not have voting rights. The matter is covered by the Articles of the company, or mutual arrangement. We feel that that position should be allowed to stand. Otherwise, it will unnecessarily disturb the relations between the two classes of shareholders. It will also create difficulties in the case of a company which wants to borrow money in the form of preference shares. If they do not give the preference shareholders the right to vote, they will find it difficult and if they give, that is barred under the present Bill. We feel that this matter should not be mentioned at all. It should be left to the Articles of the company or arrangment between preference and ordinary shareholders. It is unnecessary to make the clauses so rigid.

There are clauses that a company should not borrow beyond certain limits. It is said that beyond the limit of the capital and the reserve, you should not borrow. Normally, this is a provision to which no exception could be taken. Sometimes you have to go beyond these limits. What happens in these cases is, you approach the shareholders and get a resolution passed by them or the articles provide that you can borrow up to a certain extent. If the article provides, it is originally passed by the shareholders. If a resolution is to be passed, you have to go to the shareholders. This is a matter where it is no good going to the shareholders. It should be left to the articles of the company or it should be left for arrangement between the shareholders and the Board. Otherwise, you will make the working of the company difficult. If the articles do not provide, you cannot borrow and you have to go to the shareholders. It is no use making it too rigid and asking you to go to the shareholders even if it is provided in the articles. It will only hamper. By way of illustration, I will tell you what happened in 1952. There was a glut in the sugar cane production. In the U.P. the mills had to go on crushing and they continued to crush to the maximum extent. Beyond a certain stage, they could not borrow money from the market. When they could not borrow, they had to tell the Government, we cannot go on any further. The Government said, if you do not crush any more, the agriculturist will suffer. Therefore, they asked the industry to continue to crush cane but not to pay the sugarcane cultivator, because they cannot borrow. Such a case may happen again. Whether you pay to the cultivator or not, it is borrowed money in any case. You have to conform to the rules and go to the shareholders and give them 15 days notice and all that or you contravene the law, or stop the mill. If you contravene the law, of course you are sent to jail.

[Shri Birla.]

These things should not be made rigid. If you leave it to the articles of association, in course of time the article could be altered or the managing agent could go to the shareholder and get their consent, but the law should not be made rigid on every count.

There are about 600 clauses in this Bill as you know, and approximately in about 140 clauses either there is a heavy penalty or you go to jail. This is really anomalous. There are certain provisions which are already in the Penal Code and I do not understand why they should find a place in this law. For instance, if somebody gives false evidence or false information or is guilty of impersonation, it is punishable under the Penal Code. That has nothing to do with company law. Similarly, if one has made an agreement with a company that he will provide finance or this or that and if he contravenes that agreement, then he is liable to pay damages etc., under the Contract Act. This is duplication and unnecessary and will only create more complications. The Company Law is a sort of relation between shareholder and shareholder. If there is any difficulty, you should so arrange it that the functions of the shareholders or their conduct is governed properly under the various laws, but it should not be made penal on every count.

For instance, if a company declares a dividend and that dividend is not paid within a certain time, then you are supposed to send all the directors etc., to jail. After all, what is a dividend warrant. It is something like an I.O.U. of any other kind. If you issue a cheque and the cheque is not honoured by the bank, you do not immediately go to jail, but you put your case in a court, and if the court says there was some fraudulent intention or criminal intention behind it, then of course one goes to jail.

Chairman: Two years is the maximum penalty provided against certain extreme cases.

Shri Birla: Why does a man not pay? He may not have funds. He might have purchased some cotton or jute, and prices might have gone down. He may not have cash and therefore he is not able to pay. In such cases you can wait for a month. After all, the company belongs to the shareholders. It is the shareholders who are drawing dividend from their own company, and how are other people concerned with that? It is simply making the lot of the management more difficult, and therefore I feel this clause should again be looked into and suitably amended.

There are about 140 clauses of this nature where there is penalty. In regulating the relations between shareholder and shareholder, to provide for penalty on every count, unless it is deliberate and wilful or *mala fide*, would be wrong, because you are expecting the business community to do business and expand the activities of the country, not merely to go to jail on almost every count.

Then, there are about 40 to 50 clauses which refer to special resolutions where, unless you get the consent of 75 per cent. of the shareholders, you cannot take action. This will make it very difficult to conduct the day to day affairs of the company. In some clauses even when you have a special resolution, the proposal is that the power should rest with the Government to give the final decision about the matter. That means you are not even trusting the shareholders' special resolution, and there must be some further power given to Government, which is unnecessary. If the thing is good, you should allow the shareholders to act. If it bad, then you should say they are not allowed to act in a particular manner. But to leave the power to Government I think would not be right, because in some cases the officer will decide in one way, and in another case in another way. There will be all sorts of complaints. Therefore we feel that this power of intervention should not be there. The law should work automatically. If there is any difficulty, the matter can go to the court and the court will ultimately decide the

matter, instead of it being left to the Government or its officers.

Then there are certain clauses about change in the managing agency etc. We are unable to understand fully the intention of the framers of the Bill because in some places it says that the managing agency should not be changed, while in other places it says that it should be changed. I refer to clauses 325, 326, 309, 311 and 312. The stand of the Federation and the business community all along has been that the will of the shareholders should prevail, and I understand that the Bill also generally wants the same. If the will of the shareholders should prevail, why should they be prevented from dismissing a managing agent or appointing another. The managing agency system is either good or bad. If it is good you want to safeguard it. If it is bad then you want to abolish it, but we cannot understand the contradiction about the whole matter. In some places you want to safeguard the managing agency system, in some places you allow their control to be reduced, and in other places you want that they may be dismissed. I think this may create various anomalies. There are various agreements of managing agencies with various companies. They may be expiring in course of time and when the time comes automatically they would be relinquishing their position. That means, after some time the managing agents will disappear unless they are confirmed by the shareholders. Here there are certain provisions which say they must be confirmed by 75 per cent. majority, in certain cases by 51 per cent. These are anomalies which I am only pointing out now, I shall enter into details later. Either the shareholder is empowered to dismiss the managing agent in every case if he is dissatisfied with him, or if that is not so, in every case that power should be curtailed. But here there is one power at one stage and a different power at another. That is a thing which you have to go into. We feel that if the shareholder feels that the managing agents are incompetent etc., or they are not working in the interests of the company, they should have the right to dismiss the managing agent, whether Indian or European. But the law as it is framed, we fear, is going to perpetuate the managing agency system of the European houses. If you feel that that is in the interests of the country, we have nothing to say.

Shri K. K. Basu: How? Will you develop that point?

Shri Birla: Clause 325 reads:

"*Effect of changes in constitution of managing agency firm.*—In the case of a managing agency firm, where by a reason of any change in the constitution in conjunction with the changes which may have previously taken place, the aggregate of the collective shares or interest of (i) such of the partners as were members of the firm at the date when the managing agency agreement was executed; and (ii) such of the partners as may have succeeded by inheritance to these who were partners at the date aforesaid falls below fifty-one per cent. of the total shares or interest held at the firm time of the change by all the partners then constituting the firm, the firm shall—

(a) cease to act as managing agent from the date on which the change aforesaid comes into operation, and

(b) again become entitled to act as managing agent if, and only if, the change is approved by a special resolution passed by the company.

Explanation.—In this section, "inheritance" includes inheritance from the heir of a partner, or from the last of a chain of successive heirs with the heir of a partner."

Then, please refer to clauses 309, 310 and 311.

Then read clause 311. This is one aspect of it. Then read clauses 309 and 310.

Chairman: Clause 309 relates to the term of office of managing agents.

Shri M. C. Shah: It applies to all the companies.

Chairman: As a matter of fact, for the last two days we have been discussing these sections. We would like to know only how there can be a distinction between European and Indian firms.

Shri S. P. Jain: Under clause 326 there is a clear provision that the dismissal can take place only with 75 per cent. majority. These houses which, as we know, are situated in Calcutta, are holding 26 per cent. of the shares and by holding 26 per cent. of the shares they are preventing themselves from being dismissed. Our President was only inviting attention to this aspect of the question, that as the law stands, it is only to give protection to these houses where Indians have 51 per cent. majority and they do not want such houses to continue as managing agents. They are being prevented from dismissing these managing agency houses only because these houses are holding 26 per cent.

Shri Birla: It does not apply to Indians; it applies mainly to foreigners. Among Indian companies, there is no effort to take away their managing agencies; the effort is to take over the managing agency of foreign firms. If the foreign managing agents want to keep control of the concern, they have only to have 26 per cent. of the shares. You must not forget that today in the companies sector, Indian companies are controlled by Indians who own shares. There is no effort by British houses to take over Indian companies; the effort is by Indians to take over companies from British companies. If you want to take over British houses, you must have more than 75 per cent. of the shares.

Chairman: I may make it perfectly clear that the object of this law is not to make any such distinction.

Shri Birla: Then it has to be expressed accordingly.

Chairman: If there is any real discrimination against Indian firms, we would certainly like to remove it.

Shri Birla: Then you must make it clear that the will of the shareholders will prevail; the vote of the majority will prevail. If the majority want, they should have the right to dismiss the managing agent.

Shri Basu: According to your figures, the British houses own 26 per cent. of the shares and are continuing as managing agents. What will happen after 1959? Unless they have the majority of the shareholders with them, they cannot reappoint themselves as managing agents. So how can they perpetuate this agreement?

Shri Chatterjee: In the law itself there is no discrimination.

Shri Birla: But the fact is that.

Shri Chatterjee: So far as I know, a number of new companies in Calcutta, Indian firms, own more than 66 per cent. of the share capital, acquired. But they cannot alter the managing agents, although they held only 26 or 30 per cent. of the shares. Is that the point—that this will continue upto 1959?

Shri Birla: Yes.

Shri C. D. Deshmukh: These facts have to be established. It may equally be possible for a Bombay firm to acquire in order to oust an existing managing agent in which case the same situation will arise.

Shri Chatterjee: If Shri Jain remembers his own case, that deals with the point. There are two big jute companies, 66 per cent. of whose shares were taken over by Shri Jain. But they could not oust the British houses although they were in a hopeless minority.

Shri C. D. Deshmukh: That is not as a result of this clause.

Shri Chatterjee: What they are saying is that this clause will perpetuate that arrangement. What is going to happen although the Indian firms have acquired a majority of shares?

Shri C. D. Deshmukh: Why could not they do it in the present circumstances?

Shri Chatterjee: I think that is the point. Although they have 73 per cent., they cannot do it.

Shri C. D. Deshmukh: The amendment made in 1951 was made by Parliament.

Shri Birla: We are not referring to that.

Shri C. D. Deshmukh: Shri Chatterjee is referring to that.

Shri Chatterjee: I am referring to this fact that there are a number of cases which took place in the Calcutta High Court which went up to the Privy Council, where very big shareholding strength was acquired by Indian shareholders to the extent of 66 or 67% or even more, yet the managing agency could not be terminated.

Shri C. D. Deshmukh: Why?

Shri Chatterjee: Because there were special conditions in the managing agency agreement.

Shri C. D. Deshmukh: That has nothing to do with this here. This particular clause replaces the approval of Government which is now required for a change in managing agency. They are undoubtedly having cases where, in spite of the fact that they have this large proportion of shares, the new managing agents have not been allowed to take over. That is not as between Europeans and Indians because the new ones were not considered to be desirable. It was in accordance with the law which was passed by Parliament in 1951 to prevent this very kind of thing happening. It was in the interests of shareholders. The matter has been fully discussed in Parliament. So to give it the shape of a discrimination as between Indians and Europeans, I think, is not to present the matter properly.

Shri Chatterjee: I thought their point was that in effect it would lead to that.

Shri Birla: I think we explained it to you the other day when we met.

Shri C. D. Deshmukh: That has nothing to do with the Committee. You have to explain it here.

Shri S. P. Jain: Our intention in pointing out this clause is that the result of this clause will be that till 1959 it will not be possible to dismiss managing agents by shareholders who are holding more than 50 per cent. voting rights, and as we know the conditions in Calcutta and Bombay markets, we know that certain large managing agency houses are holding shares of certain magnitude and certain small and larger number of shareholders are holding shares of a larger magnitude. But it is not possible for the latter to have the directors and managing agents appointed of their choice. What we find in substance is this that this class which is holding a minority of shares which, in many cases, only amounts to 26 per cent. are the important British managing agency houses in country and the persons who are holding the larger percentage of shares, which amounts in a very large number of cases to about 50—51 per cent., outvote these houses at the shareholders' meetings, but in spite of this decision of the shareholders who are holding large voting rights, they are not in a position to remove these managing agents. We can also look into the results of the working of these companies. We can compare in the same industry at one stage. We have given information regarding working among the various Indian sections

[Shri S. P. Jain]

and among the European sections and we find in a very large number of cases that the grievances of these shareholders is that the management is not proper, the management is not effective. If necessary, and if we are given an opportunity, we shall prove to your satisfaction that in a large number of cases the grievances of these shareholders are genuine regarding the efficiency of the management also. But as the law stands, as the provision made in clause 326 stands, we consider this position will be perpetuated, especially in regard to such British houses till 1959. This is what our President wanted to make out.

Pandit C. N. Malviya: There is no discrimination.

Shri Birla: In effect there is. I was saying in the beginning that there are certain clauses which perpetuate the managing agency; there are certain others which give the power to the shareholders to dismiss the managing agents etc. As I said, we do not understand the implication of that, as to why there was this difference. For instance, the managing agency is to be dismissed by a majority of shareholders. It applies equaliy to Indian managing agents also. There is no differentiation as far as the law is concerned, between British and Indian managing agent, but the effect of that is as Mr. Jain described to you. But in a way it also affects in another manner; that you are protecting the managing agency system. That is for you to decide, whether you want to let the shareholders remain or not.

Mr. Chairman: There is no discrimination from this point of view, that in the same circumstances even an Indian managing agent could not be dimissed.

Shri Birla: Certainly. So it is a question for you to think of.

Shri C. D. Deshmukh: Is it also a fact that in a recent case a special resolution was passed in favour of an Indian managing agent?

Shri Birla: Yes, it was passed.

Shri C. D. Deshmukh: It was an arrangement between European and Indian firms, and the necessary majority was secured among the shareholders.

Shri Birla: Because of your good offices.

Shri C. D. Deshmukh: No.

Shri Birla: Anyway it was passed.

Shri Jain: It was 75 per cent.

Shri Birla: Then there are certain anomalies of exemption provided in the Act. For instance, certain provisions of the Act do not apply to the companies controlled by Government. We feel that the company law—whether it be for Government owned companies or private companies, *i.e.*, whether it be for the private sector or the public sector should be the same. That is a point which, I think, you should consider.

Then about this managing agency remuneration, there are various clauses which propose to reduce the managing agency remuneration. At present that remuneration is generally based either on sales or on profits. If it is on sales, then it is approximately two per cent. on the sale proceeds of the company of the total production; if it is on profit, generally it is 10 per cent. of the gross profit of the company. That is the general rule; if it is more, then it is the exception.

There are certain companies in Ahmedabad who made 3½ per cent. as agency commission on sales. After all, the total number of companies is only about 50 or 60 and it does not apply to all of them also. Therefore you cannot say that this is the rule. The rule generally is 2 per cent. on sales or 10 per cent. on the gross profits of the company.

Shri K. K. Desai: What about tea?

Shri Birla: It is generally about 10 per cent. Most of the companies are foreign companies managed by foreigners. There are agents or

secretaries in India and it is an arrangement between the parent company and the British agents in India. Therefore, it is very difficult for us to say what sort of remuneration they get. It is only recently, during the last 4 or 5 years that some sort of tea gardens have passed into Indian hands and it is not a very large percentage. In spite of these transfers, 75 per cent. of the industry is still controlled by British firms and therefore we are not in a position to give the exact figures for tea. But, I may generally put it to you that the managing agency commission is 10 per cent. of the gross profit or 2 per cent. of the sales. Originally, all the companies had commission on sales. In the first World War many of the Bombay companies changed to profit commission. Since then the gradual tendency has been to change to profit commission.

After the last company law was passed in 1936 in many of the companies whenever the change of agreement came before the shareholders, they were converted into profit commission.

You are making a very drastic change. I do not know what would be the exact effect of it at this time. But, generally speaking the commission on gross profits of the company varies from something like 18 to 20 per cent. I have collected some figures from Ahmedabad, which is said to be a controversial place; the total profit from 1940 to 1952 both years inclusive is about Rs. 131·37 crores, that is, for about 60 cotton mills of Ahmedabad. The commission paid to the managing agents is Rs. 25·27 crores subject to all taxes and the rest of it has gone either as dividend or as bonus or tax or in various other things. Even in Ahmedabad, which has been much maligned, the commission has been of the order of 19 per cent. of the profits.

Chairman: Will your Association give us a copy of the figures collected and also copies to be circulated to the members?

Shri Birla: Yes, Sir.

The total profit for the 13 years is Rs. 131·37 crores, for the period from 1940-1952, both inclusive. In other centres it varies from 18 to 22 per cent. It is very difficult to say exactly what the figure would be for a particular company for a particular year because it depends on circumstances. Suppose the commission is on sales and the company has made little profit, then the percentage would work out at a higher figure, but if the profit is high it would work out to a low percentage. In the case of commission on profit, when it is a case of percentage of the profit, it does not vary with the sales.

Though these figures are there, many of the people who have been in Ahmedabad know that this managing agency commission is not always received by the managing agents themselves. It is shared by the shareholders. In the original case, when the companies were started, what happened was this. The managing agent started a company with Rs. 5 crores as capital. The managing company agreed with anybody who took Rs. 50,000 worth of shares that he will take a certain portion of the managing agency commission. People were coming out for 1,000, 2,000 or 5,000 shares, whichever the number according to the circumstances of the case; they became shareholders and retained a portion of the managing agency commission. It has been a feature not only of Ahmedabad but of other places also. As mentioned earlier, in the case of one of the biggest industries, the Tata Steel, when they borrowed money in 1924, they not only borrowed it at a very high rate of interest on the debentures of the company but they also allowed part of the managing commission.

Chairman: What is the percentage of such companies where they share the commission with the shareholders?

Shri Birla: In most of the Ahmedabad concerns in the earlier stages whenever a company was started it was only an exception if this was not the

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case. You know in pre-war days the raising of capital was not very easy. Even today it is not very easy. During the war it was slightly easier. So, what happened was this. If a managing agent was to float a company, he collected a few of his friends and assured them of a share in the managing agency commission and they in turn took or purchased a number of shares or they were to influence their friends to purchase the shares. In this way, the managing agency commission was shared by the shareholders of the company. Therefore, it could not be said that this was something confined only to Ahmedabad. I know of my companies, and others too must be knowing of it. We have been giving commission to shareholders.

Supposing a company has to be started with a capital of Rs. 10 lakhs. The principle is that 50 per cent. is to be kept with the managing agents and the rest given to the various persons in proportion to the number of shares purchased. Supposing out of the ten lakhs they get Rs. 5 lakhs from the others, then 2.50 lakhs is kept with the managing agents and the remaining 2.50 lakhs is distributed to the others in proportion to their shares. This should not be taken to be a hard and fast rule. There have been cases where they have had to pay more and sometimes less also. Generally, 50 per cent. is supposed to be taken by the managing agents and the others who canvass take the remaining 50 per cent. in proportion.

This sort of arrangement existed in pre-war days. Even now, when the maraging agents come forward to float some companies they may have to make some sort of a similar arrangement.

Shri Dhage: You stated that the shareholders of the floated company take a share in the commission of the managing agents. Is it without purchasing shares?

Shri Birla: Because they subscribe to the shares.

Shri Dhage: Is it without subscribing to the shares of the managing agency firm?

Shri Birla: Yes; they only share in the managing agency commission and they do not take any share in the managing agency company.

Shri C. D. Deshmukh: What happens on transfer of shares?

Shri Birla: The original person who took the shares gets it.

Shri Dhage: I want you to clarify the position. I would like to know how the shareholders of the company that is floated share in the managing agency commission without their being the partners or subscribers to the capital of the managing agency concern. What is the process?

Shri Birla: The process is this. The managing agent of the company wants to sell some shares of the managed company, that is, the company which is to be floated. Suppose somebody comes forward to take a substantial portion of the shares of the managed company, then he gives a portion of the managing agency commission to that person.

Shri Dhage: Would it be correct to say that that gentlemen becomes a *de facto* partner in the managing agency concern?

Shri Birla: He is called a sleeping partner and not an active partner who shares in the managing agency profits of the company.

Shri Dhage: Let me make clear what is suggested by the witness.....

Chairman: Let us not get diverted I will allow you to put question after he has finished.

What he says is this. Supposing. A floats a company. He is the managing agent of that company. The capital is Rs. 10 lakhs and somebody comes forward to advance Rs. 5 lakhs. He agrees to part with a part of the commission.

Shri Dhage: In that case it would not be correct to say that the shareholders of the parent company share the commission of the agency. That is what I am trying to say.

Shri Birla: It is not the shareholders that share the commission. It is the managing agency company which shares its commission.

Pandit Munishwar Datt Upadhyay: It is only at the beginning.

Shri Birla: It depends at what stage you want money. Generally it is in the initial stages that you give this managing agency commission to certain shareholders. The man who purchases the shares purchases them and takes a risk. He holds the shares in the initial stages and in course of time he may dispose of those shares. But, in some cases, there are agreements whereby the man cannot dispose of the shares. There is some provision of this nature, but it is not universal. The man who buys shares pays a portion of the capital and therefore he gets the commission.

Pandit Munishwar Datt Upadhyay: It is issued later on.

Chairman: May I suggest to the members that so far as what the witness has made out, I am going to allow every one of them to ask questions. If anything further is required they may ask him.

Shri Birla: You may say that the share of the managing agency commission that is paid in India is unique. But this system prevails in other parts of the world. In other parts of the world, they are not called managing agents but they are either promoters or founders or some other name is given to them. There are shares issued in the names of the promoters which are given free in the initial stages or shares issued in the name of founder shares. The percentage of such shares vary depending upon the type of company, the kind of entrepreneur etc. There have been cases where such founder shares or promoter shares have been as high as 25 or 30 per cent. of the total shares of the company. Instead of getting managing agency commission direct from that company they get it not only in the form of dividend from the company but they also form part of the company which gives them perpetual control of the company which is a very important factor and which is not applicable in the case of Indian companies.

This is the system prevalent in Europe and America; and if you enquire into them, in most of the companies the promoters have been issued some shares in consideration of their having rendered services. The Ford Motor Company, when it was promoted, had only 25,000 dollars cash capital and the rest 75,000 dollars were promoter shares. Since then that company has neither borrowed nor raised more capital and that is the company which still exists as the Ford Motor Company in America.

The managing agency commission is now proposed to be reduced to 12½ per cent. We feel that this is a very drastic reducton. The reason being that we do not mind the percentage being reduced so much but it is now proposed to be reduced not as a part of the full profits but after some deductions are made out of the profits. For instance, the excess profits earned by a company are also proposed to be reduced out of the profits. Excess profit or whatever profit they are; they are earned because of the effort of the management and therefore we feel that such a reduction as is contemplated in the Bill, is reducing the amount very considerably and it will restrict the management from taking proper risks. After all, the managing agency does not merely float a company and manage it but also lends a name to the company and in lending that name it takes a great risk. For that the managing agent is to be provided with means. Invariably, the managing agent has to guarantee loans from various parties. In fact, the Finance Corporation insists that even on the

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capital loans which is to be advanced to a company there should be a guarantee either by the managing agency or by the directors. Leave aside what happens in the Finance Corporation. But this is a risk which has to be taken by the managing agent. They have to find finance; they have to manage the company and see that the company prospers. If they have to take risks they must have some sort of resources to take risk.

Chairman: Is it a fact that in the United Kingdom the commission given to a managing agent, or managing director is not more than 2 per cent.?

Shri Birla: As I described to you in the United Kingdom they are given what are called "promoters' shares" which run to 25 to 40 per cent. They do not get it in the form of commission; but they get the asset of the company which is more than the commission. The asset of the company is taken by them perpetually. Here you are giving them only a commission for ten or twenty years.

Chairman: So, according to you, the two are not comparable.

Shri Birla: These persons who are paid 2 per cent. or 3 per cent. are only Managers. They do not contribute any finance. To give you an instance, in 1931-32 one of the biggest steel companies in England producing about 7 million tons of steel per year was in difficulties. They had to find a good Manager. In America a manager is called a President. So they appointed a president with very heavy remuneration—of the order of 600 or 700 thousand dollars. Over and above that remuneration, the terms of the agreement provided for profit sharing and also issue of shares. After the efforts of this man the company instead of losing 15 or 20 million dollars, started making profit and it earned 15 or 20 million dollars of profits in a year. When it earned a profit, the President got three million dollars in the form of commission, which was a substantial amount. The shareholders objected that he had no right to take such a large amount in the form of remuneration when the shareholders had only a very small percentage of profits and the matter went to the court. The court ruled that the man was perfectly entitled to take that, because he was the person who had put the company on its legs and a company which was losing heavily was revived by that man.

So the analogy which has been given of 2 per cent. or 1 per cent. does not hold good for other countries.

Then there is another system which I think is not appreciated by people in our country. They have a system whereby the management is given the option to buy shares. Option to buy shares sounds a peculiar phrase, because anybody has the option to buy shares. Suppose a company's shares are standing at 50 dollars and the par value of the share is 5 dollars. The management has the option to buy certain shares at 5 dollars and sell it at 50 dollars. It is not considered as a remuneration, but it is given as an option. This option to buy shares works out to millions of dollars in some cases. I know of a person who had the option to buy shares in a company, and who a couple of years ago got suddenly £2 million profit.

So, remuneration takes different forms in different countries. Ultimately, the fact remains that you have to remunerate a man who takes the risks, who looks after the interest of the shareholders; they pay him, not because his face is attractive, but because he is doing some real service to the company. Not only does he do service, but he is able to appreciate the capital of the shareholders and give them a good profit and a good dividend. May be a management whom you pay only 1 per cent., may prove a liability to the shareholders; while a management which is paid as much as 50 per cent. may prove an asset to the shareholders, because even after paying him so much they are able to make profit. It is from this point of view that these provisions should be looked at. These are my submissions

about the managing agents' remuneration.

As regards managing agents' tenure you can well visualise what is happening in India. We have certain types of consumer goods industries. They have been more or less established. But industrialisation of the country in other spheres has to be quickened. For instance there are the mechanical industries, chemical industries. These industries are very hazardous in the sense that profits are very difficult to earn. It is also very difficult to instal these plants and bring them into a working condition. In the case of such industries, generally it takes four to five years to erect the plant. After erecting the plant, it takes four to five years, for the plant to bring any profits. Even, after ten years, it is not always that they earn profits. I know of some cases where even after ten years the companies have not been earning any profit. I feel that fifteen years is too short a period for bringing this type of industries into a stage of successful production and profit earning. Even in 1936 this question was considered by the Select Committee and in the Legislative Assembly also these points were taken into consideration. In those days such factories could have been established within two years; now that period has considerably gone up and it takes anything from five to six years. Even in those days they had decided that 20 years was the reasonable period to be given to the managing agents to manage the companies; after that they can have the agreement renewed or changed. The fifteen years period prescribed is on the short side and would not be helpful, having regard to the nature of the industries to be established in our country. Similarly the renewal period of ten years proposed is also on the low side. We feel that the 20 year period which was originally suggested would be more helpful. If, however, you want to bring it to five years, we would have no objection, but you should give sufficient time for the management to increase the profitability of the concern. In this connection you have provided that in the case of a new company there should be a minimum remuneration of Rs. 15,000. That requires to be altered. It is not commensurate with the amount of time or effort which the management will have to put. This is a matter which should be left to be settled between the shareholders and the management. You cannot make a hard and fast rule to every type of company, or that a minimum amount should be paid. We have suggested that it should be related in the initial stages to the sales of the company.

Then, Sir, there are points about investments of companies in common name. They are minor points, but they are likely to create difficulties. For instance, you have said that all the investment of companies should be held in its own name. There are occasions when you have to hold it in the name of the banker; there may be occasions when you have to hold it in the name of a director, or even a shareholder, because you may have to appoint the director of another company in the interest of the company. All these things should be taken into consideration.

There are certain questions in connection with private limited companies. You are asking that private limited companies should file their copies of the balance sheet with the Registrar and disclose all their affairs. In England there is a class of companies called "exempt companies" and I think the company Law Committee also has suggested that a similar provision should be made in our legislation. We feel that it would not be desirable to disclose all the assets of private companies, because there is a sort of sanctity attached to credit. If you disclose all its credit, then possibly people may not be able to borrow. Credit is a very delicate structure and I need not dilate on that—most of you know that. At present in Calcutta and other places there is a credit which is called "banking credit". After partition several of the Indian nationals have

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come to India from Pakistan. They have no money. Banks gave them credit to start business. If they are asked to disclose their affairs, their credit may dry up, or the general public may not be prepared to trust them. No public interest is served by asking private companies to disclose their assets. We, therefore, feel that this clause should be suitably amended.

There is another practice which I think the present Bill does not allow, but which you should consider carefully—that is shares of no-par value. No-par value shares has a particular significance. Generally what happens is that a company floats shares of a certain par value, ranging from Rs. 10 to Rs. 1,000. They raise the capital on that basis. Supposing a company is floated with Rs. 10 lakh worth of shares. In course of time the company finds it needs more capital. If the shares are standing at a premium, there is not difficulty in raising the capital. You can issue fresh shares at prices ruling in the market. But if the shares are standing at a discount and when it is particularly important for that company to issue fresh capital, because it is in difficulties, pepple do not come forward to buy its shares. In that case it may have to sell shares at the prevailing market price. The proposed Bill would allow it to sell shares up to 10 per cent, discount after the sanction of the Government or the share-holders. But if the shares are standing at 50 per cent discount, you cannot sell the shares in the market. You cannot expect the public to buy shares at 10 per cent. discount when the intrinsic value is not more than 50 per cent. In such cases the issue of no-par value shares is very important. The result of that has been that all the big American companies have converted their shares from the fixed par value to no-par value, so that they can issue shares any time they like. Whenever they feel the necessity of funds the company has millions of shares. They are counted in millions of units—they do not say what they are worth. If you want to have more capital you can issue another million unit; you can issue them at whatever price prevailing in the market. This gives flexibility to the company to raise capital as the need arises. This is going to be a very important factor if we are to industrialise our country.

There has been a demand for the amendment of the English Companies Act on these lines and the Cohen Committee has recommended that this should be allowed. In America most of the companies are now changing their share from par value to no-par value. This is a matter which we have to consider and allow for the future.

Then there are certain clauses in connection with transfer of shares. The present position is that transfers of shares are allowed, and if there is any dispute, the shareholder should go to the court. The proposal in the Bill is that in future the matter should be decided by the Government. We feel that this is a matter which should be left to be decided by the court rather than by the Government, because if the shares are to be transferred to one party or another, then a decision has to be taken on some judicial basis. We feel that the present position has not been harmful to the industry or the shareholders' body as such, and therefore it should be allowed to remain.

Chairman: Under the present law, if the articles of association provide it and give the power to the directors to refuse to transfer, nobody can go to a court of law.

Shri Birla: One can. Cases have happened.

Chairman: If there is a provision in the articles of association giving the directors power to refuse transfer without assigning any reasons, and the directors refuse, I do not think the courts can do anything.

Shri Birla: Cases do go to the court.

Chairman: But ultimately they do not succeed.

Shri Birla: When there is any provision in the articles of association, it depends upon the type of the case.

Chairman: Unless it can be proved that it has been done maliciously, the court cannot do anything.

Pandit Upadhyay: Will it not be speedier and less expensive to go to the Government?

Shri Birla: We feel it should be a judicial decision, because a joint stock company is something like a partnership. You may remember that somebody used to go to the Central Bank meetings in Bombay and create a lot of trouble.

Pandit Upadhyay: How can the court help better?

Shri Birla: The directors will refuse. Then the court will judge it on its merits.

Shri Chatterjee: Unless *mala fide* can be proved, or unless the directors foolishly put forward some grounds, the courts will be powerless.

Chairman: Therefore, if the articles of association give the company that power, they will refuse.

Shri Birla: The companies are supposed to have the power, and in case they refuse to transfer the share it is proposed that the Government should take the matter into consideration.

Chairman: I think we have tried to do it between the two extremes. There may be some shareholders who may think it should not be recognized; similarly in certain cases the directors may under this power refuse to register transfers even in the case of genuine people, for some ulterior reasons. So we are giving the power to the Government.

Shri Birla: Cases of that nature have been very few.

Shri C. D. Deshmukh: May I ask this from you, Shri Chatterjee? Are there any cases where in spite of this decision in regard to registration of shares, rulings have been given by courts that the voting powers will be exercised by those who are the beneficial owners of the shares—are there any rulings like that?

Shri Chatterjee: What it says is that the Court will not control the exercise of a discretion given by the articles to the directors as to the decision on transfer, unless it is proved that they are not exercising the power in a *bona fide* manner. The presumption would be that they had acted *bona fide*, and the onus would be no the person challenging *bona fideso* or attributing lack of *bona fides* and impropriety on the part of the directors. When the directors refuse to consent to transfer, they are not bound to state any reason, and if they do not state any reason, no case for bad faith can at all be drawn.

Shri Birla: I think if you leave the matter to the court it will be in consonance with the views of the Government also, because what you want is that no shareholder should be allowed to create unnecessary trouble and harass the management. It is only in such cases that the management will refuse transfers. Generally I do not think any managing agent will refuse, but when they suspect that the man is not going to act in the interest of the Company, they refuse. In such an event if the man still wants a remedy, it may be provided that he may go to the court.

Chairman: What is the objection to going to the Government?

Shri Birla: It will not be a judicial decision. That is the only objection.

Chairman: Where does the judicial trial come in? As Shri Chatterjee said, if the Aticles of Association give the directors the power to refuse, the courts do not even come into it.

Shri Birla: On this we had a meeting—I may frankly tell you—with various persons to decide ultimately how the shares should be transferred. There were six persons present in the meeting, one Shri Kapadia and the other five were all important members, either shareholders or management. All the six had six

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views. No two persons had the same view. You can therefore well understand!

Chairman: So let the Government decide.

Shri C. D. Deshmukh: Was there not a case Alagappa Chettiar *versus* Brady & Co. where the court decided that the registered holder should act in accordance with the direction given by the beneficial holder?

Shri Prabhudayal Himatsingka: Because there was an agreement that the registered holder was bound to give a proxy according to the instructions of the purchaser. The shares had been sold by the registered holder, but the company refused to register. Then the person went to the court. He said "I have a right over those shares, I am the beneficial owner, therefore please compel the registered owner to vote according to my direction."

Shri C. D. Deshmukh: So, that will be the case everywhere.

Shri Himatsingka: Unless there is an agreement to that effect. Simply because I have purchased the shares, I will not have the right to go to court.

Shri C. D. Deshmukh: Agreement about what?

Shri Himatsingka: That the registered holder has sold to the purchaser on the condition that he will exercise his vote.

Pandit Upadhyay: Your fear is that it might be left to any officer, in which case you would like that it is better if it is left to be decided by a Judge?

Shri Birla: Yes. Then there is a peculiar clause here and I think it will cause real hardship in some cases. That is the clause in connection with the charities to be paid by a company. You are entrusting the managing agents to deal with the affairs of companies whose assets run into crores in some cases. But when it comes to paying some charity you will limit it to Rs. 5,000 or 2 per cent. of the profits. If they want to pay more than that, then they should go to the shareholders and have a resolution passed. You very well know that in various parts of the world various public institutions, particularly educational institutions, hospitals, etc. are very heavily supported by industries. Even in India if a Minister tells us "we need your help for such and such a cause", when we feel that the object is a good one which requires, the management agrees to it. It has happened that even when the companies are not making profits, sometimes they have to pay to some Funds. Cases have happened when, for instance, for the sake of the goodwill of a company in a local area they have to spend on a school or hospital in that area. In such circumstances, to put a limit of Rs. 5,000 or 2 per cent...

Shri C. D. Deshmukh: Whichever is greater. And 2 per cent. of net profits as compared with 12½ per cent. of managing commission does not seem to be too low.

Shri Birla: It is very low. And where there is no profit how are we to accommodate the request?

Shri C. D. Deshmukh: Rs. 5,000.

Shri Birla: Rs. 5,000 is a very small amount. Even when there are no profits, I will give you an instance which has taken place only recently. A company in a certain locality was making use of a certain road. The municipality of the locality said "we are not going to let you use the road unless you pay some money to a particular school or institution".

Shri M. C. Shah: You can take that into "expenses, contribution for construction of road".

Shri Birla: Is that what you advise us! This cannot be shown as "expenses", but it has to be paid. And you cannot call a meeting of the shareholders. In a company with a big capital, if you have to call a meeting you have to spend Rs. 20

or 25 thousand in calling a shareholders' meeting.

Shri C. D. Deshmukh: This road, you say, was a municipal road?

Shri Birla: Yes.

Shri C. D. Deshmukh: And the municipality would not allow the road to be used?

Shri Birla: That is right.

Shri C. D. Deshmukh: That sounds like blackmail. We cannot provide for that.

Chairman: They may not have exactly said that. They might have said "Your factory people take boilers and all that on the road; the roads were not meant for such purposes, etc."

Shri C. D. Deshmukh: Then it is in place of a contribution, which the municipality could rightfully ask for special maintenance of the road.

Shri Birla: They could not.

Shri C. D. Deshmukh: Then it is blackmail.

Shri Birla: These cases do arise. Cases also arise where you have to help hospitals. Some calamity happens and suddenly you have to subscribe for the funds. I may give another instance. In the U.P. we are asked by the Government to find money for doing various things in the mill area. How are we to find that money. Are we to go to the shareholders for everything?

Pandit Upadhyay: You have to do all that in the interests of the factories themselves.

Shri Birla: It has nothing to do with the working of the factories. It will be pure and simple charity.

Shri T. S. A. Chettiar: What is the present position?

Shri Birla: There is no such restriction. The shareholders' consent is always there because you have to pass the annual accounts. When the annual accounts are passed, their consent is there. If the shareholders do not approve, there is a possibility of their rejecting the accounts. Why make it difficult and say that for everything you have to go to the shareholders?

Chairman: You may proceed to some other important points.

Shri Jain: There are one or two points. Clause 285 provides the maintaining of certain information in respect of some people who are deemed to be directors. We have to leave it to the discretion of the management as to who are deemed to be directors and if the management makes any mistakes, the penalty is very heavy. What we wish to say is that the information should be collected in respect of specific persons and not in respect of vague persons.

There is another clause, 328 where there is discrimination between two classes of public limited companies; public limited companies whose shares are quoted by the stock exchange and another class of public companies whose shares are not quoted on the stock exchanges. This disparity has no parallel in the whole Act. It has been introduced only here. I feel this will have wide implications. If we make a list of these companies, we shall find that there are certain managing agency companies which are publicly quoted and they are mostly in the hands of Europeans. There are a large number of managing agency houses, public limited companies, whose shares are not publicly quoted. Those companies whose shares are quoted by the stock exchanges will not have to make certain declarations whereas those whose shares are not publicly quoted will have to make a declaration. This clause if allowed to stand as it is, will create discrimination between European and Indian managing agency houses.

Chairman: Section 328 reads like this:

"(1) The provisions of Schedule VIII shall apply—

[Chairman]

(a) to every firm or private company which acts as the managing agent of any company, whether public or private; and....."

Shri Jain: I refer to clause (2). They have said that public limited companies whose shares are quoted in the stock exchanges will not be subjected to certain provisions. The point is this. If we analyse the list of managing agency public limited companies whose shares are quoted on the stock exchanges, and those whose shares are not quoted publicly, we will find a very clear distinction. There are a few managing agency houses in this country whose shares are now publicly quoted. Government themselves have declared while drafting the 1951 Act that one of the objects of the control of capital issues was not to allow the formation of these public limited companies. These public limited companies doing the business of managing agency houses are given certain protection under clause 328. These companies themselves, if they had applied at that time, would not have been given permission to be floated in this country.

Shri Basu: What is the reason for the Indian companies not being quoted in the stock exchanges?

Shri Jain: Under the present Capital issue control policy, it is not possible to obtain permission from the Government to float these companies publicly. This is against the policy of the Government to allow these managing agency companies to be publicly quoted and subscribed.

Chairman: The point is that at present there are certain public limited companies who are doing work as managing agencies and they have been allowed to do so in the past and in the future, the policy of the Government is not to recognise such a company.

Shri Jain: What I am saying is that there should not be any discrimination between public limited companies whose shares are quoted on the stock exchange and those whose shares are not quoted on the stock exchange.

Chairman: The reason suggested is that in the case of those companies whose shares are quoted on the market, the Government may not allow the free sale of shares.

Shri Jain: This clause does not apply to that point. This clause only applies to termination of managing agency. If there is a change in the constitution of the managing agency firms, they have to make certain declarations. When a declaration is made under certain circumstances, they will cease to be managing agents and a special resolution has to be passed for their continuation. These provisions have not been made applicable in the case of companies whose shares are quoted on the stock exchange. I am only pleading that whatever be the provisions, because there are a large number of companies in this country which are managing agency houses and which are public limited companies, there should not be any discrimination between those whose shares are quoted in the stock exchange and those whose shares are not so quoted. We know the policy of the Bombay Stock Exchange and the Calcutta Stock Exchange. They are not accepting managing agency companies. They are only continuing the companies which already are there on the stock exchanges.

Shri Chatterjee: In Calcutta, there are European managing agency firms which are public companies and in the case of any change in the constitution, these companies need not go to the Government.

Shri Jain: They need not go to the shareholders and need not go to the Government if there is some change. They will not have to get a resolution passed by 75 per cent. of the shareholders. In the case of any other company, they will have to go to the

shareholders, if their shares are not quoted in the stock exchange, to get their approval for any change in their constitution.

Chairman: Your point is that the Indian managing agency companies cannot make themselves public limited companies having regard to the policy of the Government.

Shri Jain: They can make themselves into public limited companies. But, it is difficult to get their shares quoted on the stock exchanges.

Chairman: The policy of the stock exchanges is a different thing.

Shri Birla: There are only 2 or 3 major stock exchanges in India. It means that there are very few stock exchanges. Companies are situated throughout India and they number into thousands. In the stock exchanges, the companies which are listed and whose shares are quoted number about 1,000. You will therefore realise that there are several thousands of companies which are not quoted in the stock exchanges. From the fact that they are not quoted on the stock exchanges, it does not mean that they cease to be public limited companies. Therefore, this should not be the criterion, that the companies should be registered on the stock exchanges. Any company, whether registered or not should be treated on the same basis. All the companies cannot be registered.

Shri C. D. Deshmukh: You think that all the companies should be equally troubled.

Shri Birla: We feel that all public limited companies should be exempted.

Shri C. D. Deshmukh: That is another matter. We thought that this section was necessary. If you say that a majority of the companies are not registered, we would correct the situation by omitting the exemption in favour of public limited companies quoted on the stock exchanges.

Shri Birla: Just as you like.

Shri C. D. Deshmukh: That is not the major point. What I would ask is, don't you agree that this kind of declaration is desirable in the case of such transfers?

Shri Birla: We do not think it is desirable.

Shri C. D. Deshmukh: In that case, you can fight the case on merits and not on the ground of discrimination.

Shri Birla: We think this is unnecessary.

Shri C. D. Deshmukh: Then, argue on the merits.

Shri Birla: We can argue so many things. I would like to argue on a much broader issue than on this. That is, the issue of the managing agency system as such. You know what is their achievement. Indian managing agency houses have been gradually growing from the beginning of the century and we have come to a stage today when something like 60 per cent. of the entire industrial sector is controlled by them. There is still about 40 per cent. controlled by British firms. We had to achieve this in the face of British opposition, their hostile attitude, creation of difficulties in the way of Indian industries etc.; and if we have achieved this without the help of a foreign power, you will agree it has not been an uncreditable achievement. Then, after the war when so many shortages were prevalent, it was the Indian industrial sector which expanded productive capacity so that today you are almost able to get cloth freely as also all kinds of goods produced in India. I am sure you will agree with me that this is no mean achievement.

In future if no undue restrictions are put in our way, in the way of investment, management etc., in course of time I am sure we will achieve what you expect us to achieve, *viz.*, greater industrialisation of India and solving the problem of unemployment. All that is possible only if you give the companies a little bit of free hand and scope so that they can expand. If you put all sorts of difficulties or controls in their way, and if businessmen are to be sent to jail on the smallest grounds, you can understand they cannot be expected to take all the risk and all the odium from the public.

[Shri Birla]

Therefore, unless you bless them and encourage them, all efforts at regulating this company law will be frustrated. After all, what is it you want? You want a prosperous India where there are trousands of factories as in the U.S.A. So, encourage the industries. If there are difficulties, remove them. Think those difficulties are not our difficulties, but your own, because ultimately it is you who have to look after the welfare of the people, who have to look after their employment. We are only means through which you will be able to achieve that. Therefore, we request that you take that into consideration in whatever you do.

We are very grateful for giving us this opportunity, and if there are any questions, we shall be very happy to answer them.

Shri T. Subrahmanyam: You closed with an appeal that you look to the Government to look after the welfare of the people. Therefore, do you conceive that the interference or the intervention of the Government is necessary for the proper management and control of these companies for the welfare of the public, as a matter of principle?

Shri Birla: As a matter of principle, If you make general laws on broad lines which do not interfere in the day to day working of the concern of the life of the people in the country, which is already being done, there is no objection. From the fact that there is a company law and from the fact that we have accepted planned economy in this country, it is clear we have no objection to that. But when you start interfering in the day to day affairs, then you can understand that it is going to be very difficult to manage anything efficiently, and to that we object.

Shri Subrahmanyam: I am putting a straight question. Everything should not be decided only by the shareholders and the directors, but the people or the Government must have a say in the matter. It is a basic principle, because as you said just now you are looking to the Government to look after the welfare of the people. I take it as a principle you admit that.

Shri Birla: What you are trying to legislate now is only a matter of relations between a shoreholder and a shareholder, and shareholders and management. It is not a sort of welfare measure which you are trying to legislate, and therefore if you try to interfere with the management you will be creating difficulties.

Shri Subrahmanyam: You do not like that rights should be given to some shareholders to go to the courts under clause 367. You say it should be altered because it may be exercised by some shareholders in a vexatious or frivolous manner.

Shri Jain: What we have suggested is that the right of appeal to the court should vest with ten per cent. holding of shares. What we have objected to is only this, that individual shareholders may not have the right to appeal but when they comprise ten per cent. shareholding they may have the full right of going to court.

Shri Subrahmanyam: In respect of how many companies have you come across instances where shareholders have taken an unjustifiable or unreasonable attitude and encouraged this sort of vexatious or frivolous applications in the past? Or course, I am not asking for statistics, but a general idea.

Shri Birla: We have not the exact figures or facts about it, but as far as we know generally shareholders have not taken any action of this nature.

Shri Subrahmanyam: I put it to you, there have not been a large number of applications of this nature.

Shri Birla: Not to our knowledge, which shows they are quite satisfied with the management.

Shri Subrahmanyam: In your memorandum, at the bottom of page 122, you have put in this sentence:

> "In a country like India where vexatious and malicious complaints are easily resorted to..."

To me it appears almost as a libel. Do you think this statement is warranted from your experience?

Shri Birla: This is not in connection with company law, but a general statement.

Shri Subrahmanyam: You suggest circulation to be resorted to in case of some meetings of the directors (clause 267). Now, clauses 253—257 provide that no person should be a director of more than 20 companies. Will it not be helpful if it is made obligatory on the part of these directors to be present at meetings instead of taking their decisions through circulation?

Shri Birla: Sometimes it is not possible to get all the directors at the meeting. Sometimes circulars have to be issued. Sometimes decisions are taken in the meeting.

Shri Subrahmanyam: What is the reason? Is it because that they are directors of more than 20 companies?

Shri Birla: No, no. Even where a person is a director of two or three companies only, the matter may have to be decided by circulation.

Shri Subrahmanyam: If they cannot be present in person, discuss and debate important matters, do you think that they could be directors of more than 20 companies, or circulation should be allowed in such matters?

Shri Birla: We say circulation should be allowed. It should not be merely obligatory to have meetings, but whether at a meeting or by circulation the matter should be decided.

Shri Subrahmanyam: You suggest that general body meetings should be allowed to be held also in places other than that where the registered office of the company is situate (clause 159). Do you think it will conduce or enable shareholders to attend these meetings in Bombay or Calcutta?

Shri Birla: In fact, meetings are being held like that even today, and if you restrict the meetings to be held only at the registered office, it will create difficulties for shareholders. The people who subscribe are mainly round about that area. They do not like to go to a place like Orissa or Madras interior and attend the meeting of the company. They know where the managing agency office is situate and they like to go and attend the meeting there. If it is held in a village, they will not even find a place to live in there. How can they go there?

Shri R. R. Morarka: According to you, how many firms of managing agencies including private limited companies and public limited companies are there in this country?

Shri Birla: I am sorry we have no information.

Shri Morarka: May I put it to you that out of 29,000 companies, we have only 1,200 and odd which have managing agents *i.e.* less than 4 per cent?

Shri Birla: In the absence of figures, it is very difficult to say, but it may be so. These 29,000 companies of which you are talking are all not manufacturing companies. Trading companies and everything is included in that. A trading company means that the proprietor or the manager is the same person who manages the concern and therefore he need not have a managing agency for himself. After all, he is the person who is going to manage and most of these companies would be of that nature. As a matter of fact, there are about 3,000 factories in this country and I could not say how many of these factories are limited liability companies and how many of them are private partnership firms. Of the 3,000, I should say quite a substantial portion have managing agencies. The rest of them do not have. The ones which do not have are proprietary concerns.

Shri Morarka: Would it be possible for you to give us some idea as to the amount of loan advanced by managing agents to the various companies managed by them?

Shri Birla: It is very difficult to give any exact idea because the sector is so large. But I can say this that it was not very easy to raise capital in the pre-war days, nor is it very easy today. When the capital is raised, it is invariably with the efforts of the managing agents and their friends. Of the share capital that is raised, quite a substantial portion is invested either by the managing agents or their friends or associates. If you ask what would be the capital invested by the managing agents, it will be very difficult to give the exact figures. You should not think that managing agents always invest money on their own account; managing agents also in many cases are partnership firms or companies and their partners, or their shareholders have taken the shares. But they take it because the managing agents are interested in the managing agency. Therefore, to say that a number of managing agents have floated a particular number of shares will be incorrect. It is only in rare cases that you can get an exact figure of that nature, but generally a very large portion of the shares are controlled by managing agents or their friends and associates.

Shri Morarka: Is it your experience that in the case of all the companies managed by the managing agents when they borrow money from the banks, those loans have to be guaranteed by the managing agents?

Shri Birla: Ask the banks. Would any bank give a loan without any managing agents' guarantee?

Chairman: Your answer is that banks will not advance money without the managing agents' guarantee?

Shri Birla: You can enquire of them.

Shri C. D. Deshmukh: We do not propose to call banks as witnesses.

Shri Birla: My reply to the question is that banks invariably insist on the guarantee of managing agents when they advance money to the companies.

Shri Morarka: Can you give us some rough idea about the total amount of loans advanced by banks to companies managed by managing agents under managing agents' guarantee?

Shri Birla: It is very difficult to give those figures. But I think the total advances today are about 450 crores; of that, something like 150 crores are advanced to the industrial sector. I would say out of that 150 crores, at least two thirds must have been guaranteed by the managing agents, if not more.

Shri Morarka: Would you contradict me if I say that it is estimated that the amount of these loans guaranteed by managing agents does not exceed 4½ crores to 7 crores?

Chairman: Why do you put hypothetical questions?

Shri Morarka: This question is not hypothetical; it is based on the information supplied to us and I want information, if possible, from the witness.

Chairman: I will try to make a suggestion. The witness has made certain statements in respect of the case that he wants to put forth. Anything in elucidation of that may be asked. What other people had said somewhere else need not be alluded to.

Shri Birla: I may clear this point. The amount must be incorrect, because this figure of 4½ crores which you mentioned is more than what my firm alone has guaranteed. So the question of 4½ crores does not arise.

Shri Morarka: According to you, should there be any limit on the number of companies a managing agent can look after?

Shri Birla: The management of the company depends on the ability of the managing agent. If the managing

agent is capable, how can there be any limit? Is there any firm to the management of man in the affairs of the other things in the world? Take President Eisenhower. Take our own Prime Minister. He controls the destinies of so many millions of people.

Shri Morarka: Just as it is intended to place a limit on the number of directorships an individual can hold, so also should there be a limit on the number of companies to which a managing agent or managing director can be appointed?

Shri Birla: We do not agree with you.

Shri Morarka: There should not be any limit on the number of companies?

Shri Birla: No.

Shri Morarka: What would be the difficulties, according to you, if it is laid down that the managing agent should only be an individual and not a firm or a company?

Shri Birla: Then you will not have continuity of management, which is very essential; nor will you have the financial backing of the group.

Shri Morarka: What do you mean by 'continuity of management'?

Shri Birla: It means that in a managing agency house or firm it is not one person who manages; there are several persons connected with it. Suppose one goes, the other man is able to look after because he knows how things are going on. They are constantly in touch with the progress of the concern and so there is no difficulty. If it were only one man, there will be great difficulty. The other man who takes charge would not know what has been going on, and it will be against the interests of the concern.

Shri Morarka: Do you think that the existence of the joint family system has anything to do with the existence of the managing agency system?

Chairman: This is outside the issue. Witness is not an expert on Hindu law.

Shri Birla: I can give this answer to that, that this joint family system helps in decentralisation of industry for which our political leaders are very anxious. Today you will find all those people who were important in the early part of the century, in the twenties, are no more, because concerns have been taken over by the persons who were really interested, that is, their sons and grandsons, and they are managing it. I think there are not a large number of houses today in India who have been there for 30, 40 or 50 years. You will see that this has a great advantage.

Shri Morarka: Do you agree that managing agency should be terminable by an ordinary resolution or should it be by a special resolution?

Shri Birla: We have said that the shareholders' voice should be supreme.

Shri Morarka: May I invite your attention to page 89 sub-clause (iii) of the Bhabha Committee's Report where they say that generally the managing agents are dismissed in pursuance of a conspiracy among the directors and that by dismissing them by ordinary resolution, the company is burdened with heavy claim for damages?

Shri Birla: As far as I know, there are hardly any cases of that nature. But I cannot say that I know of all the cases.

Shri Morarka: Do you agree that in the event of further issue of capital, the additional shares should be issued only to the ordinary shareholders and not to preference shareholders?

Shri Birla: This is a matter which is dependent on the shareholders of the company. I think even today if the ordinary shareholders of the company, who are the proprietors, want to offer the equity capital or preference capital to any class of shareholders, it is they

[Shri Birla]

who decide it and the management acts accordingly.

Shri Morarka: No, you have not understood the question. The point is, after the floatation of the company, further capital is issued, and if the company has got ordinary and preference shareholders, do you think that the right to subscribe for new shares should be given only to ordinary shareholders or it should also be given to preference shareholders?

Shri Birla: It is a question of the ordinary shareholders deciding what they want to do. There may be cases where they may want to offer capital only to preference shareholders; there may be cases where they may issue it only to ordinary shareholders; there may be cases where they may give it to both and there may also be cases where they may want to offer it to neither class.

Shri Morarka: If the ordinary shareholders allot the new shares to themselves, don't you think that the rights of preference shareholders are watered down?

Answer: No. The proprietors of the company are the ordinary shareholders and it is they who decide to whom to issue fresh capital. There have been cases where ordinary shareholders decided that it should be given neither to the ordinary shareholders nor to the preference shareholders but it should be given to the public.

Question: Can preference shares be issued to ordinary shareholders without consulting the preference shareholders?

Answer: Preference shares, if they are issued, may be given either to the ordinary shareholders or preference shareholders or to both; or they may issue it only to the public.

Shri C. D. Deshmukh: What he is asking is: are you in favour of retaining clause 75(a) by which such shares shall be offered to the persons who are only equity shareholders irrespective of the decision of the equity shareholders to do something else?

Answer: We want discretion to remain with the equity shareholders.

Shri C. D. Deshmukh: Are you in favour of freedom being left to the choice of the equity shareholders at the time of the issue?

Shri Birla: Yes. We are in favour of freedom being left to the choice of the equity shareholders.

Shri Morarka: Only equity shareholders? Preference shareholders should have no say?

Shri Birla: Yes. They will have say only if their rights are altered.

Question: And their rights would not be watered down even if preference shares are issued to other shareholders?

Answer: No.

Question: You do not think that the right of the preference shareholders would be affected or would be watered down by issuing further preference shares, and not giving the right to the preference shareholders to subscribe for these shares?

Answer: We do not think the right of the preference shareholders will be watered down because as far as the preference shareholders are concerned, the shares are issued with a preference in rate of interest. That is not altered in any case without their consent. Any further issue of such shares after that would be either ranking *pari passu* with the existing shareholders—then the right is not watered down—or if it is ranking after that, then also it is not watered down.

Shri G. L. Bansal: The point of Shri Morarka is that inasmuch as another class of preference shareholders is being created in the same company and the existing preference shareholders are being excluded from those preference shares, their right *vis a vis* the new preference shareholders is watered down.

Answer: I think that that fear is not well founded. Actually, it is the preference shareholders who do not want to purchase....

Shri Morarka: I am talking of the provision which is going to be made in the Bill where it is said.....

Shri Birla: It should be flexible.

Question: What are the disadvantages in giving the right to a shareholder to appoint an outsider as proxy?

Answer: The company is a partnership of the proprietors and it is not of outsiders. Only persons who are interested in the company should be present. Therefore, we feel that proxies should be made only to shareholders so that they ultimately know what is their interest.

Question: In your opinion how many proxies a shareholder should be entitled to appoint in a public company?

Chairman: The question is, suppose a man holds 50 shares. Do you think that he should have the right to appoint 50 proxies?

Answer: It is his choice. He should decide how many proxies he wants. But if he gives 50, it may be that he will be voting against himself.

Shri Birla: It is also possible that a person is holding shares for different people. There should be no hard and fast rule.

Chairman: Ordinarily, if a man holds 50 shares it should be only one proxy; otherwise, he would be stultifying himself by giving more proxies.

Shri Birla: Banks may be holding shares on behalf of a hundred constituents and their interests may be different. Therefore, you cannot make a hard and fast rule.

Shri Morarka: Do you agree that a shareholder can appoint as many proxies as the number of shares he holds?

Shri Birla: Theoretically, he has the right. There is nothing to prevent him giving so many proxies.

Question: Assuming for the moment that outsiders are to be appointed as proxies, would you like to put any limit as to the number of persons one shareholder can appoint as his proxy?

Shri Birla: In such a case, the man should appoint as few proxies as possible.

Shri C. D. Deshmukh: As many persons as he believes will give an identical judgment.

Chairman: May I make one suggestion? I have no desire to interfere. This matter is a very important one concerning many of us but the point is that the questions should be directed to what the witness has said or to something which arises out of it. But, if the whole company law is to be put to him, it would be actually subjecting him to a sort of cross-examination, which will not be justified. I have taken down notes of all the points that he has given. They are about a dozen. There should be no repetition of questions. He has very well summarised what is contained in the memorandum.

Shri B. K. P. Sinha: Leading questions should, as far as possible, be avoided.

Chairman: This is neither examination in chief nor cross-examination. This is an examination for eliciting some further information. Nor is he, as I said, an expert witness who is expected to depose to everything that is known.

Shri Morarka: Would you like to suggest any qualification for the inspectors which the Government may appoint under the Bill?

Chairman: There is a provision in the Bill for inspectors to be appointed for investigation to be carried out. He wants to know whether you would like to prescribe any qualifications for such inspectors.

Shri Birla: The investigator, whoever he may be, should be a fairly highly qualified person, in the sense that he should be an officer of a higher grade. When we were put a question about this by the Company Law Committee, we said that he should not be below the rank of a magistrate or a Sessions Judge. He should not be an ordinary clerk.

Shri Morarka: When they make an investigation, should their investigation confine only to a particular period or should they make a roving enquiry?

Shri Birla: They are expected to enquire into the affairs only of a particular period. It cannot be an enquiry for a period of 50 years. I think that could not have been the intention. It should be a definite enquiry, of definite nature and on definite points.

Question: Do you think that some maximum fee or scale of fee should be prescribed for these investigations?

Chairman: This does not arise out of the memorandum.

Shri Morarka: My question arises out of clauses 220 to 222 on which the Federation has expressed its views in over two pages.

Chairman: They do not say any thing about this. These are matters to be decided by rules.

Shri Birla: We have nothing to say about this particular provision. All that we want is that the wording of this clause is very vague and that it should be clarified and the Inspector must be a man of high calibre.

Shri Morarka: What are your objections to power being given to the Government to start investigation *suo motu*?

Answer: After all it is the shareholders who must decide whether the company is being run on sound lines or not. If the aggrieved party is satisfied, the third party has no business to butt into the affairs of the company.

Question: If the shareholders want to approach government and apply for investigation they require to be either 200 in number or to possess one-tenth of the capital. If they complain to the government, the government can start the investigation *suo motu*. What is the objection in giving this power to the Central Government?

Answer: If the shareholders approach the Central Government, then, of course, they would have to enquire but not by themselves.

Question: Even if one shareholder complaints, should they do it?

Answer: It will then mean that the intention of the shareholder may not be fair. There should be some safeguard against harassment of the management. It is not merely the interest of one shareholder but the interest of all the shareholders that has to be safeguarded. We feel that the matter should be carefully gone into.

Question: Do you suggest that the company concerned must be given notice first, before investigation is started?

Answer: That should be so; we have suggested that.

Question: After the investigation is completed, should the report be submitted to the High Court or to the Executive for necessary action?

Answer: In this connection, I think, I might give you instances of what is happening in other spheres. The Banking Enquiry Commission investigates and the reports are submitted to the Reserve Bank. Certain information is asked for and the matter is tried to be settled with the bank itself. There is no use trying to give it to the public. The intention is to keep things going on smoothly and that should be done in an amicable way.

Question: Do you think that a director once appointed should not be removable before the expiry of his term or if removable should be removed only by a special resolution or by an ordinary resolution?

Chairman: The witness has stated that they are generally against special resolutions; as far as possible, things should be carried on by ordinary resolutions.

Question: If the director is removable by an ordinary resolution, do you not think that he merely becomes a creature of the managing agent because the managing agent generally controls a working majority of the shares?

Answer: We do not agree. The man is removable only by the shareholders. He should be removed if the shareholders decide so.

Question: What is your objection in making a provision that a director once appointed should not be removed without a special resolution?

Answer: We generally feel that the removal of a director should depend on the will of the shareholders. But, if you want to have the special resolution we have nothing to say.

Question: Instead of one-third of the directors retiring every year, why not all the directors every third year and the whole set reappointed at one and the same time?

Answer: We do not like that idea. It will create all sorts of complications. There will be all sorts of canvassing going on and it will disrupt the smooth working of the company. There will also be no continuity. This provision of one-third is a good safeguard.

Shri Morarka: Throughout your argument you have been using the analogy of Government and the election. You know the whole country is divided into constituencies, and the Constitution safaguards the rights of minorities in several ways. Since the directors are appointed by all the shareholders jointly no such representation is possible. Therefore, if all the directors are appointed in one single meeting, minority representation may be possible. Would you not therefore like the idea of all the directors being elected at one meeting?

Chairman: The witness has already said that it would not be possible to preserve continuity in that way.

Shri Morarka: But throughout his argument he has been illustrating with reference to the analogy of the Central Government, the constitution of the Cabinet and so on.

Chairman: Reasoning by analogy is in many cases incorrect.

Shri Birla: May I be permitted to reply? The analogy which I have cited still stands, because if at any time the shareholders feel that they have no confidence in the Board, they can pass a resolution of no-confidence and turn out the whole Board. When this safeguard is there, you do not want election every year.

Shri Morarka: The difficulty is this. While in a General Election voters are divided according to constituencies.....

Chairman: I think that question does not arise for the simple reason that the constitution of Government is based on a principle different from the constitution of companies.

Shri C. D. Deshmukh: Shri Morarka, under the existing clause 262, a special resolution is not required for the removal of a Director. You made a statement that a special resolution is required for the removal of a director under the existing law—that is not correct.

Shri Himmatsingka: But it is provided that a director may be removed before time only by an extraordinary

[Shri Himmatsingka]
resolution. An extraordinary resolution means a special resolution.

Shri Morarka: What are your views about alternate directors? Who should appoint them? All the directors or the directors in whose place he is to be so appointed.

Shri Birla: He should be appointed by the Director in whose place the alternate is to be appointed.

Shri Morarka: He should have the power to nominate?

Shri Birla: Yes, Sir.

Shri Morarka: What, according to you, should be the maximum number of companies of which a person can be appointed managing director?

Shri Birla: We have said there should be no limit.

Chairman: He does not like the idea of any limitation on their being directors, managing directors or managing agents, provided they work efficiently and the shareholders want them.

Shri Morarka: I think the witness expressed that opinion only about managing agents.

Chairman: About directors also.

Shri Birla: In this connection I might say that as far as managing directorship is concerned, it is proposed to be restricted to two companies which, I feel is really wrong.

Shri Morarka: How would you like the idea of prescribing some minimum qualifications for the managing agent just as they are prescribed for the directors? Would you like a qualification to be prescribed that they should hold certain minimum shares of the company?

Shri Birla: I do not like that idea.

Shri Morarka: Why not?

Shri Birla: Whether the managing agent holds, or his friends hold, the managing agent can remain a managing agent as long as the shareholders support him.

Shri Morarka: This argument would apply to directors as well. According to you, directors need not have any qualifications?

Shri Birla: A managing agent's qualifications are that he is a good managing agent. That is why two seats on the Board of Directors are given to them, that is, to represent the case of the management, not to represent the case of the shareholders.

Shri Morarka: The main function of the managing agent is to find finance for the company. How would you like the idea of our prescribing that a managing agent should keep some deposit, so long as they are the managing agents?

Shri Birla: If the company does not require money, what is the good of asking them to keep a deposit?

Shri Morarka: You know most of the companies borrow money from banks. How would you like the idea of managing agent keeping some money with the company?

Shri Birla: I would not like that idea.

Shri Morarka: Do you think that it is a good provision that all the existing managing agencies should come to an end on the 15th of August 1959?

Shri Birla: We have disagreed with this point. We feel that contracts, whether of managing agency remuneration, or tenure of managing agents, should not expire automatically.

Shri Morarka: In your memorandum you have said that this would amount to discrimination. Can you explain the point further?

Chairman: I think that question was answered.

Shri Morarka: That was about the charge of discrimination as between Indian and British firms. If this clause remained as it is, there will be discrimination among the Indian firms themselves.

Shri Birla: Discrimination in the sense that a person might have floated a company in 1940 and another in 1950. The person who had floated the company in 1940 would have run it for 19 years, while the person who floated it only in 1950 would have had only nine years. In this way there will be discrimination. That is why we say they should not automatically lapse.

Shri Morarka: There is a provision in the Bill that henceforth the managing agents or their associates should not be the selling agents or the buying agents. Do you agree that there should be some maximum rate of commission both for selling as well as for buying prescribed, even though the persons who are appointed as selling or buying agents are not associates of managing agents?

Shri Birla: Selling commission cannot be prescribed for the simple reason that it varies from commodity to commodity. Some commodity you may be able to sell at a very low rate of commission: it may be ¼ per cent. In the case of shares the brokerage is very low. But if you want to sell something which is difficult to sell, things like radio, or refrigerator, you may have to pay 25 or 30 per cent. It all depends upon the type of commodity. So, you cannot make it a fixed commission.

In this connection we have already said that there should be no differentiation betwen an associate and other persons.

Shri Morarka: Do you agree that 12½ per cent. is a reasonable commission for the managing agent?

Chairman: He has already stated that there should be no limit on the commission.

Shri Birla: We have not said it so solidly. We have said that the 12½ per cent. proposed is on the low side. There are certain types of expenses which are to be deducted, which is wrong, such as depreciation, Excess Profits Tax, etc. There are three or four items which we have mentioned. They should not be excluded while computing profits.

Shri Morarka: Can you give a suitable definition of 'profits'? It is provided here that "no dividend shall be paid in respect of any financial year otherwise than out of the profits of that year or the undistributed profits of previous financial years".

Shri Birla: I take it in this connection that it means profits, whether accrued in this year or in the past. You connot pay dividend from out of capital. So profits should be this years' or previous years' profits, not this year's profit only.

Chairman: Some people seem to have difficulty. I have understood very clearly what you have said.

Shri Morarka: In our Bill we propose to have two types of companies, private and public companies. Would you not like to suggest that in the name of the company itself there should be something to distinguish a public company from a private company and *vice versa*, just as in Australia where in the case of every private company the name "proprietary" comes—so and so proprietary. In a public company it does not occur.

Shri C. D. Deshmukh: May I enquire the page and paragraph of the memorandum?

Shri Morarka: This is about general remarks.

Chairman: As I have already explained, the question must arise out of the memorandum or what he has stated. He has not come here as an expert on all questions. Why do you take him to Australia?

Shri Morarka: The reason is this that this witness represents a very important body.

Shri Birla: May I say.....

Chairman: No. That does not arise. The witnesses have not come here as experts. They have submitted their memorandum. Anything that requires elucidation out of that, we will ask.

Shri Morarka: With regard to the power proposed to be taken by the Government to amalgamate two companies at any time under clause 366, may I know whether you consider that the power should be taken by the Government or you have any objection to it?

Shri Birla: We have objected to the power being taken.

Shri Morarka: Will you please give your reasons for objecting to the power being taken by Government?

Chairman: It is not necessary for him to give the reasons. If he is inclined he may, but he is not bound to.

Shri Birla: We feel that amalgamation has always some basis, and that basis should only be decided by the directors of the companies concerned. If they feel that any amalgamation is necessary, naturally they will have an amalgamation. But nobody should force an amalgamation just because somebody gets it into his head. And the effect of such amalgamation may also be that it may change the proprietary nature of the concern. Somebody may be interested in another concern. He may influence another person. There may also be improper valuation in such cases. But the whole point is that we do not like the power of amalgamation being with somebody other than the proprietors of the companies.

Sshi Morarka: In your memorandum you have said (pp. 95-96) that Rs. 50,000 as the minimum managing agency commission is not sufficient and that it should be Re. 2½ lakhs. How many companies are there in this country which provide this minimum and how many cases are there where Rs. 50,000 would not be enough?

Shri Birla: After all you are framing a Company Law. You are not thinking of one or two companies. There may be various companies where payment of a sum of Rs. 50,000 may be sufficient, but in the case of some companies even Rs. 2½ lakhs may be insufficient. Take for instance a company of basic metallurgical type or heavy chemicals or heavy engineering. For years it will not earn profits. Therefore what we suggest is that the commission should be commensurate with the efforts. Out of the Rs. 2½ lakhs it is not that the managing agents will get the whole of it; quite a lot will go in expenses and taxes. We suggest in some cases, if possible, it should be related to sales where the company has started. Otherwise the amount should be made larger, and it should be between the shareholders and the management to decide as to what it should be.

Shri Morarka: Can you give any example of existing companies where the minimum is Rs. 2½ lakhs?

Shri Birla: The present law is not like that.

Shri Morarka: In regard to clause 80, you say on page 30 of your memorandum that "The Committee are of opinion that preference shareholders should have voting rights only when their rights are directly affected and in no other case". Do you mean to say that even the rights pertaining to the preference shares already issued should be curtailed or it is only for future rights?

Shri Birla: We have made it clear this morning that this should not be made as rigid as it is proposed in the Bill. The matter should be left to be decided between the partners and the preference shareholders. When companies have preference voting rights, we do not suggest that they should be taken away. We suggest that in future situations may arise when you may have to borrow money etc. We have made it clear.

Shri Morarka: Will you please refer to clause 85 which reads: "A Company may, if so authorised by its articles, (a) accept from any member the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up; or (b) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others".

In view of clause 80 which says that voting rights would depend upon the amount of capital paid up, don't you think that this clause 85 (a) would give a discriminatory power to the persons in management to accept from some shareholders unpaid capital, and from others they would not accept, with the result that to those they want they will give greater voting rights and to others they would deny?

Shri Birla: You are correct in this case. But as I said we have asked that the voting rights should be left less flexible. Otherwise it would be contradictory.

Shri Morarka: Do you think that this clause should go or stay?

Shri Birla: The clause should be revised as we have suggested and which is the usual practice in the country.

Shri Morarka: Throughout your memorandum you have said in respect of "the officer who is in default" that it should mean an officer who is, not "knowingly", but "wilfully" guilty, that is, he should have wilfully committed the offence.

Shri Birla: Yes, we have very strongly emphasised that. Because, suppose there is a fire taking place. You may 'know" that a fire is taking place, but you cannot prevent it. Why should you be penalised? You may know so many things, but you may have no hand in it or you may not be able to prevent it.

Chairman: The idea is that it should rather be "wilfully" and that more knowledge is not enough. That is their suggestion. Do you accept their suggestion?

Shri Morarka: How can I express my views here?

Chairman: I wanted for this purpose. Suppose they say it should be "wilfully". I do not understand why the witness should be subject to any examination on that.

Shri Morarka: The only point is that in company administration there are many things which can be only wilfully done. At the same time there are other things where it is most difficult to prove wilful action and knowledge should be enough to constitute an offence.

Chairman: We shall consider it while we discuss. Why ask them about it? They have made their position clear. Are you likely to take long, or will you finish in about five minutes in which case we shall carry on.

Shri Morarka: I am likely to take about ten to fifteen minutes.

Chairman: Then we adjourn now and meet tomorrow at 9 A.M.

(Witnesses then withdraw)

The Committee then adjourned.

Minutes of Evidence taken before the Joint Committee on the Companies Bill, 1953.

Wednesday, the 7th July, 1954 at 9 A.M.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

LOK SABHA

Shri Chimanlal Chakubhai Shah
Shri Awadheshwar Prasad Sinha
Shri V. B. Gandhi
Shri Khandubhai Kasanji Desai
Shri R. Venkataraman
Shri Ghamandi Lal Bansal
Shri Radheshyam Ramkumar Morarka
Shri B. R. Bhagat
Shri Nityanand Kanungo
Shri Purnendu Sekhar Naskar
Shri T. S. Avinashilingam Chettiar
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Dr. Shaukatullah Shah Ansari
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Shri Ajit Singh
Shri Kamal Kumar Basu
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Shri M. S. Gurupadaswamy
Shri Amjad Ali
Shri N. C. Chatterjee
Shri Tulsidas Kilachand
Shri G. D. Somani
Shri Tridib Kumar Chaudhuri
Shri C. D. Deshmukh
Shri Shriman Narayan Agarwal

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Shri Braja Kishore Prasad Sinha
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Shri S. C. Karayalar
Shri Amolakh Chand
Shri M. C. Shah
Shri V. K. Dhage
Shri B. C. Ghose
Prof. G. Ranga

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar, *Secretary, Department of Economic Affairs, Ministry of Finance.*

Shri K. V. Rajagopalan, *Officer on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri A. L. Rai,—*Under Secretary.*

Federation of Indian Chamber of Commerce and Industry—contd.

Spokesmen:

Shri B. M. Birla

Shri S. P. Jain

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

Chairman: Shri Morarka will continue. He has already taken a sufficiently long time. He will please be short.

Shri Morarka: As I promised yesterday, I shall finish within 10 or 15 minutes or perhaps earlier. In pages 48 and 49 of the memoranda, they refer to clause 192. I want to know why they require at least six months for merely posting the dividend warrant to the shareholders.

Shri Jain: It is only a permissive clause. It is not generally that we shall post after six months. In larger companies, it may take some time. There are certain penalty clauses also.

Chairman: In view of the penalty clauses, you want that there should be a longer period.

Shri Jain: Yes. It is only a permissive clause.

Shri Morarka: In view of the fact that the word 'paid' has been used, don't you think that some of the preference shareholders may get more voting rights? Dividend may be paid to some shareholders and to some it may not be paid. Under clause 80 (2), if the dividend remains unpaid, the preference shareholders get voting rights. If this clause is not kept as it is in the Bill, the position may be that because some dividends are not paid, some preference shareholders may get voting rights while others may not get it.

Shri Jain: We have dealt with that clause separately and stated that voting rights of preference shareholders should be there not till the paymen is made, but till the declaration is made. After the declaration is made, the preference shareholders should not have the right. That is what we have suggested in another place. There is another reason for our asking for this period. In certain cases, they do not post these warrants on declaration but only on application. It takes some time for the shareholders to make the application after the declaration and then the companies have to prepare the dividend warrants and post them. Therefore we have wanted this extra period of three months. We want that the preference shareholders should have voting rights, not if the dividend is not paid, but if the dividend is not declared. There is some lacuna and it should be corrected.

Shri Morarka: On page 115 of the memorandum, you refer to clause 356. What are the difficulties that you anticipate in the implementation of this clause? If the securities are sound securities, what difficulty would there be either in marketing them or getting the approval by a special resolution?

Shri Jain: We have explained the position that the existing investments should not be asked to be sold because there may be hardships. Such investments may not be easily saleable especially when they have to be unloaded in large parcels. On account of these difficulties and on principle we think that if investments are being held now by certain companies, we should not be forced to sell them when the Act comes into force.

Shri Morarka: On page 51, you refer to clause 200. You want that the word 'managing agent' should be dropped from this clause because, according to you, a banking company

[Shri Morarka]

cannot have a managing agent. Please correct me if I am wrong. I think a banking company can be the managing agent of another banking company. It cannot have an individual as a managing agent. But, another banking company can be the managing agent of a bank. If that is the position, this clause should remain as it is.

Shri Jain: I am not competent to speak on this question. It is a legal question whether a banking company can be the managing agent of another bank.

Shri Morarka: In their memorandum they have asked that the word managing agent' should be dropped, and stated that a banking company cannot have a managing agent.

Shri Jain: We have made this proposal because, so far, we do not know of any important bank in this country which is being managed by a managing agency. Therefore we have requested that the word 'managing agent' should be dropped. Whether it is legally possible or not, I cannot say. It is not in practice today in the country.

Shri Morarka: Will you please tell us whether hereafter debentures should be given voting rights or not?

Shri Jain: We have expressed generally that there should not be any voting rights for them. As we explained yesterday, it should be left entirely to the discretion of the shareholders and the directors. Generally we do not like debentures with voting rights.

Shri Morarka: In your memorandum on page 91 you have said that debentures may be issued with voting rights. Therefore, I am putting this question.

Shri Jain: We have said that it should be left to the discretion of the shareholders. There should not be penal provisions in the Companies Act saying that voting right should not be given.

Shri Birla: In this connection, I may refer to the Bengal State Corporation where debentures were issued with the right to convert them into ordinary shares. In such cases, voting right has to be given. Because, they are convertible into ordinary shares in course of time, and if they convert, naturally, automatically, they will have to be given the right. Such questions do arise often.

Shri Morarka: One last question, Sir. I refer to page 61 of your memorandum. You say:

> ". . . . the Committee apprehend that the knowledge that an enquiry of this nature is afoot may tend to insure public confidence in the company concerned."

Will you please explain how the company's interests can be injured by an enquiry into the ownership of shares?

Chairman: That is an obvious proposition. What is there to explain?

Shri Morarka: This is not an enquiry into the affairs of the company.

Chairman: They say that it may have that tendency.

Shri Morarka: I want to know how an enquiry into the ownership of the company would injure the interests of the company. If you think that, it is not a proper question, you may disallow it.

Chairman: Their opinion may be that it would injure.

Shri Morarka: It is not a matter of opinion; I want to know how it would injure.

Chairman: I think, gentlemen, it is a matter of your opinion. Do you agree?

Shri Jain: Yes.

Chairman: We spent the whole of yesterday examining the witnesses and if possible, I would like to conclude this evidence by 12 noon. Of course, as Shri Morarka has taken so much time, I am not coming in the way of

members. But the same questions may not be asked and points already made clear may not be repeated.

Shri C. C. Shah: The witnesses in their memorandum have touched upon many important and interesting questions, but I shall confine my observations only to a very few of them. I would like to say that in putting my questions it is not my intention to enter into any discussion because we hold certain views and you hold certain views; but my intention is to try to understand your approach to the entire problem of the company law and if possible, try to explain to you my approach briefly so that you may appreciate it. At the same time, I wish to make it clear that while we ask questions about managing agents or managing agency, there is no intention whatever to be little in any way either the past achievements or services they have rendered or even the services that some leaders of the industry render to the industry as a whole. Let there be no misunderstanding on that account. We have a common object—to improve the management of joint stock companies and to advance the industrial development of the country. Only there is a difference of approach between you and us on certain questions.

Chairman: Let there be elucidation of certain points.

Shri Shah: Shri Birla, you agree—when I refer to you, it means the Federation and not personally—that it is of vital importance to the shareholders to know who is in management and who are the persons likely to be in actual management of the affairs of the company.

Shri Birla: As far as the persons who are the managing agents are concerned, that question is automatically answered when you know the directors of the managing agency company.

Shri Shah: I am asking this general question that it is a matter of vital importance to the shareholders to know who will be the persons in management of the company. Do you dispute that proposition?

Shri Birla: I have not been able to understand the question clearly.

Question: It is a matter of vital importance for the shareholders to know who will be in actual management of the company.

Chairman: The question is: Is it or is it not of vital importance that the shareholders should know who are the persons who are in management of the company?

Answer: I have not been able to really understand the question, because in a company which is managed by somebody, the shareholders know who manages it. So the question is obvious —any shareholder who subscribes to the shares of a particular company knows who manages it.

Shri Shah: He knows. But it is of vital importance.

Answer: It is no question of.....

Chairman: It is an obvious matter.

Shri Jain: If we are thinking in terms of individuals, it is not necessary, because sometimes it is just enough for us to know the name of the bank, but it is not necessary for us to know the name of the manager; it is enough for us to know the name of the firm of Solicitors, it is not necessary for us to know the names of the partners who will carry on the conduct of the business; it is enough for us to know the name of the auditors—Batlibhoi and Purohit—it is not necessary for us to know the name of the partners. While we are appointing solicitors, bankers and auditors, we are just appointing these firms as firms who may be consisting of A, B or C, and they can change their partners or Personnel.

Shri Shah: Please do not anticipate my questions.

Shri Jain: I am just trying to amplify this point, because, after all, the joint stock companies are being managed jointly by directors in their individual

[Shri Jain]

capacity, bankers are being served by...

Chairman: I think the question was put in the name of a proposition. You better aviod such questions; otherwise we will enter into a long discussion.

Shri Shah: It was leading to another question; that was why I put it.

Chairman: Let us avoid argument and discussions. Only questions in elucidation may be asked.

Shri Chatterjee: What he probably wanted to know was whether it was not of vital importance for the shareholders to know who are the managing agents, whether Birlas are managing or whether Jain is managing etc.

Shri Shah: It is because of the confidence which the shareholders repose in the promoters that they invest their money.

Shri Jain: Yes. Not necessarily promoters. They look into the name of the bankers, they also look into the name of the auditors, the name of the managing agents, the directors—all combined plus the business. All these factors are taken into consideration before the investor puts in his money. It is not promoters alone who are taken into consideration.

Shri Shah: It is because of the confidence which the shareholders repose in the promoters or the management that the investment is made.

Shri Jain: Not necessarily. The invester invests his money after taking into consideration many factors.

Shri Shah: I put it to you that it is of vital importance to the shareholders if there is any change in the management.

Shri Jain: Yes.

Question: And there if there is any change in the management, the shareholders should have an effective voice.

Answer: Yes.

Shri Birla: What sort of change you are suggesting?

Shri Shah: Please do not anticipate me. Take clause 324 of the present Bill. I am only trying to understand the approach of your Federation to this entire Bill—I do not want to enter into arguments. It says:

> "A transfer of his office by a managing agent shall not take effect unless it is approved by a special resolution passed by the company".

It corresponds to section 87B (c) of the present Companies Act.

Shri V. K. Dhage: That requires an ordinary resolution.

Shri Shah: It is not only that. Let us understand the proposition they have advanced. Section 87B(c) of the existing law says:

> "A transfer of his office by a managing agent shall be void unless approved by the company in general meeting".

Here it provides a special resolution. Now what are your comments upon this? The proposition you have advanced in page 88 of your memorandum is this:

> "The Committee would point out in this connection that a transfer of managing agency as such cannot by any means be deemed to be detrimental to the managed company, for the transferee managing agent might happen to be as good in his management as the one he replaced. What is objectionable is a transfer of managing agency to a new managing agent when the new managing agent is such as to give rise to apprehensions of bad management".

Then you refer to clauses 367/368 as a remedy to the shareholders in case the transferee managing agent turns out to be a bad managing agent. I put it to you.

Shri Birla, that even when the existing law requires that the transfer

should be approved by the company in a general meeting, you only want the shareholders to be content with the remedy under 367/368 when the new managing agent turns out to be a bad managing agent.

Shri Jain: What we have pointed out is that the remedy lies under clause 367/368; if something happens which is not desirable, as a matter of solution we have only suggested under clause 324 that the change should take place with an ordinary resolution and not by a special resolution.

Shri Shah: No please. You have said in the last para on page 88:

> "For the foregoing reasons, the Committee would suggest that clause 324 be recast so as to read as follows:
>
> 'A transfer of office by a managing agent who is an individual shall be void unless approved by the company by ordinary resolution' ".

So only in the case of an individual managing agent, you agree that the transfer shall be void unless approved by the company by ordinary resolution, but in all other cases you do not want transfer to be approved by the shareholders.

Shri Jain: This clause 324 relates only to an individual managing agent.

Shri Shah: I beg to differ.

Chairman: Your point is that an ordinary resolution will suffice. According to the existing law, it should be by a special resolution, but you do not want this additional special resolution?

Shri Jain: There are three clauses 324/325/326. In our interpretation, clause 324 only relates to managing agency when he is an individual. In those cases what we are suggesting is this: that in the case of individuals when there is a change. it should be done by ordinary resolution, and when there is a firm or limited company and it is only change of the constitution or change of some ingredient in the firm, there should not be any necessity of an ordinary resolution. I cited the example of solicitors, banks and auditors; the same principle should be applied in this matter.

Shri C. D. Deshmukh: What happens when there is a transfer from one managing agent to another, not being an individual?

Shri Jain: We have suggested that it should be by an ordinary resolution. In clauses 325 and 326, when a change takes place in the constitution of the firm, we have agreed that the change should take place by an ordinary resolution.

Shri Birla: I think there seems to be some confusion about the matter.

Chairman: Let me make it clear. So far as I can find from those who are responsible for the framing of this Bill that clause 324 is not intended for being applied merely to individuals.

Shri Shah: I will point out this. In Section 87BB of the original Act, as it exists today, this clause (c) was introduced by the Act of 1936. 87BB (b), the section which refers to a change in the constitution of public limited companies is one which was introduced by the Act of 1951. Clauses 325 and 326 relate to 87BB(b) and 324 relates to 87BB(c). They want to change even the existing law in a manner which would be something less stringent than even the existing law. The entire approach of the memorandum is to whittle down even the provisions of the existing Act and not merely the provisions of this Bill.

Shri Birla: We must realise what the exact conditions are. The so-called trafficking in managing agency is of two kinds. One is British firms selling the managing agency houses.

(Shri Birla]

Another is passing from one individual's hand to another individual. These are two types of cases. As far as the selling of the managing agency houses is concerned, no Indian firm has so far been sold out. It is only the mills that have been sold out from one hand to another. But, no Indian firm as such has been transferred.

There are certain provisions in this Bill in connection with appointment, re-appointment and renewal of agreement of managing agency. As far as appointment, re-appointment and renewal of a managing agency is concerned, it is a simple majority of 51 per cent. that is provided under clause 310.

Shri Shah: I am not on the question of an ordinary or special resolution. I will come to that later.

Shri Birla: What is provided for in clause 310 is that any company can have a managing agent appointed by a simple majority. That is one proposition.

Now, clause 324 says that in case the same managing agency continues and if the partners or shareholders change, it will require a 75 per cent. majority.

Shri Shah: That is 325; I will come to that. I am only on 324.

Shri Birla: I am speaking of 324. Let me develop my argument.

Chairman: You wanted to know his approach; let us hear him.

Shri Birla: In clause 324 the managing agency house is supposed to have been sold out. It is only the European managing agency houses that are being sold out. I am afraid that there has been some misunderstanding about what we said yesterday. When a company is transferred from one hand to another then it may be a simple majority of 51 per cent., but if it remains in the same hand, it should require 75 per cent. Same hand means the same firm of managing agency though the partners may have changed. Supposing McLeod and Company or Kettlewell-Bullen is purchased by some Indian entrepreneur then it says it would need 75 per cent. majority. But if the company is to be managed by that firm and the Indian entrepreneur gets 51 per cent. of the shares of the company he can get himself appointed as the managing agent. That is a little bit anomalous. The anomaly is this that you are allowing the same firm to continue to manage. We are trying to point out that when an Indian firm buys the European managing agency house, it means 75 per cent. majority. But if he takes over the management of the British company and transfers himself as the managing agent, then he will need 51 per cent. This is the anomaly which we wanted to point out yesterday and we feel that this should not be there. After all, if you transfer the managing agency to your own name, then it is a greater transfer than merely transferring the managing agency house. You are only continuing the same name but you are changing the shareholding of the company. Therefore we suggest that if it is the appointment, re-appointment or renewal of agreement, it should be allowed by 51 per cent., majority. In the case of transfer of the managing agency house also the same should apply and that is implied at the end of page 88, where we say—

> "A transfer of office by a managing agent who is an individual shall be void unless approved by the company by ordinary resolution."

We do not want in this connection that it should not be void if it is the wholesale change of the shareholders of the managing agency. There also we have said that it should be 51 per cent. majority. I think I have been able to clarify the point. If there is any doubt, we will be ready to clarify it further.

Shri Shah: I may tell you what I want. This is not what I wanted. Clause 324 refers to transfer of the

entire managing agency. Clauses 325 and 326 refer to a change in the constitution of the firm or of the private limited company or public limited company who are the managing agents. Now, what I put to you is this. Under 324, it is the same as the proviso under the present 87BB namely that when the transfer of entire managing agency, whether by an individual or a private limited company or by a firm, it has got to be subject to the approval of the general meeting under the existing law. But you wish to confine only to individuals as managing agents.

Chairman: According to how he has understood your memorandum and your statement, Shri Shah says, that you do not want even an ordinary resolution which is now required under the Act in the case of the transfer of the entire managing agency and you now object to the provision that is now being made that it should be by special resolution.

Shri Jain: We have considered the firm and the limited company under clauses 325 and 326. As Shri Shah says they are included under 324 also. After further reading I feel that we should agree with him. What we are suggesting is only that if the whole body is changed, whether individual or firm, then the change should take place by ordinary resolution. We agree with him.

Shri Chatterjee: With regard to the transfer of managing agency, individual or firm or company, under the present law, it should be done by an ordinary resolution. Do you want that to be continued or do you want that also to be changed?

Shri Jain: We want that to continue.

Shri C. D. Deshmukh: You favour the suggestion made towards the end of page 88 of your memorandum? You agree that this change from the present law is unnecessary.

Shri Jain: Yes.

Shri C. D. Deshmukh: The entire position is this. These words 'who is an individual' are unnecessary because it seems to make a change even from the existing law which you do not want to alter. Is it so?

Shri Birla: Yes, Sir. We emphasise that instead of 75 per cent., it should be majority.

Shri Shah: Clause 325 and 326 are based upon section 87B(B) of the present Act. Under the present Act—which was amended by the Act of 1951—the Central government stepped in suddenly to prevent a very bad situation that had arisen and took powers to prevent any change of whatever nature in the managing agency firm where it is a public limited company. Under 325, which applies only to firms, what is now proposed is that after, 51 per cent. of the shares which were held by the original partners are transferred to somebody else then the sanction of the shareholders by special resolution is necessary. Your amendment to this clause is that the change of 51 per cent. should be only within 12 months preceding the last change which makes up the 51 per cent. and, secondly, that it should be by ordinary resolution instead of by special resolution. The consequences of that will be this. Supposing you transfer 40 per cent. of your share-holding in the year 1945 and transfer another 15 per cent. after 12 months—both together 55 per cent.—according to the amendment suggested by you, it will not require any approval of the shareholders. Am I correct?

Shri Jain: Gradual transfer is always taking place.

Shri Shah: That is as regards limited company. I am on firms in the first instance.

Shri Jain: In the firms, there may be some small partners coming in and going out. If they come in and go out but the ingredient of the firm remains the same, then there should be no further necessity of passing a resolution. But, if it is a substantial change that has taken place which amounts to 51

[Shri Jain]

per cent. of the interest, then the approval should be had by passing an ordinary resolution.

Chairman: Therefore, Shri Shah suggests that supposing, instead of transferring 51 per cent at one time, you transfer 40 per cent at one stage and then 20 per cent at another stage, ultimately it would come to more than 51 per cent. That would be the result of your suggestion if it is carried out.

Shri Birla: These marginal cases will always be there, whatever be the position.

Shri Shah: Let us take it generally. If within a course of three years a managing agency is transferred but there is no immediate transfer of 51 per cent at one time, according to you, it need not got the approval of the shareholders. That will be the result of your suggestion.

Shri Birla: In the case of European houses I may explain, where there are partnership firms, a partner comes and goes. When he comes, he is taken as a partner on a small basis, but when he goes, he possibly holds a larger partnership. It is there that this difficulty will arise. For instance, take the case of Bird & Co. So many partners have come and gone, but that necessarily does not change the character of the firm, and it is the character of the firm which we are talking of.

Shri Shah: It may be for the Committee to consider whether a change in the managing agency changes the character of the firm or not.

Shri Birla: If an Indian firm wants to purchase the shares of a European managing agency house, it would not purchase 40 per cent in one year and 15 per cent in another year. It would purchase it straightaway, and the European firm would want to go away.

Shri Jain: There is only one aspect of the question: the partner remaining the same, his interest may change. First he may have an interest of one anna, and ultimately he may have changed his interest to five annas, and in those cases you need not change the consideration. While the individual remains the same, his interest changes.

Shri Shah: I am only trying to point out the effect of your proposal. Under the existing law any change in a partnership is subject to the sanction of the Central Government. Now, you want that even if it is a total transfer by gradual means, it need not be approved by the shareholders, much less by the Central Government.

Shri Jain: The present Act of the Central Government is only a temporary thing, and it came into effect after the Bhabha Committee Report, and it is only for a transitional period. The old Act does not contain these provisions.

Shri Shah: In respect of clause 326 also, if there is a gradual change you do not want the sanction of the shareholders?

Shri Birla: Yes.

Shri Shah: Section 87B was introduced in 1936 with a view to prevent unhealthy transfers of managing agency rights. That proved to be ineffective, and therefore 87BB was put, and the Bhabha Committee after going into all evidence recommended what is now embodied in clauses 324, 325 and 326, taking into account the enormous trafficking in managing rights that had taken place. Knowing that to make proposals which are even retrograde to the existing law,.....

Chairman: On that we can come to a conclusion.

Shri Shah: All that I said is these are proposals I do not expect from the Federation.

Shri Birla: I want to correct the impression again about this trafficking in managing agents.

Shri Shah: If you want to go into that, I can give instances. The Company law is being amended to meet evils which have been discovered.

Instead of trying to suggest remedies to meet these evils, you are suggesting remedies which will increase them.

I will now come to ordinary and special resolutions. I agree with you in this that an ordinary resolution is generally speaking, as you say, democratic, majority rule and all that. A special resolution becomes necessary in special circumstances. I can envisage the difficulties which will arise in clauses 324, 325 and 326. It is in this way. If a rival in business corners 26 per cent of the shares,—it will not be the shareholders; they are poor people nowhere—they will prevent any change in managing agency rights even if the other man holds 74 per cent, and then a situation would arise in which the 26 per cent man will demand a price which will be much higher than what the 74 per cent man would like to pay.

Shri Birla: You seem to agree with us then.

Shri Shah: I do not agree. I will tell you why. In an ordinary resolution what happens is this. The management which transfers, generally has 51 per cent of the shares in order to have its hold so that if the managing agency rights are transferred along with the 51 per cent of the shares of the managed company there can be no difficulty in transfer, because 51 per cent of the shares are automatically transferred with managing agency rights. Therefore, if it is an ordinary resolution only, the transfer of management is bound to be automatic.

Chairman: What he suggests is that if a man were to purchase 51 per cent of the shares and if there is this simple majority, there would be an automatic transfer of the managing agency also.

Shri Shah: That is the reason why a special resolution is proposed in this Bill, because that will come in the way.

Shri Jain: Our reasons for proposing this are very simple. We do not consider that it will be a normal phase that managing agency rights will be sold from one firm to another. It is only a temporary phase in this country. There are large British houses who are not having shareholders in this country but who have still the right of management and they, in due course, are to be transferred to the shareholders who are holding more than 51 per cent of the shares. These managing houses are holding 26 per cent of the shares and we consider that by making provision for a special resolution, you would be perpetuating the position of these British houses for all time. By making it 51 per cent it will be possible that slowly they will be transferred and new Indian companies will come into existence.

Shri C. D. Deshmukh: You would then prefer the retention of the existing law by which all such transfers require the approval of the Central Government. The special resolution was an alternative and automatic operation of the shareholders' wishes instead of approval by the Central Government. The feeling is that although most of these transfers may be right and legitimate, there may occasionally be a transfer which may not be in the economic interests of the country, and therefore under the existing law we have power to approve, which is used sparingly and discriminately. Would you prefer Government to have that power?

Shri Birla: In our memorandum we have suggested that the power which the Government has at present should not be there and this should be left to the discretion of the shareholders. If 51 per cent of the shareholders do not want to retain the managing agent, they should be allowed to send him out. But if it is your view that unless it is 75 per cent it should not be taken away, then the better course will be to keep the power in the hands of the Government.

Shri C. D. Deshmukh: I am sorry to intervene, but this is an important point which illustrates attitudes. We feel there is a danger of managing agencies passing to unworthy firms.

[Shri C. D. Deshmukh]

You may or may not agree. If you say that the evil does not exist, there is no argument. If you are inclined to agree that there may be cases where even you would agree that a transfer would not be in the public interests, even though it is covered by 51 per cent holding, we want to know what we should do in such circumstances. Should we allow this thing to go through or should we try to provide against it? There are two ways of providing against it, because if we merely leave it to the operation of the 51 per cent rule, then we have no check, and as you know, the shareholders themselves decide. We had to choose between two alternatives—either having power which would be exercised in special cases after consideration, after advice and so on and so forth, or making the majority so large as not to make it too easy. If your view is that it would come in the way of legitimate transfers which might even be in the interests of the country, you would be prepared then to agree to special powers of approval being left to Government?

Shri Birla: It is only in exceptional cases that this question will arise. At present you have provided 75 per cent majority and the 75 per cent majority possibly presume that the managing house itself is going to be transferred.

Shri C. D. Deshmukh: Either that or we know that the owners of the concern by a very large majority now decide that it is in their interests. Therefore, a limit has been reached where the State should interfere. After all, if 75 per cent of the shareholders feel that they are going to get a good managing agent, then we say Government should not interfere. It was on that logic that we provided them 75 per cent, but if it is only 51 per cent then there may be a danger of half of the shareholders finding that they have not got a satisfactory managing agent.

Shri Birla: There are two questions implied in this. One is, a managing agency house exists and it wants to transfer wholesale to somebody else. There you have provided 75 per cent. Where, a company wants itself to be transferred to another firm, there it is only 51 per cent. That provision need not be changed because, if the company wants to go out of the management of somebody, it should be automatically free to go out. Even today, for instance, if a company does not want to have a managing agent, the Act does not force it to have a managing agent. Therefore, that provision should not change. In the case of wholesale transfer of managing agency houses if you feel this 75 per cent may be harsh in certain respects, but at the same time you feel that merely the right of 51 per cent may not be desirable, in that case keep the power in the hands of the Government.

Shri Chatterjee: Of the two evils, he prefers the Government.

Shri C. D. Deshmukh: What I understood him to mean was that if you keep 75 per cent you will come in the way of a large number of legitimate transfers. So, they are prepared to concede to Government the right to interfere only in exceptional cases by withholding their transfer.

Shri Birla: Not withholding the transfer. What I said was that if for instance a substantial majority of shareholders want to have the transfer, then you should not stick to the rule of 75 per cent. Government should decide whether even 51 per cent majority, or 55 or 60 per cent is sufficient and whether the transfer should be allowed or not.

Chairman: Government is not concerned with the percentage.

Shri Birla: If a managing agency house wants to be transferred and the managing agency house cannot be transferred unless there is 75 per cent, but if there is a substantial majority which wants it to be transferred, then the Government should intervene.

Shri C. D. Deshmukh: I refer to the existing law by which approval of the transfer is required. I asked you whether you prefer that the present law be maintained.

Shri Birla: But what is the percentage?

Shri C. D. Deshmukh: No percentage.

Shri Chatterjee: Under the present law no change in the constitution of the managing agent shall have effect unless approved by the Central Government. That is all.

Shri Birla: If it is a wholesale transfer of a managing house, we are prepared to leave it to the hands of the Government.

Chairman: The question that Shri Deshmukh has put is quite simple. He says that at the present moment, shareholders may authorise transfer of managing agents by a simple majority. In many cases it may not, but in some cases it may be, that the transfer is not in the public interest. Therefore, he asks whether in such cases you would prefer the present remedy, by which such transfers can be prevented by Government under the provisions which now exists, or would you like to avoid that evil by making a provision of 75 per cent instead of a mere majority.

Shri Birla: We do not want a 75 per cent majority. We want to leave the matter to Government itself. Where the company itself is being transferred that restriction should not apply.

Shri C. D. Deshmukh: I am only referring to the existing provisions of law, which do not affect 324.

Shri Birla: We do not want any change in 309 and 310. In regard to 324 and 325, if there is any change we are prepared to leave the matter in the hands of Government.

Shri C. D. Deshmukh: Your ends and our ends will be met. You are anxious that the ordinary, legitimate and *bena fide* transfers from European to Indian management should not be interfered with. We also agree. But occasionally there may be a case where an undesirable person might try to come in. It is only in these cases that we will interfere.

Shri K. K. Basu: For instance, Kettlewell-Bullen are the managing agents of the Company X. If the Kettlewell-Bullen itself is being purchased by the existing owners then 51 per cent is enough. If the Company X wants to have a different managing agency other than Kettlewell-Bullen, then you want 75 per cent or Government sanction. Is that the position?

Shri Birla: The position is that Kettlewell-Bullen are the Managing Agents of the Fort William Jute Mills. Suppose Fort William Jute Mills are transferred to somebody else. Then an ordinary 51 per cent majority will prevail. If Kettlewell-Bullen itself is to be transferred with the Fort William Jute Mills and half a dozen other concerns, in that case firstly, the shareholders will have to approve with 51 per cent majority, and after that the sanction of Government will have to be obtained. That is only where a managing agency house is transferred.

Shri Shah: For the transfer of managing agency rights, the managing agent is being paid a very heavy price for his rights by the new purchases. Now I have a proposal to make: that for transfer of managing agency rights it should be a condition of the agreement that the purchaser should also purchase the remaining shares at the same price at which he purchases the shares from the managing agents in order that no shareholder may be put to a loss. Are you agreeable to that proposal?

Shri Jain: No, Sir, that will only mean perpetuating the present British Houses.

Shri Shah: If that is the proposal which the Tata Industries have made to safeguard the interests of the shareholders, why do you oppose it?

Shri Birla: When we are leaving it in the hands of Government, surely they will safeguard the interests of the shareholders.

[Shri Birla]

There is no question of transfer of managing agency at all. For instance, clause 324 says:

> "A transfer of his office by a managing agent shall not take effect unless it is approved by a special resolution passed by the company."

There, we are suggesting that in case of 324, 325 and 326 which are the clauses giving effect to it, it should be by ordinary resolution and subject to the sanction of Government.

Shri Shah: Take 324, which you say should not be subject to the sanction of Government, but only by ordinary resolution.

Shri Birla: In the case of 324 there is no transfer of managing agency. After all if the shareholders want to appoint a managing agent they are free to do so. Transfer is only when the managing agency house is transferred.

Shri Jain: These are very difficult legal matters on which we are not in a position to give an opinion.

Shri Shah: Now, there are four other sections of the existing Act which have been the subject of great comment and to which amendments are suggested in the present Bill. Those sections are: 87B, 87E, 87F and 87H. If you refer to paragraph 135 of the Bhabha Committee Report this is what they say:

> "Sections 87D, 87E, 87F and 87H of the present Act deal with some of the most important activities of managing agents. They have been the subject of widespread comment and, in view of the abuses to which they have led, have done more to discredit the managing agency system than any other defaults or misdeeds on their part."

As you know 87D deals with loans to Directors, etc.;

87E refers to loans to managing agents, etc.;

87F refers to interlocking of investments;

87H refers to competitive business.

These are the four sections on which the present Bill has suggested certain amendments. I have taken too much of your time Shri Birla and would not like to go into greater details. But these are the evils which have brought the managing agency to greater discredit than any default or misdeeds on the part of the managing agents. This Bill seeks to meet these evils, or plug the loopholes. Your comments on each of these clauses, 352, 353 and 355, go to show that you do not want even the existing provisions to remain and suggest modifications in the present Bill which will not remove the evils which exist today.

Shri Birla: Firstly we do not agree with what you call evil. In fact we are proud of the achievements—I want to say that.

Shri Shah: Evils of interlocking?

Shri Birla: We are proud of that.

Shri C. C. Shah: You are proud of interlocking?

Shri Birla: Yes, I think the industrial development of this country and of the world would not have been brought about without that. In fact it is only the industrial sector which is providing finance for new industries and if you say that the industry should not invest its own funds, I do not know how industrialisation is going to take place.

Shri C. D. Deshmukh: If I may submit, this question is of importance in a general way because it really implies, first, this question: are you not in favour of taking deterrent action for preventing any evils in the system from arising? Your general answer would be "Yes, wherever there are evils which are serious, some action should be taken; otherwise there will be no companies."

Therefore the question was: In regard to these four sections do you

admit that there are sufficient evils to call for some amending legislation?

Shri Birla: There are four sections to which Shri Shah has referred. One is interlocking, second is competitive business, third is loans to managing agents.

As far as interlocking is concerned, we feel that in view of the conditions obtaining in this country, the incidence of taxation and the necessity of industrial expansion, unless some sort of interlocking is allowed, industrialisation would not make rapid progress. Yesterday I cited the example of various companies in Europe and America having some sort of similar arrangement. You yourself said yesterday that purchase of shares are possible up to a limit by the consent of the directors and beyond that with the consent of the shareholders. You are also giving a fillip in the case of some companies by exempting them from Corporation tax. That also shows that we do recognise the necessity of inter company or company investment in industry.

Chairman: Let us not enter into a general discussion. We know your views, we shall discuss it among ourselves.

Shri Shah: I come to clause 44 which says that the holding of the company must be in its own name, to which you have objected. Let me put this general proposition. One of the evils which you find in the existing law is that by reason of the nominal holdings of shares in the name of nominees it becomes difficult to find out where the real seat of power lies. That is the reason why clause 44 requires that all investments of companies should be in the name of the company. You object to that. You say it should be in the name of banks. I will read to you the evidence of the Indian Banking Enquiry which says that by reason of the shares being held in the name of banks, trafficking in managing rights has become possible.

Shri Birla: You have referred to "trafficking in managing rights". We do not know of any Indian managing agency houses having changes hands. So, this term of "trafficking in managing agency rights" is too wide. There may be some British houses which have changed hands and I do not think you will disagree that this is not desirable.

Shri Shah: I will read their evidence:

> "The Indian Banks Association which appeared before the Bhabha Committee in reply to an enquiry said this:"

The question was this:

> "It is alleged that the holding of shares of joint stock companies in the names of banks facilitates trafficking in Managing Agencies and Managing Agency rights. Is this allegation true and, if so, what suggestion can the Association make to prevent it?

The answer of the Association was this:

> "Although we have no specific knowledge, from the large number of shares held by interested parties in the names of various banks, there seems to be some foundation for the allegation. The remedy for such a situation seems to be that at the time of transferring shares to the names of banks, companies should require banks to disclose the names of the interests for whom the shares are held by the banks."

(Report of the Company Law Committee, Volume I, Part II, Written Evidence—Evidence of the Indian Banks Association, Bombay).

Do you agree with this?

Shri Birla: We have no objection to the shares being disclosed by the banks as to in whose account they have been transferred. But in regard to this question of trafficking, which is being mentioned every now

[Shri Birla]

and then, there seems to be some wrong impression about it. It is only British houses which have sold their concerns or which have transferred their managing agency houses altogether to Indian houses. As regards the question of shares in the names of banks, you do not get accommodation from the banks if you hold them in your own name. May be sometimes you have to have them in the name of your nominees or in the name of banks. It is not the property of somebody, and surely this cannot be an objectionable practice.

Shri Shah: You have no objection to the banks disclosing the names of the true owners of the shares?

Shri Birla: We have no objection. It is for the banks to decide. In fact banks do maintain the register.

Shri Shah: They never disclose them.

Shri Birla: It is for them to decide.

Shri Shah: It should be open to inspection. You also agree to a register being maintained by the company of all its investments, disclosing the names in which those shares stand.

Shri Birla: We have no objection. It will only add to the cost of management of the company.

Shri Shah: I am not worried about the cost.

Shri Birla: You may not be worried, but cost is a very important factor.

Shri Shah: There is another question connected with this. Suppose "A" company holds shares of "B" company, say to the extent of Rs. 50,000. An annual general meeting of "B" company is held at which "A" company has to vote. How does "A" company exercise the vote?

Shri Birla: The shareholders exercise the vote.

Shri Shah: Is it by a resolution of the Board of Directors or at the call of the Managing Agents?

Shri Birla: Sometimes it is by resolution of the Board. Sometimes the management themselves exercise the vote, because the management have investment in several companies. Naturally they must look after the interests of the companies whose shares they are holding.

Shri Shah: Are you agreeable that for investment held by a managing company, its exercise must be through the exercise of a vote of the directors only?

Shri Birla: We have no objection.

Shri Shah: In regard to special resolutions, your Federation has objected to a large number of clauses being made subject to special resolutions. You have enlisted them. Now, the existing law also provides for some special resolutions. Therefore you will agree that there may be occasions when special resolutions are necessary?

Shri Birla: Yes.

Shri Shah: I put it to you that the control exercised by shareholders is so illusory that unless you provide for special resolutions in important matters, their so-called theoretical control will be nil. Do you agree that the control by the shareholders is generally illusory?

Shri Birla: The control by the shareholders is always there, because whenever there is an annual general meeting many shareholders come. They put questions, they sometimes object to certain items, and sometimes they do not pass the accounts. That control is always there. As far as special resolutions are concerned, we do not object to them wholesale. We have only selected some of them which we thought to be very undesirable because that will mean that the working of the company will become difficult. We do not object to the principle of special resolutions which is there. Sometimes, as you yourself pointed out earlier, persons with 26 per cent. share-holding can prevent a special resolution being passed. The progress of the company may be held

up not on account of the matter not being in the interest of the shareholders but due to some extraneous circumstances.

Shri Shah: If I read your list you will find that even on important matters where special resolutions are necessary, you have objected.

Chairman: Please do not take the trouble. We will read it.

Shri Somnath P. Dave: Yesterday Shri Birla stated that there can be no limitation with regard to the number of companies that a managing agency firm can manage. Is it possible for a managing agency firm to manage, 20, 25, 30,—any number of firms with personal care and attention so as to see that nothing wrong happens and to be in a position to say that he is safeguarding the interests of the shareholders quite well?

Shri Birla: The management of companies depends upon the organisation. If a concern has got an organisation, it can manage as many number of companies as possible. A stage comes when if they cannot manage, the shareholders do not subscribe shares and they do not have confidence in them and the companies which they manage go out of their hands. It is a democratic process. As far as the companies are concerned, there may be 100 companies with a capital of a lakh of rupees or there may be just 5 or 10 companies with a capital of Rs. 50 crores. It is not the number of companies or the amount of capital involved which makes a difference. It depends upon the organisation that a concern has got. In other countries also the management have been managing, not one or two but hundreds of companies. Apart from that, each company possibly has got ten, twenty or fifty factories. Therefore, it all depends upon what type of organisation one has.

Shri Dave: Therefore it would be correct to say that it is not so much the person as the efficiency of the machine and the arrangement which is the material point in the successful running.

Shri Birla: The machine is always there. But, the personal element is very great, because ultimately the managing agent or the management lose if they do not manage very well. That is the greatest thing which prevents them from over-indulging. We have seen many managing agencies have gone into liquidation if they over-indulge. This is only up to a point where they are successful that they can expand. If they expand, they must give their time and their expert advice and keep in contact with everything. That is the main advantage of personal management which is prevailing in the private enterprise. Of course, the Government does manage many things. There also.....

Shri Dave: If I may interrupt, Sir, the explanations given to the answers are so long that my time is being curtailed. I require specific answers in a short manner and not these dissertations on certain topics as if I am to learn here. All I wanted to say is if the answer to the first question means that it is not so much the personal care and the efficiency of the management machinery that is responsible, then I should say that all that is made out regarding the personal reputation, personal integrity, personal business acumen of the big houses of business, would be of a secondary nature and not so quite significant. Shri Birla is giving a long reply. I want an answer, yes or no.

Chairman: What is the question?

Shri Dave: You are aware of the fact that in England and other countries, there is no system of management of the kind that we have in India.

Chairman: Are you reading something? What is the question?

Shri Dave: I am not reading. I am trying to get at something.

Chairman: Please ask the question.

Shri Dave: We did not get any specific answer to the second question. My second question is this.

Shri Birla: May I refer to one point which Shri Dave referred to?

Chairman: He was expressing an opinion. We need not have exchange of opinions here. If he asks a question, you can briefly reply.

Shri Dave: Knowing as we do that the managing agency firms can manage as many firms as they can, the remuneration has been put as Rs. 2,50,000. Would it not be a large amount that the managing agency would be drawing?

Shri Birla: The figure has been put as the permissive limit; a maximum up to Rs. 2½ lakhs.

Shri Jain: It is the maximum of the minimum.

Shri Birla: It is stated that the minimum should be Rs. 50,000. We say that the limit of Rs. 50,000 should be raised to Rs. 2,50,000. It does not mean that a company will invariably have Rs. 2½ lakhs. There may be cases where they are given Rs. 50,000. There may be cases where they are given Rs. 2½ lakhs.

Chairman: That is the maximum of a minimum. The question is, is not that too much?

Shri Birla: Suppose a company makes one lakh of rupees. How can you say that that company will pay Rs. 2,50,000?

Shri C. D. Deshmukh: The point of the question is, if there is no limit to the number of companies managed, whatever the minimum or maximum may be, is there not a danger of one managing agency house earning such a lot of income that it would be regarded socially as undesirable.

Shri Birla: You are there to take care of it. In such cases, the managing house does not contain one person. There are a number of people who manage the concern and there are a number of people who divide the remuneration.

Shri Dave: There are certain priorities in payment at the time of winding up of a company. One of these priorities relates to the workers' wages up to two months. Experience has shown that sometimes more is due to the workers. That is being classified now as ordinary credit. Would you agree that all the dues of the workers in arrears at the time of winding up may be considered as a priority demand?

Shri Birla: Workers range similarly as any other creditor. The persons who supply goods and services are more or less identical.

Shri R. Venkataraman: You have in all suggested 189 amendments to this Bill. I have counted them.

Shri Birla: This Bill has got 600 clauses.

Shri Venkataraman: Out of these amendments, you have suggested 116 for the Chapter VI alone. That is the Management Chapter. You have no amendments for winding up, no amendments with regard to Chapters 8, 9, 10, 11 and 12. May I take it that your evidence is intended to present only the aspect of the difficulties of management rather than the general interests of the country or the industry?

Shri Birla: We have been given a proposition, namely the Bill. We can only comment on that Bill. We cannot go out of our way.

Chairman: His point is that you have not suggested any amendments with regard to the winding up and other Chapters.

Shri Birla: Where we have not suggested anything, it means that we are in agreement with what is provided here.

Shri Venkataraman: You are in disagreement with not only the clauses in this Bill in respect of this chapter regarding management and administration, but also with regard to the law as it is.

Shri Birla: We have referred only to the Bill, to the important clauses of

the Bill. There are so many other clauses which we have not thought it necessary to comment upon.

Chairman: You have no objection to the clauses to which you have not referred to in the memorandum?

Shri Venkataraman: Apart from administration, your objections relate to punishment. I shall confine myself only to that aspect. You have suggested in the memorandum that the punishment of imprisonment should be completely withdrawn. Am I right?

Shri Birla: The punishment should be commensurate with the offence. On small, petty matters, it is proposed to provide for imprisonment.

Shri Venkataraman: I put it to you, there is not a single offence in the Company law for which you would like to have the punishment of imprisonment.

Shri Birla: We have not said so.

Shri Venkataraman: Take page 72. It is stated:

> "The Committee are of the view that penalty of imprisonment should be strictly confined to offences involving moral turpitude and is out of place in the Company law."

So that you think that any offence under the Company law does not involve moral turpitude. Is that your point?

Shri Birla: In the Annexure, the clauses which we have included are only those where there is no moral turpitude.

Shri Venkataraman: You say, ".... and is out of place in the Company law." Is it your view that offences under the Company law do not involve moral turpitude and therefore no punishment of imprisonment should be given?

Chairman: That is, I think, too wide and off the mark.

Shri Birla: Generally we have said that where there is moral turpitude there may be punishment of imprisonment.

Shri Venkataraman: On page 72 you say that imprisonment should be strictly confined to offences involving moral turpitude and is out of place in the Company law.

Chairman: That is too wide a statement. Do you propose to substantiate that it is so?

Shri Birla: The stress is on the point that imprisonment should be confined to offences involving moral turpitude.

Chairman: To state ".....and is out of place in the Company Law" is too wide. Is it not?

Shri Birla: You may say too wide in that sense. We mean that where there is moral turpitude only, there should be imprisonment.

Shri Venkataraman: I will proceed to my other question. He seems to think that in the Company law, any offence does not involve moral turpitude. In Annexure I, all the offences punishable with imprisonment under the Company law are listed there.

Shri Jain: Not all.

Shri Birla: We have left out many.

Shri Venkataraman: We will examine the clauses and find out. In the case of an individual committing a crime, it is possible to fasten the *mens rea* or the guilty mind. In the case of a limited company which commits a crime, how would you fix or fasten the *mens rea* or guilty mind? ... is your suggestion?

Shri Birla: A crime cannot be committed by a company as such. The crime is committed by a person and the person responsible should be punished, if he has committed the crime wilfully and intentionally. As provided in the Bill, only if he has knowledge, he cannot be punished. I suppose the same applies to the Government also. If anything has happened, I do not think that for mere knowledge in the course of administra-

[Shri Birla]

tion, any one is hauled up. Only if the person is responsible, he should be punished.

Shri Venkataraman: There are a number of things which a company is prohibited from doing. Take a managing agency company. There are a number of acts which that company is prohibited from performing. So far as the shareholders and the public are concerned, they are acts of the managing agency company. The Bill says that every director is liable. You have objected to that. What is your suggestion with regard to fastening of the liability on the persons who have committed the offences?

Shri Birla: I could not follow the question. We have dealt with the various clauses and we have said whether a particular clause is desirable or undesirable. Where we have remained silent, it means that we do not object to that clause.

Shri Venkataraman: I refer to page 2 of Annexure I: It is with reference to clause 206. Every director in the body corporate knowingly not furnishing information to the company or the auditor regarding payments made to any director etc., is liable for punishment with imprisonment up to six months. You object to this. I ask you, what, in your opinion, would be the way of fastening liability on any individual?

Shri Birla: We have not objected to this clause. We have said that there should be punishment. You can have a reasonable time if somebody is not disclosing information.

Shri Venkataraman: It is a matter of opinion; you may differ from it. But, the Government and the people think that it involves moral turpitude.

It leads to bad administration of the company.

Shri Birla: At least we differ from you here.

Shri Venkataraman: Supposing you were in charge and you had to fix the liability, what is your suggestion?

Shri Birla: Then the liability should be on the person who is responsible for the management of the company.

Shri Venkataraman: In the case of a body corporate, how can that be fixed?

Shri Birla: Generally in body corporates there are certain persons nominated or appointed to carry on certain functions, and it is they who should be responsible.

Shri Venkataraman: What is the difficulty if you have only one class of shares? Why should you have different classes of shares?

Shri Birla: Just as there are different classes of investors who invest in Government securities, household property etc., similarly, there are people who invest in ordinary shares, preference shares and debentures. These are various types of investment. They are not dependent on us. The man chooses the type of security of a particular industry and invests accordingly. For instance, preference shares have more security than ordinary shares.

Shri Venkataraman: Suppose by law we say there should be only one class of shares, what would be the effect?

Shri Birla: The effect would be that you would not be able to attract the class of shareholders who invest in preference shares and debentures, which is quite a substantial portion of the capital.

Shri Venkataraman: Are you in favour of putting a restriction on the number of companies—less than 20—of which a person should be a director?

Shri Birla: We have already replied and said "no".

Shri Venkataraman: Are you in favour of whole-time directors for companies, executive directors as we have in some of the British houses? Would that not enhance the usefulness and efficiency of the company?

Shri Birla: Executive directors are already there. For instance, managing agency houses have their executive directors. This tendency of managing companies through a firm is starting even in Europe. For instance, there shipping and insurance companies are also being managed by firms of "Managers" etc. In fact, in shipping and insurance they have got agents all over the place who are able to canvass business for them and able to supply all the trade etc. Similarly, they also manage, and this tendency is not merely confined to India. It is spreading in other parts of the world also.

Shri Venkataraman: At present there is no law prescribing the minimum number of whole-time executive directors. Would you be in favour of such a law?

Shri Birla: No, sir.

Shri Venkataraman: In your evidence yesterday you said that the managing agency system is useful for bringing in capital etc. There are some well-established companies now. What is the need for continuation of the managing agency system in respect of these well-established industries?

Shri Birla: Because if they were not there, who will manage them? When there is a depression, they are the bulwark of these companies. Some people seem to have the impression that everything will be all right if there were no managing agents. Possibly you are aware that there are about 29,000 companies of which only about 3,600 companies are manufacturing concerns who have managing agents. The failures in the other sector which is director-managed are much more than those in the sector managed by managing agents, and that is self-evident because in the latter case the managing agent has got greater stake in the company and looks after it properly unlike the ordinary director-managed company.

Shri Venkataraman: Has the efficiency of banks and insurance companies suffered because of the absence of managing agents?

Shri Birla: I would not like to enter into that controversy. Many banks have gone into liquidation. You know why. They are director-managed to the detriment of themselves, of their shareholders and depositors. Therefore, you can well understand that the management of director-managed companies is not better than those managed by managing agents. In fact, very few companies under managing agents have gone into liquidation as compared to the other sector.

Shri Venkataraman: Would you like even banks and insurance companies to be transferred to managing agents for management?

Shri Birla: The question has been put to us. We will have to consider it very favourably.

Shri Khandubhai K. Desai: Do you think that if all the suggestions made by you in your memorandum are accepted, there will be any need for this law?

Chairman: What he probably means is that if all your amendments were to be accepted, it may be a good law according to you, but according to some people this law itself may not be necessary.

Shri C. D. Deshmukh: What he means is in that case there will hardly be any amendment of the existing law.

Shri Birla: There are many other clauses on which we have not expressed an opinion. That means we agree to them. In spite of our suggestions there will be a lot of amendment of the law.

Shri C. D. Deshmukh: That is to say you are in favour of or you hold the view that the present law requires improvement in various places?

Shri Birla: Yes. We do hold the view that it requires amendment in certain places, but this is a rather

[Shri Birla]

wholesale change of the Act. We would have preferred piecemeal changes whenever it was found certain clauses required to be changed. That would be far better than changing the whole Act.

Shri Dhage: The object of the changes in the company law is to safeguard the interests of the shareholders. Do you think that by the amendments you have suggested that objective will be fulfilled?

Shri Birla: That is what we think, because we ourselves are very large shareholders in various companies which are not managed by us. This Federation represents not merely companies, but industries, commerce, trade etc. It is composed of all sorts of sections of people including investors, banks, insurance companies, ordinary traders who are the biggest investors. The Stock Exchanges of Calcutta and Bombay are also our members, and they also speak on behalf of investors. There are Investors, Associations, and there are various other associations which we represent, and we are speaking on behalf of the whole investing community.

Shri Desai: As a result of the extraordinary circumstances during the war and post-war periods, it is said that the financial structure of most of the existing companies has considerably improved. Do you agree with this or not?

Shri Birla: In some cases they may have improved. In some cases they may have deteriorated. For instance, the total aggregate corporate sector before the war started was of the order of Rs. 275 crores. Now it has reached about Rs. 900 crores. It has increased to Rs. 900 crores from Rs. 330 or Rs. 440 crores in 1942. Most of the companies which were floated during the war period or the post-war period spent their resources on capital equipment and things like that. Therefore, they are still in an infant stage and they have struggled hard to maintain themselves. You cannot say their financial position has improved, but the position of some of the companies which have been in existence from the pre-war period has improved.

Shri Desai: Has the capital structure of these companies, which has gone up from Rs. 275 to Rs. 900 crores, improved from their own resources?

Shri Birla: This is the capital outstanding. Somebody has to subscribe to it.

Shri Desai: I am talking of the existing industries like textiles, jute, plantation and coal. Let us see whether all these four industries have been able to turn the capital structure from some capital debt to some surplus.

Answer: There are cases, as I said, where the business of a company has improved; there are cases where it has not improved. Some of our largest companies are in need of capital today and the Government of India has very kindly helped them about it. In spite of the fact that they were in existence in the pre-war days, it is they who need money today and they have to go to Government for borrowing.

Question: According to you, Government has come to help some of the industries by financing?

Answer: That is the duty of everybody, to finance.

Question: Duty of Government?

Answer: Everybody.

Question: You have suggested that 2½ lakhs of rupees should be the maximum of the minimum remuneration of those who manage every company. From Rs. 50,000 you want to raise it to 2½ lakhs. Don't you think that even the maximum of the minimum should have some relation to the standard obtaining in the country?

Answer: That is why we have suggested that it should have relation with the magnitude of the company and it would be preferable to link it with sales in the initial stages. If the company has one lakh capital, you cannot charge 2½ lakhs commission,

but if the company has, say, 5 crores capital or 10 crores or 50 crores, may be that you may pay more. But how are you going to calculate that basis? Either it has to be left to the shareholders or it will have to be on the basis of sales. That is what we have suggested.

Question: The earnings of an individual or a group of individuals should have some relation to the general national standard of the country.

Answer: That amount which is paid to managing agents is with the consent of shareholders. Out of that, they have to incur so many expenses; they have to pay their staff, they have to look after so many other people, and whatever is left goes to them. This has nothing to do with what you give to them. There may be cases where the managing agents may be getting large amounts....

Question: The minimum or maximum has nothing to do with the general national standard?

Answer: No, it has nothing to do with that. I think before the Company Law Committee, our biggest managing agency house, Tatas, had given information that over a period of years—something like 15—20 years —70 per cent of the managing agency commission they received went back into the company in the form of losses which they incurred.

Question: Throughout yesterday and today you appeared to believe that it is entirely a matter between the managing agents and the shareholders and the Government should have no voice or interfering powers.

Answer: We have said that this is a law prepared to govern the relation between management and shareholders and it is only for smooth working of this relation that the law is prepared.

Question: You do not think that the Government, as constituted today, has anything to do with the better or good management of companies?

Answer: That itself means the relation between shareholders and management.

Question: And not Government? If a group of industries is not managed properly, is it not the concern of the Government to step in and assist?

Answer: That is why you are providing safeguards for the shareholders. Where the management is bad, the shareholders have the right to dismiss them.

Question: The shareholders and the managing agents also will be able to manage the concern if the government also is able to take effective voice in the administration.

Answer: I could not follow what other effective voice they can have. They can turn out the managing agent. The shareholders have the right to turn out a bad managing agent and in that way their rights are safeguarded. After all, you want that the shareholders' rights are safeguarded. That is why the Bill is prepared.

Question: What I mean is that when the old *laissez faire* policy is receding into the background and a third party in the form of a democratic government is coming in, will it not help?

Answer: You have got so many other pieces of legislation, the Industries (Development and Control) Act and so on. At every stage you find out what the industry is doing and how it has to be helped to properly carry on. So Government is taking some step or other to see to the satisfactory working of the industry.

Question: You do agree that Government has got to interfere in order to see the satisfactory working of the companies?

Answer: That is not in connection with the company law. That is quite a different thing. This relates only to formation and functioning of companies.

Question: Don't you think that when it begins with company law and when it is properly enacted, the other laws

[Shri Desai]

will be of very little avail, and they may not be necessary?

Answer: No, I do not agree with that.

Shri M. S. Gurupadaswamy: Yesterday in the course of evidence you said that it is not democracy to put age-limit on directors and also preventing canvassing and such other things. Do you know that we have a democratic Government based on public opinion and that the consensus of public opinion today in India is against the perpetuation of the managing agency system?

Answer: I do not know what is the consensus of opinion in India. I have not heard that anyone is against the system or the perpetuation of it. But in the law as it stands, what we have been arguing all the time is that the shareholders' voice should be supreme, and if they want to dismiss a managing agent, they should have that right which is a democratic right.

Question: You said also that if the present Bill is enacted as it is, it will hinder the formation of new companies and also will create a lot of difficulties in the way of new entrepreneurs. May I know whether by putting a limit on the number of companies a managing agent can manage, it will not give sufficient room for others to come in the field?

Answer: No, Sir, in this country if there is to be expansion, everybody will have to work very hard. We are hearing everyday from the Prime Minister that everybody should work hard. You are putting a proposition that somebody should not work hard; they should remain content with what they have done and not make any expansion of industry or put up new industries. If that is the proposition, we will have to be told about it.

Question: I am not against the dignity of labour or work. But I want to know whether it is not necessary now to prevent concentration of wealth? Do you think that only a few people should be allowed to control a large number of companies?

Answer: We do not say that it should be the monopoly of a few. Anybody and everybody should be allowed to expand and make as much progress as possible. Then the idea about concentration of wealth is also mistaken, because companies are started not with merely one or two persons; they are started with the capital of every shareholder who takes part in it. You will be surprised to know that we have as many as 50,000 shareholders. They are very democratic institutions.

Question: So it is your view that there is no concentration of wealth in India today?

Answer: You are taking so many steps including death duty that there would be less.....

Question: Is there no concentration of wealth?

Chairman: This is too wide a question. Let us confine ourselves to the point at issue.

Question: You also said that shareholders should not be consulted in the matter of investment by the company. Is it democratic to permit such investments being made entirely by managing agents without consulting the shareholders?

Answer: We have not said that. We have said that the directors should invest. The directors are representatives of the shareholders who are elected by them. We have not said that the investment should be done without the consent of shareholders. For instance, if the Government of a particular State takes some action, it does not have to go to the voters every time. They are the elected representatives of the voters.

Chairman: This point was explained yesterday.

Question: May I know whether you like the idea of giving representation to labour on the Board of Directors?

Answer: Firstly, the reply to the

question is 'No'. The analogy is this. Supposing you employ 10 servants in your house, do you think that they should have a voice in the management of your House?

Question: You are talking so much of democracy... When they occupy a portion of the House.....

Answer: So far as I know, we are not aware that they have occupied....

Chairman: Let us avoid this discussion.

Question: So in your opinion no representation should be given to labour on the Board of Directors.

Answer: No representation. They are not shareholders. But they are not prevented from becoming shareholders. In other countries, they are buying shares. We very much like labour to become shareholders. They will have as much power as any other shareholders.

Shri Jain: We want bonus to be issued in the form of shares.

Question: Look at page 9 of your memorandum. You say there that the present Bill contains a number of provisions which give power to the Central Government to interfere in the affairs of the company for various purposes. You say they are unnecessary. According to you, such interference will lead to corruption and a lot of delay. I want to know what alternative method you suggest? Would you like the setting up of an Independent Commission for administering the Act?

Answer: No, we are not in favour of an Independent Commission and that is why we have not made any reference about it. It is better to have the authority in the hands of the Government. But what we want is that the law should be such whereby the Government do not have to interfere from stage to stage; it should be automatic. If there is anything wrong done anywhere, the remedy should be automatic and the law should prevail. It should not be necessary for any body in the Government or any other authority to take action about it.

Question: You are of opinion that managing agencies in the past have served the country better and they have been responsible for the development of the country. Is it not true that the success of the managing agency in the past is entirely due to the fact that they were favoured by government and it is not due to their competency?

Answer: I do not think so. So far as Indian houses are concerned, we have at every stage been fighting with Government.

Question: You said that managing agency is doing a lot of good to the country. One of the special virtues of it is the provision of finance to industry. May I know whether it is in the interest of the country to depend upon a few managing agency houses for financing various industries and commercial concerns? Is it a healthy sign?

Shri Birla: In fact, we have been saying that we want very many managing agencies. That will come in course of time.

Shri Gurupadaswamy: May I know how many cases of mismanagement by managing agencies have there been during recent times and may I also get information as to how many managing agents are individually running how many business concerns?

Shri Birla: It is very difficult to give the information because we have not got the necessary machinery to collect the information. As far as managing agents' mismanagement is concerned, they have mismanaged and have gone out. We have not got that information; but the number must be very few.

Shri N. Kanungo: You said yesterday that the maximum profit of a managing agency in managing a company is 22 per cent.

Shri Birla: I said that the mode of commission was either 2 per cent. generally on the sales or 10 per cent.

[Shri Birla]

on the gross profit of the company. That gross profit ultimately may work out to something like anything between 20 to 23 per cent. of the net profit of the company. But if it is on sales, then it has to be worked on percentage of sales.

Shri N. Kanungo: When it is on sales, it exceeds 22 per cent?

Shri Birla: If it is on sales, it is on sales whether there is profit or not. Sometimes there may be huge profits and it will be a low figure and come to 2 per cent. and sometimes there may be no profit when it may go up.

Shri Kanungo: When it is on the basis of commission on profits does it also include the commission on sales and purchases?

Shri Birla: No; that is the function of the selling agent or the buying agent and it has nothing to do with the management.

Shri Kanungo: Can you tell me if there has been any tendency in recent times of specialist talent being inducted into partnership in the managing agency houses?

Shri Birla: It is gradually growing. The managing agency firms are taking more and more people who are specialising as chemists, engineers and the like. I know quite a few cases where the sons of managing agents are specialising in various engineering and chemical industries.

Shri Kanungo: I am speaking of outsiders of special talent being inducted.

Shri Birla: That is so.

Pandit C. N. Malviya: While perhaps Shri Khandubhai Desai put a question "Why not the payment of the labourers get a priority on winding up," you said they should be put just like the other creditors. Then the question was asked "Why should they not have any right in the Board of Directors or a voice in the management?" You compared them to household servants. What is the reason? Why should you not give them a voice in the management as creditors?

Shri Jain: Creditors also have no voice in the management.

Pandit Malviya: At the outset when you were making your statement you said you were putting it forward as a businessman. I hope you have no objection if you make this Bill in the form of an Act which will represent all the interests and is more democratic?

Shri Jain: What we understood is that this Bill is intended only to govern relations between shareholders and that is what we considered to be the objective of this. If we are going to have an Act with a different objective, we can express an opinion only when we know that objective.

Shri Birla: Anything that we say, we do not say without keeping in mind the interests of the country.

Pandit Malviya: You said that this Company Bill is not a Bill with a view to the formation of a welfare state. Do I take it that if it is conducive to a welfare state, you have no objection?

Shri Birla: If you accept the amendments which we have suggested it will go a long way to build up a welfare state.

Chairman: Ultimately Shri Birla also accepts it on the ground that it will be in the interests of the country. There is only a difference in the angle.

Pandit Upadhyay: I want to know whether the opinion expressed by you here is the opinion of the executive of the Federation or the opinion of some sub-committee that you have formed or is it the opinion of the constituents connected with your Federation.

Shri Jain: Our system is this. When on any important matter we have to

elicit opinion we send our comments to our constituents. We get their opinions; they are screened by the sub-committee and then by a Committee and then again possibly by another sub-committee. We have a large number of constituents spread over the country. After the information has been screened it is projected.

Question: Are we to take it that this memorandum has been submitted by you after you have circulated it to your constituents and they have given their opinion?

Answer: We first elicit the information and after screening, we make the proposal to the government. Government never likes that we should circulate our comments to all our constituents. First we make our proposals to you and then we circulate them to the constituents. Now, we will circulate it.

Chairman: You please do not circulate them.

Shri Birla: We have to tell our constituents what we have placed before you.

Pandit Upadhyay: Yesterday Shri Birla made a remark that to make enquiries into the affairs of the associate and subsidiary companies and of other directors and others connected with a company, into whose affairs an investigation has to be made, would not be justified. But the difficulty would be that they are so closely connected with the managing agency that unless you know all the affairs of all those companies which are connected, it is not possible to see whether the complaints that were made were justified or not; whether they had any truth about them or not and whether there was any ground for any investigation or not. Don't you think that in those circumstances necessary investigation should be made into the affairs of the connected organisations also?

Shri Jain: We have not followed this point.

Pandit Upadhyay: There was serious objection that when there is an investigation on a complaint made to the government or by the government *suo moto* they should not enquire into the affairs of the associate companies or subsidiary and other connected companies. They should simply enquire into the affairs of the company about which a complaint has been made. I wanted to know whether it was possible to arrive at the truth without going into the details of the affairs of the other connected companies.

Shri Jain: The precise complaint may be enquired into but there should not be a roving enquiry.

Chairman: Supposing an enquiry is started in respect of a certain company. Then an enquiry into the matters of a connected company may also be made for the purpose of that investigation but not a roving enquiry.

Shri Jain: We have suggested that whatever the enquiry, that should be looked into precisely.

Pandit Upadhyay: You have no objection to going into the affairs of other connected companies if they are relevant to the enquiry?

Chairman: If that enquiry cannot be complete without an enquiry into the affairs of the connected company, is there any objection? It should not be a roving enquiry; that is all.

Pandit Upadhyay: As regards relevant points can an enquiry be made in respect of other companies?

Shri Jain: We have not followed the meaning of this. If there is an enquiry about one company, it should be precise and looked into in that company's affairs.

Shri Birla: We have said that in the case of a specific point, the enquiry should be confined to that specific point.

Pandit Upadhyay: Then you object to enquiries into the affairs of other companies for that purpose?

[Pandit Upadhyay]

Then, with regard to special resolutions. There might be certain cases where it may or may not be desirable or proper to allow certain things to be done.

You say that ordinarily special resolutions should not be allowed and you also object to interference by government in the matters of the company. I say there may be cases where certain things which the management does not consider to be proper, the shareholders consider that they should be done. In that case would you like that when they pass it by 75 per cent. that resolution should be subject to the approval of the government and then it would be satisfactory?

Shri Birla: That was in connection with the appointment of the managing agent.

Pandit Upadhyay: Not only in one case but generally.

Shri Birla: Where it is necessary to refer to the shareholders and where a special resolution is necessary—if it is so considered by the Committee we have no objection.

Question: Do you object to the approval of the government in such cases?

Answer: Where there is a special resolution then it should be left to the shareholders. We have objected that government should not take power to interfere in every matter.

Question: But in certain cases it would be desirable for government to interfere.

Answer: That we have agreed.

Pandit Upadhyay: As regards investment in the name of the company, unless the property of the company is in the name of the company, there is a likelihood of the property being misused by the managing agents, the directors or by the executive. Therefore this provision was made that investment should be in the name of the company. Do you think that even without this provision misuse of the property is in a way secured?

Shri Jain: It is not necessary to have the shares and stocks transferred in the name of the company, because by doing that, as we have already explained, there will be a lot of complications.

Pandit Upadhyay: You have said that you put certain stocks with the railways and certain stocks with banks. Is it not possible that there should be some sort of instrument of transfer by which the security need not really be in the name of the bank or railway but the proprietary or mortgage rights may vest in the bank or the railway? Cannot that be possible?

Shri Jain: It is there and if there is any necessity there can be a provision that in the case of properties that are held in the names of some individuals or other organisations a register should be maintained by the company indicating the properties belonging to them and held in the names of others.

Pandit Upadhyay: You mean held *binami* in their name?

Shri Jain: We suggest that all the investments that belong to a company cannot necessarily be held in that company's name. Wherever they are held in others' name, either in the name of a bank, or.....

Pandit Upadhyay: Do not use the word "held"—please say where the proprietorship vests in the company.

Shri Jain: Proprietorship always remains in the hands of the company.

Pandit Upadhyay: If it is held in the name of a particular individual or firm?

Shri Jain: Even then the proprietorship vests in the company.

Chairman: The idea is that you have no objection to making a provision for disclosing these to the shareholders?

Shri Jain: Absolutely none.

Pandit Upadhyay: As regards shares, sometimes mischief is done by issuing different classes of shares by the managing agents or managing directors and others. That is why two classes of shares have been allowed, generally, unless of course consent of Government is obtained to the issue of other types of shares.

Shri Jain: In our opinion these two classes of shares are not enough. There should be more than two classes of shares.

Pandit Upadhyay: What other particular class of shares are necessary, without which you think you cannot work?

Shri Jain: There is a wide range of shares-preferred shares, ordinary shares, convertible loans, convertible preference shares, convertible debentures, etc. These classes of shares enjoy different rights at different stages.

Pandit Upadhyay: When you really need them you can issue them with the consent of the Government.

Shri Jain: That is what we have suggested—that the company should have the freedom to issue shares.

Pandit Upadhyay: And if it is misused?

Shri Jain: Normally it should be permissible: if, however, Government have any serious objection in any specific case they may stop the company from doing so. We do feel that a company must have a variety of shares.

Pandit Upadhyay: Don't you feel that the auditor should have independent status, because if he is to depend upon the tender mercies of the management, he will not be in a position to discharge his duties independently?

Shri Jain: We entirely agree with you in this matter. We do not want the auditors to be under the jurisdiction of the management. The auditors should be appointed by the shareholders and they are being appointed by the shareholders. They are removable only by the shareholders; their remuneration is fixed by the shareholders.

Pandit Upadhyay: Don't you think that sometimes appointment by shareholders means appointment by the management?

Shri Jain: No, Sir, there is not a single company where the managing agents have any right or discretion in the matter of appointment of auditors.

Pandit Upadhyay: A provision has been made in respect of auditors in which Government also has a little hand. Objection has been taken to that.

Shri Jain: We have objected only to Government intervention. We have said that this matter should be left entirely to the discretion of the shareholders.

Pandit Upadhyay: Is there any harm in the provision that the auditor should be removable by Government only?

Shri Jain: We agree that the management should neither have the right of appointment, nor the right of removal of the auditors. This right should vest solely in the shareholders. But we object to governmental interference in this matter. Government, no doubt, have the right to appoint inspectors. If the affairs of a company are not managed well, Government under the measure, have enough powers to rectify matters.

Pandit Upadhyay: Two courses of action are contemplated, if after investigation Government is convinced that the affairs of a company are not managed well. You have objected to it by saying, that it is enough if one action is taken.

Shri Birla: What we have suggested is that on the same count there should not be two punishments. Our Constitution itself provides that a person cannot be prosecuted twice for the same offence.

The liability is either civil or criminal—it cannot be both.

Chairman: What probably is meant is that an act may justify a civil action, or a criminal action or compound it. What your Federation have suggested is that they may take either civil action, or criminal action, or compound it, but action should not be taken under both the heads.

Pandit Upadhyay: In regard to clause 243 you have said that there would be a deadlock, because 51 per cent. of the majority would suggest some names and the 49 per cent. of the shareholders might suggest some other name. What is said in that clause is that only the men of the managing agent should be avoided.

Shri Birla: And also their associates which is a very wide term. I will give you an instance of what will happen. Suppose a company is controlled by four or five persons. The majority control that company and the minority is not allowed to control it. Suppose the managing agents want to appoint a man of their own. Would you want to have a man who has some stake in the company or do you want to appoint a man who is not interested in the company? Do you ever think that a man who has no interest will ever safeguard the interests of the company? You say that the associates of the managing agents cannot be appointed, but anybody else can be. What interest can that "anybody else" have in the company? Is he going to be better than those people who are interested? It will only lead to a deadlock. Suppose the managing agents want to nominate their representative and the others say they would not allow him to do so. Then there will be no board.

Pandit Upadhyay: You advocated yesterday the issue of no par value shares. Don't you think that these no par value shares are likely to be misused by the managing agents? At times they might issue shares at a discount to get their own men; and later they might have shares with a premium to prevent their purchase by others.

Shri Birla: No par value shares, or any shares for the matter of that, can be issued without the consent of the shareholders. It is the shareholders who will decide whether to issue them or not, and they will generally issue directions to the Board and the Board will sell shares at the prevailing market prices.

Pandit Upadhyay: Will that not complicate accounts?

Shri Birla: All the capital which comes is credited to the reserve fund.

Pandit Upadhyay: You will realise the mischief it is capable of creating.

Shri Birla: This is a system which has become very popular in America.

Pandit Upadhyay: Yesterday a question arose as to whether the decision about transfer of shares should rest with the Government or with the courts. Don't you think that resort to court is likely to be more expensive and the procedure more technical and dilatery, while if you go to Government you are likely to get a decision much more speedily? Instead of considering only the technicalities, all aspects of the question might be considered by Government. I was feeling that that point was not clarified.

Shri Birla: The existing practice is to go to the court, and we think it is better to continue that, particularly as it has not operated harshly to any interest so far.

Pandit Upadhyay: If your fear is that the officers may not be competent, do you think that with competent officers this would work better?

Shri Birla: It is a question of taking judicial decisions. If the man takes a judicial decision, we have no objection.

Shri S. C. Karayalar: With regard to the question of registration of transfer of shares, it is left to the directors either to consent or to refuse. Don't you think it will be advisable to give absolute freedom to transfer to the shareholder in the case of fully paid up shares?

Shri Birla: The objection applies to fully as well as to partly paid up shares. Partly paid up shares, you cannot transfer at all unless you know

that the party is a sound party. As far as fully paid up shares are concerned, there also the power should not be there that they are automatically transferable. After all it is a question of whom you want to take as partner in your company. If the party is an undesirable party, the director should have the possibility of saying no. If the director refuses unjustifiably, the question is who is to take the decision. We have suggested that the decision may be taken by the court.

Shri Karayalar: Are not fully paid up shares really the property of the holder, and, as such, subject to the ordinary incidence of transfer, etc.?

Shri Birla: When a person buys the share, the directors may transfer or not transfer it.

Shri Karayalar: Should that discretion vest in the directors at all under the articles?

Shri Birla: It should. Because, shareholders could abuse their position for creating trouble and for holding up the progress of the company or trying to say something derogatory against the management and so on.

Shri Karayalar: Will it not be against the ordinary law that a person may hold and dispose of his property at his will?

Shri Birla: Yes, but if he wants to transfer it, then the remaining partners of the show, that is the other shareholders should have a voice whether to take a new partner or not.

Shri Karayalar: It is not the shareholders who refuse but the directors.

Shri Birla: Directors are representatives of the shareholders. They can be turned out by the shareholders.

Shri Karayalar: Are you in favour of prescribing minimum qualifications in regard to shareholding for directors?

Shri Birla: No, because it depends upon the size of a company. If it is only 10,000, you cannot say that each shareholder should hold a thousand rupees worth of share capital.

Shri Karayalar: In the Bill there is no qualification prescribed.

Shri Birla: Except that he should be a shareholder.

Shri Karayalar: Even that is left to the articles now.

Shri Birla: But the articles will have to provide that the director will have a share. Otherwise he will not be a director.

Shri Karayalar: Not necessarily.

Shri Birla: No. Because, whom is he going to represent on the Board?

Shri Karayalar: The articles may provide for the appointment of directors without holding any share.

Shri Birla: That is only managing agency directors. They are directors there to represent the managing agents. The others are representatives of the shareholders, and they will have to have at least one share to qualify them to be shareholders.

Chairman: By articles they have to provide for a share qualification.

Shri Karayalar: But the Bill does not provide for the holding of any share.

Chairman: It is now left, and in the Bill also it is left.

Shri Karayalar: There is a provision in the Bill providing for the compulsory holding of Board meetings every two months. Do you think it is a safe provision?

Shri Birla: It is a little bit too wide a provision to have a Board meeting every two months. It is not necessary. I was looking into the position about some meetings of managing agents, including one or two companies controlled by Government. There also they did not have meetings every two months.

Shri Karayalar: But this Bill provides for it.

Shri Birla: We have not yet objected to it, but I think it is a bit too wide a clause.

Shri Karayalar: Will you be in favour of prescribing a minimum number of meetings?

Shri Birla: At least one meeting has to be held before the accounts are passed.

Shri Karayalar: That of course is necessary.

Shri Birla: You may say two meetings a year. But this provision to have a meeting every two months may be hard. In some cases meetings are held every fortnight. It is a matter for the directors to decide as to how and when a meeting is necessary.

Shri Karayalar: You are against a compulsory provision?

Shri Birla: Yes, I am. We have not objected to it because we thought it was not worth while as it is not such an important matter.

Shri Mulchand Dube: I am not very familiar with the working of the companies or of the managing agents. So I want a little information from you. I want to know whether the managing agents have any groups among themselves for certain purposes.

Shri Birla: There is no such thing as groups. I have not heard of any such thing. Certain individuals join together, and such things become partnerships or companies.

Shri Dube: Are there no independent managing agency companies who have formed a sort of cartel among themselves?

Shri Birla: Managing agency is open for everybody. Anybody can become a managing agent. We have not got a monopoly of that.

Shri Dube: I do not mean that. Have any existing managing agency companies tried to join together and form a cartel?

Shri Birla: I have not heard of it.

Shri Dube: You are objecting to the Government taking powers to interfere in certain cases. Do you or do you not agree that in certain cases there have been malpractices and mismanagement by the managing agencies—I say in certain cases.

Shri Birla: Mismanagement of a company is not the monopoly of managing agent.

Shri Dube: I am not saying monopoly at all. I am asking whether or not there have been cases.

Shri Birla: There may have been some cases of mismanagement. The shareholders have pointed them out.

Shri Dube: In the case of mismanagement, apart from the shareholders being compelled to go to court, do you think there could be any other remedy except interference by the Government?

Shri Birla: I do not think there can be any remedy for a man not acting intelligently. After all, if a man commits a mistake, for that he suffers as well as his associates—"associates" means in this case the shareholders. The only remedy is that the shareholder who entrusts his funds to a managing agent must be careful to see that he is a man who will manage it properly.

Shri Dube: Suppose there is a case of mismanagement and the shareholders are not able to protect themselves. Will you or will you not agree to give powers to the Government to protect the interests of the shareholders?

Shri Birla: The Government has the power and they are going to take the power under the Bill to investigate into the affairs of the company.

Shri Dube: You have no objection to it?

Shri Birla: No, we are not objecting to it. In fact it has been there all along.

Shri C. R. Chowdary: In reply to a question from a colleague of mine you

stated that your interest is the country's interest and the country's interest is the interest of the company and its management. If that be so, are you prepared to work as managers or directors or otherwise for a minimum remuneration, say, 5 per cent of net profit?

Shri Birla: I take it your proposition is: Can managing agents work on 5 per cent commission?

Shri Chowdary: In the interest of the country.

Shri Birla: In the interest of the company they can work free also. In some cases they have not charged any managing commission for years and years. The commission is charged when the company prospers; they want to partake of the prosperity. When it does not, they are also sufferers in the sense that not only they do not charge commission but they lose also. But you might be aware—it is in the Bhabha Committee's Report—that the managing agents' commission is not only profit earned by them; it is a sort of profit out of which they will have to incur various expenses, including losses which are suffered by them, so much so that in the case of the biggest managing agent in India as much as 75 per cent. of the commission was paid away in losses.

Shri Chowdary: Therefore your answer is suggestive that the primary consideration of a company is its self-interest, and the interest of the country is secondary?

Shri Birla: Everybody works for himself first and then for the country!

Shri Chowdary: Therefore, we have to accept your statement, that your interest is the country's interest, with some pinch of salt?

Chairman: I think, Shri Chowdary, this is a general discussion about a particular proposition and we may have different views about country's interests, etc.

Shri Chowdary: But, these are statements of vital importance.

Shri Birla: The vital importance to the country is that everybody's standard of living should rise and I am happy to say that the managing agents and the private sector of industry have done their best to improve that.

Shri Chowdary: Don't you think that limiting your remuneration to the minimum possible would be a contribution to the interests of the country in general and to the raising of the standard of living of the people?

Shri Birla: I am not able to catch the question.

Shri Chowdary: I will go to the other point.

In page 9 of your memorandum, you have stated:

> "Indeed it is very likely that it will lead to corruption if companies have to approach the officers entrustec with such powers for permission in respect of various matters."

May I know whether this statement is based upon a broad assumption that the officers are in general corrupt? Is it because of your past experience that you make this statement?

Shri Birla: We have only said that it may lead to corruption. We have not said that Government officials are corrupt.

Shri Chowdary: My question is whether this statement is based upon a broad assumption that in general the officers are corrupt, based upon your past experience.

Shri Birla: You are trying to say something which we have not said. We have not said anything of that nature.

Shri Chowdary: We do not expect a witness to make a statement not based on material.

Shri Birla: We have not made any statement. We have expressed only an opinion that it may lead to corruption.

Shri Chowdary: What is the basis of this statement?

Shri Birla: The greatest material is human nature.

Chairman: Let us leave it at that. You cannot go further than that. It is not a cross examination.

Shri Chowdary: In giving evidence yesterday, you postulated a concept about democracy and all that.

Chairman: I think we have had enough discussion about democracy and all that. You may go to other important points.

Shri Chowdary: In the management of the company, the concept of democracy consists in the possession of wealth. Is it your idea?

Chairman: That question does not arise. Otherwise, there will be no end to this sort of discussion.

Shri Chowdary: Are you in favour of Indianising the managing agency system in India?

Shri Birla: It is already taking place. We are not in favour of compulsorily dispensing with any managing agent even if he is a foreigner.

Shri Chowdary: Are you in favour of at least making a provision that in every directorate there should be an Indian national?

Shri Birla: We have never thought of that proposition. I think all the companies have Indian directors, as far as I can see.

Shri Chowdary: The question is whether there should be such a provision or not.

Shri Birla: I do not think that that would help.

Shri Chowdary: Supposing all your amendments and deletions are accepted, would it not result in no control by the Government over the conduct of the companies?

Shri Birla: That is what we have said.

Prof. G. Ranga: May I ask the witness whether in the opinion of their Chamber the managing agency institution is indispensable for the economic development of India?

Shri Birla: In the conditions as they are in India, it is absolutely indispensable. In other parts of the world also as I explained earlier today, the same system is being gradually followed.

Prof. Ranga: What is the view of the Chamber in regard to the possibility of some date or period by which it could be replaced by some other system?

Shri Birla: There does not seem to be any other alternative.

Prof. Ranga: Therefore, the Chamber is not in favour of the provisions of this Bill in regard to the periods that are suggested there that the present managing agencies will have to vacate in a number of years?

Shri Birla: The provisions of the Bill are that the managing agencies should be re-elected or re-appointed or nominated after a certain number of years. We have said that the periods prescribed are on the short side.

Prof. Ranga: Supposing some of the shareholders of some of the companies decide in favour of terminating this managing agency system for themselves. What system, according to the Chamber, is likely to be most suitable to take its place?

Shri Birla: If the shareholders want to dispense with them, there is nobody to prevent them.

Prof. Ranga: What is the view of the Chamber as to the possible alternative?

Shri Birla: That depends on what the shareholders think.

Prof. Ranga: Your Chamber has not thought of any alternative?

Shri Birla: We have not thought of any alternative because we cannot find any so far. If there is a possibility, people would have started it. You may be sure that we are quite enterprising at that.

Prof. Ranga: In view of the fact that the Government have started a number of companies, themselves having a predominant place, with their own managing directors and so on, this has provided one kind of alternative. Has the Chamber ever thought of the possibility of extending that system to some companies which we have today under the joint stock system?

Shri Birla: Yes. That matter has been seriously under the consideration of the Federation though we have not yet come to any conclusion so far. But, we feel that the type of management of the Government companies is not very conducive to the proper management of those concerns. We think that they should also be ultimately handed over to private enterprise.

Prof. Ranga: Your Chamber would like that there should be no Companies Act at all, that the joint stock companies may be allowed to deal with managing agency system and all the shareholders and that they can be expected to settle their affairs among themselves?

Chairman: That is their view.

Shri Birla: That is not our view. Prof. Ranga says that it is our view that there should be no Companies Act at all. We have not said that.

Chairman: Shall I put it more bluntly? Some people are of the opinion that if the Companies Act were to be amended in the terms that you have suggested, it is better to go without any law at all.

Shri Birla: We have not said that.

Shri Basu: Do you still hold the view that the main purpose of the Company law is to guide *inter se* the relations of the shareholders?

Shri Birla: Yes, guiding the relations of the shareholders and the managing agency.

Shri Basu: In his capacity as a shareholder?

Shri Birla: The managing agent as the representative of the shareholders.

Shri Basu: May I draw your attention to page 14 of the Bhabha Committee Report? There has been a quotation from the evidence tendered by the *London Economist* before the Cohen Committee and their view-point has been commended by the Cohen Committee and by our Committee. The relevant sentence runs thus:

> "It is also clear that the execution of Government's economic-policy must itself very largely operate through the medium of companies."

Do you accept that proposition?

Shri Birla: That means that all industrial development has to be through the means of companies.

Shri Basu: Therefore, any legislation for the guidance of the companies and the manner in which the companies should be run should also reflect the economic policy which the community through the Government at a particular moment wishes to follow.

Shri Birla: This refers only to the management of the companies. It postulates that companies will start functioning and will carry on the trade and industry of the country. To that extent Government will have to postulate its hopes that Government also will carry out the production and distribution functions of the country through companies.

Shri Basu: If the Government decides that even the private sector to some extent should follow a particular pattern of company law, necessarily they will have to reflect the opinion of the Government.

Shri Birla: That you are already doing, I think. When you are amending the Company law, you are trying to regulate the functions of the companies.

Shri Basu: I want to know whether you subscribe to this view or not. You say that the law is for guiding the relations of the shareholders.

Shri Birla: You are trying to regulate the functions of the shareholders *vis-a-vis* the managing agents.

Shri Basu: I refer to the economic policy of the Government.

Shri Birla: That will be only after the company is formed. You expect the company to function in the production and distribution of the country's industry or trade.

Shri Basu: Even in the formation of the companies certain norms have got to be fixed so that the body corporate may reflect the intention of the Government so far as the economic policy is concerned.

Shri Birla: I do not think that that is a correct view. The norm is to fix what is going to be the relations between the various persons who want to take part in the management and running of these industries. Once this has been fixed, the companies have to start production or distribution. At that stage, Government may come forward with something else if they want to utilise them as the machinery through which to function.

Shri Basu: Suppose the Government wants or the necessity arises that a particular company should be taken over without legislation or the Government wants to appoint a director of its own, who may not be a shareholder. Such a provision should necessarily be made in the Company law. Otherwise, the Government cannot exercise those powers.

Shri Birla: We do not agree with that view. That means you are creating a sort of differentiation between an association of persons who form a company and a partnership that does not form a company.

Shri Basu: My point is this. If the Government wants that the private sector should behave in a particular way, to get its intention fulfilled, it must have powers. It must provide for such powers in the legislation itself. Otherwise, Government cannot take those powers.

Shri Birla: The powers already in the hands of the Government are numerous.

Shri Basu: Do you agree to the proposition that the Government, in the interests of the community and in pursuance of their economic policy, must provide for the power in the legislation itself?

Shri Birla: I do not agree. I do not think Government will have 30,000 directors.

Shri Basu: May I suggest to you that the existing form of management in other countries like the U.S.A. or U.K. or any other European country may not necessarily be suitable to the conditions of our country?

Shri Birla: That is so, but I find that the type of management which you are thinking of—the managing agency system—is gradually starting even in the U.K. They call them Managers and Secretaries.

Shri Basu: Do they have more or less the same powers and functions as our managing agents?

Shri Birla: It is almost the same type as ours. There is another type of firms called industrial executives. You hand over a company to them for management. They will start the company, produce and run it for you for as many years as the shareholders want.

Shri Basu: But is it not true that these corporate Managers are subservient to the Board of Directors, whereas in our country the managing agents

themselves have a share in the directorate?

Shri Birla: There also they share. They are not merely servants.

Shri Basu: Do they have to own certain shares in the company?

Shri Birla: Not necessarily. They may own or not.

Shri Basu: But here the managing agents must have a certain interest in the company.

Shri Birla: Here also the position is the same.

Shri Basu: You have said managing agents have been helpful to provide the know-how in the initial stage of the development of industries. In the case of those industries which are already established like jute, tea, cotton coal mines etc., do you still insist that the managing agents have yet to play an important part, or can we do without them?

Shri Birla: I think managing agents have to play a very important part, and the most important part is that they or their friends control the shares and thereby they have an interest in the company. The interest in the company being there, they look to the profit and gain side of the company very considerably than a person who is not interested in the financial structure or profits or gains.

Shri Basu: One of them might work as managing director and the others can still have the same interest in the company.

Shri Birla: The difference is that he will be only one person. When there is a group, they are all interested. The moment one person is interested, others will not have any interest.

Shri Basu: If there is a company and the managing director owns 50 per cent. of the shares, instead of owning it in his own name, he may split it and have it in the names of several individuals. The interest will remain the same.

Shri Birla: I feel the system will not work here. If the system were possible, it would be very easy for anybody to take over a company and start managing it in that way. It is not prohibited under the law. Anybody can become a managing director even today. It is because it is not workable that the system is not expanding.

Shri Basu: I understood you to say yesterday that in the United States the Chairman and Deputy Chairman are individuals who come up from the lowest ladder and have the same interest in the running of the concern. Can we not have that system here?

Shri Birla: We are still far away from that position. Our economic condition does not permit our going in for that experiment.

Shri Basu: May I know what percentage of the working capital of companies is provided by the managing agencies through their own means, or their subsidiaries or on their guarantee?

Shri Birla: It is very difficult to get the figures, but somebody said yesterday that about Rs. 150 crores were lent to the industrial sector by banks. At least two-thirds of that must be on the guarantee of the managing agents. It may be even 75 to 80 per cent. The banks provide finance only on the guarantee of the managing agents. There are also cases where the managing agent goes and borrows money in the market in his name. There may be cases where the companies borrow money from others, not banks but outsiders, with some sort of guarantee of the managing agent, or it may be that the managing agent is good and people entrust some money to the company. In Ahmedabad, when people see a chimney arising from the ground they enquire who is the managing agent, and if he is a man to be trusted, they wish to help him. Even the agricurists do not draw the money for the cane they supply

[Shri Birla]
Like that Managing Agents are able to get finance either directly or indirectly.

Shri Basu: If the managing director of a company is the chairman of a bank, or if two or three directors of a company are also directors of a bank, would it not be possible to arrange the required accommodation for the managed company from the bank easily.

Shri Birla: Unfortunately it has not happened that way so far. It does not seem to be possible. The Chairman himself has got less value when he is also a member of a managing agency firm. It is the collective security of the managing agents which is a bigger thing than individuals.

Shri Basu: These managing agency firms are constituted by more or less a particular group of persons either joined together by relationship or friendship, who try to provide the accommodation.

Shri Birla: They provide the accommodation.

Shri Basu: If instead of some persons who constitute a firm, they have an individual director who is connected with the lending company and the loanee company, then it will be possible to arrange for the loan.

Answer: It has not been possible. That is why they have not started having individual managing directors.

Question: To a large extent, it is the individual whose credit determines the credit-worthiness of the particular concern. We have seen, especially in Bengal or in the old times in other parts in the formation of banks and other companies, persons are taken who are not necessarily businessmen but they have other qualifications. For instance, may not be a businessman, but he may be the Chairman of a particular bank or a company and to a large extent, the shareholders are guided by his name.

Answer: The shareholders are guided by the respectability of the individual.

Question: He may not be very well known so far as business experience is concerned.

Answer: May be, but he is respectable.

Chairman: Respectability and financial credit are two different things.

Answer: Respectability in financial matters means credit-worthiness. He is credit-worthy, therefore, shareholders entrust their capital to him. Before independence, some Rajas were directors; they did not know about business; but they were credit-worthy and therefore people entrusted them with their money.

Question: We also know from experience in Bengal that in spite of these well known individuals associated with banks, a bank went into liquidation causing great distress to shareholders.

Answer: I am painfully aware of the amount of distress caused to depositors.

Question: Therefore, instead of having 'sleeping' directors, we would like to have whole time directors who will be able to give more attention to the running of the company, who are responsible to the community and the shareholders.

Answer: It is those whole time directors who were there who were responsible for that.

Question: There are also these whole time directors who to a large extent are exploiting the good name of individuals who possibly only lend their name.

Chairman: Let us drop out that Bengal matter. Is there any definite suggestion?

Question: Therefore it is a much better proposition if we limit the number of directorships an individual can hold so that he would be able to

give more attention to the particular job with which he is concerned.

Answer: The case you cited has been such a case where directors were giving particular attention to the bank. Therefore, it depends not on the director paying more attention or not, it depends on the individual. It also shows that the managing directorship system is not better than or at least is not as good as the managing agency system.

Mr. Chairman: What is the question?

Question: My question is this. We have tried to put in a clause limiting the number of directorships an individual can hold. The intention of this is that the directors should be able to give more attention to the companies with which they are concerned. Their names should not be exploited. That is what we want. He said there should not be any limitation. If this proposition is accepted.....

Chairman: He does not accept any proposition. Even if he accepts, it does not matter. He cannot be cross-examined. Only some information may be elicited. He holds one view and we hold another. We need not go beyond that.

Shri Basu: What witness has said contradicts what he said before.

Chairman: To that extent, we will decide what value to attach to it.

Question: After hearing the full 6-hour discussion, he may change his view to some extent which may determine.....

Chairman: I do not think so.

Answer: It strengthens my argument actually.

Chairman: His views will not be changed by any examination.

Question: You said that the high percentage of remuneration to profit is provided for the managing agency system in our country because in other countries the promoters have interest in shares. If a provision is made whereby promoters are given certain interest in shares, they will be satisfied with much less remuneration than is provided for? Will that be a solution to your difficulty?

Answer: No. That is not the system prevailing in India.

Chairman: He is putting a hypothetical question whether a lower remuneration can be provided for if they are given a certain amount of shares.

Answer: It will not serve the purpose.

Question: Regarding details of prospectus, I find from your memorandum that you do not like such details to be given. Don't you think that in order to create interest in the ordinary people so far as industrial development is concerned, it is necessary that details should be there so that they would be able to understand the real affairs of the company instead of having so many 'sleeping' shareholders as we have under the existing order?

Answer: I do not know which details you are referring to but we have not said that there should be no prospectus.

Question: You have criticised the provision in the Bill and said that it is not necessary that the details of prospectus should be there. The details will actually help the shareholders to understand the real affairs of the company in a much better way and that will possibly create an interest among them to look into their investment.

Chairman: I think it is too vague a question.

Question: It has been said that in the penal provision you want to add the word 'wilfully'. There are quite a number of things. I do not know who will determine what is 'wilful'. The directors may be asked by the investigating officer to furnish certain information and the directors might refuse. In that evant you said that

[Shri Chairman]

unless the refusal is 'wilful', there should be no penal provision. Who is to determine whether it is 'wilful' or not?

Answer: Usually the person who administers the law determines or the judge, whoever he may be—he determines.

Question: May I put a hypothetical case. Suppose in your company.

Chairman: We know it.

Answer: With the equipment of so many lawyers that this Committee has, they can determine it.

Question: If you will allow me to put this question, I will put a hypothetical case. Suppose in your company an employee, a cashier, comes to office one day at 11·15 instead of the scheduled time of 10·30 and as a result of that you suffer. Do you think in that event disciplinary action should be taken against that employee, and a provision should be made whereby action is taken against him if an employee has committed a breach of discipline wilfully? I want to know the intention.

Answer: You cannot dismiss an employee; it is so difficult.

Shri Dhage: Please refer to page 50 of your memorandum. You say:

> "The Committee would like to point out the difficulties of directors of companies as a result of the delays made by auditors in auditing the accounts of the company. Either due to the auditors being over-burdened with work or for *other reasons,* they take a considerable time in auditing the accounts of the company".

I would like to know first as to what is meant by 'other reasons'.

Answer: It may be illness; there may be something else; you cannot always anticipate these things. The assistant concerned may be ill or he may have some marriage in the family. We cannot anticipate what are the contingencies that arise. Or there may be some death in the family. These reasons do arise and he is not able to submit the balance sheet in time.

Question: Do you not think that the auditors have their assistants to do the work?

Answer: The auditors have assistants. The assistant who deals with a particular company may fall ill. Then the other man will have to start all over again.

Question: For that you want auditors to be punished?

Answer: What we have said is that the period of time should be lengthened. The company should not be held responsible for it.

Question: Just as there is a limit placed on directors that they should not hold directorships in more than 20 companies so that they may not be overburdened with work, do you like that there should be a similar limit placed on auditors also in regard to the number of companies they can audit?

Answer: No, we do not think so.

Question: Why?

Answer: Because they employ so many persons, and there are partners.

Question: Here is a question of the capacity of the auditors to undertake certain work and you think that the capacity is limited. That being the case, does it not follow that there should be some limit placed on the number of audits they should hold?

Answer: It depends on the type of concern. There may be a concern which has a small amount say, Rs. 10,000 which will not require more than one or two hours time to audit. There may be a concern with very large ramifications. Are you going to distinguish between small and big concerns?

Question: Then the reason of auditor's marriage will not hold.

Answer: It does, for the particular man who is doing the work.

Shri Dhage: Please refer to page 7 of the memorandum where you have said—

> "The shareholders must exercise

their judgement in choosing the company in which they will invest. If their choice is bad they have themselves to blame."

May I therefore say that you mean thereby that all the provisions that are there to safeguard the interests of the shareholders are unnecessary?

Shri Birla: We have not said that.

Shri Dhage: Then what do you mean by saying that they have themselves to blame?

Shri Birla: In spite of the safeguards, the shareholder may lose his capital if his choice is bad. That is, if he chooses some company which may be unsuccessful in spite of good management.

Shri Dhage: The context of the other paragraph is with regard to the management than the shareholders. You have said that there should be stringent provisions in the Bill in order to take care of the interests of the shareholder. Then you say if there is something which happens, it is the shareholders themselves that are to blame. So these provisions are unnecessary.

Shri Birla: With the best of intentions, sometimes a company does not work well. There have been some instances wherein people came forward with good intentions to start companies. They started as managing directors and the shareholders came to grief and in some cases the companies had to be taken over by Government. The men who started those companies had the best of intentions but they were unsuccessful in their efforts. The choice of the shareholders was therefore wrong.

Shri Dhage: You do not need any provision for misdeeds?

Shri Birla: There is no misdeed; they did their best but yet the companies did not succeed.

Shri Dhage: There is evidence before us to show that the managing agency has been a curse. People have said that instead of their being an advantage they have rather proved a curse. That being the case, do you think that there should be no stringent provisions?

Shri Birla: If my judgment has been wrong then what is to be done about it?

Dr. R. P. Dube: I think Shri Birla must have read the report of the Company Law Committee, and the evidence that was given before it by the Registrar of Joint Stock Companies, Bombay, who had thirty years' experience. He says, 'I strongly feel that the system of managing agents should be abolished.' Towards the conclusion, he says, 'The Indian Companies Act has been so cruelly abused that many people have lost their faith in joint-stock enterprise.' How does the preamble to your memorandum compare with the views expressed in this report? You say that the Bill is 'unnecessarily long, verbose and complicated'. You also say that the machinery of industrial and company management is already difficult and complicated and has been made more complicated. You go further and say about the powers of the Government that there is likely to be undue interference by them in the day to day administration of the company which will lead to corruption. Do you think that without this there will be less corruption?

Shri Birla: In this connection, I will refer you to our memorandum page 1. It says that the Company Law Committee themselves have not accepted this. The proof of the management or the corporate sector is that during the last three or four years the capital has gone up by Rs. 250 or Rs. 300 crores.

Shri Chatterjee: I suggest that we adjourn till day after tomorrow. There are four of us who want to put questions and we will finish in one hour. We shall have to trouble Shri Birla.

(Witnesses then withdrew)

(The Committee then adjourned)

THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953.

Minutes of Evidence taken before the Joint Committee on the Companies Bill, 1953.

Friday the 9th July, 1954 at 10 a.m.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

LOK SABHA

Shri Chimanlal Chakubhai Shah
Shri Awadeshwar Prasad Sinha
Shri V. B. Gandhi
Shri Khandubhai Kasanji Desai
Shri Dev Kanta Borooah
Shri Shriman Narayan Agarwal
Shri R. Venkataraman
Shri Ghamandi Lal Bansal
Shri Radheshyam Ramkumar Morarka.
Shri B. R. Bhagat
Shri Nityanand Kanungo
Shri Purnendu Sekhar Naskar
Shri Tridib Kumar Chaudhuri
Shri K. T. Achuthan
Pandit Chatur Narain Malviya
Dr. Shaukatullah Shah Ansari
Shri Tekur Subrahmanyam
Shri Mulchand Dube
Shri Kamal Kumar Basu
Shri C. R. Chowdary
Shri M. S. Gurupadaswamy
Shri Amjad Ali
Shri N. C. Chatterjee
Shri Tulsidas Kilachand
Shri G. D. Somani
Shri C. D. Deshmukh

RAJYA SABHA

Dr. P. Subbarayan
Shri Shriyans Prasad Jain
Shri Somnath P. Dave
Dr. R. P. Dube
Shri B. S. Doogar
Shri S. C. Karayalar
Shri Amolakh Chand
Shri M. C. Shah
Shri V. K. Dhage
Prof. G. Ranga
Shri B. C. Ghose

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar—*Secretary, Department of Economic Affairs, Ministry of Finance.*

Shri K. V. Rajagopalan—*Officer on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

WITNESSES EXAMINED

I. *The Federation of Indian Chambers of Commerce and Industry*—(contd).

Spokesman:

Shri B. M. Birla

II. *Indian Federation of Working Journalists, New Delhi.*

Spokesmen:

Shri K. Ram Rao

Shri S. A. Shastri

Shri C. Raghavan

(*The witness of the Federation of Indian Chamber of Commerce and Industry was called in and he took his seat*)

Shri Ghose: If I understood you rightly, Shri Birla, you had stated the other day that there exist in countries abroad forms of management, although under different names, which for all practical purposes are not dissimilar to the managing agency houses of this country—is it right?

Shri Birla: I said that some sort of management of this type is being introduced in some concerns abroad.

Shri Ghose: That means they have introduced in respect of certain companies forms of management which are not dissimilar to the managing agency system of this country. Does it not follow from this that one of the implications would be that, if for argument's sake we were to abolish the managing agency system in this country, persons who are associated with the managing agency system, or who may want to establish managing agency system hereafter will have the ingenuity or the resources to contrive a condition of things under which they will be able to derive virtually the same advantages which the managing agency system assures them today?

Shri Birla: At the moment all sorts of forms of management are open to anybody who wants to start a company and people have found that this is the most convenient method of management. I cannot understand how, for instance, if one system is abolished any other system will overnight take its place. If there is advantage in the other system it will automatically come in.

Shri Ghose: If you think that the systems of management in other countries are similar to the managing agency system in this country, then it might be argued that in the eventuality of the abolition of the managing agency system, those systems will assure similar advantages.

Shri Birla: Now what I have said is that in other countries also some sort of system which is similar to ours is being introduced. In fact, they find it more advantageous.

Shri Ghose: I shall not pursue this point.

Will you please refer to page 5 of your memorandum. The last sentence reads:

> "True, the interests of the shreholders should be borne in mind and their hands strengthened to as large an extent as possible. The Bill goes very far in carrying out this purpose."

Does it not follow from this that the Federation, you, myself, in fact all of us here, are agreed that the present Bill goes very far, but not to the fullest extent in protecting the shareholders' interests?

Shri Birla: No, as a matter of fact this measure is not going to protect the interests of the shareholders. In fact, in some cases it will go against their interests.

Shri Ghose: You have said that the interests of the shareholders will have to be protected and the Bill goes very far in carrying out this purpose—but not to the fullest extent, I should imagine.

Shri Birla: What we mean by "very far" is that it is going too far.

Shri Ghose: I should like to come to the managing agency system. Would it be right to say that, in principle, you agreed to the provisions of the Bill, with certain modifications that you have suggested at certain places.

Shri Birla: I could not follow your question.

Shri Ghose: I take it that in principle you agree to the aim of this Bill, subject to certain modifications.

Shri Birla: What is the exact point you are referring?

Shri Ghose: If it could be shown that some of the modifications that you have suggested are not material, then, in principle, what the Bill is aiming at is a good thing.

Shri Birla: We have not said that the Bill is bad.

Shri Ghose: Take the question of managing agency system, for example. There are two impotant things: term and remuneration. If you take the term, you say that it should be 20 and 15 instead of 15 and 10. The arguments that you have advanced here, you will remember, were advanced before the Bhabha Committee which have not accepted those arguments. You feel they have come to a wrong conclusion on the correct premises.

Shri Birla: Yes, we feel so, as far as the period is concerned.

Shri Ghose: Secondly you have said that the managing agent should be appointed by the shareholders. If that is so, whether the term is 15 years or 10 years, how does it affect you? Even if we cut it down to ten years, if you have a majority, you can be re-appointed under clause 210. So, it is immaterial to you what the period is.

Shri Birla: It becomes important in this way that if you dismiss a managing agent before a certain period, then you have to give him compensation. If, for instance, he automatically vacates office every year there will be constant wrangle between the shareholders and the management as to who is going to get control of the management of the company and it will ultimately lead to the disadvantage of the shareholders.

Shri Ghose: You have put it from the point of view of the resignation of the managing agent; I was coming to it from the point of view that you suggested. What you say is that if the management wants to go away, then compensation should be paid according to the Bill.

Shri Birla: If the management is dismissed, then compensation is paid, not if the management wants to go away.

Shri Ghose: Even if the term is shortened, so far as the managing agents are concerned, how are they concerned, if they have a majority?

Shri Birla: They do not get a majority all the time. It is on the support of the shareholders on which they are dependent. There will be any number of claimants for the managing agency right of a particular company and there will always be a tussle among various shareholders.

Shri Ghose: The difficulty will arise only when the managing agent does not have 51 per cent. majority.

Shri Birla: If, for instance the managing agent is constantly threatened by dismissal they will not be able to take sufficient interest in the company and they will not be able to plan efficiently.

Shri Ghose: There is no question of dismissal: I was only referring to the term.

Shri Birla: If the term is short, they will have all the time to be canvassing to ensure that somebody is supporting them. That is not very good in the interest of the company.

Shri Ghose: So, you say that even when they are in a minority they should have a term of fifteen years?

Shri Birla: Unless they are dismissed by the shareholders.

Shri Ghose: In regard to remuneration you said that 12½ per cent. is a drastic reduction in the profits of managing agents—is that so?

Shri Birla: It does not mean that: the other day we gave you figures relating to Ahmedabad.

Shri Ghose: If it is not a drastic reduction, am I to suppose that the figure of 12½ per cent. suggested is not unsatisfactory?

Shri Birla: It is a mistake to consider that it is 12½ per cent. because there are so many deductions to be made out of it. Usually or generally, remuneration varies between 20 to 25 per cent. on the net profit where remuneration is based on the sales commission. In companies outside Ahmedabad, places like Bombay and Calcutta, it is 10 per cent. of the gross profit. Suppose the profit before allowing depreciation is x and if all the profit is taken away when you allow depreciation, then there is no profit left and there is no commission. There may be cases like that where there may be no profit left.

Shri Ghose: That may be so even with 20 per cent.

Shri Birla: The ten per cent. I said is on the gross profit.

Shri Ghose: What is your estimate of 10 per cent. profit in terms of net profit?

Shri Birla: It varies. If the company's net profits are very little then the percentage will be less: if the company's net profits are high, then the percentage will be high.

Shri Ghose: Usually what is it?

Shri Birla: I have given the figures in regard to Ahmedabad.

Shri Ghose: That is on sales.

Shri Birla: The majority of them are on sales.

Shri Ghose: On the basis of gross profits I want to know.

Shri Birla: It will be very near to that figure.

Shri Ghose: You have seen clause 333 of the Bill which provides that an additional remuneration may be paid by a special resolution approved by the Central Government: will that satisfy you?

Shri Birla: We have said that if you delete the words "and is approved by the Central Government", then it is quite satisfactory.

Shri Ghose: By a special resolution only?

Then I come to clause 253 which says that no person shall be a director of more than twenty companies. I believe you have stated in general, not taking exceptional cases, that twenty is not a small but a fairly good number. If that is so, would you be satisfied if a provision is made to the effect that except with the approval of Government, no person shall be a director of more than 20 companies?

Shri Birla: Why do you want to bring in Government in this matter? This is a matter between the shareholders and the company. If you feel that it is necessary to have any provision of that nature at all, leave it to the shareholders to decide by 75 per cent. or special resolution. You are creating complications by bringing in Government. Suppose a person has directorship of twenty companies; if he wants to become the director of the twenty-first company, which company's shareholders are going to get the resolution passed, the 21st company or all the 20 companies?

Chairman: You yourself said that it should be left to the shareholders—shareholders of which company?

Shri Birla: Or it should be left to the directors. Suppose the other company's directors feel that the particular director is not able to give attention to the company's affairs, they will automatically oust him from their company.

Chairman: Shri Ghose's point is that supposing it is in the interest of the country, the company and everybody else that a particular person should become a director of the 21st company, it is in such cases Government sanction is envisaged.

Shri Ghose: What I find out from his answers today is that if we suggest the provision of Government approval, he would prefer a special resolution.

Then I come to clause 355—inter-company investment. You said that this should be left entirely to the discretion of the company, provided all the directors agree?

Shri Birla: Yes, Sir, and in the case of directors not agreeing by passing of a special resolution by the shareholders.

Shri Ghose: If all the diretcors agree, you would not like to send it to the general meeting of the shareholders, lest there might be a conflict among the shareholders. Your idea is that even if there is such a conflict, you would only leave it to the directors and not permit the shareholders to have a say in the matter.

The provision in clause 255 is that inter-company investment is allowed within certain limits if all the directors agree and beyond that there has to be a special resolution of the shareholders. Shri Birla's suggestion is that there should be no necessity for a resolution if all the directors agree. There may be a controversy between all the directors agreeing and the majority shareholders not agreeing. Otherwise there is no sense in trying to ascertain the opinion of the shareholders.

Shri Birla: If the directors do not agree, then the matter may go to the shareholders.

Chairman: Shri Ghose says: in spite of the fact that the directors agree. why should it not go to the shareholders?

Shri Birla: Then you have to call the shareholders' meetings every now and then. It is difficult, because in some cases thirty or forty thousand shareholders have to be dealt with and it takes months to call a meeting.

Shri Ghose: So the difficulty is one of calling the meeting and nothing else?

Shri Birla: You cannot discuss everything with the shareholders. And you do not wait for six months to make an investment.

Shri Ghose: I want to find out if there are any difficulties. The Associated Chembers and the Employees' organisation did not have any objection.

Shri Birla: The Associated Chambers have not much interest in it.

Chairman: After having examined him so long, I think his views are sufficiently clear to us.

Shri Ghose: I want to find out if there are other reasons except the difficulty of calling a meeting.

Chairman: If possible I would like to finish with this witness by 11 o'clock.

Shri Ghose: Then I will go to clause 357 in regard to competitive business. If I have understood the clause rightly, it does not prevent companies managed by the managing agent carrying on such business. The question does not arise then. It is only when the principal engages in such competitive business that the clause is called in question. Then some of the difficulties pointed out that there are large number of companies managed by the same firm do not arise.

Shri Birla: It says that a managing agent shall not engage on his own account in any business, which is of the same nature as, and directly competes

with, the business carried on by a company of which he is the managing agent or by a subsidiary of such company, unless etc. Then it says: for the purposes of sub-section (1) a managing agent shall be deemed to be engaged in business on his own account, if such business is carried on by (a) a firm of which he is a partner or (b) a private company 20 per cent. of whose voting power is exercisable by the managing agent or (c) a body corporate 70 per cent. of whose voting power is exercisable by the managing agent. It says therefore that if there is a private company and the managing agent holds 20 per cent. shares in it then it will be construed as business which is competitive. Similarly if there is a public company and if he holds shares to the extent of 70 per cent. in it, it will be considered as competitive business.

There the problem arises, why should you for instance debar the special knowledge of somebody to be utilised?

Shri Ghose: Suppose Birla Brothers were to manage ten tea companies. Will it be prevented?

Shri Birla: Yes.

Shri Ghose: That is not my understanding of the clause.

Shri Birla: That is the effect of it.

Shri Ghose: In so far as managing agencies are concerned there is no question of competitive business. If the managing agent as a principal sponsors such business then it becomes competitive business.

Shri Birla: No. It becomes competitive business if they control 20 per cent. of the shares.

Chairman: That is his interpretation.

Shri Ghose: Will you please refer to para 140 of the Bhabha Committee Report? It is said there:

> "It stands to reason that after a managing agent has been appointed or reappointed he should not engage in any business as a principal which is of the same nature as a business carried on by the managed company."

Shri Birla: Here it is defined as to what the "principal" is. If he holds 20 per cent. of the shares in the case of a private company, it is competitive business.

Shri Ghose: Your suggestion is that instead of 20 it should be 50 per cent?

Shri Birla: Even if he holds 70 per cent., in the case of a public company it becomes competitive business.

Chairman: I think we know his views.

Shri Amjad Ali: Please refer to clauses 192 and 194 relating to penalties. You object to the penal clauses there. What are the possible causes of delay in paying dividends?

Shri Birla: The possible causes of delay, as I described the other day, are, firstly, that the clerical staff may have delayed the issue of the warrant. In many cases the divided warrant is issued on receipt of an application from the shareholders. Suppose the shareholder does not make an application at all, then the dividend warrant is not issued for months. Or, after the declaration of dividend there may be financial difficulties. There may not be sufficient funds to distribute the dividends. Or the money may not be in the bank. Therefore, on that account if you send everybody to jail, it is not their fault that the company has suffered and they are not expected to pay the money from their own pocket.

Shri Amjad Ali: Do you not think that the retention of this clause will keep the management always in their senses?

Chairman: According to Shri Birla they are always in their senses!

Shri Amjad Ali: Please see clause 194? Do you visualize that there may be sleeping partners?

Shri Birla: We have not said anything about this clause.

Shri Amjad Ali: What is your view about the penal provision?

Chairman: They do not object to it.

Shri Amjad Ali: What is your view about clause 154—annual return and certificate to be attached thereto?

Chairman: I think they have no objection.

Shri Birla: We have not said anything about clause 154 also.

Shri Chatterjee: In page 4 of your memorandum you have said:

> "The Company Law Committee themselves have observed that some of the restrictions and checks which they propose would be irksome to business which is conducted in an efficient and honest manner."

Are you referring to page 210 of the Committee's report, that is para 278?

Shri Birla: Yes.

Shri Chatterjee: If you look at the last sentence of that page, the Committee say that although they recognize some of the inconvenience or hardship that may be caused, still they want the recommendations to be enforced and they say that it will be compensated "by the general rise in the standard of management of average business".

Do you agree with it?

Shri Birla: No.

Shri Chatterjee: Let us take each category. The first is definition of "associate of the managing agent". Please see sub-clause (2). I would refer you to page 25 of the Bhabha Committee Report. There they have pointed out:

> "It is obvious that it is no use laying down restrictions on some particular activities of managing agents, if they can be legally carried on through the agency of their 'associates'."

Do you agree that some restrictions should be put and some such clause should be there?

Shri Birla: No. In fact we have objected to this clause being made so wide as to make the working of the company difficult.

Shri Chatterjee: I can follow your point that the net has been cast too wide and that there should be some amendment. Do you want that, if the Select Committee agrees with the main recommendation of the Bhabha Committee that the loopholes should be blocked, then there should be some provision like this as to 'associates of managing agents'?

Shri Birla: This provision of 'managing agency' has become a little bit too wide, and we feel it is unnecessarily creating difficulties in the way of the proper management of companies. If the Committee wants some sort of provision, we have no objection, but this is a bit too wide.

Shri Chatterjee: About (a), (b) and (c) you have no objection?

Shri Birla: We have not objected.

Shri Chatterjee: With regard to (d), so far as I can make out, your objection is to the word 'officer'. Is that so?

Shri Birla: Yes, because officers sometimes are members of the managing agency company also.

Shri Chatterjee: You have referred to clause 340 of the Bill in that connection. On page 15 of your memorandum you point out that "by reason of the restrictions contained in clause 340 which is extended to associates also, it will not be possible to pay the expenses of this officer in connection with his visits to, say, U.K. for planning the purchase of capital equipment, etc." Do you think that will be a very great restriction?

Shri Birla: Yes, it is a very great restriction. Not only will he not be paid expenses for going abroad, but

even in India in some towns, for instance Calcutta or Bombay where distances are great, if some officer of the company has to run after purchasing something, if coal is not there in Calcutta and he has to run to buy it, he will not get the expenses, and the result will be that the company's work will suffer.

Shri Chatterjee: That will be the effect of clause 340 read along with clause 2(2). Is it not so?

Shri Birla: Yes.

Shri Chatterje: Suppose we amend section 340 so as to make it permissible for the expenses of the officers for the purchases of capital equipment and certain other costs to be allowed, will it meet the case?

Shri Birla: It is not only a case of purchasing capital equipment. It is also a question of the purchase of the day to day requirements of the factory.

Shri Chatterjee: Am I to understand that apart from clause 340, you have inherent objection to the word 'officer'?

Shri Birla: Yes.

Shri Chatterjee: Will you please elucidate why?

Shri Birla: Suppose it is a jute mill. It has to purchase jute. As you know, jute is scarce these days. It is not easily available. An officer of the company has to run to the jute growing area and purchase jute and ensure a proper supply. There is short supply of raw materials. There are difficulties of wagon supply. Every now and then, officers of the company have to run to somebody to maintain and ensure proper wagon supply to distribute the goods and so on. Therefore, the whole clause, as it is worded, debars any officer of the company from drawing any expenses. That is very detrimental to the interests of the shareholders.

Shri Chatterjee: No amendment of clause 340 will meet the objection and the word 'officer' has to be deleted?

Shri Birla: I am sorry, I am not a lawyer in that sense to advise which clauses should be amended.

Shri Chatterjee: Your memorandum refers to clause 340.

Shri Birla: Firstly to clause 2 (2), definition of 'associate' and then it says that these clauses should be amended.

Shri Chatterjee: In clause 2 (2)(d) you are referring to clause 340. I thought that amendment of clause 340 would meet your objection.

Shri Birla: That is for you to decide.

Shri Chatterjee: Am I to understand that from the business point of view, if we enlarge the scope of clause 340, it will meet your point?

Shri Birla: If you considerably widen the scope, it will meet the difficulty. Not only purchases abroad, but purchases in India also.

Shri Chatterjee: With reference to clause 2(2)(e), I take it that your objection is to the word 'member'.

Shri Birla: Yes.

Shri Chatterjee: Is it because of possible restrictions on the advance of loans or other reasons? You have referred to clause 352 of the Bill. Is there anything else? Why are you objecting to the word 'member' there?

Shri Birla: Again, as I said, a member of the managing agency company is an officer of the managing agency company also. Similarly, he will not be able to purchase various raw materials, etc., and his expenses would not be paid.

Shri Chatterjee: You have also referred to the Factories Act. What is the actual difficulty?

Shri Birla: The actual difficulty is, the member is also an officer of the company under the Factories Act. Therefore he has to be nominated occupier under the Factories Act. Under the Factories Act, an occupier has to be a member of the managing agency.

Shri Chatterjee: Therefore, if this word is there, he cannot be an occupier under the Factories Act. That is the difficulty.

Shri Birla: Yes.

Shri Chatterjee: In regard to 2(2)(f) what is the real objection? Am I to understand that your objection will be met if we only delete the last words, "whether alone or together with any person....." or whether your objection is more fundamental?

Shri Birla: We have asked for the deletion of this clause. We say:

> "The Committee would therefore suggest that sub-clause 2(2)(f) be deleted altogether."

> "If this suggestion is not acceptable, then alternatively only such bodies corporate in which more than 50 per cent. of the voting power is exercisable by the managing agent directly may be considered as associate."

Shri Chatterjee: Suppose we delete that portion, is there any real difficulty in the working of the company?

Shri Birla: It will considerably improve the clause. This comes in the way of various other clauses in connection with advances, etc.

Shri Chatterjee: Suppose some Member of the Select Committee thinks that this definition of 'associate of the managing agent' is not quite comprehensive and wants to insert any relatives, what do you say to that? A managing agent can be an individual, can be a firm, can be a limited company. Suppose in the case of an associate of the managing agent, when the managing agent is an individual, any relatives of such individual will also be deemed to be an associate or any relative of a partner and so on in the case of a firm will also be deemed to be an associate, what do you say?

Shri Birla: I think it is going too far. We have asked that this clause should not be there. If you further elaborate it and include so many other categories as you are suggesting, it will create great hardships. What has a relative to do with the management?

Shri Chatterjee: Look at page 306. The Explanation to clause (2) shows who are the relatives: parent and child, grandparent and grandchild, brothers or sisters, uncle or aunt, nephew or niece, first cousins. We want to insert that in the case of a managing agent when he is an individual or when the managing agent is a firm, it is not merely right to say any partners of Messrs. Birla and Co. should be called an associate, but also your son or nephew or brother should also be called associates.

Shri Birla: That is what we have objected. The present definition is very wide. It should be reduced. You are suggesting to widen it further.

Shri Chatterjee: I ask whether it is right.

Shri Birla: It is not right.

Shri Chatterjee: If it is right on the basis of the recommendation to say that the partners of Messrs. Birla Brothers or any firm in which you are a partner is an associate, would it not be right to say that your nephew or son should also be deemed to be an associate?

Shri Birla: After all, these days, the nephew or son is not a partner in the same firm. If they are altogether outsiders as it is becoming now, even under the joint Hindu family system as well as any other system, I do not see how they can be considered partners. Sometimes, the brother and sister are opposed to the members of the managing agency. How can they be included?

Shri Chatterjee: They will not be called partners, but treated as associates.

Shri Birla: That would be wrong because they are actually not connected with the business. They are sometimes opposed to the managing agent or his

action. Anybody who is not connected with the management is not an associate.

Shri Chatterjee: Suppose that law is made, would it really affect the working of the company?

Shri Birla: It would. That means that no joint Hindu family can do business of any kind.

Shri Chatterjee: Look at clause 44. You have put forward some grounds why this clause should not be there. Assuming we make an exemption whereby a company can transfer to any person any share or security held by a company by way of security for repayment of advances to the company, is there any objection to the clause remaining as it is?

Shri Birla: The objection is, though you may allow transfer in the case of banks, etc., what about buying and selling of shares? If you buy shares and then if you want to sell them, you have to transfer incurring heavy transfer charges. That will go into the business of the various companies who are dealing in shares and securities.

Shri Chatterjee: Your objection related to the difficulty of getting overdrafts from banks and also securities to be lodged with some Railway company, etc.

Shri Birla: What about buying and selling of shares?

Shri Chatterjee: That would be only in the case of a company dealing in shares.

Shri Birla: Many companies are dealing in shares.

Shri Chatterjee: Apart from the subsidiary companies, you do not generally deal in shares.

Shri Birla: There are many companies dealing in shares. When companies have extra funds, they may invest the money in one company today and in another company tomorrow. This will unnecessarily create difficulties if they have to transfer their shares in their own name. The cost of transfer will add to the expenses and will make business very difficult.

Shri Chatterjee: On principle do not you think that it is right and proper that the company should have all its holdings in its own name?

Shri Birla: Whatever a company holds is its own. Suppose somebody takes away something whether held in the name of the company or held in the agent's name, that is a fraudulent transaction. He will automatically be dealt with under the criminal law of the land. This has nothing to do with dealing in shares, etc. After all, the property belongs to the company whether registered in its own name or not. As long as the company has paid for it, it is company's property.

Shri Chatterjee: It leads to malpractices.

Shri Birla: I am not aware of any fraudulent transaction discovered so far.

Shri Chatterjee: That is why the Company Law Committee wanted this law to be altered suitably.

Shri Birla: If anybody has fraudulently taken away anything, he could be dealt with under the criminal law.

Shri Chatterjee: So your suggestion is that there is no necessity to make any law like this?

Shri Birla: It is more or less unnecessary. It does not in any way protect the interests of the shareholders.

Shri Chatterjee: Please refer to clause 105. If I have followed your point correctly, you only want a right of appeal in the case of fully paid up shares.

Shri Birla: Yes. In the case of partly paid up shares, there is no question of transfer.

Shri Chatterjee: In the case of partly paid up shares, the directors should be given the right to refuse the registration on any ground?

Shri Birla: Yes. They have ultimately to realise the money.

Shri Chatterjee: You want it to be left to judicial decision?

Shri Birla: Yes.

Shri Chatterjee: Assuming that after the transfer, the transferor is made the trustee of the transferee and he is compelled to vote according to the directions of the transferee, there is no point.

Shri Birla: Yet, he is not a shareholder of the company.

Shri Chatterjee: Not technically. If you sell 10,000 shares and take my money and if I apply to the directors and they dilly dally and shilly shally and not put my name, during the interregnum, I can compel you to vote according to my desire.

Shri Birla: You can compel. Why should the powers of the directors be reduced?

Shri Chatterjee: Therefore you want the directors to have unfettered authority.

Shri Birla: Yes.

Shri Chatterjee: Please refer to clause 243. Shall I be right in saying that you have exaggerated the difficulties when you say that there will be a complete deadlock in management if this clause remains as it is?

Chairman: He will not admit that.

Shri Birla: It will lead to what I have pointed out. After all, you are taking away the right of the shareholders. The shareholder has paid the money on the same basis as any other shareholder. How can his right be taken away? In any case, these restrictions will go against the interests of the shareholders. There may be many shareholders who are members of the managing agency firm and yet may be against the managing agency. Even they would not be entitled to get any body elected to the company as a director.

Shri Chatterjee: The company Law Committee in paragraph 84 (page 63) of their report have pointed out:

> "They (several witnesses) contended that unless such reservation was made, the managing agents, by reason of their position and the influence which they exercise over the affairs of a company, were likely to "swamp" a board with their own nominees. There is considerable force in the argument and many instances which were brought to our notice seemed to support this contention."

And then the opinion of Shri S.C. Sen, partner of Messrs. Dutt and Sen, who was draftsman of the 1936 Bill is quoted. Therefore they wanted these safeguards to be put in. Is it not desirable to prevent it by suitable safeguards?

Shri Birla: Firstly there cannot be any safeguard as long as somebody has got any shares in his own control. If you say he should not appoint an associate and appoint only an outsider, then what about the outsider? Is he not again on the mercy of those who are voting for him? Therefore, the safeguard you are visualising is only a very thin one. Besides, how can you create difficulties particularly in such cases where a party man is opposed to the management and he wants to come into the Board? If you are going to debar him from coming into the Board, that will be really a hardship not to the management but to the person who wants to protect the interests of the shareholders including himself. The only unfortunate thing is that he happens to be one of the members of the management. That means all the cousins, brothers and sisters who might have shares will be debarred from standing as directors to the Board which will be very much against their interest and which will be, in a way, favouring the management.

Shri Chatterjee: You do not think that there is any safeguard necessary?

Shri Birla: No.

Shri Chatterjee: The whole clause should go?

Shri Birla: Yes.

Shri Chatterjee: Do you admit that the object of having the old section 86F which curtails the privilege enjoyed by directors of entering into contracts and other things is to a large extent rendered nugatory and therefore some safeguard is necessary?

Shri Sen's opinion has been quoted by them as under:

> "Section 86F curtails the privilege hitherto enjoyed by the directors of entering into contracts with the company and imposes on them the liability to obtain the consent of the board of directors which can now no longer be a packed body of persons representing any particular interest. "

The Committee then point out that the object has been defeated to a large extent by swamping the boards by a packed body of persons.

Shri Birla: You might remember a case some time ago in which the Bombay High Court gave a judgment. A person purchased a tin of ghee from his own company and therefore he was penalised from being a director of the company. If you think that is a case of a packed body, I have nothing to say.

Shri Chatterjee: On principle is it not desirable to see that no Board of Directors is swamped?

Shri Birla: It is not packed. Most of the companies have, as you might have seen, got respectable people. If these people happen to give support to the managing agents, you cannot call them packed bodies.

Shri Chatterjee: Turning to clause 273 (loans to directors) I take it you do not seriously suggest that we should delete the entire clause. I want to remind you that sub-clauses (a), (b) and (c) of sub-clause (i) really reproduce the existing law. You have no objection to them?

Shri Birla: We have no objection. Our objection is to (d) and (e).

Shri Chatterjee: In regard to (e), that is a reproduction of the Bhabha Committee's recommendation.

Shri Birla: Sub-clause (d) reads:

> "any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any director, or by two or more directors together, of the lending company; or"

Suppose Dunlop Rubber Co., has got a company in India which they manage —Dunlop Rubber Co. (India) Ltd.,— and they hold 25 per cent. of its shares while the rest is held by the public, it means Dunlop cannot give any loan. Similarly, in the case of Burmah-Shell refinery, if two directors of the parent company hold shares to the extent of 25 per cent., then Burmah-Shell should not give any loan to it.

Shri Chatterjee: I do not think—I may be wrong—the Bhabha Committee recommended (d). They recommended (e) which says that the Central Government should have the power to declare that it is satisfied that the directors, managing director, managing agent or manager of a company is accustomed to act in accordance with the directions or instructions of any director or directors of the lending company, notwithstanding that the provisions of clause (d) may not be satisfied in relation to such public company.

Shri Birla: This "accustomed to act" is such a wide clause. When you go and borrow money from a bank, you have got to be accustomed to act according to their direction. Does it mean you should act contrary to their direction? After all, a person will lend money only to a person who will be accustomed to act according to his direction, not one who acts contrary to his direction . Therefore, the very principle of it is wrong.

Shri Chatterjee: In such a case the Central Government will take that into account and exempt that company.

Shri Birla: That means the Central Government will have to come in every now and then.

Shri Chatterjee: You can possibly reasonably ask for some safeguards as to in what cases Government should declare, on what basis, or something like that.

Shri Birla: We are talking of the clause as it is worded. As it is worded it means the very person who is lending money should not lend money and some enemy should come and lend money. Is that possible? Nobody who is opposed to the management of a particular company will lend money. It is people who are favourable inclined who will lend money. It is only where the directors of the company act according to the directions of the bankers that they can get the loan. The bankers say: You should do this and that, you should take such and such action. Otherwise, they just recall the advance.

Shri Chatterjee: Then, you are completely opposed to both (d) and (e). With regard to (d) what is the real difficulty that you envisage in actual working? I want to have a little more elucidation if you do not mind.

Shri Birla: It reads:

> "any body corporate at a general meeting of which not less than twenty-five per cent. of the "total voting power may be exercised or controlled by any director, or by two or more directors, together, of the lending company;"

That means that if two directors of the lending company control 25 per cent. of the voting power of the company to which the money is lent, then money cannot be lent to that company. I have cited the instance of Dunlop and Burmah-Shell. Similarly, here are many other Indian companies also.

Shri Chatterjee: Would you modify your objection if this 25 per cent. is raised to a higher figure?

Shri Birla: The basis is wrong. After all, you are doing business with another company for some particular purpose, and you are not helping the shareholders in any way by having this sort of restrictive clause.

Shri Chatterjee: You know this system of lending money to directors has been greatly abused.

Shri Birla: I am not aware of that.

Shri Chatterjee: Even the Cohen Committee has said that they consider it undesirable that directors should borrow from the company. If the directors can offer good security, it is no hardship to them to borrow from another source.

Shri Birla: We are now talking of directors. It refers to a company. Only (a), (b) and (c) refer to directors. We have not objected to that.

Shri Chatterjee: Therefore, you say the Cohen Committee's report is applicable so far as that goes.

Shir Birla: Yes. Only (a), (b) and (c) refer to what the Cohen Committee has said. I am referring to (d) and (e).

Shri Chatterjee: Please look at page 78, line 4 of the Company Law Committee report:

> "The object of this enlargement [i.e. (e) in the present clause] of the scope of the present section (the section was 86D) is to cover loans given to those companies which although registered as public companies, are really private companies."

Shri Birla: I do not agree with that.

Shri Chatterjee: But do not you think that that is a desirable objection? If it is really a private company, there should be some safeguards imposed.

Shri Birla: The premises on which the whole section is being drafted or built up is wrong, because there is

prohibition of a director from borrowing money. It is all right as far as that goes, but here you are putting restrictions, not on directors but on companies from borrowing money.

Shri Chatterjee: Now I will take up clauses 324, 325 and 326. With regard to clause 324, your suggestion was special resolution should be deleted.

Shri Birla: We have said that it should be an ordinary resolution.

Shri Chatterjee: You say the transfer should be effected only by a 51 per cent. majority plus Central Government's approval?

Shri Birla: Yes, Sir.

Shri Chatterjee: I want to follow exactly what you are saying. I think Messrs. Birla Brothers are the managing agents of Messrs. Kesoram Cotton Mills. Is it not?

Shri Birla: Yes.

Shri Chatterjee: We are told you case will you allow the Government approval to function?

Shri Birla: That will be a case where the managing agency firm is altogether being transferred or purchased by somebody else.

Shri Chatterjee: How many companies, roughly, are managed by Birla Brothers?

Shri Birla: Roughly ten or fifteen.

Shri Chatterjee: We are told you manage 128.

Shri Birla: I wish we were able to manage so many. Unfortunately we have not got so many.

Shri C. D. Deshmukh: What they meant was that Birlas had interest in more than one managing agency company and the total of those companies managed by such managing agents in which some Birla or the other had interest was 128.

Shri Birla: There are so many Birlas; firstly, I do not know which one is referred to. I am not even a director of that company. I cannot give you any answer about it, but I am sure even these together may be only about 25, not 125.

Shri Chatterjee: Let us take the figure 12. When you say that Birla Brothers are relinquishing or transferring the managing agency that means you are transferring the managing agency not merely in respect of Kesoram, but all the twelve companies.

Shri Birla: There are two types of cases which are visualised under these two clauses. One is: suppose Kesoram Cotton Mills dismiss Birla Brothers as managing agents or Birla Brothers resign the managing agency, in that case, Kesoram has to find somebody to manage it. In that case, the Board of Directors or the shareholders of Kesoram can appoint somebody else with 51 per cent. majority. That is a clear case. No question of the Central Government coming in. There is another case which was referred to the other day, that is where Birla Bros. themselves want to be sold out, *i.e.* the shares of Birla Bros. are purchased by somebody else and that entrepreneur who purchases these gets the whole group.

Shri Chatterjee: Therefore, they will be managing agents of the twelve companies.

Shri Birla: There every one of the twelve companies will have to agree that they want to continue to be managed by that new entrepreneur in the name of the old firm, *i.e.* Birlas. If they agree and if the Central Government consents, then they will be allowed; if the Central Government says 'no', then they will not be allowed.

Shri Chatterjee: It is in a case of the whole House, that you like the Central Government to give consent.

Shri Birla: Yes.

Shri C. D. Deshmukh: As an alternative evil to their being required to pass a resolution by 75 per cent. majority.

Shri Birla: Yes. We have to choose the lesser of the evils. In this particular case, I think the intention of the Government and the purchaser would be identical because these cases will only arise where a foreign managing agency wants to transfer its agency to some Indian agent.

Shri N. C. Chatterjee: Please look at clause 352. Are you objecting to sub-clause (a) or (b)?

Shri Birla: To sub-clause 1(b).

Shri Chatterjee: Do you want that we should tell you on what basis a declaration will be made as specified in the clause?

Shri Birla: It is something of the same nature just now discussed—

> 'accustomed to act in accordance with the directions or instructions of the managing agent or associate of the managing agent, notwithstanding that the body corporate may not itself be an associate of the managing agent.'

Shri Chatterjee: What about your suggestion regarding a proviso? Supposing we give a proviso whereby we ask you to show cause before Government makes a declaration?

Shri Birla: The very basis is wrong.

Shri Chatterjee: Your objection is fundamental?

Shri Birla: We object to the whole thing.

Shri Chatterjee: In fact a proviso is suggested by you at the end of page 107 of your memorandum. When you give an alternative suggestion, I generally take it that you will be quite happy if we give that proviso.

Shri Birla: We will not be happy; but we will tolerate it.

Shri Chatterjee: Cannot it meet all practical difficulties?

Shri Birla: I do not think it would meet all practical difficulties.

Shri Chatterjee: Please refer to clause 352(2). There a ceiling of Rs. 20,000 is fixed for current accounts to be maintained by the managing agent with the managed company. Suppose one firm of managing agents manages ten companies. What we are providing here is on the lines of the Bhabha Committee's recommendation. The Bhabha Committee have recommended that the limit should be Rs. 20,000. But you are objecting to this. Are you objecting to it on the mere ground of your business practice?

Shri Birla: It is on account of business difficulties. Various companies have to pay in the form of wages or salaries at the end of the month funds amounting to several lakhs of rupees. The amount should depend on the magnitude of the company's operation and not just a ceiling for everybody alike. Rs. 20,000 may be enough in the case of a small company which has not to pay a large amount by way of wages or salaries, but where a company has to deal at the end of the month with 5 or 6 lakhs in the form of wages and salaries, this limit is very low. It happens that you have a number of companies, the managing agent keeps the money for a day or two and sends it over to the factory. You will not be able to keep that money. The managing agents have their offices; generally the managed company do not have their offices. So the money has to lie all the time with the managing agents in cash or safe. So you can imagine how this clause will work if you make a limit of this nature. There are practical difficulties; you will not be able to keep the money. With whom are you going to keep all that money?

Shri Chatterjee: The Bhabha Committee says that it is essential for carrying on your routine payments, but so that the privilege may not be abused by the managing agent it has been said that some ceiling should be there.

Shri Birla: I think this ceiling is very low. That is my feeling.

Shri Chatterjee: Supposing we give you another reasonable figure, would that meet the difficulty?

Shri Birla: If you put a reasonable ceiling, it will meet the point and I think that reasonable figure should be anywhere between 2 and 2½ lakhs.

Shri Basu: I want a clarification. In the clause as it is drafted, there is no limitation as to the amount lying in the particular managed company which even the managing director can operate in the name of the managing agent. Is it not possible that the managed company itself may have a very large amount in the banks?

Shri Birla: Yes, but the managed company may not be sitting at the place where the money is necessary. If it is not necessary, who is going to keep that money?

Shri Basu: There is no bar to its being operated by the managing agents keeping the account in the banks.

Answer: I am talking of the cases where you will have to pay cash.

Shri N. C. Chatterjee: Ordinarily a single managing agent manages twelve companies. The accounts are centralised by you. In respect of payments etc. you must be wanting money. The only question is about the ceiling fixed Rs. 20,000.

Shri Birla: That is too low because it will be impractical.

Shri C. D. Deshmukh: The expenses are to be incurred on behalf of the managed company?

Shri Birla: Yes.

Shri C. D. Deshmukh: Do you say that no account is maintained in the name of the managing agent?

Shri Birla: No. An account is maintained in the name of the managed company by the managing agent.

Shri C. D. Deshmukh: Therefore, any moneys which are at the disposal of the managing agent would be moneys in the accounts of the...

Shri Birla: Managing agent. It will be lying with the managing agent.

Shri C. D. Deshmukh: Why?

Shri Birla: They are the only persons who have got the office or the accounts.

Shri C. D. Deshmukh: Why? The managing agents operate account and draw whatever money is required. Here we are dealing with loans to managing agents.

Shri Birla: The subject is loans as well as current accounts. If jute is to be purchased, the managing agents have got an office and the company will have to send the money to that particular branch. If you send 2 lakhs, you do not purchase suddenly; you will be buying it in two or three days and the banks do not everyday send telegraphic transfers in such places. Or the man will have to carry it and put it in the safe of the managing agent and then utilise it. They cannot send it. This will be actually coming in the way of the company's business.

Shri Chatterjee: What you actually do is this, if I follow your system aright. Suppose you are managing five jute mills, you have got a general idea of so much to be purchased and you go on....

Shri Birla: Not always. When it is purchased, it is allocated immediately to such and such company's accounts. But in case it is ready purchase either jute or cotton you have to send the money before you purchase. When the cultivator brings cotton or jute, you will immediately have to pay him for it. The same thing happens in the case of sugar. When the agriculturist brings his cane in the cart, you immediately pay for it.

Shri Chatterjee: Shri Deshmukh's point is that if you can operate on

[Shri Chatterjee]

your principal's account, there is no difficulty.

Shri Birla: There is no banking account of that nature in such places.

Shri C. D. Deshmukh: 352(2) refers to credit.

Shri Birla: It is lying in credit.

Shri C. D. Deshmukh: You say that you have to take cash.

Shri Birla: It is lying with the managing agent. If you hand over the money to the managing agent, then it is lying with him in the current account. As you pay, you just debit that company.

Shri C. D. Deshmukh: The money is drawn by cheque and issued by the managed company and 2 lakhs are issued in cash to the managing agent. How does that necessarily become a credit in the current account of the managing agent?

Shri Birla: The managing agents will have to put that in their safe and credit the company with 2 lakhs. Some account has to be kept of the money.

Shri C. D. Deshmukh: It will be in cash.

Shri Birla: Without any account?

Shri C. D. Deshmukh: Account would be cheque issued by the managed company.

Answer: On whose account?

Shri C. D. Deshmukh: Money has been paid to the managing agent by the managed company for the purpose of purchases. It will be shown as cash paid to the managing agent.

Shri Birla: Now the moment it is paid to the managing agents, they must enter there that they have received two lakhs from the managed company.

Shri C. D. Deshmukh: In the account.

Shri Birla: And the moment it is entered, it becomes a credit

Shri N. C. Chatterjee: Do you mean to say that thereby you are bringing in immediately 352(2)?

Shri Birla: Yes.

Shri C. D. Deshmukh: What does 'Current account' mean?

Answer: Any money which you put even for one day business is in current account.

Shri Chatterjee: What the Bhabha Committee says is this:

> "Many witnesses urged the abolition of this provision, but we feel that in those cases where a managing agent is in charge of a large number of concerns, it may be an advantage for the managed companies to permit the opening of a small current account in the name of their managing agent, so that all routine payments on behalf of the managed companies may be conveniently made through the managing agent's current account."

It is only in that case that you do not want a ceiling.

Shri C. D. Deshmukh: You are saying that as soon as an entry is passed in the managing agents' books of accounts, it becomes a current account. That is not right. Current account means current account in a bank.

Shri Birla: That is the intention.

Shri C. D. Deshmukh: That is in the present Act also.

Shri Birla: Plenty of amounts are left there. There is no limit.

Shri C. D. Deshmukh: That is so. But they are left in the current account. Current account means current account with some bank of the managing agent.

Shri Birla: Any money paid to the managing agents in current account by a company is transferred immediately to the buying account of the managing agent and then...

Shri C. D. Deshmukh: I only raised a legal difficulty. Now if the managing agent goes to some place to buy jute where there is no bank, there is no point in his entering moneys which he receives from the managed company into his account because then he will have to draw cheque.

Shri Birla: No, Sir. He has to credit that money in his account and pay that money in cash....

Shri C. D. Deshmukh: My contention is that it is a current account in a bank.

Shri Birla: No, Sir.

Shri C. D. Deshmukh: When a situation like this arises, the managing agent will not put the money into his bank because he wants it for cash use. He receives 2 lakhs cash from the managed company and has the 2 lakhs because at that place there is no bank for payment for jute. I was wondering whether that came within the mischief of sub-clause (2) of 352 because current account can only mean not books of account but current account with a bank.

Shri Birla: That is not the definition. That is one aspect of it.

Shri C. D. Deshmukh: Ask Shri Chatterjee. A current account cannot possibly mean books of account.

Shri Tulsidas Kila Chand: If money is paid from a managed company to the managing agent, where money is paid and received, that is current account.

Shri C. D. Deshmukh: Nothing to do with the bank?

Shri Tulsidas Kila Chand: Nothing.

Shri Chatterjee: What Shri Deshmukh says is correct ordinarily. Current account means current account with a bank. But unfortunately the Bhabha Committee says this, that supposing you have 4 lakhs in respect of your jute companies you just send 2 lakhs out of that to twelve companies and you keep for routine payments 2 lakhs and if in the books of the managed company there is a current account in your name held in suspense, then clause 252(2) will come into operation.

Shri Birla: I will now describe the various types of cases which will arise. You send something to Calcutta, Bombay or any other place. The goods have been despatched and the railway receipt is sent with the Bill to the managing agent and he is asked to realise the money from such and such a party. The managing agents realise the amount and give to the company. It may be Rs. 50,000 or it may be Rs. 1,00,000. Immediately they send so many store bills and all that. These are again thrown on the managing agent and the party for whose account the bills have been passed may not come to the managing agent and take away the money. The money is lying all the time with the managing agent.

Similarly, about articles coming from abroad. Some mill situated in up country imports an article from abroad. It remits money to the managing agent. The managing agent receives payment of 2 lakhs to be paid when the draft comes. The draft may come in a day or it may come within four or five days; all the time the money is lying with the managing agent. The money is received from the managed company. Straightaway it is credited to the account of the managed company and they draw the money and pay it to the person who has drawn the Bill All the time the money is coming and going. We say that the limit is really very low.

Shri Chatterjee: You are asking for a higher limit?

Shri Birla: Yes, Sir; Rs. 2 lakhs is not really high.

Shri Chatterjee: You think that clause 352(2) will debar you from making purchases on behalf of the managed company?

Shri Birla: Yes, Sir.

Shri C. D Deshmukh: I am disposed to agree with Shri Birla that the current account must be an account in the books of the company operable by the managing agent. Otherwise, it would be necessary to add a word to show it is the current account with the bank. Then the question arises what kind of account is a current account. It is a running account in the name of the managing agent.

Shri Birla: Yes, Sir.

Shri C. D. Deshmukh: And the clause makes a distinction between the loans to managing agents and the moneys on which they operate upon for current expenses. In that case, Rs. 20,000 is an arbitrary and unnecessarily low limit.

Shri Chatterjee: I think this is what the Bhabha Committee mean when they say, 'permitting the opening of a small current account in the name of the managing agent'. They are thinking of the managed company letting you open a current account in your name.

Chairman: Shri Chatterjee, how long will you take?

Shri Chatterjee: I will take about 15 minutes.

Chairman: Shri Agarwal wants to go away. He would like to put a few questions. He may put those questions and afterwards you may continue.

Shri Chatterjee: Yes, Sir.

Shri S. N. Agarwal: I am sorry I could not be present all through. I would just like to ask a few general questions.

So far as I know the managing agency system in this shape or form does not exist anywhere else in the world. There might have been some conditions 100 years ago when this was found to be necessary by the British. But, do you really feel that conditions in India still warrant that this system should continue?

Shri Birla: Yes, Sir. The assumption that this type does not prevail in other parts of the world is also not very correct. As I said, for instance, this morning, there are various cases where this type of system is being introduced.

Shri Agarwal: As a result of the experience gained in this country?

Shri Birla: As a result of the experience in other countries.

Shri Agarwal: I am quoting from the Bhabha Committee's report. Do you agree with the opinion of the Registrar of Joint Stock Companies, Bombay, who had thirty years' experience?

Shri Birla: I do not agree with that. The proof of it is that there are so many thousands of companies in India. If there had been some better method then somebody would have taken it into his head to follow that better method. So far, none of them have come forward with a method better than the managing agency system.

Shri C. D. Deshmukh: Government have started....

Shri Birla: There also the government is the managing agent. They are financing and looking after the business; somebody is the managing director and the Cabinet or the Ministry is looking after the affairs.

Shri C. D. Deshmukh: The point is that the company has no contract of managing agency with the government. The government is the holding company. It is conceivable that a holding company may exercise all the rights of a subsidiary company in its management, in the choice of the managing directors and the nomination of the Board of Directors by virtue of the fact that they have a sufficiently large holding in the held company. That is the relationship

between the government and its companies. It may well be that the holding company may just proceed to appoint the Board of Directors and the Board will then appoint the Managing Director. The managing agency system is different and it is not there. There is a contract of management for a certain number of years, the difference being that instead for the Managing Director being appointed on contract for the limited purpose of general management, the managing agency company is appointed and so they are required or expected to have a stake in the managed company. There are certain obligations which are understood to rest with the managing agents e.g., the obligation to raise funds, to guarantee loans etc. That is, all the expenses of ordinary management, in the first instance.

Shri Birla: In this connection, you might be remembering that during the war period several plants were handed over to several companies like the General Motors etc. by the American Government to be worked.

Shri C. D. Deshmukh: That was only a contract of management. The general Motors were not expected to have a holding in the government concerns.

Shri Birla: It was both ways; it was a contract as well as holding. The General Motors might have had no holding but there were some other companies.

Shri Agarwal: You will remember that in the directives of the Indian Constitution, it has been very clearly stated that it is the duty of the State to see that concentration of wealth in the hands of a few does not take place. As a result of that, the government have abolished the intermediaries in land. The natural question that taxes all of us is why should we not abolish this second intermediary in industry, just another relic of feudolism. What is your view as a citizen of India? Naturally, you would like this directive of the Constitution to be implemented. Do not you think this managing agency system makes for this concentration of wealth in the hands of a few persons?

Shri Birla: Firstly, the idea that there is concentration of wealth in the hands of a few persons is incorrect because the wealth belongs to the shareholders and that is not concentrated in a few hands. The number of shareholders is thousands and thousands and I can give you instances of some of my companies. There are 40, 50 or 60 thousand shareholders. Therefore there is no concentration in the hands of a few.

Then as far as feudalism is concerned, I do not know what you would call feudalism and what not. You are limiting the period of management of these companies, to a certain number of years. Under the present law, it is limited to 20 years and now you are going to reduce it to a still lesser period which we feel is not desirable and would not be conducive to the proper management of the companies. Ten years cannot be considered to be life of feudalism. I would respectfully submit that there is no question of feudalism. The shareholders have the right to dismiss the managing agent any time. We have been emphasising this aspect of the matter from the very beginning that the shareholders must have a chance to dismiss the managing agent when they like.

Shri Agarwal: Do not you think that in these limited companies the scope for the managing agents to get profits is almost unlimited?

Shri Birla: Shri Deshmukh is there to look after us; otherwise he would

[Shri Birla]

not be getting Rs. 200 crores and Rs. 300 crores by way of income tax and other taxes.

Shri Deshmukh: Only if he discovers.

Shri Agarwal: It is argued by the managing agents that they play a helpful role in supplying capital in this country. But, we find that they have also started, during the last decade or so perhaps, a number of banks and insurance companies and this money is invested in those concerns of the managing agents so that ultimately it is the public money that is coming forth for investment. Suppose we abolish the managing agency system, what difference will it make?

Shri Birla: It will make a lot of difference. Firstly, the assumption that the managing agents are establishing banks and insurance companies is incorrect because there is no managing agent of a Bank or Insurance company.

Shri Agarwal: All the important agents have insurance companies.

Shri Birla: Not all of them. There are 1,400 or 1,500 managing agents in this country. I do not know how many of them you can call important. Hardly any of the Banks is connected actually with the managing agent as such.

Shri Agarwal: I was rather surprised to see that you and your Federation think that the recommendations of the Bhabha Committee about restricting the powers of the managing agents in order to prevent abuses are unnecessary. I think you said you feel proud that you are providing all these things, interlocking, advancement of loans by directors and so on. Do you still think that the system as it exists is absolutely good for the country and there should be no changes?

Shri Birla: The Bill, which has been introduced, has got so many clauses —numbering about 600—and we have not commented on all those clauses. We have referred only to such of those clauses as we have thought were restricting the freedom of functioning of the joint stock enterprise. There may be some clauses restricting the functioning of the managing agents; but we have not objected to these. We said we are proud of our achievement. Somebody said that there should not be this interlocking. If I may be permitted to send this pamphlet on to you, this gives you information as to how it has developed in other countries. If interlocking were not there things would not have developed in the United States or England or in the continent as they have developed. One thing leads to another and it becomes an advantage and conducive to good relationship. Therefore, we feel that so far as that point is concerned, there is nothing wrong about it and we are proud that we have been able to achieve something.

Shri Agarwal: Supposing Parliament ultimately decides that the managing agency system should go, what will happen to the money with the present managing agents? Will that not be invested in some other ways?

Shri Birla: They have abolished the zamindary and other things. That money has not found its way back to industry or other ways.

Shri Agarwal: It has been used in some other way.

Shri Birla: We feel that it has not been utilised at all. Otherwise, all these complaints that industrialisation has not taken place would not have arisen. In fact, in the present stage of development of India, if you start experimenting with a system which has been established for over 100 years we would not be putting this country in its proper place on the map of the world as the Prime Minister wants us to. If we want industrialisation, then we feel that this is the best method to start with. Of course, Parliament is supreme and they can decide anything.

Shri Agarwal: What will happen to the money in this country? Will it fly to other countries or will it remain uninvested in the country?

Shri Birla: There are so many crores of rupees supposed to be in the villages. What has happened to them? Are you able to get them? It is only when somebody has some interest that he tries to attract that money.

Chairman: Shri Agarwal's question is a simple one. There is money lying with the managing agents. Supposing the managing agency system is abolished, will that money be invested?

Shri Birla: It is a wrong assumption that you are making. No money is lying with the managing agents; money is collected by the managing agents. They collect in from various sources. If a managing agent is reputed for sound management, he is able to attract money. It is not every managing agent who is able to attract money.

Shri Chatterjee: I am taking up, Shri Birla, clause 353, relating to inter-company loans. As between companies under the same management, loan is prohibited, except with the consent of the lending company by special resolution. You have objected to this provision. Do you realise that the law as it stands today is more strict than this and we are really trying to liberalise it by putting in special resolution?

Shri Birla: Sir, we have been complaining that the present provision is coming in the way of expansion of industries. We feel that the clause as it is worded is not liberal enough. A 75 per cent. majority resolution, or a special resolution, is not always possible. You have to call a special meeting for it; it takes months and months and the purpose of the clause is defeated by this provision.

In this case even a subsidiary company lending money to the parent company is prohibited. This is very unfair. After all it is your own money and you cannot take it back from the subsidiary.

Shri Chatterjee: You have stated that if this clause is enacted it will be a serious obstacle to manufacturing programmes of jute, sugar and some other industries. Why do you say that? How will it obstruct their programmes? Am I to understand that you cannot possibly carry on business unless you utilise the funds of companies under the same management?

Shri Birla: In the sugar and jute industries funds of subsidiary companies who perform marketing operations are made available to the parent company. We feel that the way in which this clause is drafted, namely, providing for a special resolution, is not conducive to expansion of business.

Shri Chatterjee: With regard to sub-clause (1) at the bottom of page 109 of your memorandum you have stated :

> "If the same person is a sleeping partner in two managing agency companies, the two managed companies cannot on that account be deemed to be under the same management."

I am not able to follow this sentence. What exactly do you mean by it? You want the provision regarding the special resolution to be deleted ?

Shri Birla: In fact, we have suggested the substitution of the words "by a special resolution of the lending company" by the following words :

> "by a resolution passed by a directors' meeting with the consent of all the directors present at the meeting, provided notice of the meeting and of the resolution proposed to be moved thereat has been given to all the directors then in India, or by an ordinary resolution of the lending company."

Shri Chatterjee: Then you go on to say :

> "If the same person is a sleeping partner in two managing agency companies, the two managed companies cannot on that account be deemed to be under the same management."

Shri Birla: I explained to you yesterday how shares are sold by various companies. Shares are sold not only to the public but also to certain persons to whom managing agency rights are given. They are treated as sleeping partners. They have nothing to do with the management of the company; they have nothing to do with looking after the affairs of the company.

But under this clause even sleeping partners can come in the way of loans being given.

Shri Chatterjee: X company is being managed by A and Y company is being managed by B. A and B are firms. C is a sleeping partner in A as well as B. Therefore this clause will operate and you say it is not fair.

In other words your objection is that this clause prohibits loans as between companies with the same management except with the consent of the lending company by a special resolution.

Chairman: Your objection is that there need only be a simple resolution and not a special resolution.

So far as the principle underlying the provision is concerned, it was not objected to. In spite of the common sleeping partnership, your ground appears to be that they should be considered as companies under the same management?

Shri Birla: We have only cited the instance.

Chairman: Do not you think that a sleeping partner who does not advance money will be in a better position than the managing partner himself?

Shri Birla: We have not suggested any amendment to that. We have only suggested an amendment that the special resolution may be made into an ordinary resolution.

Shri Chatterjee: In sub-clause (1) you have objected to the special resolution: you want it to be left to a unanimous resolution of the Board?

Shri Birla: Or an ordinary resolution of the company.

Shri Chatterjee: You have also suggested the deletion of item (i) (b) in the Explanation to sub-clause (1)—

> "a partner in the firm acting as a managing agent of the other body".

Shri Birla: There we are referring to the sleeping partner.

Shri Chatterjee: Do you want an explanation given under sub-clause (b) ?

Shri Birla: Yes, if you change the clause as we have suggested it will serve our purpose.

Shri Chatterjee: Please refer to sub-clause (2) of clause 353. If I remember aright you were saying that section 353 will not apply to a loan by a holding company to a subsidiary company and you want the same privilege also in a *vice versa* case—that is, you want that a subsidiary company can lend money to the holding company.

Shri Birla: I cannot think of any reason why it should be barred.

Shri Chatterjee: There is chance of possible misuse, as Shri Ghose says.

Shri Birla: The funds of the subsidiary company are of the parent company. Why should the parent company not be able to utilise those funds?

Shri Chatterjee: If the funds of the subsidiary company are not allowed to be invested in a parent company, there will be financial loss. Suppose we do not allow *vice versa*—the subsidiary company's funds are not allowed to be invested in the holding company?

Shri Birla: For all practical purposes the parent company's funds are lost to it: somebody else is making use of them.

Shri Chatterjee: In regard to clause 355, interlocking, you have talked a lot about foreign companies like Du Ponts, Lever Bros. etc. You also gave an instance of Tatas. Now what we are suggesting here is that up to 10 per cent. you want a unanimous decision of the Board of Directors.

Shri Birla: We have said that the investment should be with the consent of the Board of Directors, as it is at present.

Shri Chatterjee: As the clause stands at present, up to 10 per cent. you can do it with the Board of Directors' sanction; over 10 per cent. you want a special resolution.

Shri Birla: Which means practically you are banning it.

Shri Chatterjee: Do you think it will amount to banning?

Shri Birla: You cannot get a special resolution so easily passed.

Shri Chatterjee: So, this 10 per cent. is too low a limit?

Shri Birla: We have suggested that 10 per cent. is too low a limit, therefore, the matter should be left to the Board of Directors to invest funds with their unanimous consent. If they are not agreeable the matter may go for an ordinary resolution of the shareholders.

Shri Chatterjee: In your memorandum you say that restrictions on inter-company investments are detrimental to national economy. Are you not overstating the case somewhat? Can you substantiate it?—because this is a very serious matter.

Shri Birla: Finances which are available at the moment are mostly incorporate sector. The problem before us is how these are to be best utilised. Either a company may expand itself with its own funds, or a few companies may join together and start a business.

As you are aware previously small shareholders used to come forward and companies were being formed with capital subscribed by them. But with the high rate of taxation, new companies are being formed in lesser and lesser number. So companies join together and start a new company. This is the most feasible method of doing business. Till now the industries that were started were of consumer goods. That has more or less been completed and the industries that we are in need of now are of a somewhat complicated type. The risk to be undertaken in starting these industries is somewhat minimised by a number of companies joining together.

Shri Chatterjee: Do you not think that there has been a certain amount of abuse in this sphere of inter-company investment, and some safeguard has to be provided now?

Shri Birla: I do not think there has been any abuse of this, because if the persons have purchased shares of different companies, there are not many instances where such companies have gone into liquidation.

Shri Chatterjee: Apart from liquidation, there has been some amount of abuse of privilege?

Shri Birla: Not in inter-company investment. It may be because of other reasons, but not this.

Shri Chatterjee: In regard to clause 357, competitive business, what are the suggestions you are making? You have said that this proposal completely belies the history of the managing agency system. What is your suggestion?

Shri Birla: As I cited some instances in future we have to think of entering into difficult industries, and there the foreigner is at a great advantage as compared to Indian enterprise.

Chairman: That was explained.

Shri Birla: I explained it to Shri Ghose also this morning.

Shri Chatterjee: In regard to special resolution, you want that to be abolished?

Shri Birla: Yes.

Shri Chatterjee: With regard to sub-clause (2) what are your suggestions?

Shri Birla: Deletion of it. We have suggested that as long as they do not start it in their own name there should be no objection. That is the existing basis. That should remain and this alteration should not be there.

Shri Chatterjee: Sub-clause (2) reads "For the purposes of sub-section (1)...."

Shri Birla: The whole of this should go, because the first clause says "A managing agent shall not engage on his own account in any business". Even so the difficulty is going to arise. If I.C.I. are going to manage a company in India, they are managing it because of their expert knowledge. Why cannot an Indian firm do the same? Why cannot they give their expert knowledge?

Shri Chatterjee: That may be a good grouse because of possible discrimination.

Shri Birla: I gave an instance, that of Atul Products. It helps the company that manages and the company that is managed. Atul Products makes dyes. It has formed another company in co-operation with another firm, and they will be producing another type of dye. If Atul Products in course of time is able to find some other method of producing dye, why should it be debarred? In fact it is the special knowledge of the company which helps both the companies.

Shri Chatterjee: Special resolution permits competitive business.

Shri Birla: Why special resolution?

Shri Chatterjee: With regard to sub clause (2), what you say is you want to define in what cases a managing agent shall be deemed to be engaged in competitive business. Do not you think that some such thing should be there?

Shri Birla: In sub-clause (1) it is there, "if it is done in his own name".

Shri Chatterjee: Or will not you agree that 20 per cent. should be made 50 per cent?

Shri Birla: No limit.

Shri T. S. A. Chettiar: We were asking questions about clause 352 (2), that is, loans to managing agents. For anything that has to be done on behalf of a managed company, funds can be taken from the managing agency itself. Shri Birla said: suppose I want to send Rs. 50,000 to somebody for the purchase of jute. The amount may be more having regard to the bigness of certain companies. Is it not possible, when things have to be done on behalf of the managed companies, that the money can be sent in the name of the managed companies themselves?

Shri Birla: I gave several instances where the money cannot be sent in the name of the managed company, because it is lying in the till of the managed company, or the managed company may be situated 200 or 500 miles away. Rs. 2 lakhs may have to be paid to a certain person. It has to lie with somebody. It has to be with the managing agents.

Chairman: Can it not be in the place wherever it is required?

Shri Birla: It is the managing agent's office that is situated there.

Shri Chettiar: While large amounts of money like Rs. 2 lakhs are kept with the managing agency, for a hundred rupees a cheque on the funds of the managed company is issued How would you like to avoid it, that is large funds of the managed company which are not utilised for the purpose of the managed company?

Chairman: Do you admit it that large funds of the managed company are not utilised for the purpose of the managed company?

Shri Birla: I do not.

Shri Chettiar: I know of cases.

Shri Birla: I say put a limit.

Chairman: You want Rs. 2 lakhs?

Shri Birla: You are not suggesting that everybody should deposit so much. You are suggesting a maximum.

Shri Chettiar: You are generally against all special resolutions?

Shri Birla: Not all.

Shri Chettiar: In which cases are you for?

Chairman: In many cases. They have given in detail.

Shri Chettiar: Do you conceive that in certain cases minority shareholders have to be protected?

Shri Birla: Yes. You have provided so many clauses to protect them.

Shri Chettiar: And is not special resolution of the shareholders one of the ways of protecting them?

Shri Birla: In some cases we have not objected to that.

Shri Chettiar: May I take it that except in the cases where you have specifically objected, in other cases agree to special resolution?

Shri Birla: Yes.

Shri Chettiar: In case of loans to related companies you say that 51 per cent. will do?

Shri Birla: Yes.

Shri Chettiar: Are you aware that in many cases this is a clause which has been so much abused that because 51 per cent. is at any time in command of the managing agent, the normal shareholder has no profits in either of these companies and is put to suffering?

Shri Birla: I am not aware of the latter part, but the managing agency may have control of 51 per cent. That may be correct.

Shri Chettiar: On page 6 of your memorandum you have said:

> "The Government of the day, though elected by the electorate cannot afford to disclose to the electorate the details of governmental action or important state matters which have to be kept confidential and secret. If it is so for Government, the same applies in the case of directors of companies elected by the shareholders. They have also to keep certain matters from the shareholders in the interest of the companies themselves".

What are those matters that you would like to keep away from the shareholders?

Shri Birla: Anything generally which may help the competitors we would not like to disclose to the shareholders.

Shri Chettiar: Would you lke to say that in the general body meeting certain matters should not be discussed?

Shri Birla: We have not said that. But where a matter is not in the interests of the shareholders or of the company as such, it should not be disclosed.

Shri Chettiar: How would you like to bring it into effect in the Companies Bill? There is no such thing. Normally it should be answered. You are enunciating a new principle.

Shri Birla: The present Company Law should remain.

Shri Chettiar: You do not want any special provision?

Shri Birla: That is right. The shareholders ask about the accounts and all that, and we give all the information.

Shri Chettiar: Please refer to page 104 of your memorandum. With regard to giving retrospective effect, you

[Shri Chettiar]
are against retrospective operation of the clauses of the Bill?

Shri Birla: It refers to voting right and rights given to the shareholders etc.

Shri Chettiar: Are you aware that a case has been put before us by other witnesses who came before us that in a company started in 1864—I may as well give the name of the company, the Bombay Burma Company—the promoters have up-to-date large shares in the profits, though the company was started in 1864?

Shri Birla: They must be holding shares.

Shri Chettiar: It is the promoter's profit without shares. That is what we have understood from the evidence.

Shri Birla: I am not aware of that.

Shri Chettiar: Are you agreeable that where promoter's profit or profits of a similar nature relate to companies which were started half a century back or so, in such cases retrospective effect can be given to the provisions of this Bill?

Shri Birla: How can you give retrospective effect? You can give effect from today.

Shri Chettiar: It does not mean that whatever they have received should be taken back. The idea is that they may not continue to receive these profits any more.

Shri Birla: But they must be holding some shares.

Shri Chettiar: Even in the case of holding shares, if you want to give extra profits?

Shri Birla: If they are holding shares, then the original person who got the shares could not be holding them after these years. It is somebody else who must have purchased them. And he must have purchased them at the market price. The man who has purchased on the basis of a certain price, and he will be deprived of the right of holding the property.

Shri Chettiar: That can be said even of the zamindars of today. I am putting before you an extreme case. The 1864 promoters might have a few shares, or they might not have But they are getting extraordinary profits even today. Would you like it to continue?

Chairman: Our Bill does not deal with promoter's profits.

Shri Chettiar: It is open to us to make a provision.

Shri Birla: I think it may go against the Constitution if you deprive somebody of his property.

Shri Chettiar: That is a different matter. In clause 82 differential voting rights are sought to be abolished: terminations of disproportionately excessive voting rights in existing companies. Would you like to maintain those disproportionately excessive voting rights?

Chairman: I do not think they have said that.

Shri Birla: This clause, as it is worded, is very rigid in some respects. It says certain type of shareholders should have vote, certain type of shareholders have no vote. We have said that the question of preference and other shareholders and others should be allowed to be determined by the conditions prevailing in the Articles of Association or the rights under which they were issued them. I do not think there are any cases where they have any disproportionately excessive right. For instance a ten rupee share may have one vote, and a hundred rupee share also may have one vote. But even there the present estimate has to be considered. We do not think we should change the voting right.

Another thing we have suggested is this. The Bill says that preference shareholders should have no vote. We thought it was too strongly worded a clause, because many preference shares have got voting rights and we

do not want to disturb those voting rights merely because it is to be provided in the Act. Therefore we have said there should be some flexibility in the matter.

Shri Chettiar: Apart from preference shareholders, which is a difference category, you have stated on page 39 of your Memorandum that the Committee are not in favour of retrospective operation being given to any provision which will affect existing rights of parties in respect of any matter particularly regarding the rights of shareholders.

Shri Birla: That is the main point which we have before us.

Shri Chettiar: What you mean is that you do not object in the case of future companies, but where according to the terms of the Articles, different rights have been given, they should be allowed to continue.

Shri Birla: Yes. We are not aware of any case where there are disproportionate rights.

Shri Chettiar: In cases where there are such rights.

Shri Birla: We do not object. If you feel that the shares should have come on the par basis, we do not object.

Shri Chettiar: What would you consider to be very disproportionate?

Shri Birla: For instance, if in some cases, preference shares have the right to vote, we do not think that they should be disturbed. In some cases they may not have the right to vote. That should not be changed. The issues were made at different times depending upon the circumstances of the case.

Shri Chettiar: Supposing there is difference between people who have Rs. 10/- shares as against people who have Rs. 100/- shares: do you consider that disproportionate?

Shri Birla: You can ask the person who has Rs. 5/- share to take shares of Rs. 100/- and you can equalise.

Chairman: The simple proposition is termination of disproportionately excessive voting rights in existing companies. I think the question of preference shares is different. The provision is:

> "If any existing company has issued before the commencement of this Act any shares, by whatever name called, with voting rights in excess.....

Shri Birla: I say, the same type of shares.

Chairman: Your objection is that vested interests should not be disturbed.

Shri Birla: In regard to the same type of shares. Now there are two types of equity shares, Rs. 5/- and Rs. 100. You can disturb.

Chairman: The idea is that for the same type, there should be the same right. We will consider the point.

Shri Birla: You have defined it. When you say, all shares, that is a different category altogether.

Chairman: We will see about the wording. So far as the principle is concerned, you agree that it is right.

Shri Birla: Yes.

Shri Chettiar: Please refer to clauses 338 to 342. Are you aware that making the managing agents or the associates as selling agents or buying agents has led to great abuses?

Chairman: He does not seem to agree.

Shri Chettiar: It is a question of evaluating the evidence of the witness. Let us ask him about patent facts and see what he says.

Shri Birla: I am not aware of any. We have not objected very much to this clause except in certain respects.

Shri Chettiar: In cases where the power of appointing the associates has been abused, apart from this, what would you suggest to prevent such abuse?

Shri C. D. Deshmukh: All that they want is that certain expenses should also be allowed.

Shri Chettiar: In making appointments as officers and agents, have you found that certain relatives of managing agents have been appointed on very much higher salaries as compared with the appointment of non-relatives?

Shri Birla: I am afraid, I do not know that; I do not know what is happening in other companies.

Chairman: That is a general charge. That takes us nowhere.

Shri Chettiar: Under the Bill, there is no prohibition for a company having managing agents, managing directors, etc. Do you think that where the managing agents are there, there should not be any managing directors?

Shri Birla: I am not aware of a managing director as well as a managing agent of a company. Of course, there are directors. There cannot be two persons to manage. There cannot be both a managing agent and a managing director.

An honourable. Member: There is no prohibition.

Shri Birla: It does not happen also.

Shri Chettiar: It may not generally happen. Would you like to have a provision that these two cannot go at the same time?

Shri Birla: You can have it. We do not object. We have never heard about it. You cannot give the same powers to two persons.

Shri Chettiar: Under the Bill, it is possible that they can have all these categories; there is no prohibition.

Shri Birla: It does not happen.

Shri Chettiar: There are certain clauses in the Bill which give powers to the Government. Generally, you would like everything to be closed by the shareholders resolution.

Shri Birla: Yes.

Shri Chettiar: Would you like to have any provision made for appeal to the Government?

Shri Birla: We have been discussing this matter yesterday and this morning, as regards transfer of managing agency,.....

Shri Chettiar: Even for transfer of shares.

Shri Birla: I think the court would be better.

Chairman: That matter has been discussed. We will draw our own conclusions. The replies have been exhaustive.

Shri Chettiar: Have you any suggestions regarding Chapter XI: that is with regard to companies incorporated outside India?

Shri Birla: We have not suggested anything.

Shri Basu: Yesterday, the witness made a serious allegation that there is going to be discrimination against Indian managing agency firms as a result of the provisions of the Bill. I would suggest that if the witness could submit a memorandum to substantiate that point, it will be better for us.

Chairman: I have no doubt heard at times some remarks from Shri Birla as to the result of some of the provisions of the Bill in favour of managing agency houses in the hands of foreigners. I took it only as an illustration of the policy. Generally, so far as the Bill is concerned, we have not made any distinction like

that. I do not think that now, because the witness says something, we should embark on a further enquiry. The Bill itself nowhere makes any distinction between companies managed by non-Indians or Indians. We want to treat all alike. I think it would not be proper also for us to give a sort of an impression that we are trying to do something which we are not doing.

Shri Basu: My submission is, if the witness still insists on his remarks that there is going to be discrimination according to the provisions of this Bill, I would request him to strengthen and substantiate the point and send a memorandum.

Chairman: I can only ask Shri Birla that if he wants to suggest that in some provisions there will be a sort of discrimination in favour of Indians as compared with non-Indians, and if he wants to give any further explanation on any point he may send a memorandum.

Shri Birla: There is no such point as far as the Bill is concerned. I made it clear the other day.

Chairman: Also cases of discrimination against Indian managing agencies, you may send if you want.

Shri Birla: There is no discrimination in favour of Europeans or in favour of Indians. I suggested the other day, when we were discussing the question of transfer of managing agency, that it may tend to be in favour of non-Indians. Then we came to the conclusion that in such cases, the matter may be left to the Government and there is an end of it.

Chairman: On behalf of the Committee, I thank you for the elaborate information that you have placed before us and the views which you have expressed here on behalf of the Federation. We know we have had to trouble you for three days. But, the Bill vitally affects different interests in the country and the Federation is interested in one aspect. We are thankful for the views expressed.

Shri Birla: I am grateful to you for examining me at length and for the latitude shown to me and I am grateful to the Members for patiently hearing me for three days. I have no doubt that your deliberations will result in the smoother working of the corporate sector. If my views have been of any assistance to you, I should be grateful to you. Thank you.

(The witness then withdraw)

The Joint Committee then proceeded to examine following witnesses :

Federation of Working Journalists

Spokesmen:—

1. Shri K. Rama Rao.
2. Shri S. A. Shastri.
3. Shri C. Raghavan.

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

Chairman: You have submitted a memorandum and it has been circulated to the Members. You are probably interested in safeguaring the interests of your Federation, in getting priority for the wages which may be due from the companies which collapse. The point is simple. We will carefully consider all that you have said. In addition, if you want to suggest any amendment or stress any points, we would like to hear you.

Shri K. Rama Rao: I would like to place before the Committee a few points, or rather stress some of these already stated, because I thought, in the course of a representation to a Committee, I should not argue. Therefore, I should like to place some arguments in support of our contentions.

The general background of our profession is this: Insecurity: your

[Shri K. Rama Rao]

never know when one will be on the streets; infantile mortality: newspapers come and go like mushrooms, especially at election times when politicians exploit the press; inadequate finances: you never know whether one is going to get ones' salary next month. I may tell you that I have lost 90 months salary in my 35 years of journalism. Most of these newspapers are mismanaged, because the politicians have a finger in the pie. We have said a lot on this subject before the Press Commission. I do not know whether the Commission in its report will suggest a special legislation for the press in all its aspects; it may suggest some amendments to the Indian Companies Act. in any case we are confining ourselves to the ambit of the present draft Bill.

Generally speaking, we are concerned with clause 117 which deals with payments of certain debts out of assets subject to a floating charge in priority to other claims under the charge. Clause 492 deals with preferential payments, when the liquidator comes in. Whatever I say concerns both these clauses. Naturally I am speaking not only for my profession, which is one of the most unfortunate professions, but also for the generality of the employees of limited liability companies. What we want is absolute protection. That is to say, we do not want protection, by way of preferential payment, only against a floating charge. We want protection against every kind of charge. You are giving four months. Very well, make it *pucca*.. I shall examine that point later. In my experience protection against a floating charge itself is not enough.

Then, the word "debenture" is not defined anywhere in the Indian Companies Act. It means "I owe you"—ample promissory note. In England the ordinary man understands what a debenture is, here there is much ignorance about it. Palmer defines it as nothing more than an instrument that acknowledges a debt. I want that definition to be there. You will be doing a world of good if you put in a definition to this effect in the Indian Companies Act.

About the floating charge, my submission is there is nothing like a floating charge today. It is a fiction. We think or feel that there is something like a floating charge. Actually it is not so. I shall explain it. There were two cases, one in Bombay and another in Calcutta. In each of these one of the parties insisted that it was a floating charge, but in the appeal court it was held not to be so. What happens is this. A newspaper company, for exemple mortgages its newsprint and book debts. We all think they are liquid assets and therefore a floating charge is created on them. But if you read the documents which are entered into with banks, you will get there some conditions like these: "Our man will be on your premises. You will show your monthly accounts. The goods in the godown will be kept at a particular value and level" and so on and so forth. The courts have held that this amounts to a specific charge. So, I want it to be a charge according to which I get my preferential payment in any case. That is the long and short of it.

Chairman: You mean to suggest there should be no distinction between floating charge and a charge of any other kind?

Shri Rama Rao: That is exactly the point. We do not want the word "floating" there. We want the charge to be *pucca*.. Next at a given moment a floating charge may mean nothing. In the "Indian Daily Mail" we calculated in January, 1931 that if the worst happens we would get at least two months' salary out of the arrears of four months that had already accumulated. When the liquidator stepped in he could not realise more than Rs. 20,000, while our two months' salary bill amounted to Rs. 40,000. We thus got precious little. If you read the judgment of the Calcutta High Court in J. D. Jones & Co., Ltd., vs. Ranjit Roy and others (A.I.R. 1927, Calcutta

page 682) and of the Bombay High Court in Bank of Baroda vs. H. V. Shivdasani (A.I.R. 1926, Bombay, page 427) you will get a clear idea of what a floating charge is and what a specific charge is. I am too poor to go to lawyers generally to be wrongly advised. I therefore want *pucca* protection by saying that it is a protection against all kinds of charges.

I am now proceeding to another point, *viz.*, procedure. Procedure is a ticklish thing. In July 1931 the liquid assets of the Indian Daily Mail were taken possession of by the Bank of India under a floating charge. On August 1931 the specific mortgages holder, the Nizam, took possession of the assets mortgaged to him. In September the liquidator stepped in—as the result of a move made in the High Court. We fought a case against the Bank of India that it was a floating charge. The Advocate-General of the day advised me to take out a chamber summons against the Bank of India on the ground that the company was already in liquidation. Actually Shri Justice Kania did not take two minutes to knock me out. He said it should be procedure by suit. I later renewed the litigation by way of a suit.

Chairman: Do you want some simple simple procedure for all this

Shri Rama Rao: Yes, we want it to be very simple indeed we want it to be like in *forma pauperis*. We want the bill to include a provision about procedure as simple as possible, as inexpensive as possible.

I submit that the use of the word "revenues" in clause 492 is wrong. In a judgment Shri Justice Talayarkhan has suggested that the trading debts due to the State must be separated from ordinary taxation for the purpose of priority ranking, because if the State comes with a huge Commercial claim, I am wiped out.

Instead of "clerk" or "servant", I would suggest the use of the word "employees" in this Clause. Recently, an assistant editor was by the Patna High Court held to be a clerk and not a workman.

The ceiling previously was two months and Rs. 1,000. The Bill has made it four months but it keeps Rs. 1,000 at the same level. The value of money has since depreciated and wages have risen. We therefore suggest that Rs. 1,000 should be raised to Rs. 3,000 or Rs. 4,000.

Then I come to the question of provident fund. Shri Raghavan will explain it.

Shri C. Raghavan: The sections are 381, 382, 383 and 384. It is provided in clause 382:

> ". . all moneys contributed to such fund (whether by the company or by the employees) or accruing by way of interest or otherwise to such fund, shall be either deposited in a Post Office Savings Bank account or invested in the securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trust Act. . ."

We say that this is really a trust property on behalf of both the employees and the employer and it should be compulsorily provided that the employer should create a trust in respect of provident funds and he should not be permitted to use provident fund moneys for his day to day administration. We have had bitter experience in this regard. In a company managing a paper in Bihar—"Searchlight" of which Shri Rama Rao was the editor, not only the employees' provident fund contributions were made use of for the assets, but even the income-tax deductions which the employer was deducting at source for paying to Government were being utilised. The employees did not know about it. After two years, the income-tax authorities of Patna Circle sent a notice saying 'You have not paid your income-tax. If you do not do so, I am going to levy a penalty on you.' When it was pointed out

[Shri C. Raghavan]

to him that the employer had deducted the income-tax at source, he said 'No, you are responsible. Under the law, you are responsible for payment of your income-tax'. Then only when the employees threatened the management that they would take action against them for breach of trust, or something that the management paid off the money to the income-tax department and the income-tax department was good enough to waive the penalty. We suggest that such kind of temptation should not be placed in the hands of the employers and the provident fund contribution should be made an absolute trust. Once you concede that it is an absolute trust—because after all, it is my contribution that is paid and the employer's contribution that he is making under the rules—the penalty provided, namely, Rs. 500, appears to the Federation to be too meagre because if the employer is able to get, say, Rs. 20,000, provident fund contribution, he can commit a technical breach and he may make use of it. Because if he goes to a bank for a loan he may have to pay a higher rate of interest; so he may utilise it for his day to day purposes, and if prosecuted, pay a penalty of Rs. 500. So if you provide a punishment of imprisonment in jail, that may act as a deterrent; he should be subjected to a higher penalty for breach of trust as provided in the Indian Penal Code. So, if necessary, there must be a provision for compulsory simple imprisonment.

Then I come to section 492(g), where provision is made for payment of provident fund *per rata* amongst all other things. If under sections 381-382 you create a trust, it should therefore be treated as a separate money, we are unable to understand how under section 492 when the company goes into liquidation the trust money should also be brought into the assets of the company. It should not be made to rank with other debts. We suggest that a proviso be added so that this amount having fallen due to the employee at any time should not be made to rank with *pro rata* payments. It should be made to rank higher than even taxation and other things which are due to the State. Provident fund security should not be brought into the liquid assets of the company. Probably this provision is due to the fact that clause 492 was copied from the original Act—section 230. The character of this provident fund contribution was probably lost sight of and we request the Committee to look into the matter.

In respect of floating charge, we would suggest an amendment in clause 117:

> "Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a charge, floating, specific or otherwise"

and we would also like to add an Explanation to that clause:

> "The expression 'charge' in this section shall have the same meaning as Part V of this Act".

So that we would like to bring all charges under the same definition.

Shri Rama Rao: The main part of our argument is over. Now there are only three or four points to discuss.

We are for nationalisation of audit for policing public funds. Just as you have a police service to catch thieves, you must have an audit service to catch the company thieves. I do not want to use strong language in connection with the audit profession of this country—they are just like all of us; they have got to live, just as journalists have got to live—but auditing is a crude farce. You must not expect the auditor to lose his living, to put it at the lowest, by being too strict in his work.

There is the improved provision for inspection. But I feel that, unless the machinery is further improved and a provision much stronger than what is proposed is put in, most of the calamities that now occur will not be stopped.

We are absolutely against the managing agency system. This evil is spreading even to the newspaper world. Formerly if I were working for a Jawaharlal Nehru or a Prakasam it was a kind of joint patriotic venture, but in these days you know the type of persons who have taken hold of newspapers and for whom journalists have to work. They are imposing this awful institution called managing agency on the newspaper world. We have placed this question before the Press Commission. It comes under the chapter of breaking of the chains. I do not know what the Commission is going to do.

We have this interlocking of finance. I do not want to mention names, but if you see the fate of the *Times of India*, you will be surprised to know that one of the most splendid newspaper institutions of this country can not own its own building today. After the change from the European management the building has been sold to insurance Company. I do not know from where the insurance company found the money. It is from some other source. It seems to have paid 1-1/4 crores of rupees. It is a kind of labyrinth in which all get lost. We have gvien the instance of "Bharat" of Bombay in our memorandum. It was started under the august auspices of the late Sardar Vallabhbhai Patel. Many journalists joined the paper because the big name was inspiring. But as a result of colossal mismanagement, it failed and lots of people lost their employment. Even court decrees could not be executed. Official notices were served but they were returned 'not received', 'refused', 'not acknowledged'.

Shri Raghavan: I have one here. We shall present it to the Committee.

Chairman: Not necessary. We believe this.

Shri Rama Rao: We have submitted to the Press Commission that when a paper starts, it must have some minimum amount of money in the bank. What happens? Just before an election, a paper is started for propaganda, but after the election the proprietor is not to be traced. The paper fails. It has served its purpose. Probably he has lost the election or he has not become a Minister. Something has happened and the result is that hundreds of people are thrown on the streets. In Malabar alone there are 16 daily 'newspapers'. Last year when I was there I was making an inquiry. There are 16 daily newspapers, many of them political stunts, for a small territory and the men who suffer are working journalists!

Chairman: Who carries on these stunts generally?

Shri Rama Rao: Generally, a knave finds a fool. The fool is the working journalists, the knave is the politician.

Then there is another point, regarding the *Indian Daily Mail*. It is a strange thing. The Bank of India took charge of the liquid assets. The Nizam liquid assets. The Nizam took charge of the specific assets. When the liquidator came later on the scene there was nothing. The poor working journalist suffers. So I went and asked the liquidator whether he was going to fight out the battle of the employees who had lost seven months salary. He said: "Please put in my possession Rs. 5,000; I shall fight your battle." It is a very strange position. So the liquidator who deals with every individual company makes a fortune. It has changed recently because the department has now been taken over by the Government, but even now they deal with every individual company. I protest against it. I suggest that the best thing is for the Government to have a general liquidation pool, from that he can get money to do his work, including prosecution of directors who have swindled. What happens? The director in the *Indian Daily Mail* burnt the documents of the company, documents which should not have been destroyed. I took the case to the company judge. He said: Give

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the liquidator Rs. 2,000; he will deal with the matter. In this way, the men who are responsible for the failure of a limited liability company go scot-free. In England such cases are dealt with by public-spirited peoples and also they are dealt with by the Director of Prosecutions, at the expense of the State. If that is done here also, then most of the crimes that are committed in the shelter of the Indian Companies Act will be traced. I trust that this Committee will recommend that Government should have a liquidation pool monies from which can be used to prosecute company directors who have mismanaged the affairs under malfeasance, misfeasance and non-feasance. If you do it, then a good many of our company troubles will come to an end.

I have finished. I thank you very much. I invite your attention to the Bharat case given in appendix B to our memorandum. It is a very important one. We crave your kindness for doing your best to make the changes we have suggested.

Chairman: I think generally there is hardly anything to be asked because the evidence has been so clear and so emphatic also.

Shri V. P. Dhage: You have suggested that there should be an audit service in the sense of a police service. Will you say why you have come to form this opinion?

Shri Rama Rao: As a result of the enormous swindling to which both directors and auditors are parties.

Shri Raghavan: I will give you one example. In the newspaper world, you have something called the Audit Bureau of Circulation. It certifies the circulation of a newspaper. Here I have got with me a certificate given by an auditor giving the net circulation of a Bihar paper as 26,950 a day. To the knowledge of our Federation, even the total print order of that paper was not 10,000 a day.

Shri Dhage: There are suggestions made also by other witnesses that have appeared here that there should be some other method of audit etc. Would you like that the Government may appoint auditors instead of the regular services doing it?

Shri Rama Rao: If that will do, I agree.

Shri Dhage: There are certain grievances for which you say the auditors must be responsible. Then, what is the other alternative you would suggest? First, I would like to know the various evils. Secondly, I would like to know from you as to what are the suggestions that you will make to correct those evils.

Shri Rama Rao: Generally speaking, there has been a movement in England for nationalisation of the audit services. The State must protect the public against exploitation by interested people. I will answer the question this way. The auditor must be a servant of the State, the servant of the public and not the servant of the man who engages him. For the obvious reason that he is engaged by a private party, he is under the shadow. I do not take the audit certificate to be clean and reliable. Many auditors also think with me. By whatever method we do it, if we secure the interests of the public and the shareholder, it would be welcome to us.

Shri Dhage: Can you say why the auditors have been doing this?

Shri Rama Rao: I suppose just for the sake of a living.

Shri Raghavan: The point is this. If the auditor raises an objection to the payment of even a particular amount, then the managing director or the directors at their next meeting throw the auditor out.

I have worked in an insurance company before I became a journalist. I say from my personal experience. In the insurance companies the rate of commission is specified, that is, you cannot pay more than say 30 or 40 per cent. But every insurance company pays more than 40 per cent. I am not over-estimating when I say 'every insurance company'.

Shri C. D. Deshmukh: You mean 'every insurance company' without any exception?

Shri Raghavan: Yes. I must say, 'without exception'. I do not blame the insurance companies. Once one insurance company starts doing it, all the others have to do it. There are so many heads. They produce bills. The auditors certify that the money has been spent on these things. They (companies) have got what is called a No. 2 account. I myself have made entries in No. 2 accounts. They do not pay the full amount on the receipts. They pay 30 per cent. or 40 per cent or 50 per cent. The rest is kept apart. If the auditor raises any objection, he will be thrown out at the next meeting. If the Government appoints the auditor then he will say that he is not satisfied with the voucher. He will be able to mention it in the profit and loss account or in the audit report. So the company and the public and the shareholders will be able to know the actual facts.

We have found in some labour cases the Labour Tribunals saying that they cannot go behind the auditor's certificates. We know from personal experience that the vouchers are bogus; so much money is not spent. The *Times of India* when they started in Delhi created a selling agency for the sale of the newspaper. The company had a huge pay roll. After the employees are working in the private homes of the directors. Some may not even have seen a newspaper but yet they are shown on the pay roll of the company—the agency created for the sale of the newspaper. They will have some arrangement with some newspaper agency which will be given some 5 or 10 per cent. commission but it will be charged at the rate of half an anna per paper.

Shri Chatterjee: The whole thing is bogus?

Shri Raghavan: I would not say that because I know I should not use unparliamentary words.

Chairman: I would like to bring to the notice of the witness that all the evidence that he is giving is likely to be made public and therefore it is better to be cautious. One can be cautious and emphatic without courting trouble.

Shri Dhage: You said that it is for the purpose of living that the auditors give inaccurate certificates. I think you would agree that there is a large number of such people who have no work. What kind of auditors are those that give much certificates?

Shri Rama Rao: Those who want to make a living, those who do not want to starve and die.

Shri Tulsidas: You have suggested the name of a particular company. I would like to know if this particular company was managed by a managing agent, would these things have happened?

Shri Raghavan: We have said that it is not with individuals we are concerned. It is the loophole in the law which enables these people to go ahead with impunity. In fact, we are prepared to concede that Shri Tulsidas Kilachand lost very heavily in the 'Bharat'.

Chairman: He wants to protect not only the public but you also.

Shri Tulsidas: I concede that the working journalists should not be made to suffer. Supposing, as you say, there is priority with regard to the salaries and other claims of the journalists before the debentures, if that was provided, would you suggest that any bank would be prepared to come forward and give loans against the assets of the company?

Shri Rama Rao: I have been expecting this question and I will answer it. Supposing I am the managing director of a newspaper company. I go to a bank for money. The bank today gives me Rs. 50,000. If you accept my amendment, the bank will give only Rs. 40,000 to the managing director and tell him that it keeps this Rs. 10,000 as a margin or a reserve against the four months' salary to be

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paid by way of preferential payment. But, if you say that the money-lender's interests are more important than those of the workers, I say this is not a 'Welfare State'.

Shri Tulsidas: Apart from the question of a 'Welfare State' it presupposes that the bank, if it decides to lend money, which it has as a trustee of the public because public moneys are deposited with the bank, should take the risk of losing public money.

Shri Rama Rao: Where is the question of losing here? Instead of giving me Rs. 50,000 today the Bank will give me only Rs. 40,000 and keep the Rs. 10,000 as a margin.

Shri Tulsidas: Do you realise that in view of these restrictions the bank will not lend money as freely as possible and the companies will not be able to function and will come to a standstill because of want of money?

Chairman: So far as he is concerned, he only wants priority for the workers wages etc. He does not concern himself with what amount the banks advance. They will take note of the fact and advance a suitably less sum.

Shri Tulsidas: My point is that if such restrictions are incorporated into the law then there will be a certain amount of unemployment and the 'Welfare State' will cease to function.

Shri Rama Rao: I am not afraid of unemployment. Shri Deshmukh is looking after that. If under these conditions unemployment is inevitable, I am going to suggest nationalisation of banks and insurance companies.

Shri Dhage: You said the auditors sign the certificate for a living. I would like to know whether such certificates are given by established firms or by those who are struggling for a living.

Shri Rama Rao: I may tell you that it is a widespread evil; but generally it is done by most of those who cannot afford.

Shri Dhage: You have suggested punishment by imprisonment for certain offences if they are committed. There are many such provisions in the company law with regard to imprisonment etc. Are you in favour of such other provisions in the Bill?

Shri Rama Rao: Yes; unless you do that, the public will not have confidence in limited liability companies and unless limited liability companies are successful in this country, you will not be able to get enough funds for the private sector.

Shri Basu: You have suggested the nationalisation of the audit system. Do not you think that if provisions are made either in this law or in the law relating to Chartered Accountants that the auditor will be personally liable for wrong certificates issued and will be punished by being debarred from practice etc., it will be sufficient for the difficulty you visualise?

Shri Rama Rao: It will not do. Crime is no crime so long as it is not detected. Can you tell me how many auditors have been prosecuted in India? Take the English case law. We have got instances of first class auditing firms being put in the dock. In India we take no interest and once the money is lost we say it has gone to the *Ganga* and we keep quiet.

Shri Basu: Every auditor, before he gives a certificate, must satisfy himself that there is sufficient reason for a payment; he must scrutinise each and every item of account. That will increase his liability to function as auditor. Will that not solve the difficulty you envisage?

Shri Rama Rao: I do not visualise that it will solve the problem.

Shri Basu: You have suggested that in future, when newspapers are started they must have a minimum fund. Do not you think that even today there are possibilities of any political group or common men combining together and starting a newspaper?

They might be put to a lot of difficulty if you make it mandatory that a certain amount should be deposited in the bank before they start a paper.

Shri Rama Rao: There are obvious difficulties, I admit. I would rather say that better no newspaper comes out in this country than that a newspaper should go on living on my starvation.

Shri Basu: As in the case of an insurance company, where you say a certain proportion of the fund has to be kept in a scheduled bank, have you got any suggestion about the proportion to be kept in the bank with regard to a newspaper?

Shri Rama Rao: It all depends upon the particular case. To start an English daily in Delhi may require Rs. 50 lakhs while at Patna it may require only Rs. 20 lakhs. A weekly in Delhi may require Rs. 2 or Rs. 3 lakhs while it will require only Rs. 1 lakh in Patna.

Shri T. K. Chaudhuri: You have said in your memorandum that your Federation is opposed to the introduction of managing agency in newspaper work. We have also heard your arguments on this point. Do not you feel that those managing agents who have the power of big finance behind them have to a certain extent given economic security to the journalists?

Shri Rama Rao: They do not give economic security; they do a lot of political bullying and the editor's life becomes miserable.

Shri C. C. Shah: You have stated that four months' arrears of wages are to be paid and you say arrears prior to the relevant date. There is no definition of the relevant date. Is it from the date of the winding up order or is it from the date the official liquidator is appointed? The official liquidator may be appointed some six months later. The winding up order may be made some 12 months later. The result will be that there will be no arrears of four months from the relevant date, and you will get nothing. The date must be changed. Recently in the case of one mill in Bombay, though it had stopped working six months back, no liquidation proceedings have been ordered and no provisional liquidator appointed. Perhaps that will be done six months later. How is the four months which you have suggested to be determined?

Shri Raghavan: We are thankful to you. That is why we have said not from the date of appointment of liquidator. Arrears of salary of four months to employees standing on the books should be paid, whatever be the date of appointment of the liquidator. We had a sad experience: we financed one of our sub-editors and won a suit in the City Civil Court, but we could not recover from the company even the cost of the stamp paper of the judgment copy.

Shri R. Venkataraman: With regard to the claims of the employees, under the present Company Law they have to sue individually. Have you any suggestion to make for collective action on behalf of the employees?

Shri Raghavan: We have sugested that.

Shri Rama Rao: I had to file a representative suit against the bank of India in the Daily Mail case. I had to pay Rs. 200 to the *Times of India* alone for advertisement charges. That wae terrific. Now we suggest that a trade union should have the authority to do it. It is for the Committee to introduce a clause to simplify the procedure, making it inexpensive for the employees. I would suggest also *in forma pauperism* in order to Save Cost.

Chairman: Your contention is that the suit will be so costly that individual employees will not be able to undertake it.

Shri Raghavan: Moreover, only if we sue collectively shall we be able to check fraudulent practices. If I file a suit individually, the liquidator may not be inclined to attach all the

[Shri Raghavan]

assests of a company. At the utmost he may ask the company to deposit a thousand rupees in the court. If we are able to sue collectively we will be able to protect the interests of the employees as well as of the State, because in that case the provisions of clause 492 will be attracted.

Chairman: Gentlemen, on behalf of the Committee I thank you for having placed your views before it. They will certainly receive our consideration.

Shri Rama Rao: We are thankful to you all for having given us a patient hearing. We hope we have won our case before you.

(*The Witnesses then withdrew*).

THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953.

Minutes of Evidence taken before the Joint Committee on the Companies Bill, 1953.

Saturday, the 10th July, 1954 at 9 A.M.

PRESENT

Shri H. V. Pataskar—*Chairman*

MEMBERS

LOK SABHA

Shri Chimanlal Chakubhai Shah
Shri Awadheshwar Prasad Sinha
Shri V. B. Gandhi
Shri Khandubhai Kasanji Desai
Shri Dev Kanta Borooah
Shri Shriman Narayan Agarwal
Shri R. Venkataraman
Shri Ghamandi Lal Bansal
Shri Radheshyam Ramkumar Morarka
Shri B. R. Bhagat
Shri Nityanand Kanungo
Shri Purnendu Sekhar Naskar
Shri K. T. Achuthan
Pandit Chatur Narain Malviya
Dr. Shaukatullah Shah Ansari
Shri Tekur Subrahmanyam
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Shri Mulchand Dube
Shri Ajit Singh
Shri Kamal Kumar Basu
Shri C. R. Chowdary
Shri M. S. Gurupadaswamy
Shri Amjad Ali
Shri N. C. Chatterjee
Shri Tulsidas Kilachand
Shri G. D. Somani
Shri Tridib Kumar Chaudhury
Shri C. D. Desmukh

RAJYA SABHA

Dr. P. Subbarayan
Shri Shriyans Prasad Jain
Shri Somnath P. Dave
Dr. Nalinaksha Dutt
Shri S. C. Karayalar
Shri Amolakh Chand
Shri M. C. Shah
Shri V. K. Dhage
Prof. G. Ranga
Shri B. C. Ghose

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar, *Secretary, Department of Economic Affairs, Ministry of Finance.*

Shri K. V. Rajagopalan, *Officer on Special Duty, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj, *Deputy Secretary.*
Shri A. L. Rai,—*Under Secretary.*

WITNESSES EXAMINED

The Institute of Chartered Accountants of India.

Spokesmen:—

Shri S. Vaish

Shri N. R. Mody

Shri S. Vaidyanatha Iyer

Shri C. C. Chokshi.

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

Chairman: I think you have given us something similar to a memorandum in which you have referred to some of the clauses of the Bill. I would like you generally to explain some of the salient points, not with respect to drafting etc. which you might leave, but with respect to any fundamental changes or matters of importance which you would like to bring to the notice of the Committee.

Shri S. Vaish: Sir, I shall just proceed as you have directed me. The first point which we have taken up in the memorandum is with regard to the form of the balance sheet. This question raises two aspects: first, what the balance sheet should contain or what the balance sheet should present; second, how it ought to be presented. As far as the first aspect is concerned I have not much to say. You may prescribe whatever you think is necessary to be shown in the balance sheet. But we have a submission to make as to the presentation or the form of presentation itself.

We have submitted in the memorandum that the form of the balance sheet should not be made very rigid. In view of the developments in accounting thoughts, it would perhaps be better if no rigid form of balance sheet is prescribed, and the manner in which the details required to be furnished as per the Act or the law may be left to the individual instances themselves. I will illustrate my point. For instance, very often it is asked by a shareholder as to where is the depreciation fund, where it has gone. They say: you have been making a provision for depreciation year after year, but we do not find where it is. It may be necessary for us to indicate that in an appropriate manner by adopting a different line of presentation. It may as well be necessary to show as to what is the working capital of the individual concern. Ordinarily, the form as it is laid down today.....

Chairman: With regard to the first point I also feel it is important. What should be done to show as to what has happened to the depreciation fund?

Shri Vaish: It may be, if the form of the balance sheet as it stands today or as it has been proposed in the Bill is given a final shape and takes the form of law, then it is difficult, I am afraid, to say how the balance sheet would represent the depreciation provided; because according to the requirements of the form laid down it has to be deducted from the different assets, and the written down value has to be shown in the balance sheet: whereas if we are allowed to treat the entire depreciation which is accumulating year after year as a separate sort of fund or reserve, we may say "these are the various items, that is, as capital, as funds, as reserves, and these are represented in these assets" without impairing the value of the assets or without affecting the value of the assets, showing the assets at their original value and showing what

are the other assets which when taken along with the fixed assets will make up the capital and the various funds. That would to my mind be more understandable to a shareholder.

Similarly very often it is said: As the balance sheet is presented to us we cannot make out as to what is the real worth of this particular concern, namely what is the capital and what are the reserves. Because, on the liabilities side we show the capital, the liabilities, the reserves. Perhaps it may be required in some cases as a better presentation that we show the capital and the reserves as representing the real worth of the concern, and we deduct the liabilities from the current or floating assets, so that we show, as one statement or a part of the statement, the assets minus current liabilities. It may perhaps be thought better in individual instances; and then we show that these assets represent the capital, the reserves and the accumulated profit and loss account. In that way possibly the accounts may be presented to the reader in a more understandable form.

Then another point which I may be permitted to mention is with regard to the flexibility of the form which we have in view. It appears that at the moment the entire form must come out as a final account to be published. It may be that in some concerns, medium size concerns, all items may not be really relevant. It may not be as if we have to show the funds as Nil. When we turn to the form of the balance sheet we find there is share capital with various sub-heads, reserves with various sub-heads, and so on and so forth. It appears to me that probably the intention at the moment is that we must say 'Nil' wherever the items are irrelevant for our purpose; nonetheless we must indicate those items. If we burden the balance sheet with too many details and say 'Nil', it appears to me that it loses much of its informative value. Ordinarily it is difficult to a layman to understand it when there are so many 'Nils' there and they are not relevant. Perhaps it may be clarified, if it is so desired, that if any item is irrelevant or is not applicable to a particular instance that need not be shown as a part of the published account.

In this connection before I go to another point I may specifically invite attention to a particular note given against the first item on the assets side, that is fixed assets (*our memorandum, page* 19). This has to be read along with the note given on page 291 of the Bill (Schedule VI, Part I). The second note against fixed assets says:

> "In case where original cost figures cannot be ascertained the valuation shown by the books shall be given and where any of the assets are sold and the original cost in respect thereof is not ascertainable, the amount of the sale proceeds shall be shown as deduction."

This is the second note against fixed assets, appearing as an instruction in the last column. Here the intention appears to be that we must show, according to the very first note, the original cost of the assets, the additions thereto and deductions therefrom and the total depreciation written off up-to-date, that is up to the date of the balance sheet. The second note says where the original cost figures cannot be ascertained, then the valuation shown by the books shall be given: so that, possibly it may be interpreted to mean that either the original cost, if it can be ascertained, should be given, or, if the original cost cannot be ascertained due to any difficulty whatsoever, then the book value as we call it may be given.

I submit that that is not a very satisfactory state of affairs. It may be that in a particular instance we may not be in a position to ascertain the original cost. Nonetheless we may be in a position to assess or find out the cost in between some date. If we

[Shri Vaish]

are seized of the balance sheet for 1953, then we may be in a position to find out the original cost as far back as 1935, and not beyond that. I think it will be more useful if, instead of having the written down value as on date given in that case, we say the original cost as in 1935 was this much—we cannot give the original cost on the very first date the concern was started—and thereafter, that is, from the date we are able to ascertain the original cost, we go forward and say, additions are so much, deductions are so much, depreciation is so much. Because, that gives some more information than what seems to be the intention of the provision today if the original cost itself cannot be ascertained.

The second point is contained in para. 37 of our memorandum (page 25). Here there is one point which we may be permitted to bring to notice. This para. has relevancy to clause 213 of the Bill. According to the intention of the provisions of the Bill as they appear, the audit in the case of a branch is not really compulsory. Clause 213 provides to the effect that if the company in general meeting so decides, the audit in the case of the accounts of a branch may be dispensed with. That is as far as a branch is concerned. Now, the term "branch office" as defined in clause 2(6) of the Bill means that if in an office the activities carried on are the same or substantially the same as are carried on at the head office, then that office would not really be a branch office. In other words it is contemplated that a company may have several principal offices, if I may so style them. If there are several principal offices, then the intention appears to be that all those principal offices' accounts must be audited by an auditor qualified for the purpose.

In that connection I have to make respectfully one suggestion.

It may be that the statutory auditor, as we generally call him, in the case of the company may not be in a position to cope with the requirements of audit of all such principal offices. In that case, it may be made permissible that the statutory auditor may depend on the work done by another auditor not being the statutory auditor himself. At the moment, it appears to be that the statutory auditor who is appointed by the company in general meeting must audit the accounts of all offices which may not come within the definition of the branch office as laid down in the Bill. I therefore want a sort of clarification or enabling provision that an auditor who is appointed as the statutory auditor may be in a position to depend on the work or may rely on the work carried on by another auditor not being the statutory auditor as far as other offices not being branch offices are concerned.

Then I come to para. 21 of the memorandum, with regard to the question of declaration of dividend. This is linked with clause 190 of the Bill. This clause says:

> "No dividend shall be paid in respect of any financial year otherwise than out of the profits of that year or the undistributed profits of previous financial years".

Then the Explanation is not very relevant for my purposes. In this connection, I would again take you to note (h) given in Schedule VI of Part I, page 299, of the Bill. It says:

> "The debit balance in the profit and loss account shall be set off against the general reserve and where there is no general reserve against future profits".

I submit that clause 190 needs to be reconciled with this note (h). If clause 190 gives a warrant for declaration of dividend out of profits of the current year or the year under consideration without any regard to losses incurred in earlier years, then as far as I can read, that runs counter to the contents of this note (h), because note (h) says that if there is a

loss, that must be set off against future profits. Therefore, if in any year there is a profit and at the same time there are losses brought forward from preceding years, then we cannot declare dividend out of the year's profits until the past losses of the preceding years have been set off against the subsequent year's profits. If this is agreed upon, then this clause 190 which apparently seems to permit declaration of dividend out of the year's profits without any regard to the losses of the earlier years has to be suitably modified.

Shri Dhage: How would you like clause 190 to be modified?

Shri Vaish: I would like note (h) to find its place. I would like the capital of the company to be maintained intact.

Shri Chatterjee: Have you any objection to clause 190?

Shri Vaish: I think the object can be clarified by adding a suitable proviso to clause 190, but I cannot claim to be a draftsman. Clause 190 has to make it clear that dividend can be declared out of a year's profit or out of undistributed profits of the previous years provided that losses that come forward from earlier years are set off first before dividend is declared.

Chairman: So far as clause 190 is concerned, it does not say that as soon as profits are made, dividend will be declared. It says:

> "No dividend shall be paid in respect of any financial year otherwise than out of the profits of that year or the undistributed profits of previous financial years".

As soon as there are profits in spite of previous years' losses, we should give dividend—that is not the idea. The idea is that no dividend shall be paid except out of profits. Therefore, they are preventing dividend being declared out of anything but what has accrued as profit to the company.

Shri C. D. Deshmukh: It has to be made clear for the purpose of this clause.

Chairman: There is a practical difficulty you must, as auditors, have come across. In many of the companies, it is the big shareholders who are in a position to wait for three or four years before a dividend is declared. If a company has got 5 lakhs investment with a capital of 10 lakhs, the big man can afford to wait for three or four years if there are losses, but so far as the smaller shareholders are concerned, if you prevent dividends being paid except out of profits after previous years' losses are wiped out, the result will be that their value diminishes and ultimately the smaller fish will find its place into the stomach of the larger fish. That is the practical result. The bigger man is always prepared to wait because he knows that ultimately the company will make profit, but not the smaller man. I think, therefore, we need not be too hard upon this provision.

Shri Vaish: That contingency, if I may respectfully submit, may arise even if there are no profits for a continuous number of years. That consideration may also require, I respectfully submit, declaration of dividend even if there are no profits.

Chairman: What I mean is that the bigger shareholder has the capacity to wait; the smaller one has not that capacity. Ultimately, it may be in the interest of the company.....

Shri Vaish: That is a question of policy and we cannot claim to say anything. But we submit that efforts should be made to keep capital intact and that is possible only if we make it a rule that dividend can be paid only out of net profits really representing profits as a result of activities todate.

Shri G. D. Somani: Are you aware of the difficulties that might be caused to new companies in this connection? You must be aware of the legal depreciation allowance at present admissible. Suppose new companies have to wait to distribute dividends to their shareholders until all the depreciation allowance—100 per cent—over a period of five years or so are provided for, do you think that they

[Shri G. D. Somani]

would be able to pay dividends to their shareholders for 8 or 10 years?

Shri Vaish: When we look to the provisions of the profit and loss account, I think it has been made clear or it is going to be made clear that the depreciation which is to be provided for in the determination of the net profit or loss under the Indian Companies Act is to be the normal depreciation not including extra shift, initial or special depreciation allowance. If that is so, we may very well get the allowance under the Income Tax Act for the purposes of income tax assessment. But I think it is clearly contemplated that the net income coming for assessment under the Income Tax Act is not the net profit or loss under the Indian Companies Act.

Shri C. D. Deshmukh: You say that the debit balance is to be set off against future profits. At what stage do you carry out this process of setting off against future profits? That is to say, last year there is a loss, now there is a profit. First you have to show in the balance sheet last year's loss set off against the profit. Therefore, dividend can only be declared out of such profit as may be left. It may well be that the whole of the profit may be absorbed by the loss of the previous year in which case profit for the purpose of clause 190 will be non-existent unless you change this.

Shri Chatterjee: According to Shri Vaish, dividend can be declared out of current profit after squaring up the previous losses.

Shri C. D. Deshmukh: If we reconcile these two provisions, that must be the meaning. Therefore, make it explicit.

Shri Vaish: Now, I come to paragraph 35. This relates to clause 211(1) of the Bill. It has two sub-clauses (a) and (b). Particularly in regard to sub-clause (b) we have to make a submission. Sub-clause (b) may again be divided into two parts, namely, persons who have obtained similar qualifications outside India and persons who have obtained adequate knowledge and experience in the course of his employment by a chartered accountant. As far as the second category is concerned, that should not find a place in the list of recognised or authorised persons.

Shri Chatterjee: You mean that the portion "or as having obtained adequate knowledge....etc." should go.

Shri Vaish: Yes. I refer to the category who may be deemed to have obtained adequate knowledge in the course of their employment by a chartered accountant. It seems to suggest that anybody working in the office of a chartered accountant may well have a chance of being appointed as a chartered accountant.

Shri Chatterjee: This is copied from the English section word for word.

Shri Vaish: The scheme as it stands in the U.K. is, I respectfully submit, fundamentally different from what it is in India. Here, we have a Chartered Accountants Act to regulate the profession of accountancy. That Act was passed in 1949. Consequent on the passing of that Act, the profession has been consolidated. Any one who is a Member of that institute is supposed to be a person qualified to practise throughout India. Having done that, I think it will be dangerous to create two or three different categories of accountants. They should all come under the same body. If any one is considered fit enough by the competent authorities, whoever they may be, to practise the profession of accountancy, he should be a member of the Institute of Chartered Accountants of India. The question that arises for consideration is as to how we should govern the entry on that register. As far as persons domiciled in India are concerned, there is a course prescribed, there is an examination prescribed, there is a practical training prescribed and any one who considers himself to be fit enough must be prepared to undergo the necessary tests. Once we have decided to regulate the profession of accountancy within one compact body, the question is how persons having foreign

qualifications should be allowed to get entered on the register. My submission is that section 4 (1) (V) of the Chartered Accountants Act, as it stands today, gives sufficient scope for persons with foreign qualifications to come on the register maintained under the Chartered Accountants Act. There is one point made out to this effect. It may be that for some international considerations, persons with foreign qualifications may be required to be enrolled in our register. But, we are supposed to be only a technical body and we can only go into the qualifications side. If there are any other considerations, certainly we do not ourselves claim to be competent to decide them. If it is ultimately thought by any quarter whatsoever that recruitment should be thrown open to persons having foreign qualifications and that the Council or Institute should have no say in it, we certainly would say that the Government alone can best consider and we are nobody to consider that. We would like that that sort of overriding powers may be taken by the Government without impairing or affecting the present position as far as the Act is concerned. That is, the Council may be allowed to retain that discretion as far as the judging of the technical qualifications, standard, experience and everything else is concerned and over and above that, if the Government think fit, they may have an overriding provision to say that such and such qualifications would be recognised.

Shri C. D. Deshmukh: Is it the whole of sub-clause (b) that you or the Institute object to or only the second part?

Shri Vaish: My initial objection is that nobody who is not a member of the Institute should be allowed to practise the profession of accountancy in India. As far as the question of the recognition of foreign qualifications by the Government is concerned, that may be brought as one of the provisions of the Chartered Accountants Act itself. I do not say that persons having similar qualifications outside India should not have any place whatsoever. I do submit that in proper cases, in proper circumstances, those qualifications may be recognised. But, that should be recognised under the Chartered Accountants Act itself. In other words, persons so recognised should be members of the Institute. If the provision as it stands today is allowed to become law, it will mean that there will be one category of accountants governed by the Chartered Accountants Act of 1949 and another category of accountants which will have nothing to do with the Institute, which will have nothing to do with the Chartered Accountants Act. They will form a class of accountants practising independently having nothing to do with the other class of Accountants, which is supposed to be a body regulated under the Chartered Accountants Act.

Shri C. D. Deshmukh: When you say that he should be a member of the Institute, it is the same thing as saying that he is a chartered accountant within the meaning of the Chartered Accountants Act.

Shri Vaish: Yes.

Shri C. D. Deshmukh: Sub-clause (b) says that he is for the time being authorised by the Central Government. For the time being authorised by the Central Government, means either temporarily or in exceptional cases: not as a separate category. When you began your exposition, you drew particular attention to the portion "or as having obtained adequate knowledge and experience....". That is one point. One may concede that the mere possibility of having acquired adequate knowledge should not be regarded as equivalent to the possession of qualifications. Then, you proceeded to say that even where there are qualifications, if for some reason, the Institute does not recognise them, as for instance, on account of difficulties in regard to reciprocity, you would not concede the Central Government the power to allow such an auditor to act as an auditor for the time being.

Shri Vaish: I do not say that.

Shri C. D. Deshmukh: That is what the clause says.

Shri Vaish: The clause is there. The power to allow a person having foreign qualifications may be taken by the Government under the Chartered Accountants Act. Section 4 (1) (v) of the Chartered Accountants Act makes a corresponding provision. The authority to decide which foreign qualifications should be recognised vests with the Council of the Institute.

Shri C. D. Deshmukh: If the Council have decided to recognise those qualifications, still it is open to them not to include these among the chartered accountants.

Shri Vaish: No, no. Once they are recognised, they will be included as members of the Institute.

Shri Dhage: Supposing the Chartered Accountants Institute does not recognise a particular qualification, and in the opinion of the Government, they think it is proper temporarily to give a certificate of practice, would you have any objection to the Government of India having such powers?

Shri Vaish: We do not have any objection to that. But, we simply want that section 4 (1) (v) of the Chartered Accountants Act may be suitably amended.

Chairman: Looking at the meaning of clause (b) of clause 211, he is for the time being authorised. It contemplates exceptional cases, in which a person may be authorised for the time being.

Shri Vaish: He may be authorised even under the Chartered Accountants Act.

Shri V. B. Gandhi: If the Government exercises the authority to empower somebody to practice for the time being, and if at the same time, the Government also makes it a condition that such a person authorised by the Government to practice should subsequently become a member of your Institute and be regulated by your rules in his practice, would that satisfy?

Shri Vaish: So far as the purpose is concerned, that would. But, I would still submit that you can have that purpose satisfied if you bring that provision by way of an amendment of the Chartered Accountants Act. If the Chartered Accountants Act places a disability in some way or other on any other person becoming a member of the Institute on account of any provisions in the present Bill or by any of the other measures, I think what you will have to do is to make an amendment of the relevant provisions of the Chartered Accountants Act. Section 4 (1) (v) of the Chartered Accountants Act says that any of the following persons shall be entitled to have his name entered in the Register. In the category of persons, you have the name of any person who has passed such other examination and completed such other training outside India as recognised by the Council as equivalent to the examination prescribed for Members of the Institute provided that in the case of any person who is not permanently residing in India, the Council may prescribe such further conditions as it may think fit. There may be another proviso: provided further that in the case of any persons, the Central Government may by written order authorise them to practise the profession of accountancy in India, and in their cases the requirements of this clause will be deemed to be satisfied.

Shri Dhage. If an amendment of the Chartered Accountants Act is made to that effect, that person will have better facilities for the purpose of conducting audit than only under the Companies Act because it will be only limited to these companies.

Shri Vaish: It is not a question of facilities. What I visualise is, he will be a member of the same compact body, that is, the Institute of Chartered Accountants in India.

Shri Dhage: I concede that where the Chartered Accountants Institute is an autonomous body, there should be no other body to regulate the profession of accountants, except under that Act. Apart from that, if a person gets a certificate from the Government of India under the Chartered Accountants Act, he will have the additional advantage of working in other companies also.

Shri Vaish: He will, for all purposes be deemed to be a member of the Institute.

Dr. Dube: We have got the Medical Council. All recognition of qualifications is done by them; there is no other authority that recognises qualifications. Here, they have the Chartered Accountants Act and their Institute. I personally think that whatever they recognise should be accepted by everybody and the Government should not take this power of recognising A or B or C.

Shri C. D. Deshmukh: You are going beyond what the witness is saying. What the witness says is that the Institute should be the judges of what the qualifications should be. They recognise that they have prescribed certain conditions for recognising foreign qualifications like reciprocity. It may be that although the qualifications on their merits may be good, you may recognise country A and not country B. They are prepared to concede that where the qualifications are equally good, but there are difficulties in recognising them, Government may recognise them under special powers and that there should be a provision for this in the Chartered Accountants Act. The difference between that scheme and the present scheme will be this. If a person authorised specifically under the Company law practises and is guilty of a sin of commission or omission, he not being a member of the Chartered Accountants Institute, will not be within the disciplinary control of the Institute. Now, you, in the interests of the profession of Chartered Accountants, feel that every one who exercises the powers of auditor should automatically be a member of the Institute. Therefore, the same object can be achieved by amending the Chartered Accountants Act rather than this.

If the suggestion is accepted, the whole of clause (b) will disappear and there will be an understanding that an amendment will be promoted to the Chartered Accountants Act. There, the question will arise whether knowledge or experience should be recognised, but not here.

If for some reason we debate to retain (b) then you would urge that at least the offending portion of (b) should be deleted.

Shri Vaish. I would like to make mention of another point, and that is covered by paragraph 30 of our memorandum, *i.e.*, investments of comanies to be held in its own name. All that I submit in this connection is this, that for practical reasons, owing to practical difficulties, it may at times be impossible for the company to hold the investments in its own name. The circumstances under which that happens are rather common. We may have to hand over the investments to a bank for safe custody or for collection of dividend. We may hand over the investments to be kept as deposits or security with certain Government or semi-Government bodies. Now the fact is even though they are so made over, they remain the property of the company concerned, but they are not held in their name. So in some cases I submit the satisfaction of this requirement may be waived, or the relevant provision may be suitably modified.

Chairman: What are the other cases excepting handing over for safe custody or for other purposes to the banks etc.? Supposing some provision is made to leave out such transfers?

Shri Vaish: Similarly they deposit as security at times. When certain investments are made over for deposit as security, then the parties insist that they should be transferred in the name of the persons with whom they are deposited. If that happens, the company cannot retain their name as the owners of the relative scrips or certificates.

Shri Dhage: If company "A" borrows from bank "B" on the security of certain Government promissory notes, the bank desires that the scrip be transferred in their name. You say that while the transfer has taken place, the ownership of the scrips still remains in the name of the company "A". How is a person to be satisfied that that ownership still remains with company "A"?

Shri Vaish: By taking a certificate and having it verified from the bank concerned.

Shri Dhage: If the Bank gives you a certificate to say that they hold the scrip in their name but it is your property, that should satisfy that the investment still remains in the name of the company.

Shri Vaish: Yes. That sort of proviso may be included in clause 44. That is what we do even today. I can tell you that as far as the audit requirements obtaining today are concerned, that is the procedure we follow.

Shri Bansal: Has it come to your notice that banks generally maintain a register of companies which keep shares with them?

Shri Vaish: Different banks adopt different procedure. But certainly it is unthinkable for us to visualise that the bank may be holding the shares or investments of other companies without keeping a proper regular account.

Shri Gandhi: In the case of securities which are given over a deposit against contracts also, is the ownership till retained by the company?

Shri Vaish: Most certainly. If the investments are made over only as security, then I think it is as much as saying that the ownership is still retained by the original holder and that for certain purposes it has been passed on to serve as security.

Shri C. D. Deshmukh: The point is this. Investments not held in the company's own name have led to certain abuses, is it not?

Shri Vaish: Yes.

Shri C. D. Deshmukh: It is our intention to cure those abuses. What you point out is that it is necessary to be careful in drafting so that you do not interfere with the day-to-day business of companies.

Shri Vaish: In fact, that is exactly our point. We do not in the least suggest that this requirement should not be there.

Shri C. D. Deshmukh: Now, therefore, you itemised two things. It would be very useful if you could suggest a form of words which will enable us to cope with the evils and yet ensure that we do not interfere with regular business. You have pointed out the circumstances in which it may be necessary to relax this. We may provide for these two things and prescribe a register in which the ownership of the company will be indicated. But are there any other cases within your experience? How can we get over this problem except by categorising every practice in which a name other than that of the company has to be shown?

Shri Chatterjee: Supposing we put in a proviso that nothing in this section shall prevent a company from transferring any shares or securities held by the company for payment of loans advanced to the company or for purposes of any obligations undertaken by the company, will that do, or do you want any other provisos to be added?

Shri Vaish: I would like only one proviso, and that is mentioning the circumstances. Two we have mentioned and there are two others which

have come to our notice. One is where a company by its Articles of Association prevents another company becoming a shareholder. Very often it is found that a company says: we cannot have another company as shareholder of our company. In that case, the other company perforce may have to use the name of a director to serve as a custodian or a trustee for the company as far as holding the shares in the other company is concerned.

Chairman: Can they not suitably amend their own Articles of Association?

Shri Vaish: They may, but it is difficult for the holder of the shares to have the provisions of the Articles of Association of another company amended. If I am representing 'A' company and am a shareholder in 'B' company, then it is not possible for me to have the articles of B company amended, and if the B company does not like to have its Articles amended, I cannot help it.

Shri C. D. Deshmukh: I should say that this could be served by a proviso. "Provided that where for certain purposes such as taking a loan or making a deposit shares are to be shown in a name other than that of the holding company, a register shall be maintained of such shares held in such manner." So long as information is available, it does not matter, so that the auditors can go through everything, check up and see it is the proper use of the name of some other person.

Shri Vaish: That is enough.

Shri Dhage: Along with the receipt from the other company.

Shri Vaish: Of course, because that receipt must be there.

Then, another contingency of that nature is where shares have to be held as qualification shares by a company in the name of a director.

Shri C. D. Deshmukh: In all such cases there will be a register showing these securities held in names other than that of the company, where the property still remains that of the company.

Shri Vaish: That would be a general proviso.

Shri C. D. Deshmukh: We shall give two or three illustrations of the kind of thing for which such a thing is usually done in the ordinary course of business, because in categorising you may easily forget some particular practice.

Shri Chatterjee: We may say "and in analogous cases".

Shri Vaish: The last point is covered by paragraph 31 of our memorandum, *i.e.*, share premium. The present clause 72 is to the effect that share premium is to be treated as part of the capital. This, to my mind, creates a difficulty *vis-a-vis* section 17 of the Banking Companies Act whereby banks are enjoined to transfer from out of the net profits each year sums to the reserve account until the amount in the reserve fund becomes equal to the paid-up capital. I do take it that the intention is really not to judge the quantity of that reserve. I think this confusion or ambiguity may well be avoided or regularised and we may say that this premium will not be treated as part of capital for purposes of section 17(e) of the Banking Companies Act.

Chairman: Apart from the points which you have raised in your memorandum, we have received certain suggestions so far as the question of appointment of auditors of companies is concerned, and we would like to know something about it from you.

For instance, there is a suggestion that auditors should be appointed by Government for different companies instead of that being left to the companies themselves. The underlying idea is that as the appointment of the auditors depends upon the will of the shareholders which, in many cases, does not mean anything except the will of the managing agents, the auditor's position, though ostensibly it is independent, is not as independent as it

[Chairman]

should be, because, after all, if he wants his appointment to be renewed, naturally he requires the favour of the company, which means he has to have the resolution of the managing agents or directors or managing director, whoever they may be. Therefore, in order to maintain the independence of this class of people, it is suggested that appointments should be made by Government. Have you got anything to say about that

Shri Vaish: I think it has at times been described probably in a more interesting manner and it has been said that the profession of accountancy ought to be nationalised. What has been said is this. Certainly, I submit that if ultimately it is found that the shareholders are quite incompetent, they do not know their interests at all, that they do not know where to invest the money, then certainly it can be said that everything in regard to that company or the affairs of the company ought to be done by the government. I do presume that the government will also have to depend on human character.

Chairman: What I wanted to know from you is this. In fact, the auditors, as a rule, are not found to be quite independent and therefore the suggestion is that they should be appointed by the government.

Shri Vaish: I submit that that suggestion is quite unfounded and what has at times occurred is that the circumstances under which the auditor works are not very well appreciated.

Chairman: Your idea is that at the present moment the work of audit is done quite independently and there is no necessity of government being asked to appoint them?

Shri Vaish: There are at times found to be evils and faults for which there is ample safeguard in the Indian Companies Act or in the proposed Bill.

Shri C. D. Deshmukh: Is there any safeguard in the Chartered Accountants Act and can you take disciplinary action?

Shri Vaish: We can take. We are actually taking disciplinary action. In fact, gavernment is represented on the disciplinary body and you may be interested to know that once we undertake an enquiry in respect of an accountant, even though we find him not guilty we have to send our finding to the High Court. It is not as if we could leave the accountant simply off by finding him not guilty. Whether we find him guilty or not, we have got our finding ultimately to be decided upon by the High Court and therefore there can be absolutely no fear.

Chairman: I may tell you that only yesterday it was pointed out to us that there was a certain certificate of an auditor saying that a certain number was the circulation of a paper, which, on the face of it, obviously could not be correct.

Shri Vaish: In respect of that we have recently taken action and the matters are being considered. After all in this society we have got characters of all types; we deal with them effectively.

Chairman: You do not mean that this evil is so large that the government should intervene?

Shri Vaish: In fact, these stray cases are quoted as the rule of the day; that, I submit is most unfair.

Chairman: The suggestion is that just as there is a police service there should be an audit service run by government.

Shri Vaish: That is a much larger question. I do not think we can claim to represent the government policy.

Chairman: They say that just as there are the police to keep all people under check, there should be an audit service so that the managing agents of companies may be kept in order.

Shri Vaish: Though the provision is there and the law provides that there shall be the police, still people keep independent *chowkidars*.

Chairman: It is better to provide for a *chowkidar* than to depend on the police.

Shri Vaish: We must have a *chowkidar* commanding one's own confidence.

Shri C. D. Deshmukh: You would welcome any communication pointing out any defects in audit?

Shri Vaish: As soon as we find anything either in the newspapers or anywhere, we ourselves make an attempt to find out who is responsible. We try to contact the authorities concerned and we make it a point to take all necessary action.

Chairman: I would like to draw your attention to one of the provisions in this Bill, namely, the provision regarding interlocking. On the one hand, we are told that interlocking is absolutely necessary in order that our industries may flourish. On the other hand, we have been told that interlocking has resulted in such abuses that it is better that we stop it altogether. In your capacity as auditors you must have come across the advantages, and disadvantages, the abuses or the good points in the system. Could you give us your opinion about it?

Shri Vaish: At the outset, I must say that when I give an answer to this question I give my individual opinion, because we have not considered this matter. My own feeling is that it is neither an unmixed evil nor an unmixed good. At times, it has been found to result in serious abuses. There is no doubt about that; but it is not that it has not done good either. According to me, this practice has got to be curbed and not completely eradicated.

Chairman: Would you suggest curbs for avoiding this abuse?

Shri Vaish: Once we concede the question of promotion of subsidiary companies, in the subsidiary companies also there is the question of investment of funds of the principal company in some form or other. Short of it, it may be the investment of the funds of one company in another. For that purpose, I think safeguards will have to be evolved for which, I think you will have just to give us some time.

Shri C. D. Deshmukh: We know qualitatively that certain abuses exist but we have no idea as to the extent of those abuses and we are in danger of throwing the baby with the bath water. You may have a quantitative idea as to the extent to which this evil occurs. Therefore, what kind of safeguards would prove adequate, say, publicity or things like that? I only give you illustrations. We are acquainted with different views on the matter. That is why we put it to you. If you would like to put this to the Institute and send us a supplementary note, we shall be happy.

Shri Bansal: You have made the position of auditors clear. I would like to inform you that again and again it has been deposed before this Committee that auditors are generally under the thumb of the managing agents. The managing agents have generally the opportunities and ways by which they bring their pressure or influence to bear upon the auditors to give a kind of report which will suit them and cannot give a correct picture. How far is this evil widespread, in your opinion, and what are the ways the managing agents use to bring about that influence over the auditors?

Shri Vaish: I submit the second question does not arise. The answer to the first question is an emphatic 'No'. It is not that it is a practice that the managing agents bring pressure on the accountants to give a report as they like to be. At the same time, it may as well be that there are certain apparently or probably deep-hidden objectionable features of the balance-sheet and the auditor finds himself, as far as the requirements of the law go, helpless to do anything. I will give an instance immediately. It

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may be that in the case of a balance-sheet the auditor finds a loan advanced by the managing agent to the company to the extent of say, Rs. 50 lakhs. The auditor asks, 'Is the loan correct'? The reply is 'Yes'. Now, I do not know how the auditor can go beyond it as far as the present requirements of the Indian Companies Act are concerned. If he attempts to go deeper into this matter, the managing agent may say it is uncalled for and probably he may be justified. I am only dealing with the provisions of the law. As auditor I want to get the correct answer whether the loan given was correct. I put the question whether the loan was given. He says, 'I have given it from the bank; here is the cheque I gave.' The auditor cannot make any enquiry into the advance or the affairs of the managing agents. Later on, if the matters are investigated thoroughly, it may even be found that the managing agents have made a fortune out of the affairs of the company. How on earth can the auditor find out that fact? The law being what it is, he cannot make an independent enquiry from the outside public. He has got the proof that the money has come from the managing agent to the company. There may be any number of ways open to the managing agents which, probably, even the most minute scrutiny may be unable to bring out.

Shri C. D. Deshmukh: In that particular, the government auditors powers will be no more extensive than those of the ordinary auditor.

Shri Vaish: The same powers will remain there.

Shri Bansal: Do you think that the powers of the auditors under this Bill will go a long way to mitigate the evil?

Shri Vaish: I think there will be some improvement.

Shri C. C. Shah: Do you suggest that any further powers should be given to the auditors so that investigations may be carried on?

Shri Vaish: I wish they had more powers if that can be permitted, similar to those contained in section 37 of the Indian Income-tax Act. I do not know how far that will be considered proper. We cannot be supposed to be investigating or making a roving enquiry into the affairs of the company, and that would create more difficulties.

Shri C. C. Shah: Let us take the instance you gave. The auditor has reasons to believe that the answer given by the managing agent is not true or does not represent the true state of affairs.

Shri Vaish: I am sorry. I did not say that. All that I said was that in certain cases it may be that there is a loan from the managing agent to the company and the auditor may have no means to find out from where the loan has originated. The fact that the loan has been made by the managing agent to the company may be verified and found to be a fact by the auditor. Beyond that he has no means to probe into it.

Shri Shah: Do you think that any wider powers given to the auditors would enable them to discharge their duties more efficiently to the shareholders?

Shri Vaish: What I want to say is that if you want the audit to be more thorough there must be this power to find out where this money has come from as distinguished from an investigation or a roving enquiry.

Shri Bansal: I think you mean that as far as the duties of the auditor are concerned, according to you, they appear to be fulfilled when he has given a correct report to the shareholders?

Shri Vaish: From the existing law, it is so.

Shri Bansal: Can you give us a working definition of 'net profits' for the purposes of dividend?

Shri Vaish: I think the definition can be given almost to the point of exactitude but for the question of depreciation. Depreciation is an element which cannot be determined with any arithmetical accuracy. I think it would suffice for me to define net profit as the net accretion to capital at the end of the year as compared to the capital at the beginning of the year.

Shri Bansal: What is the difficulty in taking depreciation as in income-tax at the present time?

Shri Vaish: That is going to present a great difficulty. At present the allowance under the Income-tax Act is based on so many considerations. It may be to stimulate industry; it may be to give encouragement to new industries; it may be to prevent a sort of disadvantageous element coming in the way of promotion of industry. They give initial depreciation; they give extra shopping allowance they give especial depreciation and so on. Not only that. As far as section 10(2) and 6(a) are concerned, they say that the difference between the cost, the written on value as at the end of the five years and the market price for the time being may also be allowed as an item to be taken in the computation. In fact, all that is not certainly going to be an element of charge to determine the profit, because, as it were, you cannot possibly think of any profit for at least five or six years or even eight years to come.

Shri Bansal: For going into profits for other purposes is quite a different thing. The shareholder is concerned with getting profit or dividend, naturally, out of that net profit which is left over after meeting all the charges.

Shri Vaish: I am afraid I cannot agree with that suggestion, because there a shareholder has to be visualised as if he is one of so many proprietors. Now, a proprietor who carries on business knows it for a fact that even though, according to the income tax concept of things, he has made no profit, he has been allowed a huge depreciation. He knows it for a fact that he has made a profit. If you put a shareholder on the same basis as a small proprietor, then certainly you cannot but say that he has to be given the same conception as a proprietor.

Shri Morarka: The purpose which you have in mind would be served if it is stated in clause 190 that no dividends will be paid out of capital, instead of saying that dividends will be paid out of profit. Would that meet your case?

Shri Vaish: In fact that is already there. The point is at times there is difficulty in judging whether the dividend has been declared out of capital or profits. They say we have made a profit this year, and have declared a dividend out of it. So, unless you say that the capital will remain intact it is very much like saying that you pay a dividend out of a year's profits and you do not make up for the capital lost in the earlier years. You may not have the capital intact, still you may declare a dividend out of a year's profits if this proposition is conceded.

Shri Morarka: Don't you think that the provisions in clause 190 meets your case?

Shri Vaish: In fact, I would say that a dividend can be declared only after seeing that the capital remains intact. That to my mind would be the answer to your question.

Shri Ghose: On the question of independence of auditors I want to ask you this. It is said that there are auditors who are rather accommodating, even though the managing agents themselves do not want to influence them. Is there any truth in this statement or not?

Shri Vaish: There may be a few instances here and there. But we have to consider this from the point of view of the status of the profession and how the profession on the whole discharges its obligations. In the case of a few instances which have come to our

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notice we have taken very severe action against auditors who were found to be delinquent.

Shri Ghose: It is not a question of delinquency, but what I called a tendency to accommodate.

Shri C. D. Deshmukh: Excessive good nature.

Shri Dhage: Shri Vaish, I would like to know from you whether you would like the position of the auditor under the present Bill to be more independent, so far as appointment is concerned?

In the memorandum that you had submitted to the Bhabha Committee you have suggested that the law may be so framed by which the managing agents and the directors shall have no right to vote in the matter of appointment of auditors, but in the memorandum which you have now submitted, you have left that point out. May I know whether you still think that a provision like that would safeguard the interests of the shareholders and make your position more independent?

Shri Vaish: All that I can say on that matter is that there may perhaps be a fear lurking in the minds of people that the managing agents or the directors succeed in influencing the auditors. But I for one feel that an auditor would not care for such influence, because he would fear more for the disciplinary action which would stare him in the face if he did anything wrong.

Shri Dhage: Apart from the action which the Institute of Chartered Accountants will take, do you think that a provision of that type will make the auditor more independent? You have said "yes" in the memorandum you submitted to the Bhabha Committee.

Shri Vaish: I would like to refresh my memory on that point. If we had said so, there must have been some consideration weighing with us at that time. But I have not got a copy of that memorandum with me now.

Chairman: But what is your present view?

Shri Vaish: I think there is sufficient safeguard today; there is a provision for the changing of an auditor; there is provision for the replacement of an auditor. A further safeguard, to my mind, is not going to alter the position. It may be that some shareholders may be unnecessarily deprived of their right to make a selection. After all if there are managing agents and directors, there are shareholders also.

Shri Dhage: The Society of Accountants of Bombay say....

Shri Vaish: I am not concerned with that society.....

Shri Dhage: I am sorry its name is Accountant's Association of India, Bombay.

Shri Vaish: We have not heard of it.

Shri Dhage: They have suggested that as at present the accountants in India have no status and this has resulted in abuse of power and big business organisations are using them as stooges and tools to manipulate figures and place them for audit. They have also suggested in cases of malpractice, abuse of power, manipulation of accounts, of even negligence, a penal provision should be introduced making the accountant responsible and liable to the statement made therein.

Shri Vaish: We do not at all share those views. All that I can say is that in my view, particularly interested, or possibly persons affected hard might have given expression to those views. We claim to know the position of the profession as it exists throughout the country and if in a few corners here and there people give different views, I would not take those views as representative views.

Shri Dhage: There is a certain section of opinion which holds this view—you cannot deny that.

The Society of Chartered Accountants in Bombay have suggested that—they have not said that there should be no vote exercised by the managing agents or directors—along with the

majority vote in whatever manner it may be exercised by the managing agents or the directors, in order to safeguard the interests of the minority, they may have the right to appoint a joint auditor. They have suggested this in the memorandum submitted to the Bhabha Committee. What do you think of this?

Shri Vaish: I do not agree with either of these two. I do not agree that the managing agents or anybody of shareholders, whether they happen to hold the office of directors or managing agents, should be debarred from exercising their rights as shareholders. Any right given to anybody of shareholders is as much a right of the other shareholders.

Regarding No. 2, I do not know in what circumstances that local society has made that recommendation, but to my mind that is going to make the position exteremely difficult and much more complicated and I do not subscribe to the view that there should be an auditor by the majority and an auditor by the minority.

Shri Dhage: You suggested that there is enough safeguard for the purpose of appointment of the auditors because there is notice etc., to be given. I would like you to take a case where the directors and the managing agents exercise 51 per cent. vote. Will the appointment of auditors not depend on their vote?

Shri Vaish: I am only trying to see as to how far the auditor will be able to exercise his independent judgement in the matter of audit. We must understand one thing very clearly: it is not that the auditor has to satisfy the majority.

Shri Dhage: There is no question of satisfying. The fact is that the appointment will be made by the majority.

Shri Vaish: If, however, your conception is that the majority would take a decision always against the minority then probably the fundamental conception of the Indian Companies Act and all other legislative measures will have to be altered. You cannot get away from the fact that the majority has always to be entrusted with the conduct of affairs.

Shri Dhage: I am not discussing democratic principles. I am only trying to see how far an auditor will be able to exercise his independent judgment in the matter of audit if the managing agents have a 51 per cent. majority. You suggested that the giving of notice, etc., as provided in the Bill will give him independence.

Shri Vaish: Even if it is a question of appointment by the managing agents as such, I would say that the auditor in order to discharge his duties well and properly has got to be independent, because he has to stand the test of the requirements of law, and the notion that he is acting as a stooge of the managing agent has to die out. A few instances that might have come to notice, cannot lead to a generalisation.

Chairman: So far as I have been able to understand him, his view is that apart from the question as to who appoints the auditor, because he belongs to a particular profession, like the lawyer or medical practitioner, he has to observe his professional etiquette. His position is not on a account of who oppoints him, but because of his belonging to a particular profession and the fact that he is subject to discipline of that profession.

Shri Dhage: I was trying to say that there is a large number of practising auditors who have taken the certificate for practice but who have no audits at all. And one of the witnesses said that it is for the purpose of living, that certificates of that type are given, and they made a suggestion that the appointments of the auditors should be made by the Government. And the other suggestion was that there should be a service, like the Police Service etc., for the purpose of the audit as well. That being the case I would rather like to see that the position of the auditor is made as In-

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dependent as possible. For that purpose, the questionnaire circulated by the Government, before the Bhabha Committee took evidence, stated that the managing agents and directors should not exercise their vote in the matter of appointment of auditors.

Shri Vaish: I submit an auditor can be independent only if he is conscious of the fact that he belongs to a respectable profession of integrity and character. And with due respect I would very humbly challenge the statement from any one who says that certificates are issued by the Institute to persons but that the Institute does not keep any control over them.

Shri Dhage: No, there is no reflection on the Institute.

Shri Vaish: I ask why have they not come up before the Institute and given instances?

Shri Dhage: There is another point. The re-appointments are made in order that the position of the auditor may be independent. The Bill provides that as far as possible, they may be re-appointed, that is, the same auditor may be re-appointed. Suppose there is a firm of auditors. Suppose the appointment is to continue. How long do you think it will continue? Will it not be in perpetuity?

Shri Vaish: How? He can be removed by the shareholders

Shri Dhage: Suppose there is a firm of auditors with partners. The firm will be re-appointed.

Shri Vaish: Unless it is desired to remove them. It is not that the auditor must be re-appointed. The provisions of the Act are too clear even today that if the auditor is to be dispensed with, he can be dispensed with, but not as if it is a surprise affair. The shareholders as a body must know that there is a move to change the auditor. The auditor is given the right to appear at the general meeting. Then questions can be put to him. All those things are by way of safeguards in regard to the appointment of auditor. If a change of the auditor is not desired or required, then the rule is that the old auditor will be re-appointed, that is, the retiring auditor will come in.

Shri Dhage: Assuming that things are normal, even if the partners have been changing, the firm will continue.

Shri Vaish: Of course.

Shri Dhage: If you read clause 214, it says "Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 211, then only a partner of the firm practising in India, may sign the auditor's report or sign or authenticate any financial statement of the company." What happens is there is not a thing in favour of a firm so far as the signing of the balance sheet is concerned. But if a person practises individually, is he not at a disadvantage in that regard?

Shri Vaish: He is. Therefore he can be a firm. I really do not understand. If he is practising only as an individual and he dies out, that is to say he retires from the profession, then certainly there is a vacancy. But if there are two persons by way of a firm practising and that firm is appointed and there is a change in the firm, then that firm continues.

Shri Dhage: Between the individual and the firm the individual is at a disadvantage. May I know whether there are firms in Bombay or elsewhere in which sons have joined as partners?

Shri Vaish: There can be and there are.

Shri Dhage: That being the case, should they promote a venture of this type by making the profession more or less as a commercial concern?

Shri Vaish: Here it is not as if they get a contract for working as auditors for ten years or that the firm with its varying constitution from year to year may continue to act. It is not that. Every year the auditor has to be re-elected. And if it is a firm, the shareholders can very well understand whether the firm is to be re-elected or not.

Shri Dhage: I am trying to make the profession appear not only in the eyes of the businessmen but also in the eyes of the common folk as enjoying the confidence of the people. From that point of view I am trying to see that an individual and a person related to a firm, so far as the opportunities to audit and practise are concerned, are treated as equal.

Shri Vaish: All that I can say on that point is, it should not be taken that partnership is a combination of all virtues and advantages without any responsibility or liability. If I work as a partner in a firm, then there are certain liabilities on me, because I make five others as my agents and authorised attorneys, so to say.

Shri Dhage: I am afraid you are not catching my point. According to Appendix II (page 450) of the Bhabha Committee Report, the number of companies was nearly 20,590 in 1947-48. Now it may be, according to the figures circulated by the Government of India, 29 thousand and odd or 30 thousand. But the number of companies that have been paying Income-tax, as given in this very Schedule (*page* 458 *ibid* is about 7,500. It is not above 8,000. We shall take it that today it is about 10 thousand.

Now, the number of companies that are registered is about 30 thousand. But out of this number, those that pay Income-tax and Super Tax are nearly 10 thousand. That is to say, the rest of the companies are such which are not making enough profits to be able to pay Income-tax. That follows. The number of practitioners, according to the information that is available, is about 2,000.

Shri Vaish: What is the basis? Practising? All right. We will take it at that figure.

Shri Dhage: If you take those companies that are making profits and those companies that are registered—we shall take it for the purpose of argument—the number is 20,000 companies. For the 2,000 practitioners that means it comes to 10 companies per auditor. It is not the case that ten audits are with every auditor. But by the process of re-appointment that is going on, and by the process of partnership of firms continuing, do you not think that the audit is getting concentrated in a few hands?

Shri Vaish: I do not think so. It is not the only work which the profession has. There are so many partnership concerns, there are individual proprietors, they do Income-tax work, financial advice, costing, Sales Tax work, any amount of work. We should not start with the assumption that the only work that Accountancy holds or controls is the audit of companies.

Shri Dhage: I am confining myself here to company audit, because we are dealing with Company Law. We are not dealing with Income-tax or Sales Tax. And for the number of auditors who may be doing work regarding sales tax, Income-tax and others there is no audit work.

Shri Vaish: They have audit as well as Income-tax work.

Shri Dhage: I know from my experience that a large number of people do not have any audit at all, and complaints have come up.....

Shri C. D. Deshmukh: What is the short point?

Shri Dhage: I would not like that the practice of the profession should be done in the name of a firm and in partnership. Secondly, I would like that the number of audits, as has been done in this Bill for the purpose of directorship, may be rationalised to say that not more than 20 audits or 10 audits be conducted by a single auditor.

Chairman: Would you like nationalisation of auditors?

Shri Dhage: Whatever our opinions may be, people who represent a large section of public opinion have come out to say that the appointments of auditors should be done by the Government, or that it should be nationalised as has been suggested. In view of this allegation—whether it is cor-

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rect or incorrect, the feeling is there—would you like to have a thing like this?

Shri Vaish: My answer is an emphatic 'No'.

Shri Dhage: Sir, I have finished.

Shri Somani: In the beginning you stated about the form of the balance sheet and profit and loss account that this should not be rigid and that there should be some amount of flexibility.

Shri Vaish: Yes.

Shri Somani: May I in this connection put it to you that there is a form of profit and loss account as required under the Companies Bill under which the companies will be required to disclose separately about their cost of raw materials, stores or wages. Don't you think that it will put several companies in the position of disclosing very valuable information to their competitors, if they are to disclose information item by item?

Shri Vaish: My submission is that unless the figures in terms of money are disclosed along with the quantities also, the information which is disseminated will not be found at all useful to the competitors. The firm does not mention the quantities or units. It only gives the values. Once you have conceded the principle of essential information being imparted to the shareholders, this at least may be given, provided the quantities are not shown.

Shri Somani: Information is even now given in the shape of raw materials and stores or the several manufacturing items. Will it serve any additional purpose by giving the information separately under raw materials and stores, etc.?

Shri Vaish: Even now we are doing it. Generally we show raw materials and stores separately. I think that is a more useful form of presentation of accounts. It does not amount to giving information to competitors which may be disadvantageous or harmful to the company.

Shri S. C. Karayalar: With regard to declaration of dividends, is it your suggestion that the dividends may be declared so long as the profit and loss account does not show a debit balance?

Shri Vaish: My suggestion is that dividends should be declared with the proviso that the capital remains intact. If there is a debit balance in the profit and loss account, there are no capital items debited there. For instance, it may as well be that there are capital items also. Your question requires some clarification. The profit and loss account may have debited to itself certain items of a capital nature. I will not say that the debit balances in the profit and loss account must essentially be wiped out. In principle, what I mean is that the capital ought to remain intact and then alone can dividends be declared. When a shareholder receives a dividend, he takes it as if it is something out of the profits and that the original structure of the capital remains intact.

Shri Karayalar: So, you are not in favour of the provision in clause 190, namely, that no dividend shall be paid in respect of any financial year otherwise than out of profits in that year.

Shri Vaish: That is what I submitted.

Shri Karayalar: That is, profits for payment of dividend in a particular year without taking into account the position in regard to previous years.

Shri Vaish: I am not in favour of that provision.

Shri Karayalar: You want this provision to be modified.

Shri Vaish: Yes; that is what I submitted.

Shri Karayalar: In other words, you want clause 190 to be controlled by the note (h) on page 299.

Shri Vaish: It has to be brought in line with note (h) there. That is my suggestion.

Shri Karayalar: With regard to the application of share premium account,

sub-clause (1) of clause 72 says that the share premium account will be taken as capital. But, under sub-clause (2) the share premium account may be applied in payment of several items. Some of them are of a capital nature; others are of a revenue nature.

Shri Vaish: I submit that all of them are of a capital nature.

Shri Karayalar: Sub-clause (a) of clause 72 refers to paying up unissued shares of the company to be issued to members of the Company as fully paid bonus shares; that is of a capital nature. Then, (b) refers to writing off the preliminary expenses of the company: that will not be treated as capital.

Shri Vaish: We treat those expenses as of a capital nature, although they are non-asset creating expenses. There are certain expenses which are not clearly revenue expenses as distinct from capital expenditure. Any way, I do not think that the technical differences between capital and revenue expenditure are of relevancy just now.

Shri Karayalar: Ordinarily, preliminary expenses of the company are written off out of profits.

Shri Vaish: That is capital expenditure. Share premium is capital receipt. As a matter of fact, share capital and share premium have been received by a company on incurring certain expenses which are preliminary expenses. I do not think there is anything wrong in this. I will go to the extent of saying that it is in the fitness of things that the capital receipt of premium should be allowed to be set off against the corresponding capital expenditure in getting that capital.

Shri Karayalar: Preliminary expenses of the company relating to floatation are treated as capital expenditure.

Shri Vaish: It is capital expenditure and it can be shown as an asset in the balance sheet.

Shri Karayalar: It is provided in clause 209 (3) that where at an annual general meeting no auditors are appointed or re-appointed, the Central Government may appoint a person to fill the vacancy. Are you in favour of giving this power to the Central Government?

Shri Vaish: I would submit that there cannot be an escape from it. If the shareholder or any person interested in the matter has taken no steps for the appointment of an auditor, it is for the Central Government to come forward and remove that lacuna.

Shri Karayalar: Or, would you like to give that power to the directors, just as in the case of sub-clause (6)? Would you not like to treat it as a casual vacancy?

Shri Vaish: No. Because, it is not as if the shareholders have exercised their option and the contingency has arisen for no fault of anybody. The casual vacancy occurs merely because of an accident. The failure to appoint an auditor may be a matter of design.

Shri Karayalar: Would you not give that power to the directors in preference to the Central Government? That is the question.

Shri Vaish: To that, the answer would depend on the facts and circumstances of each case. It is not that in all cases where the shareholders do not exercise their power, the Central Government should come in. Where it is contemplated that the shareholders will make an appointment at the Annual General meeting and they do not make an appointment, certainly, there is something which the Central Government has to take care of. If in that contingency, the director is given the power, that may create some difficulty.

Shri Karayalar: It has been suggested that where further issue of capital is needed for a company, shares of no par value should be issued. Do you think that the issue of shares of no par value would create difficulties in the preparation of the balance sheet or the accounts?

Shri Vaish: It would not. As far as the question of policy is concerned, I for one would think that it is not a baby which we should hold. That is a matter regarding control of industries and fiscal policy. We are interpreters of results and not enunciators of policy.

Shri Karayalar: Would you be in favour of a provision in the Bill providing for the issue of shares of no par value?

Shri Vaish: We have nothing to object.

Shri Karayalar: Essentially, there is no objection on principle?

Shri Vaish: Not as accountants.

Shri K. K. Basu: Let us begin with the balance sheet. You said initially that the shareholders in our country are not very alert. Don't you think therefore that it is necessary that the balance sheet should contain as much detailed information as possible to make it easily understandable by them?

Shri Vaish: To start with, I must say that I do not remember having said that the shareholders are not alert. All that I said is that the shareholders are not expert in understanding the figures in the balance sheet as it is now presented. All that I said was that whatever contents the legislature desires to be imparted in a balance sheet may be done, but that the form in which these contents are presented may be left to individual discretion because individual requirements may require or justify a departure from this rigid form that has been laid down.

Shri Basu: Is it your idea that no balance sheet should be prescribed in the law itself and that it should be left to the company to be determined?

Chairman: He does not say balance sheet; he objects to the form.

Shri Basu: I mean the form. The Bill has prescribed a form. As far as I can understand from the memorandum and the evidence that the witness has been giving, he says that it should be left to the company to determine the form in which it should be presented. In view of the low understanding capacity of the average shareholders to follow the figures, it is better to put these figures in such a way that any shareholder can understand them. Therefore, the form should be such that it contains more details.

Shri Vaish: It is not as if more details are required to be given. It is a case of presenting the details in a different form. I may illustrate. It may be a question of presentation of depreciation particulars. You can say, assets bought at so much, depreciation provided so much, net value so much. I have seen shareholders asking how it is said that according to your accounting, you have provided for depreciation to the extent of 20 lakhs. We do not find it anywhere in the balance sheet. It takes time to explain the implications of how a balance sheet is presented. That is a matter under examination and accounting thoughts are developing. There is yet difference of opinion on that subject. It may well be desirable to state that we had capital subscribed to the extent of Rs. 50 lakhs, we bought assets for so much, those assets are here, year after year we have made provision for depreciation to the extent of Rs. 20 lakhs so that our depreciation fund is so much and this is the total. That may be more intelligible.

Shri Basu: Is it your suggestion that the form annexed to the Bill will not help matters and that it is not an improvement on the existing system of publishing accounts?

Shri Vaish: I never said it is not an improvement. As far as the contents are concerned, it is certainly an improvement. I have not objected to the contents part of it. There are two aspects of this question. One is the contents presented and the other is the form of presentation.

Shri Basu: It means that according to your experience, it is not an improvement on what is actually done today.

Shri Vaish: It is an improvement in respect of the contents.

Shri Basu: Therefore, your suggestion is that with slight alterations, with the right to have a certain flexibility, it is better to have a specimen form annexed to the law itself.

Shri Vaish: The requirements may be given. It may be made clear or there may be an enabling provision to permit flexibility in the form of the presentation of the balance sheet.

Shri T. K. Chaudhury: In page 18 of your memorandum you have quoted the Cohen Committee where they observe that it is doubtful whether standard forms of accounts would be practicable. Then, when you make your own observations on this you say:

> "At the same time the Committee feels that law should prescribe a minimum amount of information relating to the affairs of a company to be disclosed in its Balance Sheet."

How can that be done without the standardised form?

Shri Vaish: In that connection, I would refer you to the requirements of the profit and loss account. The bill requires certain particulars to be furnished without stating in what manner it ought to be furnished or in what form it ought to be furnished. That is left to the individual discretion of the company. They may show the opening stock as a deduction from the sales, for the purpose of the net turnover of the year. If you prescribe a rigid form in the case of the profit and loss account also, possibly the other form which may be considered to be more useful for the purposes of the shareholders may not be possible. That flexibility has been left open in the case of profit and loss accounts. But in the case of balance sheets that rigidity has been prescribed. As in the case of the profit and loss account, you may say in the case of the balance sheet also such and such information ought to be imparted into it, but the manner and form of presentation may be left to us.

Shri Basu: When you accept the proposition there should be a balance sheet giving such details which would be easily understandable to the shareholders, could you give us specific suggestions which could be incorporated in the preparation of the balance sheet, from the standpoint of an experienced auditor?

Shri Vaish: There is no comparison between profit and loss account and balance sheet. It is not that profit and loss account is less rigid and balance sheet is more rigid. In the profit and loss account there is no form prescribed. You have said this information has to be imparted. How the form is to be compiled is not actually laid down in the legislation. So, the question of any rigidity does not arise. As far as the balance sheet is concerned, the contents are prescribed as also the form in which they have to be presented. So, I say that just as in the case of the profit and loss account, so in the case of the balance sheet the form may not be rigidly prescribed. Coming to the contents of the balance sheet, we say a balance sheet ought to show all the contents which are there today subject to what I have submitted today about depreciation.

Shri C. D. Deshmukh: I wish to draw Shri Vaish's attention to page 115 of the Company Law Committee's report, paragraph 152. There it is stated:

> "The question relating to the accounts of companies was considered at some length by a sub-committee of the Indian Accountancy Board, which examined the Cohen Committee's report, and, after taking into consideration the existing provisions of the Indian Act *(which, of course, prescribe a form) suggested a revised form of balance sheet. That sub-committee was of opinion that it was not desirable to prescribe a standard

*The words in brackets are Finance Minister's own remarks.

[Shri C. D. Deshmukh]

form for the profit and loss account....."

That has been, of course, adopted, but I just wanted to point out that the Indian Accountancy Board themselves had suggested a revised form of balance sheet. Do you feel so strongly on the subject?

Shri C. C. Shah: May I also point out that Government in the memorandum which it circulated containing its recommendations prescribed a standard form of balance sheet and also a standard form of profit and loss account. The Institute then replying said this:

> "The Council is of opinion there should be no form to the profit and loss account prescribed by the Act, but certain items which should be specified in the account should be mentioned. The Council would have no objection to the form of balance sheet prescribed."

That is what you said then, and the balance sheet now prescribed is substantially the same as the old one.

Shri C. D. Deshmukh: Further more, under clause 196 (4) Government has the power to vary the form of the balance sheet on the application of a company. So, the rigidity is avoided.

Shri C. C. Shah: There is something more, too. Under clause 196 (1) it is a standard form, but it has to be or as near thereto as circumstances permit. Even there, there is a certain latitude given.

Shri Vaish: My submission on that score is only this. As far as this is concerned, we know that of late there have been some developments in accounting thoughts, *i.e.*, presentation of accounts. As a matter of fact, in the last two or three years there has been a great controversy going on about the form of presentation of the accounts of various concerns—insurance companies, banking companies, electrical undertakings and all that—and no finality has been reached yet. Then we said we had no objection. We certainly did say that but at the same time we made a suggestion that the position may be left flexible. In certain cases, if the intention of the Act is that essentially the form should be what it is and there may be just a few changes here and there and substantial changes would be prohibited —that is only what we wanted to safeguard against.

Chairman: Are you not satisfied with the provision that it should be as near the prescribed form as possible? Government could themselves change the form later if they want.

Shri Vaish: That is a legal position on which I do not think I can say anything with authority. All that we wanted was to express our own doubts about it.

Shri C. C. Shah: May I also refer to paragraph 153 of the Company Law Committee report at page 115, where they say after considering the provisions of the English Act:

> "We have, therefore, attempted to bring together all the information to be shown in these documents under one standard form of balance sheet and in one schedule relating to the contents of the profit and loss account."

The Bhabha Committee gave careful thought to this subject, *viz.*, whether a standard form should be prescribed, and taking into consideration the schedules in the English Act and our provision, they thought that a standard form of balance sheet was absolutely necessary.

Shri Vaish: I have to amplify what I did say. All that I said was, when that form was prescribed, the intention was not that it should be made rigid. We are in touch with the accounting thoughts prevailing in different countries and we find that the form which was considered to be quite satisfactory five or six years ago is considered to be very inadequate today. Just as I mentioned about depreciation, certainly I think that if the depreciation fund is shown as a separate fund,

not deducted from the different individual assets, that would certainly be, as far as I understand, a very serious departure from the requirements of the schedule. In case that is found to be a better form, then that represents a difficulty. But if it is thought as a legal proposition that flexibility is contemplated and can be permitted, then my object is served.

Shri B. C. Ghose: There may be a contingency where the form of the balance sheet itself might be desired to be changed. But this can be done only for a particular company which might want to give it in a different form. So, their point is not met. If you want to change the form of the balance sheet as a whole in future, under clause 196 (4) you cannot change its form for all companies.

Shri C. D. Deshmukh: The only remedy to keep pace with development of thought is to be prepared to amend the law. You cannot do anything else. Either they will take us into their confidence and say "this is how the thought has changed" in which case it is open to them to suggest a revised form, or their case may be that thought is developing so rapidly that no one is in a position to prescribe a form,—that may be another kind of advice —and we had better wait two or three years before we prescribe a form. Then the third kind of case is—I understood it to be his principal case—that many companies would find that several particulars do not apply to them and the forms would be riddled with 'nils', and he thought it would be very confusing. To that my answer is, in that case one reference to the Government is enough, under clause 196(4) in which case all these 'nils' can be avoided.

Shri Ghose: Since it is a schedule, we might also take the power to amend it. It is not in the main clauses.

Shri C. D. Deshmukh: By notification. That is another way.

Shri Basu: So far as stocks are concerned, we have provided that more details should be given, since a good deal of malpractices are usually reported. As far as I remember, in your memorandum you want to simplify it. Don't you think that, if the details are given, it will help people to understand?

Shri Vaish: We have never touched the question of stores or stocks separately. We have made suggestions with regard to the form of presentation of the profit and loss account and the balance sheet. Now, when we were discussing the question of the presentation of the profit and loss account, we said according to the requirements we can either show the opening stock as a separate item on the debit side, or deduct the stock from the sales. But, as far as the various suggestions made in the memorandum are concerned, they do not take 'stock' as an individual factor.

Shri Basu: Coming to your suggestion regarding the audit of the branches, where there are so many principal offices, by some one other than the audit appointed by the company, you said that the auditor of the company should accept the statement made by them, *i.e.*, the person who audits the branches.

Shri Vaish: Yes, but he must be a qualified auditor.

Shri Basu: In the general meeting, only the auditors of the company can be present. So far as any question relating to those particular branches are concerned, who would be there to explain the details?

Shri Vaish: You have raised two questions: one, the presence of the auditors at the general meeting and the other, the question of the responsibility of the auditors. Taking the second question first, certainly auditors who have done their respective jobs are responsible for their respective work. There is no doubt about it. Now as far as the question of the presence of the auditors at the annual general meeting is concerned, until you specifically provide in the Act that the auditors of the different

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offices will have the right to be present, the provision will be to the effect that only the statutory auditor who is appointed by the shareholders at the general meeting will be present, and in respect of the accounts of the offices which he himself has not audited, he will have to depend on the information conveyed by the other auditors.

Shri Basu: But if those auditors are present?

Shri Vaish: That can be provided in the Act.

Shri Basu: If any responsibility has to be thrown on the auditors, only the company's statutory auditor will be responsible. But he will show the certificate that he has obtained from the other auditor and say he is not responsible.

Shri Vaish: When I make that suggestion that the auditor must be enabled to depend on the work of other auditors as far as other offices are concerned, in effect I say that I should be held responsible only for the work I do, and for the work which has been done by others and on whose work I depend, certainly I cannot be held responsible; it is those gentlemen themselves who can be held responsible. In this connection, I would again invite your attention to the provision relating to branch audits. In relation to branch audits, it is specifically provided that another auditor may be appointed to audit the accounts of that branch and the statutory auditor, as I call him, would naturally depend on the work of such other auditor. Now certainly it cannot be said that if the accountant who has actually audited the accounts of the branch has gone wrong anywhere, then it is the statutory auditor who is responsible.

Shri Basu: There are well known cases of allegations being made that branch office accounts are kept in a manner which does not properly disclose the affairs of the company. Take the case of the tea gardens. Actually the plantation is far off from the registered office of the company. There is a local man there who maintains the accounts, but the auditor of the company is not able to go and audit the accounts. He gets the certificate of that particular person. Now allegations are made that the accounts there are not kept properly. Do you not think, in that case also, those auditors may be called upon to explain, if necessary, by the shareholders the deeds and misdeeds committed in the branch offices?

Shri Vaish: I think it is a very very far-reaching suggestion that the auditor should be responsible for all the deeds and misdeeds of the management and directors of the respective offices. The auditor will go to the extent he is required under the statute.

Shri Basu: Usually the auditor's certificate is there. He does not go beyond that. But you know, often in the case of these big companies, the head offices are far away from the places of operation. The branch offices are alleged to have committed something which does not properly disclose the affairs of the company. So in that case, a provision should also be made that in order to root out those malpractices, those auditors should be called to explain.

Chairman: How can you hold auditors responsible for all that happens?

Shri Basu: Take the case of the tea gardens. Some local person is incharge there. There is a good deal of malpractice in the accounts.

Chairman: Granting all that, how can we hold the auditors responsible for it?

Shri Basu: The auditor concerned should be brought forward to explain in detail whatever is done.

Chairman: According to him, the man who has audited the branch office may be held responsible.

Shri Basu: Even that is not there.

Then you have suggested that in regard to the retention of sub-clause (b) of clause 211(1), the Government

may be given power to direct your institute that such and such person should be allowed to give a certificate as auditor. Apart from the existing provision wherein you also accept certain foreign qualifications, do you think there will be such necessity wherein persons who cannot take advantage of the provisions of the Chartered Accountants Act will be there to work as auditors?

Shri Vaish: I have made the position very clear. We claim to be judges of technical qulification. When we say that a person has not qualifications satisfactory to enable him to be known as a member of the Institute, we go only as far as that. But there may be certain considerations that some foreign qualifications may have got to be recognised. This recognition of the qualification is subject to certain conditions—this qualification is recognised, say, for a period of five years or two years, he must be a domicile of this place and all that. We can only say on technical considerations, but certainly we do not claim to be judges of the policy of the Government.

Shri Basu: Can you visualise such a contingency, unless you say that there is a dearth of qualified auditors in our country? I could not follow it.

Shri Vaish: Just as I cannot visualise the policy.

Shri Basu: If the Government say that in the interest of that policy a provision should be there, you have no objection?

Shri Vaish: No objection.

Shri Basu: Could you tell us in how many cases an auditor who has made certain comments as to the working of the managing agents so far as a particular concern was concerned has been reappointed or an auditor has been appointed on the vote of the shareholders against the managing agent's nominee?

Shri Vaish: I will have to collect statistics before I can answer that.

Shri Basu: From your experience, could you not mention some important cases—10 or 15—where auditors have been appointed on the vote of shareholders against the managing agent's nominee or auditors have been reappointed even after passing such comments against the managing agent?

Shri Vaish: Generally, the appointment has been unanimous. More often than not, I find the appointment of auditors is by unanimous vote.

Shri Basu: When I say 'managing agent's nominee' I mean auditors whom the managing agent supports.

Shri Vaish: It is difficult to say as to whether they only represented the managing agents or whether they represented the others also.

Dr. R. P. Dube: You say that in regard to auditors no extra provision is necessary in the Bill because your Institute can take disciplinary action against defaulting auditors. May I know how many such cases have come to your notice up till now? If you have not come across any such cases, am I to understand that the information that the public has of auditors not doing their work properly is wrong?

Shri Vaish: To the latter part of the question, I submit most respectfully that if it is a mere cry only in the wilderness, if no specific instances have been brought to the notice of the Institute or to the Council or if it is claimed that complaint has been made and no action has been taken by them against the defaulting auditor, then I would say that that complaint is unjustified. To the other question, I would only say this. In the case of any complaint by the Government, the requirements of our law are that we have no option but to go ahead with the inquiry. It is not for us to say that the inquiry should not be held. As soon as it is a complaint brought in by the Government against the conduct of any Accountant, we must hold an inquiry. We must find out whether he is guilty

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or not guilty; even if we find he is not guilty, our proceedings must go to the High Court for the ultimate finding. So that there is no room for anybody to suspect that we can be lenient or partial to an accountant.

Dr. Dube: I do not want explanation. I asked for a specific answer to the question whether you have taken disciplinary action and if so, in how many cases.

Shri Vaish: For that you will have to give me time to collect statistics.

Dr. Dube: You should know. I am Chairman of my Medical Council and I can tell you in how many cases disciplinary action has been taken against defaulting doctors. There is no question of collecting statistics. We have taken action in ten cases.....

Shri Vaish: We have dealt with a much larger number than that.

Dr. Dube: But have you taken any action?

Shri Vaish: We have removed them from the register. We have disqualified them. I may mention that we have even disqualified members of the Council who controlled the affairs of the Council.

Chairman: Apart from Government, if there are complaints from shareholders, then also you inquire?

Shri Vaish: Yes, we do inquire.

Dr. Dube: Is it a fact that if a new partner is to be admitted into a firm of auditors, he has to pay some goodwill money, and if so, how much?

Shri Vaish: I believe you are referring to the question of a practising firm of accountants where another accountant qualified under the Chartered Accountants Act wants to join in partnership. Of course, he can join the firm and he may have to pay goodwill; very often he has to pay. But it is not only payment of goodwill; the other accountants in the firm have to feel satisfied that here is a person who is worthy of being admitted into the concern.

Dr. Dube: Is that satisfaction on account of the money that he pays?

Shri Vaish: I do not think so.

Shri Tulsidas Kilachand: Please refer to page 25 of your memorandum, paragraph 38. What is the difficulty?

Shri Vaish: This refers to clause 243. It is difficult for an auditor who is entrusted with the accounts of a particular company to know the exhaustive list of the officers and employees of that company. It is not as if he would call for a list of, say, all the workers and find out whether any one of them is an employee in this context. Therefore, the only difficulty which is expressed here is that if the auditor does not actually find out as to who are the employees out of the vast number of employees in a particular concern, then he cannot be held responsible. What are the means open...

Shri C. D. Deshmukh: Where is the auditor held responsible?

Shri Vaish: That is the point here. It is said in clause 243.

Chairman: Clause 243 relates to certain persons connected with the managing agent not being appointed as directors.

Shri Vaish: The auditor has got to satisfy himself that the whole directorate is properly constituted and in that context he has to see that the fees paid to the directors are a valid charge. If it is found out that there is somebody who cannot be shows as a director, it may be interpreted to mean that he has sanctioned or has passed for payment a payment which is not valid. In that context, it is necessary for him to satisfy himself that the directors are duly appointed directors. We have to take all possibilities into consideration.

Shri Tulsidas Kilachand: I do not think the auditors are expected to know.....

Shri Vaish: If that is so, we want a clarification.

Shri Tulsidas Kilachand: Here you mention the difficulty about finding

the voting strength. Now that provisions are being made by which there is publicity as regards persons holding the shares, is there any difficulty in finding out the voting strength?

Shri Vaish: Voting strength at what point of time? Either there must be some register or some stricter requirement on the part of the company to disclose at all material points what is the voting power held by whom and we can rely on that. Otherwise, it is an extremely difficult task for an auditor who is on the scene after the year is over, to find out what was the voting strength remaining at a particular time in the previous year.

Shri Tulsidas Kilachand: Provisions in the Bill are such that disclosures have to be made.

Shri Vaish: I only wish that we may be enabled to depend on the information that is given to us and not that we have to go into the records to find out really what is the voting power possessed by whom at a particular point of time.

Shri Tulsidas Kilachand: Now that the register of persons holding the shares has to be maintained, I do not think there should be any difficulty. If there is any difficulty, what are the measures that you would suggest?

Shri Vaish: All that I can suggest is that there may be a sort of certificate prescribed by the managing agent or the director. Otherwise we should not be held responsible to have the information verified by ourselves.

Shri Tulsidas Kilachand: These provisions are made particularly to safeguard against abuses. The point is that if we have a certificate from the managing agent or the director it is not enough to stop the evil. I do not think there is any difficulty.

Shri C. D. Deshmukh: Is it not possible to find out the voting strength at a fixed time? There is the register of shares. If you want to make sure that any director did not have more than 25 per cent., is that not capable of being verified from the share registers?

Shri Vaish: It is of another company, not of the company with which the audit is concerned. I cannot have the means.

Shri C. D. Deshmukh: In that case, it is not a matter capable of being audited by you.

Shri Vaish: All the same that transaction may be questioned. In fact, if he is not a competent person to deal with the affairs of this company, what are the means open to me to verify whether the transaction is valid or not?

Shri Tulsidas Kilachand: I would like to know how these things can be verified.

Shri Vaish: I can only depend on the certificate by the other company.

Shri Tulsidas Kilachand: The auditor of the other company can at least verified that these persons held 25 per cent. or more.

Shri Vaish: The other auditor is not working in relation to the audit of this company. As the statutory auditor of this company, when I have to verify the transactions of this company, for some reason or other it becomes necessary for me to find out the situation on the directorate of that other company and the voting strength of the directors of that company. Then, it is rather very difficult for me to get that. All that I can do is to depend on the certificate given by the other company.

Shri Tulsidas Kilachand: I agree with you that the difficulty is there. But, if this particular information is required, naturally, the auditor of the other company can verify. I say that after all the difficulty is not so great. The auditor of the other company can give the information.

Shri Vaish: He does not come in anywhere so far as this company is concerned unless you make it a condi-

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tion in combined audit that the auditor for the audit of the accounts of a company has to discharge some other functions as well.

Shri Tulsidas Kilachand: Can you suggest ways by which this can be avoided?

Shri C. D. Deshmukh: He suggest that at the time such a resolution is passed, the directors have to produce a certificate from the other company that they do not hold more than 25 per cent. of the shares. The originals would be in the other company and it would be the auditors of that company who can verify that those were correct at the time they were given.

Shri Tulsidas Kilachand: I would come to the question of dividend. I want to know from you what is the general practice at present regarding this.

Shri Vaish: At the moment there is no bar against the company declaring a dividend out of the profits of a particular year even though losses are brought forward from the earlier years. I take it the question is, is it bad? Generally, we auditors advise the company that it is rather dangerous and they themselves refrain from declaring a dividend if there are losses brought forward from earlier years. But, there are cases where dividend has been declared out of the current year's profits even though losses are brought forward from preceding years.

Shri Tulsidas Kilachand: When they do so, are there not special reasons for that?

Shri Vaish: There are reasons. But, I say, the reason that the capital ought to be kept intact is more important.

Shri Tulsidas Kilachand: You want to have rigidity and dividend should not be declared unless the profits fully cover the previous losses?

I would again put a question about branch audit. I know the provisions do not require that the branches should be audited and that can be decided at the annual general meeting. You want that other auditors should audit those branches and not the statutory auditor?

Shri Vaish: The provisions as they appear in the Bill today permit the accounts of a branch to be audited by an auditor other than the statutory auditor. The provision goes further and says that in the case of a branch, if the company so decides at a general meeting, the accounts of the branch may as well not be audited. It may be audited by persons other than the statutory auditors appointed by the company. My difficulty is with regard to offices which do not come within the definition of the term 'branch' as defined in the Bill itself. There may be the case of a company which has got several offices, none of them being a branch but principal offices carrying on the same activities or substantially the same activities as the head office. In that case, the intention of the Bill, as it stands today, appears to be that the audit of all the offices should be conducted by the same auditor. I want to have an enabling provision that in that case the audit of the different offices may as well be conducted by different auditors and the auditor who is appointed as the statutory auditor of the company in the general meeting be in a position to depend upon the certificate of the report given by the other auditor in respect of other offices.

Shri Tulsidas Kilachand: Now, you are suggesting that it should be on the lines of the banking and insurance companies; is that not?

Shri Vaish: The insurance and banking companies have separate provisions. Here we are concerned not with the branches as such; we are concerned with several offices.

Shri Tulsidas Kilachand: Under the Insurance Act it is not provided definitely that all the branches have to be audited. The difficulty is not found in the case of insurance companies. Why should you have it here?

Shri Vaish: My difficulty has not been properly appreciated.

Shri Chatterjee: In the Bhabha Committee report it is stated—

> "No law, however, well-designed, can ensure these qualities. For, technical competence depends upon training and experience, while the moral calibre of men depends on the traditions of their business, service or profession, and their mental attitude towards such traditions."

There is a schedule attached to the Chartered Accountants Act and the report refers to it. They express the hope that section 22 would be strictly enforced. So far as you know, has that section been enforced?

Shri Vaish: Yes; it has been enforced.

Shri Chatterjee: In that schedule I find there are 22 items. Is it sufficiently clear that incorrect balance-sheets and profit and loss account would be tantamount to mis-conduct by auditor?

Shri Vaish: I do not say specifically, but it may be that there are two or three items which cover it—(o), (p), (q), etc. It has, however, to be appreciated that the items of the schedule are illustrative not exhaustive.

Shri Chatterjee: In answer to one of my friends you said you are bound to make an enquiry if the Government directs you to do so: if it is a complaint made by any other persons it is left to your option.

Shri Vaish: It is not left to our option. What we have to decide is whether the complaint is a frivolous one, or whether there is a *prima facie* case in it. When it is found to be a *prima facie* case, it goes for detailed investigation to the disciplinary committee on which Government is represented. Whatever be the findings of the disciplinary committee, confirmed by the Council, it has to go to Government.

Shri Chatterjee: What is the percentage of complaints made by Government, as contrasted with private complaints?

Shri Vaish: About 10 per cent. from the Government.

Shri Chatterjee: 90 per cent. from other sources. With regard to those 90 per cent., what percentage do you entertain, roughly?

Shri Vaish: Roughly about 50 per cent.

Shri Chatterjee: In some of those 50 per cent., you have taken action?

Shri Vaish: We have taken action in some cases. In fact the punishment meted out by us was considered rather severe in one or two instances by the High Court. We had in one case recommended five years suspension of membership; they reduced it to two years. In another case we had recommended removal: they said that a warning was sufficient.

Shri Chatterjee: Therefore, you say you have not been very lenient.

Shri Vaish: We have been rather watchful.

Shri Dhage: What is the total number of complaints received by you so far?

Shri Vaish: As an accountant I would like to find it out exactly—I would not like to hazard any guess.

Shri Chatterjee: With regard to an auditor's duties, this is what is said in a judgment:

> "It is the duty of the auditor not to confine himself to verifying the arithmetical accuracy of the balance sheet, but to enquire into its substantial accuracy and ascertain that it contained the particulars specified in the articles of association and was properly drawn up so as to contain a true and correct representation of the company's state of affairs."

In actual practice, do you experience difficulties in discharging the later part

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of your duties, that is, depicting a true and correct representation of the company's financial state? Do you want any specific powers in meeting those difficulties?

Shri Vaish: The power we already have. We are not to limit our scrutiny to the final balance given on the balance sheet; we have to go behind them. We have even to verify the accuracy of the books. It is contemplated here and we have got that power.

Shri Chatterjee: The Bhabha Committee considered that the auditors require more power and it has been provided for in this Bill. The Bhabha Committee also thought that it would be desirable in the public interest to protect the interests of the shareholders. For instance, you can have access to the books of account at any time, apart from the annual audit.

Shri Vaish: What is provided for here is only a clarification of the powers we have. In fact, we are supposed to go through the entire period, not books as they stand at the end of the year.

Shri Chatterjee: For instance, the branch office books?

Shri Vaish: That provision has come in now.

Shri Chatterjee: Am I to understand from you that the powers that you already have, plus the additional powers given by this Bill, are quite enough to give you the requisite power?

Shri Vaish: Yes.

Shri Chatterjee: So, you do not want any additional powers?

Shri Vaish: So long as it is only an annual audit, and not an investigation.

Shri Chatterjee: I mean to discharge your duties?

Shri Vaish: We think so.

Shri Chatterjee: In the English Acts it is provided that no dividends can be provided except out of profits. Will a clause like that be advantageous here.

Shri Vaish: That is for the legal experts to say.

We only say that it may be made impossible for a company to declare dividend without maintaining the capital intact. I think the only way to do that is to make it clear in the Bill. It may, however, be contended by a company that they are declaring profits only out of the year under review, and it is not necessary for them to maintain the capital intact.

Shri Chatterjee: I am quoting to you from Palmer's Company Precedents, Edition:

> "Sums written off out of past profits as depreciation of fixed capital may (apparently) be applied as profits if owing to the real value of the fixed assets no depreciation has in fact taken place."

Is this followed in practice here?

Shri Vaish: In practice, we do not do it here.

Shri Chatterjee: For instance, a company has suffered loss to the tune of about Rs. 8 lakhs. The current year's working shows a profit of Rs. 15 lakhs. According to you Rs. 8 lakhs has to be deducted out of Rs. 15 lakhs and only the remaining Rs. 7 lakhs should be utilised for declaring dividends? Supposing in that loss there is an artificial depreciation of fixed [illegible] Cannot you make allowance for [illegible] depreciation?

Shri Vaish: Again, it will come to a question of estimating. The question of determination of the proper amount of depreciation is always a difficult proposition. It is always very difficult to say as to what the correct amount to be provided by way of depreciation is.

Then again, there are various theories advanced as to how it should be done; so that, in the matter of depreciation, we have to stop somewhere.

Shri Chatterjee: Suppose an auditor is honestly convinced that the depreciation provided for is exaggerated and that much should not be provided?

Shri Vaish: I think it will be a difficult situation for the auditor. In that case he will have to be an expert valuer of the different assets of the company.

All that I can say is that the capital ought to remain intact.

Shri Chatterjee: Your idea is that there should be no payment of depreciation out of capital.

Shri V. B. Gandhi: Shri Vaish, on page 6, in clause 5, of the Bill we find the definition of the officer who is in default.

> "...the expression "officer who is in default" means any officer of the company who is knowingly guilty of the default, non-compliance, etc."

I understand that a similar definition in the United Kingdom Act has the words "wilfully guilty". in addition to "knowingly guilty". Do you consider that the addition of the word "wilfully" would be more just to the officer? I put this to you, because as auditors you have intimate knowledge of the conditions and difficulties in which these officers function. Would you consider that "knowingly guilty" is not enough and if we want to be fair to the officers of the company, we should also have the words "wilfully guilty" as in the United Kingdom Act.

Shri Vaish: I may just prefix my reply with the reservation that these are matters on which the accountants really do not come in. In what cases the officer should be deemed to be in default, what should be the punishment prescribed, in what circumstances the punishment are to be meted out,— these are matters in which to my mind the accountant's profession hardly comes in. But speaking in my individual capacity, I would say that if an officer knows about some default, then it is as much necessary to make him liable for the consequences, as he ought to have been in case he was wilfully guilty of it. If he knows certain things, even if he is not a party to it, he must have the responsibility for having at least connived at it.

Chairman: In short you are satisfied with the present position.

Shri Gandhi: It is the impression of some of us in this Committee that the Bill is too long and too complicated. Would you agree with this?

Shri Vaish: Unhesitatingly, I do agree.

Shri Gandhi: Out of the registered companies, do you really believe that the numerous small units would be in a position to fulfil the requirements of the various provisions of this law without difficulty?

Shri Vaish: The difficulties are bound to be there.

Shri Achuthan: You have stated that the auditors are independent. Will there be any objection to make a provision that for the same company the same auditors cannot be appointed for the second year, so that they may work more independently?

Shri Vaish: The basic presumption underlying that question is that the auditor is not at present independent. If the shareholders are satisfied that the auditors are doing their work properly, why should they be changed?

Pt. C. N. Malviya: Please see para 32 of your memorandum. You have referred to clause 192 relating to penalty for failure to distribute dividends in time. Why do you want to defend defaulters even when in this law there is a proviso like this:

> "Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provision in the following cases, namely:—
>
> (a) where the dividend could not be paid by reason of the operation of any law;

[Pt. C. N. Malviya]

(b) where a sharenolder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;

(c) where there is a dispute regarding the right to receive any dividend."

Can you suggest certain more provisions to be added in case there is difficulty where the dividends may not be paid?

Shri Vaish: That point has been covered in the paragraph itself. We have only said that (a), (b) and (c) may not obtain. Even then it may be difficult for the company to find out as an ascertained fact that the payment of the dividend has been made. So we only say that it should be sufficient that the dividend warrants are posted within a period of three months, because it may be impossible for the company to see that the payment of dividend is made. All that they can do is to see that the warrants are posted. If they do not cash them or receive them the company should not be penalised.

Pt. Malviya: If they commit any default, you do not object to the punishment?

Shri Vaish: As far as the punishment part is concerned, we as Accountants have not applied our mind to the punishment part of it.

Pt. Malviya: In para 38 of your memorandum you have pointed out "In such cases how are the auditors to find out who the officers or the employees are?" What is the difficulty. Cannot you see from the list of officers? Or cannot you ask a question? Will you have any difficulty?

Shri Vaish: Here it may be difficult for us to find out particulars of all the employees in a company.

Pt. Malviya: Not all the employees. Persons not to be employed as directors.

Shri Vaish: Here the provision is that "none of the following persons shall be appointed as a director". There may be a particular person working somewhere, and it is impossible for me to find out from a long list of employees whether that person is or is not an employee at a particular time, because he may have been a director only for two or three months. He may have been paid a director's fees. Necessarily it has to be found out by us whether payments of fees to directors are valid payments. If the appointment itself is not valid, payment will be invalid. Therefore it becomes a very onerous duty on our part to find out whether all the persons who figure as directors in a particular year have at any time whatsoever been employed in any capacity in the midst of that year.

Pt. Malviya: If you agree to the principle that certain officers and employees should not be employed as directors, how will you solve the problem of such officers or employees being appointed as directors?

Shri Vaish: The directors and management can very well take care of it, because the directors make the appointment of the employees also.

Chairman: He has no objection. The difficulty is how are the auditors to do it?

Pt. Malviya: One question more. Can you give us illustrations where auditors have reported malpractices in the audit report?

Chairman: The question that is asked is: Can you give instances where auditors have reported to the shareholders malpractices?

Shri Vaish: So many qualified reports appear in the press. As far as published accounts are concerned they can be had. I can refer you to the published accounts. As far as private companies are concerned I do not think I need mention the names.

Chairman: No. The question was whether you do it.

The witness says they do it.

Shri S. P. Dave: You know the general consensus of opinion in the country is that due to the corrupt practices and undesirable practices and abuses of power, the system of arrangement existing at present has to be improved very much or changed; are you aware of this opinion?

Chairman: Excuse me, Shri Dave. How are they concerned with it? It does not arise out of anything that they have stated.

Shri Dave: My question is: you as auditors are interested in safeguarding the interests of the shareholders and the public in general; but in spite of your rendering such onerous services very honestly and candidly how is it that the institution with which you are connected has fallen into some disrepute?

Chairman: I do not think I will allow this question. This is only expressing your own opinion rather than asking any question. How can he say whether they have fallen in disrepute?

Shri Dave: In spite of your trying to take care that the management does its work honestly, how is it that the management has fallen into such disrepute?

Shri Vaish: We have never certified the good conscience or the good quality of work of any officer. We have only said as far as we can say on the accuracy of the accounts as presented to us.....

Chairman: No, no, the question does not arise.

Shri Dave: Is accuracy of accounts your only business?

Shri Vaish: It is not only accuracy. It is the contents of the report we submit, and the report does not refer only to the accuracy or the official figures; it also refers to the state of affairs and certain other aspects of the accounts as far as they are contained in the report itself.

Shri C. D. Deshmukh: What he means, I think, is this: there is a field of malpractices which cannot be detected by audit. That is to say, you yourself have said that there are certain matters in respect of which investigations alone can disclose the full facts and therefore you do not concern yourself with them.

Shri Vaish: For that, proper provisions of law are necessary, and I think they are contained in the Bill.

Shri C. D. Deshmukh: So far as an auditor is concerned what does an auditor do if he smells a rat?

Shri Vaish: He tries to catch it.

Shri Dave: In clause 212 of the Bill the duties of the auditor are enumerated. Would you like us to add anything there in order to see that in future the country is faced with no mismanagement, defalcation, etc., etc.?

Shri Vaish: My humble submission is an auditor cannot be a cure of all evils. If there are certain evils persistent in a society, proper measures should be made. It is not as if the management goes on doing wrong and you expect that the auditor should cure every evil. The remedy has to be found in a proper manner. The evils have to be located and the remedies prescribed.

Shri Dave: Would it not lead to an assumption that you are rather too timid and do not want to help us in detecting the real fault?

Chairman: I do not think it is a proper question, calling the witness names "you are timid" and all that. This should be avoided. Can we not ask our questions in a straight manner and elicit information?

Shri Vaish: If you investigate...

Chairman: No, you need not answer that question. He is going to ask another question.

Shri Dave: You are supposed to give a true picture of the profit and loss of a company. It is general knowledge that these profits and losses sometimes can be shown more or less by valuation of stocks. Do you take all the care necessary to see that the shareholders get a correct picture?

Shri Vaish: We take all possible care, but as far as valuation of the stocks is concerned, that too has to be done on certain well recognised principles. And if the principles themselves are so very well recognised, so very well accepted in all responsible circles and these principles themselves are capable of giving results, then nobody can help it. As to on what basis a particular loss or profit has been arrived at, it may be on the cost price or on the market value. If the cost price has been adopted for the valuation, the result may or probably will be different from what it will be if the market price is taken as the basis. And because there are different bases, therefore different results are bound to be noticed.

Shri Dave: Before we arrive at the margin of the profit, we have to allow for various costs like raw materials, labour, energy, etc. In every industry there are general patterns of costing which auditors are supposed to know. When there is a very wide variation, is the matter pointed out to the shareholders that in spite of, say, raw materials having cost 40 per cent., their cost in this particular concern is 55 per cent.?

Shri Vaish: Well, as far as the causes of the variation are concerned, we certainly go into them. But it is not for us to say as to why the cost is more than what it was last year. We have to report the facts as they are. We are not so much concerned with the various causes so long as those causes are not actually objectionable.

Shri Dave: In order to make your institution more serviceable, helpful and to be of more guidance to shareholders, would it not be better to have these enquiries also?

Shri Vaish: In the proper context, yes. If it is an investigation, we would like powers to that extent. If it is audit, it will be for that purpose. If it is verification of a statement for a purpose, we could make an enquiry. Much has to depend on the object in view entrusted to the Accountant.

Shri Dave: What prevents you today from making such an enquiry?

Shri Vaish: The terms of the job which are entrusted to us are limited. If it is an investigation the scope will be different. If it is an audit, it will be different.

Shri Dave: What are the terms you are referring to?

Shri Vaish: The varying nature of work.

Shri Dave: Are they prescribed by any statute?

Shri Vaish: They follow from the provisions of the certificate which we have got to give in different circumstances.

Chairman: The same person could be appointed for different purposes. That is the point.

Shri Dhage: Sir, before the witness leaves I have to make a request. He said that he would be able to give the information with regard to the complaints that have been made, after ascertaining the facts.

Shri Vaish: I can give the number, the statistics if the honourable Committee so desire.

Chairman: Yes, we would like to have the information which you can easily supply.

Shri Vaish: I have to send to you the number of the complaints received and how they were disposed of. Only the statistics, not the names?

Chairman: We are not concerned with the names. The results also you may give.

Shri Vaish: The other note is about the inter-locking system.

Shri Chatterjee: Also where the Institute has taken action *suo motu*, and the results.

Shri Vaish: Very well.

Chairman: Shri Vaish, we thank you and your colleagues for having given us some valuable suggestions, particularly on a dry subject like this

(Witnesses then withdrew)

The Committee then adjourned.

THE JOINT COMMITTEE ON THE COMPANIES BILL, 1953

Minutes of Evidence taken before the Joint Committee on the Companies Bill, 1953.

Monday, the 16th August, 1954, at 10 A.M.

PRESENT

Shri Hari Vinayak Pataskar—*Chairman*

MEMBERS

LOK SABHA

Shri Chimanlal Chakubhai Shah
Shri Awadheshwar Prasad Sinha
Shri Shriman Narayan Agarwal
Shri Ghamandi Lal Bansal
Shri Radheshyam Ramkumar Morarka
Shri B. R. Bhagat
Shri Nityanand Kanungo
Shri T. S. Avinashilingam Chettiar
Shri K. T. Achuthan
Shri Tekur Subrahmanyam
Col. B. H. Zaidi
Shri Mulchand Dube
Pandit Munishwar Dutt Upadhyay
Shri Kamal Kumar Basu
Shri C. R. Chowdary
Shri M. S. Gurupadaswamy
Shri Amjad Ali
Shri N. C. Chatterjee
Shri G. D. Somani
Shri Tridib Kumar Chaudhuri
Shri C. D. Deshmukh

RAJYA SABHA

Dr. P. Subbarayan
Shri Shriyans Prasad Jain
Shri Somnath P. Dave
Dr. R. P. Dube
Shri Braja Kishore Prasad Sinha
Shri R. S. Doogar
Shri S. C. Karayalar
Shri Amolak Chand
Shri M. C. Shah
Shri V. K. Dhage
Prof. G. Ranga
Shri B. C. Ghose

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar, *Officer on Special Duty, Department of Economic Affairs, Ministry of Finance.*

Shri K. V. Rajagopalan, *Officer on Special Duty, Department of Economic Affairs, Ministry of Finance.*

SECRETARIAT

Shri M. Sundar Raj, *Deputy Secretary.*

Shri A. L. Rai, *Under Secretary.*

WITNESSES EXAMINED

I. *Incorporated Law Society of Calcutta.*
spokesmen :—

Shri S. N. Sen.
Shri T. Banerjee.
Shri R. C. Deb.

II. *Bombay Incorporated Law, Society.*

Spokesmen:—

Shri Damodardas.
Shri Madgavkar.
Shri Pakvase.
Shri Desai.

I

Incorporated Law Society of Calcutta

Spokesmen :—

(1) Shri S. N. Sen
(2) Shri T. Banerjee
(3) Shri R. C. Deb.

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

Chairman: We are very grateful to you gentlemen for having submitted your memorandum after careful study of the provisions of the Bill. We have carefully gone through the memorandum. But, as this is an important measure and as you are expected to be in the know of things we thought it better to give you the trouble of placing your views before us. If some of our friends want to ask any questions about what is contained in the proposals made by you that may be done. I would like you to suggest to us anything which you may have other than what is contained in the memorandum submitted already by you.

Shri S. N. Sen: There are a few points on which we want to give a little more elucidation.

You must have observed that we have suggested that in cases where orders passed by the Court have got to be filed with the Registrar or other officers, we have asked that the time for the filling of the orders should be extended. Some time lapses before the copy of the order is received from the Court. Normally, after the order is passed certain preliminaries have got to be gone through. As soon as the order is passed the Attorney has to file an application for the drawing up of the order; then the draft order has to be approved by the Attorneys and then signed by the Judge. Then an application for obtaining a certified copy has to be filed and finally the certified copy is obtained. We have suggested that the time should be, in such cases, from the signing of the order and not the making of the order.

Chairman: I think that will not meet the point; the order may be signed the same day.

Shri Sen: That is not possible so far as the Calcutta High Court is concerned; I am speaking from my personal experience. The judgment is pronounced by the Judge but then the Solicitors have got to put in a requisition for the drawing up of the order. The order has to be drawn up; it has to be approved by the Solicitors and then approved by the Court and then it is duly endorsed and put up for signature and then it is signed. After a few more days we get the certified copy of the order.

Chairman: Under the provisions of this Act such an elaborate procedure may not be followed and these orders may be signed the same day. But, some time might be given for obtaining certified copies of the order.

Shri C. D. Deshmukh: I think that if the District Judge passes the order, the date of making and signing the order may be the same. But, where there is an interval between the making and the signing of the order and then between the signing of the order and getting a certified copy, what they suggest is that the date of

[Shri C. D. Deshmukh]

signing the order should be taken and not the date of the making of the order. Whether for legal purposes we can import this difference or not, this is the practice prevalent in the Calcutta High Court.

Shri N. C. Chatterjee: So far as the Calcutta High Court is concerned this is the practice. In mofussil courts, when the order is dictated it is immediately signed and it is finished then and there. In the Calcutta High Court it is not so. They have got to put in a requisition for the drawing up of the order. As a matter of fact, the old practice of the Calcutta High Court was that every order was drawn. But it was stopped and later on we put up a rule specifying that no order shall be drawn unless the Attorney puts in a requisition for the drawing up of the order. Therefore it takes a lot of time.

Chairman: I have heard of complaints in the High Court of Bombay, that the orders are not now ready as early as they used to be before. I think Shri C. C. Shah knows it better.

Shri Chatterjee: What is the time taken between the making of the order in the Court and the drawing up of the order, supposing you put in a requisition the very next day after it is pronounced in Court?

Shri Sen: It takes some time. Unless the Judge certifies that the drawing up of the order has to be expedited, it does take some time.

Shri C. C. Shah: Does it also apply to orders made in Chambers?

Shri Sen: Yes.

Shri C. C. Shah: Our practice in the Bombay High Court is that when orders are made by the Judge in Chambers he signs them then and there.

Shri Sen: As a matter of fact in the Calcutta High Court the orders are made in Chambers but the Judge never signs on the file.

The next point that we have suggested is that whenever copies have got to be supplied by the Companies concerned, these copies should be authenticated. So far as I remember, there is no provision in the Companies Act by which we can compel the Company to give copies under their signature as true copies or authenticated copies. So, we have suggested that whenever there are directions in the Companies Act that copies should be given they should be authenticated copies.

Chairman: We can say in the definition that 'copy' means a copy authenticated by some responsible officer of the Company.

Shri Sen: These are the two general observations we have made and the particular suggestions are in the details submitted. If you want us to clarify those points we will be able to make our submission in more detail.

Re. Clause 9(1) and (2). When we use the word 'company', it is either a company to be incorporated under this Act or a company already in existence. According to the definition of clause 9, no company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of some other Indian Law. Therefore, we are suggesting that the opening word 'company' is inappropriate. I may, however, point out that this word has already been used in the English Act.

Shri C. C. Shah: And also in the existing Indian Act.

Shri K. V. Rajagopalan. But, the definition obviously cannot apply in this case.

Shri Sen: We thought that this word 'company' appeared to be not proper; it is superfluous. Although there is no difficulty actually, we suggest that the word 'company' may be deleted.

Shri Chatterjee: 'Company' is defined in clause 3 and it is stated there that 'company' means a company formed and registered under this Act or any existing company as defined in clause (ii).

Chairman: The draftsman thinks that the word 'company' may be taken in the ordinary urage in this place.

Shri Chatterjee: They have no comments to make so far as the other clauses are concerned.

Shri C. D. Deshmukh: They are not so much concerned with policy matters.

Shri Sen: We are entirely in agreement with the policy stated in this memorandum.

In 58(c), it has been stated—

> "Where the omission from a prospectus of any matter which is required to be stated or set out therein under the provisions of section 51 and Scheduled II is calculated to mislead, the prospectus shall be deemed in respect of such omission, to be a prospectus in which an untrue statement is included."

In clause 56, there is criminal liability for mis-statements in prospectus. Having regard to 58(c), we are just suggesting that *bona fide* mistakes or omissions should be excluded from the provisions of clause 56.

Shri C. D. Deshmukh: *Bona fide* mistakes calculated to mislead would not involve criminal liability.

Chairman: *Bona fide* mistakes are those mistakes which are due to omission?

Shri Sen: Yes, in the case of *bona fide* omissions, they should be exempted.

Shri C. C. Shah: But we have amended clause 58.

Shri C. D. Deshmukh: But not in this sense.

Shri Chatterjee: Where the omission is calculated to mislead, it is practically a fraudulent omission.

Shri Sen: We have got no objection to fraudulent omissions, but in case it is due to a *bona fide* mistake or in case it is not intentionally omitted, it should be exempted from criminal liability under clause 56.

Shri C. D. Deshmukh: You conceive of a case where a *bona fide* mistake can be held to be "calculated to mislead".

Shri Sen: Yes.

Shri D. L. Mazumdar: *Bona fide* mistake which results in misleading—that is what is probably meant by them.

Shri C. D. Deshmukh: It is stated that the omission is calculated to mislead. Does that admit even of some mistakes which nevertheless are *bona fide* mistakes? Does that process of judgment allow room for mistakes of this charcter which may not be *mala fide*?

Shri Chatterjee: Ultimately, the Court may hold that in view of particular facts, it has resulted in misleading.

Shri C. D. Deshmukh: Then 'calculated' is not really calculated'.

Shri Chatterjee: Calculated by the Court.

Shri C. D. Deshmukh: No calculation on the part of the particular persons concerned. What is meant by "calculated to mislead" is that you must stand by your judgment. It would only be likely to mislead or certain to mislead. The word 'calculated' has an element of subjectivity in it.

Shri T. S. A. Chettiar: Suppose I say "This is a calculated insult to me". What does it mean?

Shri Chatterjee: The person who is making the omission is doing it not with a view to mislead. Some such thing is meant here.

Shri Sen: The first part refers to untrue statement and the last three lines say "unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did, upto the time of the issue

[Shri Sen]

of the prospectus, believe, that the statement was true". Clause 58(c) refers to omissions.

Shri C. D. Deshmukh: This interpretation clause merely tells you what is an untrue statement. It does not affect the saving clause which is contained in the last three lines. It is still open for anyone to say that although it is not a material omission, it is an omission calculated to mislead. That means that it would be regarded as something which would be deliberate. Nevertheless, I am in a position to prove that I did not have reason to believe that this was so. In other words, there is nothing in clause 58(c), which is a rule of interpretation, to exclude the operation to the extent to which it applies to the last three lines of clause 56, in which case, it is not necessary to change this at all. The *bona fide* is not excluded by the mere interpretation clause unless we specifically provide that if it is found to be a calculated statement, it shall no longer be open for him to prove—; that we have not said.

Chairman: Clause 60.—redrafted.

Clause 66(6).—redrafted.

Clause 68.—consequential to 66(6).

Clause 71.—

Shri C. D. Deshmukh: We have amended that.

Shri C. C. Shah: We have amended as suggested by them.

Shri C. D. Deshmukh: They are all co-related.

Shri Chatterjee: You are putting some questions on clause 71. What is your suggestion?

Chairman: We are going to redraft the whole thing and the draftsman is going to look into it.

Shri Sen: Clause 99(b): We have suggested that this resolution should be an ordinary resolution and not a special one.

Chairman: Clause 99 refers to alteration of rights of holders of special classes of shares.

Shri C. D. Deshmukh: Is there any special reason for your suggestion?

Shri Sen: It is only affecting the rights of a particular class of shareholders and so we have suggested an ordinary resolution instead of the resolution as proposed here.

Chairman: Then we go to clause 105.

Shri Chettiar: Do you feel that normally all appeals to Government should be substituted by appeals to Courts?

Shri Sen: Our feeling is that in most of the cases, private rights will be decided better in a court of law.

Shri Chettiar: Can you give a classified list of the numbers in which appeals should be allowed to go to the court?

Shri C. C Shah: Where they have wanted they have pointed out.

Shri R. R. Morarka: I presume this is not a general statement but only with respect to clause 105?

Shri Sen: That is right.

Shri C. D. Deshmukh: I am not clear about the last four lines of your memorandum. You have said:

> "The right of the parties to go to a Court of Law should in no case be interferred with and the Government should never attempt to usurp the jurisdiction of a Court of Law."

Shri Sen: We are sorry that the wording is...

Shri C. D. Deshmukh: A bit strong

Chairman: And wide also.

Shri Sen: We mean when the private rights of a shareholder are involved.

Shri Chatterjee: You want the appeal should be to the High Court?

Shri C. D. Deshmukh: This is the motive and the spring of their observation in regard to clause 105. This is the principle that actuates this amendment. But they leave the general observation with us. The onus

is on them to show if such a change is required. If it is not, it is our concern to consider whether to apply that principle or not.

Shri Chettiar: The proposal under the Company Law Committee Report is to create a central authority. Under the Bill it is a department. Suppose the decision is left to a government department and not to a central authority as is contemplated under the Company Law Committee Report, have you any additional observations to make?

Shri Chatterjee: Suppose we give the power to a properly constituted authority under the statute, either under this or under any other Act, which will have judicial or quasi-judicial functions, have you any objection to that statutory authority operating in this sphere entertaining appeal and dealing with them?

Shri Sen: Like a Board of Trade.

Shri Chatterjee: You do not mind in that case the power being taken off the courts?

Shri Sen: So far as the administration of the company is concerned.

Shri Chatterjee: The appeal is now with the Central Government. Your objection is that you want the courts to retain that power.

Chairman: Leave aside the High Courts of Bombay and Calcutta whereon the original side they deal with these matters. In the mofussil, with the kind of judicial machinery that we have got and where there are only rare occasions when they have to look into the Company Law, is it not better that we entrust these matters to an expert body which may also consist of persons who know these things and who have got a judicial frame of mind rather than entrusting them in the hands of those people in the mofussil, because merely by saying "judicial", things would not improve.

Shri Chatterjee: You remember the strictures of the Judicial Committee on winding up proceedings about delay. If you leave it to a central statutory authority, these points will not arise. Are you suggesting that the people should go to a court of law or are you agreeable to a central statutory authority?

Shri C. D. Deshmukh: My point of reference to the last four lines of your memorandum is slightly different. These are not matters entirely juridical in their context when you receive transfer applications and decide indemnity and various other things. When you say 'you are usurping the functions or law'—by law. I mean doing justice as between two parties with reference to certain statutes, interpretations and so on—here there are many other extra-juridical issues which might arise. And it seems to be better to leave it with some kind of a quasi-judicial authority in these matters rather than a court of law. Apart from the question of delay, there are matters with which a specialised extra-juridical authority would be better equipped to deal than courts in general. That would be my point. Whether it should be Central Government or Central Authority is another issue. But I am saying the nature of the work is such that it is not a thing which obviously is the work of a court.

Shri C. C. Shah: There is another point. Under the existing law there is no remedy if a transfer is refused by a company. This is a new right created for shareholders. And there are very few shareholders who can afford to go to a court of law and spend the time and money. Probably this is a more expeditious remedy when they go to the Central Government. At present there is no remedy to them.

Shri Basu: Their point is if it is a statutory body it is all right. But if it is Central Government it might be just a department.

Shri C. D. Deshmukh: They have not said so. In their minds it was not obvious if they have made a distinction between Central Government and Central Authority. I wish to know which it is. I gather from what they say that the function of a judge should be assigned to him.

Shri Sen: That is so.

Shri C. D. Deshmukh: Merely changing one for the other will not therefore meet their objection.

Shri Chatterjee: In most of the cases the difficulty arises when the directors refuse registration, and if they do not disclose any reasons they are not amenable to the jurisdiction of the court. That is the position. We are trying to provide some kind of appeal. The only question is which will be the appellate forum. Now refusal by the directors is practically final, unless they are so unwise as to formulate reasons.

Shri C. D. Deshmukh: Case laws have not been built up, principles have not been evolved. It seems better that a non-judicial authority should try and do justice. Later on we can see if there is a context which can be defined for courts to fix principles.

Shri C. C. Shah: At present that refusal is more on extra-judicial grounds.

Shri D. L. Mazumdar: In nine cases out of ten they are on extra-judicial grounds.

Shri Sen: As it is questioned, it is better that this is done by the court so that the right can be ventilated there.

Shri C. C. Shah: I think we have discussed it enough.

Chairman: Let us go to clause 107. I think there is no conflict between this and Regulation 21 of table "A".

Shri Sen: There is no conflict.

Shri D. L. Mazumdar: Regulation 21 is not a compulsory Regulation. That is your point. Here we have merely followed section 82 of the English Companies Act; and this is also a recommendation of the Company Law Committee.

Chairman: Then we go to clause 110. This is the same as section 84 of the English Act. Of course in England there is no Penal Code.

Shri Sen: Under the Indian Penal Code such a person can be dealt with.

Shri C. C. Shah: This is not only impersonation, but deceitful impersonation.

Chairman. It is not better, as we are having special provisions in the Companies Act, to have such a provision here rather than leave it to the Indian Penal Code?

Then we go to clause 112(1).

Shri C. C. Shah: These are all printed copies generally.

Shri Sen: Yes. We want an extension of the time, because it may not be ready within a short time. And it is also punishable in case of default.

Chairman: Then we go to clause 139(2).

Shri Sen: If it is removed from one town to another, we have suggested that it should be by ordinary resolution. But if it is within the same town or village there should be no restriction.

Shri D. L. Mazumdar: The corresponding section in the English Act is section 107.

Shri B. C. Ghose: Why ordinary resolution in place of special resolution?

Shri Sen: Because we do not find any special reason for passing a special resolution.

Shri Ghose: In an ordinary resolution it will be by simple majority and there will be no difficulty in passing a resolution. In order to prevent such a thing this has been suggested. And what is the harm in having a special resolution?

Shri Chatterjee: I think your real point is that ten miles distance is not proper.

Shri D. L. Mazumdar: There is no proviso to the English Act.

Shri C. D. Deshmukh: You want an ordinary resolution in this case.

Shri Sen: Yes.

Shri C. D. Deshmukh: And also no restriction in the case of removal beyond 10 miles in the same city?

Shri Sen: Yes.

Chairman: Clause 140. The names should also be painted in English: that is the suggestion.

Shri Sen: For some time at least, it is suggested.

Chairman: Clause 148.—

Shri Sen: We have suggested that the word 'wrongly' should be replaced by the words 'without sufficient cause'. The words 'without sufficient cause' have been judicially interpreted in many cases. It would be better to have that wording instead of a new word.

Shri Chettiar: Suppose there is sufficient cause, but it is wrong: what is the remedy?

Shri Sen: What is meant by 'wrongly' has to be construed. We have interpretation of the words 'without sufficient cause'. That is why we want the change.

Shri C. C. Shah: The introduction of a new wording may lead to difficulty.

Shri Chettiar: My point is this. There is sufficient cause, but it is wrong. What happens?

Shri D. L. Mazumdar: If there is sufficient cause, it is not wrong: that is their contention.

Shri C. C. Shah: Why do you want three Judges?

Shri Sen: It is not a matter of such great importance, to require three Judges.

Shri Morarka: I would request you kindly to read the clause. It says:

> "if the order be passed by a single Judge of a High Court consisting of three or more Judges, to a Bench of that High Court."

There is a comma after Judges. The number of Judges refers to the strength of the High Court.

Shri Sen: The comma is there. We are grateful to you.

Shri C. C. Shah: Clause 159: There is a difference. In the existing law, the application has to be made to the High Court. Why do you want to make a change and bring in the Government? Court means District Court or a High Court having jurisdiction. I think there is a point which will have to be considered.

Shri Sen: We have suggested, in clause 162 (2) after the word 'consent' the words 'in writing' may be inserted.

Shri C. C. Shah: I want to understand your point. The application has to be made to the High Court. What is the reason for suggesting that any member cannot apply but only members having not less than 1/20th of the issued share capital can?

Shri Sen: If any particular shareholder could make an application, it will become difficult sometimes. A certain number of members should have to join in making the application.

Shri Shah: The existing law is, any member can apply. The Directors will be heard on such applications.

Shri Sen: Instead of one particular shareholder seeking to take steps, a certain percentage of shareholders should take action.

Shri V. K. Dhage: According to the provision, a meeting that is required to be convened has not been convened. Whether it is an extraordinary meeting or whether it is an ordinary meeting, why do you want another 1/10th of the shareholders to move the court?

Shri Sen: The clause reads:

> "If for any reason it is impracticable to call a meeting of a company other than an annual general meeting in any manner in which meetings of that company may be called or to hold or conduct the meeting of the company in the manner prescribed by this Act and the articles,....."

You will notice that the wording is, if it is impracticable to call a meet-

[Shri Sen]

ing. Whether it is impracticable or not, the provision is that any member may move if he thinks it necessary. We are suggesting that a certain percentage of shareholders should consider whether a meeting is necessary and then move the court.

Shri Dhage: Take for example an Extraordinary General Body meeting. If the Board of Directors calls that, it is all right. Suppose the shareholders call it, a particular number of people holding certain qualifications must apply for the purpose of convening a meeting.

Shri C. C. Shah: This is altogether a different thing. It is said, if it is impracticable to call a meeting. Say, it is not possible to give 21 days' notice and the meeting has to be called at shorter notice. The application may be made by a director or member. That is the existing law. There has been no difficulty. Even when any member applies to the court, he has to satisfy the court that it is impracticable to hold the meeting.

Chairman: Clause 179(2)—In the place of "shareholder" the word "member" is preferred.

Shri C. C. Shah: It is a matter of nomenclature.

Shri Chettiar: Why do you want deletion of the words 'or in a manner oppressive of any of its members'?

Shri Sen: Our suggestion is that the minority shareholders have been given sufficient protection, under this Act.

Shri C. D. Deshmukh: This provision was passed by the Legislature in 1951.

Shri Chettiar: Suppose somebody is not even allowed to speak, what is the remedy? They have the majority on the one side.

Chairman: This provision is there in the English Act.

Shri Sen: We have only suggested that investigation by the Central Government on the ground of oppression is not necessary.

Shri Chettiar: Can you show the clauses which contain a similar provision to show that it is unnecessary?

Shri Sen: There are Clauses 367, 368, 369 and 370.

Shri C. C. Shah: Clause 222 (b) (ii).—The wording 'or towards any of its members' is rather too wide. We may consider it. In Clause 287(4)(b), why do you want 5 per cent. in place of 3 per cent. Perhaps, it is a matter of policy.

Shri Sen: We have nothing to say about it.

Shri Ghose: Why do you want to have 5 per cent.?

Shri Sen: The company has no managing agent. Therefore, it is suggested that 5 per cent. may be allowed.

Shri Ghose: They were getting only 3 per cent.

Shri Sen: The amount was not thought to be attractive.

Shri C. C. Shah: This is for a director who is not a whole time Director. Three per cent. should be sufficient. However, we shall consider.

Shri Sen: In Clause 292 (2), the word 'members' seems to be a misprint for 'directors'.

Chairman: We will correct it if it is so. Clauses 313 and 314.—It seems to be a matter of drafting.

Shri C. C. Shah: We will have to consider these sections. There is a little confusion.

Chairman: It is a suggestion made by them that the intention is not clear. If it is the intention to say that the managing agent shall not be eligible for re-appointment, a provision to that effect should be inserted in clause 309.

Shri C. C. Shah: Clauses 313 and 314 seem to be an inducement to the managing agents to accept the revised scales earlier than the 2 years period. We will have to consider that.

Shri Sen: Yes.

Clause 412

Chairman: Many of the mofussil Courts are empowered, but as a matter of fact, there is no official liquidator nor special rules. There are the rules of the High Court which they try to follow. Therefore, is it not better to leave it to the High Courts?

Shri Sen: That is our feeling also, that they should be left to the High Courts.

Clause 419

Shri C. C. Shah: It is a matter of nomenclature.

Clause 427

Shri Sen: From our experience we feel that the period should be extended to three months.

Clause 445

Shri Sen: This is in respect of our general observation.

Clause 484

Shri Sen: This is to make the clause clear.

Clause 504

Shri C. C. Shah: I appreciate the suggestion because it extends the liability of the director for negligence and misfeasance, but will it not be argued that 12 years is a long period?

Shri Sen: Under the Banking Companies Act it is 12 years, and we have suggested on that line.

Shri C. C. Shah: Of course, it is a better protection to shareholders, but it may deter directors from accepting responsibility. We have ourselves raised it from three to five years. Is your suggestion based on experience?

Shri Sen: No, it is not based on experience. We merely suggest that it should be in line with the Banking Companies Act.

Clause 515(9)

Shri Sen: It happened in a case that the liquidator kept the money intact, only he did not transfer it. He did not get any commission on the money, for acting as liquidator, but nonetheless the had to pay 20 per cent. interest personally.

Clause 520

Shri Sen: We do not press for that.

Shri C. C. Shah: In fact, it is necessary.

Clause 575

Shri Morarka: Why do you think there should be no discrimination? For example, in the Industrial Finance Corporation, do you think it is practicable to apply the whole of the Companies Act?

Shri Sen: If it is a matter of policy, we do not want to say anything, but we think companies are companies and they should be governed by the same rules.

Shri C. D. Deshmukh: This is a very important clause. It is an alternative method of trying to provide for Government companies. In the absence of this, we will have to have a special statute when obviously public interests are involved. We thought this was an easy way of providing for public interest by taking power. It is not discrimination just for the sake of discrimination. Otherwise, we will have to come before Parliament every time.

Shri Chatterjee: Parliament will have better control in that case.

Clause 582

Shri Sen: Normally, the accused is never a witness and as a matter of fact he is not cross-examined even. He only makes a statement. Subclause (2) gives the power to the Court to draw an adverse inference where an accused does not appear as a witness. That probably goes beyond the elementary principle of criminal jurisdiction. Probably option may be given, but not drawing of adverse inference.

Shri Chatterjee: Every one has a fundamental right against self-incrimination.

Shri Sen: There is one suggestion we wish to make. The Registrar of Joint Stock Companies may be specially authorised to launch these prosecutions and other things because we do not find there is any specific power given to anybody to take up all these prosecutions or to enforce any penal clauses of fines etc. There is no general clause so far as we can gather.

Shri D. L. Mazumdar: Is it your case that we have no corresponding section to section 278 of the existing law?

Shri Sen: We have clauses 577 and 578.

Shri D. L. Mazumdar: Are you happy with clause 278?

Shri Sen: No.

Shri Chatterjee: You want a specific duty to be cast on the Registrar with specific powers to initiate prosecution and enforce the penalty?

Shri Sen: Yes.

Shri D. L. Mazumdar: The Registrar is entitled to make a complaint.

Shri Sen: But there is no specific functionary in the Bill on whom an injunction is put to enforce these.

Shri D. L. Mazumdar: If as a result of the investigation the Registrar finds that a breach of the Act has taken place, he is certainly entitled to make a complaint.

Shri Sen: Unless there is a mandatory direction, he may or may not do it. We want that he shall do it.

Shri D. L. Mazumdar: Provided he is satisfied that it is a breach of the Act. Would it not be enough to leave it to an officer to take action under the Act? If, having satisfied himself that a breach of the Act has taken place, he does not make any complaint, obviously he has failed in duty and action may be taken administratively against him.

Shri C. D. Deshmukh: I think it will be impracticable. If you say it shall be the duty of a Policeman to prosecute everyone who breaks the Motor Vehicles Act, you will create another class of officers where Policemen have failed to take action. It will be the general duty of Government and officers to see that the present law is administered, and you cannot give it any statutory form. It will create complications, I think.

Shri D. L. Mazumdar: In regard to clause 514, two views have been expressed. The preponderant view is the one which involves an amendment of clause 514. The existing clause was based on a view, which on further consideration we have been advised, has to be changed. I thought I could have advice from you on this point.

The note that I have written on this is as follows: "The question has been raised that payment of moneys into a Scheduled Bank may be *ultra vires* of the Constitution. It is argued that a liquidator, in a Court liquidation—whether it is under the supervision of the Court or not does not matter—is an officer of Government, and therefore moneys realised by him would be deemed to be moneys received by the court. Under article 284(b) of the Constitution of India, all moneys received by or deposited with any Court within the territory of India to the credit of any account shall be paid into the public account of India or the public account of the State, as the case may be. Since the public account of India or a State is maintained by the Reserve Bank of India, Article 284 would seem to require the deposit of moneys received by the liquidators in Court liquidations in the Reserve Bank only, and not in any Scheduled Bank in India."

This point requires examination. An assessment of this point would seem to turn on the question whether a liquidator in a Court liquidation is an officer of the Court or not.

We are faced with a practical difficulty on this point, particularly when—let us suppose that the legislature accepts the provision—there is an official liquidator. There are two

ways of handling the practical problem. Either the liquidator opens hundreds of accounts in the Reserve Bank of India in the name of the States concerned, or he maintains a huge accounts office in his own office and has a consolidated account with the Reserve Bank of India. In any case, he cannot make use of the machinery of a Scheduled Bank. That is the main point.

Shri Chatterjee: What is now done? Do liquidators open accounts in the banks?

Shri T. Banerjee: Usually, in banks they open accounts in the names of the different companies.

Shri Chatterjee: Is that done under the specific authority of the Court?

Shri T. Banerjee: Not always. As soon as a liquidator is appointed, he is supposed to open an account in the name of the company.

Shri Chatterjee: Is that done under the specific authority of the Court?

Shri T. Banerjee: The order of the court authorises him to acquire the assets of the company; and after collecting the assets, he deposits them into the bank. A check is kept over the moneys drawn by him, and the cheques issued by him, and the accounts are signed by the Registrar of the Court.....

Chairman: You may send us a comprehensive note on this point.

Shri D. L. Mazumdar: As a matter of fact, the issue was discussed at some length some time ago, and we were told that a liquidator acting on a Court order is an official, and therefore the provisions of the Constitution are attracted.

Shri C. D. Deshmukh: Is winding up of a company, the affairs of the Union or of a State?

Shri D. L. Mazumdar: It will be the affairs of the Union, because all companies are being brought under Central legislation.

Shri C. D. Deshmukh: But how can the winding up of a private company be regarded as the affairs of the Union or of a State?

Shri D. L. Mazumdar: As soon as the liquidator is appointed by the Court.

Shri Chatterjee: Logically, every receiver appointed by a Court is accountable to the Court.....

Shri D. L. Mazumdar: I could not say about receivers. But about liquidators, we were advised like this.

Shri C. D. Deshmukh: Two conditions must be satisfied in this connection. First, he must be an officer. We shall say that the liquidator is an officer. Secondly, he must be employed in connection with the affairs of the Union or the State, as the case may be. Now, a liquidator appointed to liquidate a private company may not necessarily be held to be an officer employed in connection with the affairs of the Union.

Shri D. L. Mazumdar: That is the view we should like to take, if we can. But the preponderant view is that a liquidator winding up the affairs of a company will be deemed to be an officer, within the meaning of article 284 of the Constitution.

In fairness, I must also say that the Advocate-General of Bengal, with whom I had a discussion, held the contrary view.

Shri C. D. Deshmukh: He may be an officer. But he may not be employed in connection with the affairs of the Union.

For instance, an officer of Government may be sent on foreign service, in which case, he is an officer of Government all right, but he is not employed in connection with the affairs of the Union. In the Court of Wards etc., we had officers deputed on foreign service, in the old days, but it is not necessary that those accounts are given to the State, merely because an officer has been sent by the State.

Here, we are placing the services of the officer at the disposal of the shareholders, for the liquidation of their affairs. Why is it necessary that we regard all this as the affairs of the Union?

Shri Chatterjee: Otherwise, even in the case of a receiver, it will be the same thing.

Shri D. L. Mazumdar: That is the implication of Article 284, we are told.

Shri T. Banerjee: We shall consider that point carefully, and send you a note.

Chairman: We are very thankful to you for having taken all the trouble to come here from Calcutta, and to give your advice.

Shri T. Banerjee: We are very grateful to you for having given us this opportunity to say something on these points.

(Witnesses then withdrew)

The Joint Committee then proceeded to examine the following witnesses.

Incorporated Law Society of Bombay.

Spokesmen:

(1) Shri Damodardas.

(2) Shri Madgavkar.

(3) Shri Pakvase.

(4) Shri Desai.

(Witnesses were called in and they took their seats)

Chairman: We are very thankful to you for the memorandum which you have submitted to us. We realise that you must have been put to a little trouble, in preparing this memorandum and sending it to us in a hurry, for you did not have enough time. All the same, we are thankful to you for whatever you have sent us. We shall go through them carefully, and consider all the points that you have raised in your memorandum.

I am really glad that you have left practically all matters of policy out of your memorandum. So, much of the controversy has been avoided.

In your note on clause 2, you have suggested a redrafting of the clause.

Shri Damodardas: The idea of making the definition of an 'Associate of the managing agent' wider than what is provided for in the Bill, is not to allow any persons having their business connection with the managing agent, escape the consequences which are provided for in the Bill. Definitions (c) and (d), (e), (f), and (g), are the additions we have suggested. The idea is to cope in as many persons as possible. Our amendments are as regards (c), (d), (e), (f) and (g). They are underlined.

Shri C. C. Shah: The Government is moving an amendment to this which carries out the object which the Society has in view.

Shri Chatterjee: Are you adding to any of the categories to cover over the definition as stated in the Bill?

Shri Damodardas: Yes.

Shri Chatterjee: Which are those?

Shri Damodardas: They are underlined in the memorandum—(c), (d), (e), (f) and (g). (a) and (b) are already there in the Bill.

Shri Chatterjee: 'Where managing agent is a partner'—that is not there in the Act.

Shri Damodardas: No.

Shri G. D. Somani: You said in the beginning that you do not want to express any opinion on the matter of policy. May I ask whether your Society generally favours putting all these restrictions on the managing agents or you have only by way of clarification....

Shri Damodardas: If the Committee wishes to know the opinion of the solicitors as a whole, it is that they have found by experience that it is necessary to put as many restrictions on the power of managing agents as possible. Of course, they are against abolition of the system.

Chairman: You want controlled managing agents?

Shri Damodardas: Yes. I may tell you that it would be very calamitous if the managing agency system is abolished by one stroke of pen. It is not possible in India, constituted as the various companies are, and it would be harmful to the companies

[Shri Damodardas]

rather than to the managing agents, to cut off the managing agency system abruptly. I would call this the middle stage. The ultimate idea may be to abolish the system. Now we are plugging only those places in which the managing agents have been known to be playing havoc. That is our object. The managing agent cannot be a selling agent. What we have found is that in so many companies, the managing agent is also a selling agent. The managing agent gets say, 10 per cent. commission, but he also gets the maximum selling agency commission.

Chairman: We will now go to the amendments. That is a matter which is still not decided by the Committee.

Shri Damodardas: This is our view. We cannot dictate the policy to the Government.

Shri K. V. Dhage: You said that you were not for the immediate abolition of managing agency and also said that we are in the middle stage and you are in favour of gradual abolition.

Shri Damodardas: I would like to add that if it is found to be in the interest of the companies in future, if you find that you can now do without the system and at the same time benefit the companies, then certainly it should be abolished.

Shri Dhage: There has been a suggestion made that while allowing the managing agents of the companies already appointed, we must hereafter not allow managing agencies to be formed?

Shri Damodardas: I am not a prophet.

Chairman: Let us first confine ourselves to the memorandum.

Shri Damodardas: Even the Select Committee and the members cannot say what will happen ten years hence. Nobody is a prophet after all.

Chairman: We have already voluminous evidence on both sides. I am trying to confine the discussion only to the memorandum. Otherwise, we might not be able to have the benefit of your views with respect to those provisions.

Now we come to item 2.

Shri Dhage: In item No. 1 they have said in the Note: '(a) and (e) appear to be unnecessary in view of the Partnership Act'. How does that happen? Why do you say that (a) and (e) appear to be unnecessary in view of the Partnership Act?

Shri Damodardas: They are covered.

Item No. 2

Shri Chatterjee: Our clause is taken from the English Act. "'Debenture' includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not". What is your suggestion?

Shri Damodardas: Our suggestion is that there should be two separate categories—secured debentures and unsecured debentures. They may be separately classified and dealt with.

Shri D. L. Mazumdar: What exactly does it mean in terms of this clause? What change will be brought about in 2(9), supposing your ideas are accepted?

Shri Damodardas: If you use the word 'debenture' throughout the Bill, then that may mean a secured debenture or an unsecured debenture. We do not know whether those clauses of the Bill are made applicable to all the debentures—whether they are secured or unsecured. The unwary purchaser may not know about it. Our suggestion is that they should be separately dealt with in the Bill.

Shri D. L. Mazumdar: That is, in the operative provisions of the Bill and not in the definition.

Shri Damodardas: It must be there in the definition clause. Otherwise, if you use the word 'debenture' only by way of definition and that includes secured and unsecured debenture, then when you refer to these

debentures in subsequent clauses, that would include both.

Shri D. L. Mazumdar: What is the way you suggest?

Shri Damodardas: I have tried my best to find out a suitable name in one word. That has not been possible. It may be 'unsecured debenture'.

Shri Chatterjee: Debentures carrying a charge and others.

Shri Damodardas: Secured debentures and unsecured debentures.

Shri K. N. Rajagopalan: Various clauses in the Bill apply to debentures. What is the distinction between secured debentures and unsecured debentures? What are the clauses to which the reference of 'secured' debentures should be confined and what are the clauses to which the reference of 'unsecured' debentures should be confined? That is the essence of the distinction that you want to make. That distinction must have some effect. Merely making a distinction will not carry us far. If in every clause, debentures should apply equally to secured and unsecured debentures, then there is no point in making distinction because we have made it very clear in the definition that debentures, though unsecured, will still be debentures.

Shri Damodardas: We will endeavour to give you an additional note. We will classify them and give you the various clauses.

Chairman: That will be better so that we will know where to make any distinction.

Shri C. D. Deshmukh: Would it be sufficient if you define secured debentures and unsecured debentures—one constituting a charge and the other not constituting a charge?

Shri Damodardas: Yes.

Shri C. D. Deshmukh: So that if you use the words together, either a secured debenture or an unsecured debenture, secured debenture will mean debenture stock, bonds or any other security constituting a charge and unsecured debentures will mean other things not constituting a charge.

Shri Damodardas: Yes. These have to be registered. The trouble is that an unwary person dealing with the company may not know whether it is a secured debenture or an unsecured debenture.

Chairman: Supposing without making any distinction, it does not affect any provisions of the Act, it is all right; otherwise, if it does, we would like to know.

Shri Chatterjee: You are debenture ordinarily carries with it the impression that the debenture debt is secured by a charge or a security on the assets of a company?

Shri Damodardas: Yes. The commercial public generally understands a debenture to be always a secured debenture.

Item No. 3

Shri Damodardas: Clauses 2(19), 2(20) and 2(21) deal separately with manager, managing agent and managing director. As you are excluding the managing agent, we should exclude the managing director because he is separately dealt with.

Chairman: We are still considering the definition clause.

Item No. 4

Chairman: We have already redrafted clause 44.

Shri Damodardas: That is a very important point. If the company is compelled to hold all investments in its own name, then it will not be possible for it to obtain overdraft facilities.

Chairman: We are attempting in the proposed new draft to carry out this idea. It is still under consideration.

Shri Damodardas: I wanted to impress upon you the importance of this.

Shri Morarka: There seems to be some mistake when they say: 'A pledge on movable assets like shares

[Shri Morarka]

and securities is not required to be registered under section 109(e)'. I do not think it is 109; it must be some other section.

Shri Desai: 109(e) of the existing Act, not of the Bill. That is, clause 119 of the new Bill.

Item No. 5

Shri Damodardas: The point is this. Sub-section (4)(e) of clause 119 says that if there is a charge, not being a pledge, on any movable property or the company except stock-in-trade, it does not require registration. There has been a conflict of opinion on the interpretation of this clause. It would be desirable if the clause is suitably amended so that a charge on stock-in-trade may be registered as the other charges.

Shri Chatterjee: Previously there was no comma after the word 'pledge'; it did not make any sense then. In order that the clause may make some sense, we inserted a comma. The result would be that a pledge would not require a registration.

Shri Damodardas: This is an important charge and should not be excluded from the necessity of making it a registered charge. That is our view. If a floating charge is required to be registered, it would be better also if a pledge on stock-in-trade is made to be registered.

Shri C. D. Deshmukh: One is a matter of clarification and the other is a matter of principle. You say that the Madras judgment interprets the present section 109 of the Companies Act in a particular way. But how do we come to the view from that judgment that it is necessary to include a charge on stock-in-trade? The judgment can only result from interpretation.

Shri Damodardas: The construction is quite contrary to the construction put on the same section by the Bombay High Court. We should not, first of all, remain in the realm of indecision as to what the Supreme Court will decide.

Shri C. D. Deshmukh: The insertion of the comma removes the conflict.

Shri Damodardas: Apart from the construction, it would be better, even on merits, if the clause is suitably amended.

Shri C. C. Shah: There is a question of principle in this. It is not merely a question of interpretation. If the stock-in-trade has to be made a charge, it will, for the duration of the charge, be frozen. If this is frozen in this manner by the creation of a charge, it may cause some difficulties to the company. These are aspects which are to be examined.

Shri Damodardas: Once a company creates a charge on the stock-in-trade, then your apprehension of the stock-in-trade being frozen is there whether it is registered or not. The stock-in-trade is a very important factor in the company's assets and is sometimes more than the subscribed or paid-up capital and the public should know this.

Shri C. C. Shah: It is necessary for safeguarding the public interests; but, I was trying to put across other considerations also.

Shri Damodardas: I may tell you that this does not come in the way of your consideration because once a charge is created, it is frozen.

Shri C. D. Deshmukh: Even an unregistered charge on the stock-in-trade may be void against the liquidator, and he says: why not then register it together with the other charges. We are not concerned with the proper creation of a charge? When there are these charges, they should be registered if they are to be void against the liquidator.

Chairman: We shall take these points into consideration when we consider the appropriate clause. We can now take up discussion of item 7, as item 6 is only a formal amendment.

Item No. 7

Shri Damodardas: This relates to clause 146. This is a usual provision and it has been incorporated in the Bill. Sometimes, petitions relating to shares arise in litigations and the Court tells who is the owner of the shares and then it is necessary that at least the decision of the Court should be operative. The moment the Court comes to a decision that A, and not B, is entitled to these shares, then they are got to be transferred and such transfers should be on the records of the company. It is not now a matter of private dealing, dealing of shares between two individuals; that has now become a matter of public record.

Chairman: Clause 146 says: 'No notice of any trust, express, implied or constructive shall be entered on the register.....'

Shri Damodardas: Supposing I hold ten shares and I transfer the shares to B who is a nominal holder of the shares, myself being the real owner, then it is between individuals. I might have given these shares to B for the purpose of becoming a director or for some other purpose. Then this Bill says that my ownership is not recognised and that is quite correct. But in the matter of trusts if a court decision is given, the company is bound to respect the decision of the court and therefore, I say this. Party transactions may not be recognised and that is quite correct but once the court intervenes and decides the ownership, it is not a transaction between individuals.

Shri C. D. Deshmukh: This was intended to relate to private notices and trusts. When a matter goes to court, the interval between the court's recognising that someone else is the real beneficial owner of a particular share and its order to effect the transfer will be very small so that, if the interval is very small, there is no need to register.

Shri Damodardas: The interval need not be small and besides, why should not this be clarified?

Shri C. D. Deshmukh: What will be the effect of the clarification? It will be an entry of a fact that a particular court has held that there is a trust in respect of a particular share. What are its legal consequences prior to its formal transfer in the name of the beneficiary?

Shri Desai: The idea is that the public may know by an inspection of the register that in respect of these particular shares, there is an order or decree of the court to this effect.

Shri Damodardas: The company does not recognise any trust; it merely recognises an order which is passed by the court. It is binding on the company.

Shri C. D. Deshmukh: What happens when such an order is passed? What are the further consequences? What kind of order is issued when it finds that A is the beneficial owner of shares which are entered in the name of B? How does it proceed further?

Shri Damodardas: The court merely declares that A is the beneficial owner of the shares held in the name of B.

Shri C. D. Deshmukh: If the law allows the share to be transferred merely because it stands registered in the name of a particular person; if the law allows that henceforth voting shall be done by the shareholder himself or by proxy of the shareholder registered as such, then there would be the legal effect of the court holding that there is a trust.

Shri C. C. Shah: The court is entitled to restrain the nominal owners from voting contrary to the wishes of the beneficial owner.

Shri C. D. Deshmukh: Is that provided?

Shri C. C. Shah: Not in this Bill. The beneficial owner may ask for an order from the court restraining the

[Shri C. C. Shah]

nominal owner from voting contrary to the wishes and direction of the beneficial owner.

Shri C. D. Deshmukh: It is a matter as between A and B. So far as dividends are concerned, what happens?

Shri C. C. Shah: The dividend warrant will go to the registered shareholder.

Shri C. D. Deshmukh: Many precautions may be taken by the beneficial owner, but so far as exercise of rights *vis-a-vis* the company is concerned, the scheme of this Act seems to be that the registered owner only can exercise such rights.

Shri Chatterjee: It affects the negotiability of the shares and that is why we made this suggestion.

Shri C. C. Shah: The point is, it is left to the beneficial owner to apply for an order from the court so that he may become the registered owner.

Shri C. D. Deshmukh: In transactions concerning the negotiability, the prospective buyer may wish to inspect the register. Now, when he inspects the register, he will say: "'A' is the registered owner. Not only 'A' is the registered owner, but there is an entry against it that the actual trust is in favour of 'B'." If that is so, there is a great possibility of all these other things arising, namely, some kind of order to 'B' from the court that he shall vote accordingly. Then as this man will step into the rights of the original owner, he may say, 'I will have nothing to do with this share'. Because of these complications it should be clear from the records of the company.

Shri Morarka: In some shares there may be a lien and the prospective purchaser may not know whether a particular share is under any lien or not. Therefore he will have to see the lien register of the company.

Shri C. D. Deshmukh: He should see whatever is available.

Shri Morarka: Therefore, the possibility that is contemplated under this Memorandum can be solved by these particulars being entered in the lien register rather than in the register of members.

Shri C. C. Shah: Probably clause 158 of this Bill may meet with such a situation.

Chairman: I think we have already discussed this.

Shri Chatterjee: The object of this clause is that it is a very valuable safeguard for the company. So far as I can understand, our friends want that if there is a competent adjudication, it should be recognised by the company.

Chairman: Recognised in the sense that it should be noted. We have considered this once and we will again consider it. However, it is a suggestion worth considering.

Item No. 8

Chairman: I think the same point was raised by the other Association.

Shri Damodardas: May I correct one mistake. In the Memorandum, second para, it should be: "We, therefore, suggest that the provisions in that behalf contained in Section 76. . . " and not 'Section 79'.

Chairman: We will note that.

Shri Damodardas: There is a corresponding provision in the Bill which relates to provision under Section 79 of the present Act, where the right rests with the High Court. Then, there is no reason why under Section 76 and the corresponding provision of the Bill the same right should be given to the High Court and not to the Central Government.

Shri C. C. Shah: You mean the existing provision should not be interfered with?

Shri C. D. Deshmukh: It is a different case from the other one.

Shri Damodardas: In clause 178 the court is given the powers whereas in

this section that is not the case. I do not know why this difference should be made.

Shri C. C. Shah: That has already been pointed out by the Calcutta Association.

Item No. 9

Chairman: I think the Government are conscious and probably they may propose suitable amendments when that clause comes up.

Shri Damodardas: That, Sir, is for the protection of the company.

Chairman: In fact, I find an amendment proposed by Government which will be considered on its own merits.

Item No. 10

Chairman: I think, item 10 is a good suggestion and it may be agreed to.

Shri Damodardas: It is only a suggestion to adopt a uniform phraseology.

Item No. 11

Shri Dhage: May I know as to what is the objective in not allowing the proxy to speak at the meeting?

Shri Damodardas: He is not a member of the company; he is an outsider.

Chairman: It means giving encouragement to people who are professional talkers and creators of trouble.

Shri Damodardas: There are people whose profession it is to become proxies and create trouble.

Shri S. P. Jain: Are you in favour of proxy being given to non-members of the company.

Shri Damodardas: I would not like it personally. Conditions in India are quite different from those in Britain.

Chairman: If it is decided that proxy should only be given to another member, then there will be no trouble.

Shri Dhage: You say that because he is not a member he should not be allowed to speak. But, take the case of such shareholders who are illiterate and who do not understand anything of what the Managing Agents do. In such cases would it be wrong if an illiterate shareholder appoints somebody to speak at the meeting for him?

Chairman: But, apart from the Managing Agents there are other literate shareholders; why should an outsider come in?

Shri Damodardas: He is taking the view that apart from the managing agents, there are no other literate shareholders.

Shri Dhage: I only said that there may be some who may not be literate.

Shri Damodardas: Then those some can depend on the others to help them and not outsiders.

Chairman: Generally what happens is that there is always a group.

Shri Damodardas: I think it will encourage agitators and trouble-makers who have no interest in the affairs of the company to come in and create trouble.

Chairman: We shall consider that. Now we go to the next item.

Item No. 12

Shri Damodardas: It is only a clarification and there is no material alteration. It is a matter of language.

Item No. 13

Chairman: It is obviously a printing error and it is being corrected.

Item No. 14

Chairman: That also is a matter of drafting and I think it is being considered.

Shri C. D. Deshmukh: A draft has also been suggested and we will be considering that.

Item No. 16

Chairman: What do you mean by saying—

"Classification of the entire authorised capital is not necessary to be made except in respect of the capital intended to be issued."?

Shri Damodardas: There is the authorised capital, the subscribed capital and then the paid up capital. So far as the authorised capital is concerned, it is not necessary to say that 10,000 shares are ordinary and 10,000 shares are preferential. They may classify the shares that are thrown open for subscription. But the balance of unsubscribed capital need not be classified so that the Company may classify them as ordinary or preference at a future date when they are issued for subscription.

Item No. 21

Shri Damodardas: Everybody knows that an investigation is going on into the affairs of the Company. But when the report comes out and it is not published the Company will suffer in its prestige. If the Report is in favour of the Company, it would enhance its reputation.

Item No. 22

Shri Damodardas: The protection given here is only with reference to the communication made by a person to his legal adviser but does not extend to the advice tendered by the legal adviser to the person. It should also be protected likewise.

Shri C. C. Shah: Section 126 of the Indian Evidence Act is very much wider.

Shri Damodardas: The same protection must also be extended under this Act.

Item No. 27.

Shri Damodardas: The intention is not clarified. The effect should commence only after a declaration has been made by the Central Government.

Item No. 28

Shri Morarka: Under clause 146, it is only a register of members and in that register we enter the names of the shareholders, whoever they may be. Under clause 285, we enter the holdings of each Director, whether they are held in his own name or in the names of others in trust for him. I think, in the existing Bill, we have already provided for separate registers under 146 and 285.

Item No. 29

Shri Damodardas: May I request you to correct a mistake in our memorandum? Instead of 'knowingly or willingly', it should be 'knowingly or wilfully'.

Shri Jain: I would like to know what difference it would make if 'knowingly' is there and 'wilfully' is not there. I would like to know the technical difference between the two. They should take into consideration the definition of 'officer in default' in clause 5 of the Bill.

Shri Desai: The position is this. Under the English Act, section 440(2), the words used are 'knowingly and wilfully authorises'. The present clause is a departure from the English Act. I do not know whether it is deliberate or it is merely an omission. If it is deliberate, then there is the difference between the words 'knowingly' and 'wilfully'. In 'wilfully', there is what is known as *mens rea*. 'Knowingly' does not imply any bad motive or any motive as such. It is mere knowledge. These words have been interpreted in many decisions. For instance, in 1908(2) Chan. Burton v Bevan, it has been pointed out that a thing may be done with knowledge and yet not wilfully. Therefore, in our opinion, we should have 'knowingly and willingly' on the English line.

Shri C. D. Deshmukh: Supposing we do not mention anything at all and say simply, 'any person who fails to comply', what difference will it make? Whether it is a technical error or not, we are not at all concerned with it.

Shri C. C. Shah: He is answering the question raised by Shri Jain.

Shri C. D. Deshmukh: All this discussion arises out of your original observation. I say that Shri Jain's question is not really connected with what you are saying here. Why not only 'knowingly'? Your observation is that technical or accidental error should not be punished, and that there should be the element of *mens rea* or knowledge or both.

Shri Jain: What is your reaction to only one, 'knowingly' or 'wilfully'? If it is a case of 'wilfully', will it not include also 'knowingly'?

Shri Desai: If it is only 'wilfully' then it may include 'knowingly' but 'knowingly' will not include 'wilfully'.

Shri C. D. Deshmukh: When an error takes place, it may be of three stages. First is where the error takes place without knowledge, as in this case. Then the second is 'knowingly', that is, I know that the error is taking place, but I am not particularly concerned with the consequences of that error. The third is definite *mens rea*. I know that an error is taking place and I know that a certain effect would follow as a result and I calculate the effect. Is there any reason why you should make the offence 'knowingly and wilfully' and not only 'knowingly'?

Shri Desai: In the English Act, it has always been held that it must be both knowingly and wilfully.

Shri C. D. Deshmukh: It must be both knowingly and wilfully, but are these words used in the English Act?

Shri Desai: Yes.

Shri T. Subrahmanyam: Instead of 'knowingly and wilfully', you have suggested "knowingly or wilfully".

Shri Desai: We have already said it was a typing mistake.

Shri K. K. Basu: Keep aside the English provision for a moment. Even in our Indian Act, we have the word. By using the word 'knowingly' and not 'wilfully', do you mean to say that it might go against the smooth working of the Act?

Shri Jain: What difficulty do you envisage if you drop out the word 'wilfully'?

Shri Basu: If the managing agency system should be restricted, do not you think that it is a sort of characteristic difference between the directors of banks in England and banks in India?

Shri Desai: That would be a different question altogether.

Shri C. D. Deshmukh: In the Insurance Act, you have got only the word 'knowingly'. Therefore, it is possible to conceive of circumstances where an offence committed knowingly is punished.

Shri C. C. Shah: The intention is to punish negligence.

Shri Desai: Normally when a criminal punishment is involved, *mens rea* must be there.

Shri Moolchand Dube: If a man knowingly does a thing which he knows to be wrong, regardless of the consequences that will follow, will you not call it 'wilful'?

Shri Desai: Yes, it will be wilful.

Shri Dube: Therefore 'knowingly' includes 'wilfully'.

Shri Desai: Not necessarily.

Shri C. D. Deshmukh: Now, you are explaining the difference between the words 'knowingly' and wilfully', but you are not giving your view and in your memorandum it is not included.

Shri Desai: When the question was raised, we answered it.

Shri C. D. Deshmukh: I am asking you this: As a result of this explanation, are you in favour of changing the definition of 'officer in default'?

Shri Desai: We would like to fall in line with the English Act.

Shri C. D. Deshmukh: But you have not put it in the Memorandum and it has actually occurred to you now.

Shri Madgavkar: It is a matter of policy and so we did not put it in the Memorandum.

Shri C. D. Deshmukh: What you have said is also a matter of policy. A technical error also, in certain cases, would be punished. You say that we should use the words "knowingly and wilfully" and you go from No. 1 to No. 3. That being your view, we are surprised why you did not mention incidentally that section 5 also ought to have been corrected.

Shri C. C. Shah: There may be some offences where we may like even to impose penalty for technical errors, and some for negligence. All cannot be on a uniform basis and that is a matter which we will have to consider.

Item No. 30

Chairman: Yes, that is a mistake.

Item No. 31

Shri C. C. Shah: Under Clause 317, the managing agency comes to an end if any partner is convicted, and under 322, the managing agent is given the power to dismiss the convicted partner. There may be a partnership for a term or for a period and under the Partnership Act, you may not be entitled to dismiss any partner. Therefore, they want to add the words "Notwithstanding anything to the contrary in any other law for the time being in force or to the terms of any contract". That is a suggestion which we will have to consider for the reasons mentioned in clause 317; the other partners would have to suffer for the offences of one partner.

Chairman: It is a good suggestion and we will consider it.

Item No. 32

Shri D. L. Mazumdar: That is the intention.

Items Nos. 33 *and* 34

Chairman: Yes, these are misprints.

Item No. 35.

Chairman: This is only for clarification.

Shri C. C. Shah: There are certain agreements which restrict the powers of the directors and we want that the directors should hold those powers in spite of the agreements.

Chairman: Generally, the managing agents are to do the work.

Shri Desai: There may be certain restrictions further than what is already provided.

Chairman: It is suggested that the word "managers" be taken out from item 1 of Part I of Schedule VII and in Part II item 1, the words should be "power to appoint, suspend or dismiss any person as manager of the company."

Shri D. L. Mazumdar: This is a matter which is under consideration.

Shri Desai: I am referring to the managers with the small 'm', and not to the Managers with the big 'M'. Suppose a big company has 10 managers with the small 'm'.

Shri D. L. Mazumdar: As I said, this will have to be examined.

Shri C. D. Deshmukh: You say towards the end of this item "do not appear to be not reconcileable". Is there any point in the double negative or is the word "not" occurring again, a typing mistake?

Shri Desai: Obviously, a typing mistake.

Item No. 36

Shri Desai: It is only pure drafting.

Item No. 37

Chairman: Yes, the observations are noted.

Item No. 38

Shri Morarka: On a point of information, I would like to know from them whether, from their experience,

they have found any difficulty or they anticipate any difficulty in the future. Why are they suggesting this change?

Chairman: They want only to clarify the word "contributory".

Item No. 39

Shri C. C. Shah: These are suggestions which have to be considered more carefully because a lot of time is wasted in settling the contributory lists, and powers may be delegated to the liquidator to settle the lists of contributories.

Chairman: So far as my experience of Bombay goes, there is no machinery available in the district courts. I do not know whether ultimately it will not be desirable that where a company has a capital of more than Rs. 1,00,000, all these proceedings should go to the High Courts. I know of cases where the liquidator himself did not know what the meaning of 'contributories'; was and he never called them.

Shri Damodardas: The High Court is a supervisory court of all the district courts. The Chief Justice goes along to the various district courts from time to time. May I suggest that instead of the Central Government being given the power to appoint certain district courts to deal with the winding up proceedings, the High Court or the Chief Justice of the High Court be given that power?

Chairman: Now that you have raised this question, let me tell you this. What happens in a district court is that at the last minute, just about the time when the judge is ready to leave the court premises, the clerk of the court brings in these papers. All miscellaneous matter, not only sessions cases but also appeal cases of even Rs. 100 or Rs. 50, are disposed of first and after these are disposed of, the clerk thinks of these papers, and brings them to the notice of the judge as he prepares himself to go back home. I do not blame those people. They are not accustomed to such things.

Shri Damodardas: I know of instances where proceedings in district courts have taken much longer time and been more expensive.

Shri C. D. Deshmukh: Clause 8 provides that district courts shall not entertain liquidation proceedings.

Shri C. C. Shah: The point is that it provides that the Central Government may, by notification, empower any district court etc.

Chairman: It is a good idea. All this will be done by the Government in consultation with the High Court.

(*Reads Item No. 40—clause 404.*) What this clause means is that misfeasance summons is more or less a short remedy, so that within the company itself that matter may be decided instead of having court proceedings. But there misfeasance means something in the nature of a breach of trust. In other words, the misfeasance is not what is used in common parlance but misfeasance as a breach of trust. Suppose there is a Board of Directors and the minority are against them. If they pass some resolution, it falls under this category. It will include all those directors in one summons. I think the English law contemplates that when you want to charge a man with misfeasance you can charge him with what he has omitted to do, but it cannot be somebody who is not a party.

Shri Damodardas: Against those directors who are guilty of misfeasance.

Chairman: Suppose X is guilty of one and Y of another. You mean that all should be under one summons?

Shri Damodardas: Yes, it will save time. Of course the court in its discretion may say "We shall deal with point A first, and the people concerned with point B may not be

[Shri Damodardas]

present in the court." It may be done that way by separating them. Or if a judge feels that A and B can be taken together or it is necessary to take them together, they can be taken together. But it should not be open to the directors to contend that separate misfeasance summons should be taken.

Shri Madgavkar: The usual defence is on the ground of multifariousness.

Chairman: The normal principle is correct that Y should not be asked to say something in defence of what X has done. But the proceedings may be one. That is your point. It will only save a few more applications. That is all.

Shri Damodardas: It will save much more time and also costs.

Shri C. D. Deshmukh: It will save unnecessary defence.

Shri C. C. Shah: The second point is more important, regarding the burden of proof. If a liquidator makes out *prima facie* case it should be on the directors to prove that they are not guilty of misfeasance.

Chairman: Even in ordinary civil suits the initial burden is on the plaintiff but afterwards as the trial proceeds, naturally the burden shifts.

Shri Basu: It is an important suggestion.

Chairman: That is the principle even now. Suppose under the Civil Procedure Code the burden is first on A. After he establishes a *prima-facie* case, the burden shifts.

Then we come to item 41.

Shri Desai: That is merely a drafting one.

Chairman: Then we come to item 42. You mean whenever a report is filed by the liquidator, it should be considered by the Court?

Shri Damodardas: It should not be shelved.

Item No. 43.

Shri Damodardas: We have suggested this because you can deal better with the property of the company then.

Shri D. L. Mazumdar: It is already there, is it not?

Shri Desai: It is not there; there is no express vesting power.

Shri Damodardas: Then it will help realisation.

Item No. 43. *second Para.*

Shri Damodardas: We want that the period should be allowed by the High Court instead of by the Central Government. The winding up is under the High Court.

Shri D. L. Mazumdar: We put it in for the purpose of avoiding delays. It is much easier to get adjournments from courts than from Government.

Shri Damodardas: The High Court knows all the facts. It can take him to task: "Why did you delay"?

Chairman: My attention is drawn to the fact that in England it is done by the Board of Trade. If some such authority is created, it will be considered whether the power should be given to that authority.

Item No. 44

Shri Desai: This is merely to avoid delay in going to court.

Item No. 45

Shri Shah: That is a very useful suggestion, because we have no provision corresponding to section 273 of the British Act.

Item No. 46

Chairman: (*Reads item* 46). This might delay the action.

Shri Desai: Otherwise there would be blackmarketing.

Shri C. C. Shah: It will have to be examined.

Shri Desai: We are merely submitting a suggestion.

Chairman: Gentlemen, myself and this Committee are very thankful to you for the very useful suggestions you have made, for the trouble taken by you in coming from Bombay and for giving us valuable help. Thank you.

Shri Damodardas: Sir, on behalf of my colleagues and myself I thank you for the manner in which you have appreciated our memorandum. At least we feel that we have not wasted our time. Thank you.

(Witnesses then withdrew.)

The Committee then adjourned.

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