C. B. (II) No. 92

LOK SABHA

JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI
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WITNESSES EXAMINED

JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959.

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959

Tuesday, the 7th July, 1959 at 08.30 hours

PRESENT

Sardar Hukum Singh—*Chairman*

MEMBERS

Lok Sabha

2. Shri H. C. Heda
3. Shri Satyendra Narayan Sinha
4. Pandit Dwarka Nath Tiwary
5. Shri Shivram Rango Rane
6. Shri Radhelal Vyas
7. Shri N. R. M. Swamy
8. Shri Jaganatha Rao
9. Shri Ajit Singh Sarhadi
10. Shri Radheshyam Ramkumar Morarka
11. Shri G. D. Somani
12. Shri Feroze Gandhi
13. Shri Mulchand Dube
14. Shri Rohanlal Chaturvedi
15. Shri Arun Chandra Guha
16. Shrimati Sucheta Kripalani
17. Shri Narendrabhai Nathwani
18. Shri Nityanand Kanungo
19. Shri K. T. K. Tangamani
20. Shri Yadav Narayan Jadhav
21. Shri Tridib Kumar Chaudhuri
22. Shri Surendra Mahanty
23. Shri G. K. Manay
24. Shri Naushir Bharucha
25. Shri Lal Bahadur Shastri

Rajya Sabha

26. Shri Khandubhai K. Desai
27. Shri T. S. Avinashilingam Chettiar
28. Shri P. D. Himatsingka
29. Shri Babubhai M. Chinai
30. Shri J. S. Bisht
31. Shri P. T. Leuva
32. Shri M. P. Bhargava
33. Shri R. S. Doogar
34. Shri J. V. K. Vallabharao
35. Shri Rohit M. Dave

DRAFTSMAN

Shri S. P. Sen Varma, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar, *Secretary, Department of Company Law Administration.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

WITNESSES EXAMINED

I. *Indian Banks' Association, Bombay.*

Spokesmen:

1. Shri C. H. Bhabha
2. Shri P. V. Gandhi
3. Shri Mohan Singh

II. *Tata Industries Private Limited, Bombay.*

Spokesmen:

1. Shri J. D. Choksi
2. Kumari G. N. Cowasjee

III. *The Indian Merchants' Chamber, Bombay.*

Spokesmen:

1. Shri Lalchand Hirachand
2. Shri Gopaldas P. Kapadia
3. Shri R. G. Saraiya
4. Shri Tanubhai D. Desai
5. Shri C. L. Gheevala

I. Indian Banks' Association, Bombay

Spokesmen:

1. Shri C. H. Bhabha
2. Shri P. V. Gandhi
3. Shri Mohan Singh

(Witnesses were called in and they took their seats)

Chairman: We have gone through the memoranda supplied by them to us. Each Member has got a copy of them; if the witnesses want to add to or clarify or supplement anything that has been said in the memoranda, they may do so. Or, if they want to make some statement in a general manner, then too, we have no objection.

Shri C. H. Bhabha: We are thankful to you for giving us this opportunity of presenting our case before the hon. Members of the Joint Committee, and for the very special privilege you have given us by fixing up this time today.

We have submitted our memorandum already, and the basis of the memorandum has been that somehow, from the Government side, banking companies have been more or less lumped or treated on a par with other joint-stock enterprises in the country. Our contention is that the very nature of banking is entirely different from the nature of ventures which are for other purposes, just like manufacturing or trading or carrying on other types of businesses of some other nature.

We feel that banking companies already have their own specialised legislation. Banking companies are affected by the Banking Companies Act, which is by itself a very comprehensive piece of legislation. Banking companies are also regulated or governed by the Reserve Bank of India Act. In addition to that, I might draw your attention and that of the hon. Members to the fact that we are also affected directly by the Bankers' Books Evidence Act.

Since the basis of banking business is trust and secrecy, if those fundamentals are borne in mind, then the various contentions to which we have drawn your attention, Sir, and that of the hon. Members of the Joint Committee, will be borne out, namely that we should be eligible for certain specific exemptions, and should not be treated on a par with other ventures of this country. And that is the basis on which we have presented our case.

In addition, we have also shown the practical difficulties of bankers of this country, if they were to be regulated by the general Companies Act in special matters. I may only draw your attention, Sir, and that of the hon. Members here, to one amendment that is sought to be made, namely that every branch shall be audited. These are the actual words used in the amendment to section 228. Now, in the case of the State Bank, which has got over seven hundred branches, it is exempted. There is a special provision laid down in the State Bank of India Act regarding the audit of the State Bank of India. In the case of other commercial institutions, that is, banking institutions, which

have got four hundred or three hundred and fifty branches, the absurdity of this amendment will become obvious to all of you, specially if you will visualise that there are branches in very small places also.

Now, under the new definition of the term 'branch' as proposed to be amended by clause 2(d), a small office of a bank in an outlandish place employing not more than five or six people shall have to be audited. The present practice is that the statutory auditors whom the shareholders appoint have the authority or the privilege of going to those offices also, but invariably they rely on what are known as certified returns, which they may get audited or otherwise.

So, we feel that there are several issues which we have made out in our memorandum, and which we are prepared to elaborate, should you or any of the hon. Members here wish us to do so. We feel that certain things, if they are analysed, reduce themselves to a position which it will be very difficult to implement, so far as the banking companies are concerned—leave aside the time or the effort or even the money aspect. There is the specific thing in connection with this audit to which I would like to draw your attention.

Unlike other joint-stock enterprises banking companies must complete their accounts within as short a period as possible after the closing of their books; and the banks in this country close their books on the 31st of December. Generally, by the first half of January, all the results are announced. That is essential for the creditworthiness of these credit institutions. And when they announce, they say 'subject to audit'. Now, the audit is supposed to be completed within a period of two months, because under the law of banking, the meetings of banking companies must be called before the 31st of March at the latest. So that is the difference which I am trying to emphasise, and which entitles banking companies to be treated entirely on a separate or a different footing, as has already been done since the Reserve Bank of India Act came into existence. We cannot, therefore, visualise how many of the several things that have been pushed here into this Bill could be made applicable in the remotest sense to banking companies.

I have no other special points to make. If you, Sir, or any of the hon. Members here wish me to elaborate any point, I shall do so.

Chairman: The four memoranda that you have sent us have been circulated to hon. members already. And I suppose they are sufficiently clear. If any hon. Member wants to ask any questions for the purpose of clarifying anything, he may do so.

Shri Rohit M. Dave: In the memorandum you have submitted, you have taken objection to section 530(1)(b) which deals with certain rights which the workers have in case of a company which is wound up. It has been stated over there that because a company always looks forward to its being run rather than its being wound up, therefore, all the liabilities that are contemplated are liabilities of a running company and not of a company which is being wound up.

What I want to ask you is this. When a particular loan is taken by a particular company, normally, is it not the intention of the company to repay that loan? The question comes because it is said that non-payment also must come only when the company is wound up. That is exactly the difference between the charge of the workers, on the one hand, and the charge of the bankers, on the other, on a company in case it is a running company and it is not contemplated that it would be wound up. I have not understood exactly what you are trying to make out in regard to 530(1)(b).

Shri C. H. Bhabha: The answer is very simple. As hon. Members are aware, the bank's moneys are moneys

of the general public and most of the moneys are repayable on demand. When advances are made, particularly to industrial ventures, a calculated risk is taken. But, we feel that unforeseen liabilities of this nature will retard the desire of banks to finance industrial ventures. And, in our view, it is one of the functions of banking to try and assess in advance the security of the loan, as they have gone in for industrial advances in a big way recently, provided there are as few uncertainties as possible.

What we have tried to bring out by an illustration of a company which is being wound up is this. There are many unforeseen circumstances that come quite often during the career of industrial ventures and these unforeseen circumstances should not be augmented by such types of liabilities which are supposed to be non-existent at the time an advance is made but which would have a prior charge as soon as anything untoward happens to that company. So, to that extent, we feel that by incorporating this additional unforeseen or uncalculated or incalculable liability, the progress of banking advances to industrial ventures would be retarded or checked. The banks would be chary of giving advances when they do not know what will be the other superior or senior charges, even when all the other precautions have been taken by them.

Shri Rohit M. Dave: You say that it is unforeseen. It ceases to be unforeseen when the retrenchment and lay-off compensation is already provided for the last 5 years. How does it differ from an ordinary company doing production and from banking and other concerns? The question is not of a running concern. If it goes into liquidation, should not priority be given to the workers? Is it not also a sort of deferred payment which has to be paid?

Chairman: Perhaps, in his answer he said that nobody knows when that claim might arise, how much it might be, whether there might be a possibility that such a demand might be made and whether it would be chargeable or not.

Shri Khandubhai K. Desai: When a particular company goes into liquidation—whether it is a banking company or otherwise—and everybody hopes for the best—should the workers' claims be ignored as you seem to claim today?

Chairman: Which workers? Are they the workers of the bank which has advanced money or the other? How can the advancing bank be sure of the liabilities of a company to whom it has advanced loans, whether the worker in that industry is making a demand on that company for wages or any other thing? These are things which are not, at least certain to the bank advancing the money. They cannot make so many enquiries at the time the advance is made.

Shri C. H. Bhabha: That is the thing. It is not possible for a banking company, when it makes advances to industries, (a) to know the total strength of the employees; (b) the number of employees who have been there for 5 years, or for 7 years or for a period of 20 years, because their liability is not reduced in concrete terms, and (c) whether, just before going into liquidation, the management has increased its labour force by 500 and all that.

I am not here to talk in terms of whether the claims of the workers should be better than the claims of the bankers or others. But, I do think that banking business *vis-a-vis* industry will be checked or greatly restricted or retarded or there will be a deterrent to banks to make advances to industrial concerns if this sort of contingent liability or an unknown liability is put on the statute.

Shri Khandubhai K. Desai: But, when the bank advances certain loans, certain risks are taken and this is also a risk which is calculable.

Shri C. H. Bhabha: In our opinion, this is an incalculable or contingent liability which we cannot ascertain. It is our opinion. Your opinion may be different.

Shri Nathwani: You object to compensation under the Industrial Disputes Act being included; but you do not object to the maximum figure of Rs. 1,000—your suggestion comes to that, that this limit should remain but, in fact, this should not be reached.

Shri C. H. Bhabha: On a prior occasion we had pointed out that even this limit is an onerous limit; but there being no alternative—a known responsibility or liability that may arise—we have no greater say on the subject. But we do feel that even the limit mentioned by the hon. Member must retard the banks from giving loans as liberally or as wholeheartedly as they ordinarily would for industrial ventures in this country.

Shri Nathwani: You have stated that the compensation, at present, would amount only to a fraction of Rs. 1,000. What exactly is meant by a fraction? At what figure would you place it?

Shri C. H. Bhabha: After the amendment to the Industrial Disputes Act, the Association tried to find out from its members the liability or the prior charge that accrued in cases of industries or companies which went into liquidation and to whom advances had been made by banking companies in this country. So far, the experience has been that this liability has not been of any untoward nature which has impaired the security of banks. That is what is meant by us.

Shri Nathwani: Can you say what you meant in terms of the amount?

Shri C. H. Bhabha: I would not say that. We merely took a general survey for our own purposes, to gather experience when we go on making industrial advances. The little experience that we gathered was that it did not come up to the maximum figure. That is all I can tell you.

Shri P. T. Leuva: The witness has said that so far, from the experience of the members, they have calculated that the figure has not reached this maximum. May I know what would be the percentage of retrenchment compensation and others which might have to be paid and what is the percentage of the wage bill in a manufacturing concern?

Shri C. H. Bhabha: It varies from company to company and it varies according to the fortunes of the industry. When new technique is developed, and retrenchment compensation is paid out, perhaps it remains to be seen. We have no such figure, nor are we in a position to say it. We have never made it.

Shri Leuva: Can you say definitely that the credit position of a company has been affected because of the compensation?

Shri C. H. Bhabha: In some cases bankers have restricted their credit; when large amounts of the cash resources or the liquid resources of the company have had to be paid out for retrenchment compensation, there, the credit has been restricted.

Shri Leuva: The question arises at the time of liquidation. What would be the percentage of the claim of a worker which would be outstanding at the time of liquidation, because the retrenchment compensation has to be paid at the moment of liquidation. So, normally speaking, there would not be any arrears of retrenchment.

Shri C. H. Bhabha: Retrenchment compensation is payable even when the companies are running and not at liquidation time.

Shri Leuva: Retrenchment compensation is payable and therefore there would not be any arrear of retrenchment compensation which can affect the creditworthiness of any concern.

Shri C. H. Bhabha: Yes; it would be.

Chairman: The witness has given his opinion. We might not agree with him. He says it has affected in the case of certain companies.

Shri P. D. Himatsingka: All the workers would be treated as retrenched if the company goes into liquidation and I think that the amount payable will amount to a very huge sum, for, some workers would have put in 20 years of service, some for 15 years, and they would all be entitled to a half-monthly salary for every completed year of service.

Chairman: If the hon. Member has to answer the point raised by another hon. Member, that could be done by us separately. He may put any question to the witness.

Shri P. D. Himatsingka: I was trying to understand Shri Leuva's point of view.

Chairman: All right. Shri Morarka.

Shri Morarka: What would be the practical effect if this amendment is carried out? How would the banks take it if the amendment is carried out? Would there be any change in their attitude towards the advances which they are making to the industries?

Shri C. H. Bhabha: I have given the answer. We feel that we will certainly pull in our horns rather than encourage it. We will completely discourage or severely restrict advances for industrial ventures if this sort of contingent liability, which is unknown to us, continues.

Shri Morarka: In your illustration you say that whereas you are giving Rs. 7½ lakhs today, if this amendment is carried out, you will be able to advance only about Rs. 2½ lakhs.

Shri C. H. Bhabha: Generally bankers can have a particular margin We have taken a hypothetical case of a company which goes into liquidation and have considered as to what extent we would be affected if an X-quantity of compensation is to be paid which is a prior charge. We have just assumed those figures and from those figures we have come to the conclusion that ordinarily we would have gone up to Rs. 7 lakhs. We could now think in terms of going up only to Rs. 2½ lakhs. It is a hypothetical case that we have worked out.

Shri Morarka: May I refer to page 2 of the first memorandum dated 23rd May? I refer to section 292(1). It is divided into two paragraphs. I really could not understand what your organisation exactly wants. Because, you say one thing and say differently about it in paragraph 2. There is no question of the practical effect of this section to compel the directors of a banking company to delegate. There is no compulsion. The section only says that the Board may delegate powers.

Chairman: What is the practical effect of that? Perhaps it may not lead to that effect.

Shri Morarka: If you have looked into the amending section.....

Chairman: I do not know whether the witness could answer that.

Shri Morarka: See the amending section—clause 102 of the Bill. It clearly says:

> "...the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the managing agent, secretaries and treasurers, the manager or any other principal officer of the company or in the case of a branch office of the company, a principal officer of the branch office, the powers specified"

so on and so forth.

Shri C. H. Bhabha: That is well and good so far as the other joint stock enterprise is concerned; a branch office of a bank to function by itself, for banking business. It is a *sine qua non* that there is to be a delegation. After

this section,—however it has been amended to a certain extent—the delegation arises in this fashion, namely, a general evaluation is taken by the head office of the total quantum of business transacted at that circle or area or branch, and a delegation is given to the branch manager in order that he may carry out the function. Although it says "may", in the case of a banking company, for the success of the branch or for the functioning of the branch, delegation has to take place. Now, in actual practice, in many cases, or in some cases, the delegation to the branch has been to the extent of about Rs. 50 lakhs or Rs. 75 lakhs or even a crore or Rs. 2 crores, commensurate with the turnover and the needs of the area. We represented even to the Shastri Committee that by asking for this delegation, the Board gives away wide powers to the branch managers, willingly or unwillingly, since the law requires it. In the past, the delegation of powers was only to the principal officers at the head office and they in turn would delegate or subdelegate the powers to branch managers according to a certain system. Whenever a branch manager or a branch officer wanted to exceed his authority, immediate reference was made to the general manager who could rectify it through the telephone or telegram.

We have experienced that as a result of this section which has been incorporated in the new Companies Act, quite often, however reliable our man is, he is impaired in business. We delegate to a certain branch agent Rs. 30 lakhs loans power—that is, the power for advancing that amount. He comes up in the course of business—when it is peak period—that the advance comes up to Rs. 29 lakhs. A customer who is an old client has a right to demand say, Rs. 5 lakhs as advance at that particular moment. Without a new resolution for delegation he cannot make the advance. That is one obstacle so far as we are concerned.

The second obstacle is that he cannot merely refer it to the General Manager or the Managing Director or the Deputy General Manager or the District Manager or whoever that be. During that period, he loses the customer and if he starts exercising his discretion or authority for the furtherance of the business of the institution, then he is violating this section. So, in our view, we felt that this delegation should be so modified and some scheme should be evolved whereby the Board's responsibilities would be there. Ultimately, it is the Board's responsibility. But the delegation should be to the senior and superior officers and not to every branch manager.

Chairman: Shri Morarka's fear was that, as you have put it in your memorandum, the practical effect of this sub-section is to compel the director. He feels that it is for the Board to do it. The Board may or may not delegate the powers. If the Board does not want to delegate it or has not that confidence, is there any compulsion by law through the amendment whereby it could be done?

Shri C. H. Bhabha: I have answered that, but the very nature of business compels us.

Shri Morarka: My point is not clarified. In para 1 they say that if these powers are delegated to the Branch Manager or to the local agent, then that person would become very strong and in a way he would not be within the effective authority of the General Manager. In para 2 they say that there are occasions when the Branch Manager acts outside his authority in emergency cases and to cover such cases, there must be some sort of authority given to him. I personally could not understand what they want.

Shri C. H. Bhabha: In para 1, we have simply said that the delegation to the General Manager has been an old custom, but because of this new section, delegation directly by the Board to the Branch Manager has come into practice and that also has to be done if the business of the bank

is to be carried on. In the first para, we say we are agreeable to the delegation to the General Manager. It has been the practice and there is no objection to that. But the trouble arises when the delegation directly by the Board to the Branch Manager or to the local officer takes place. That local officer sometimes oversteps the mark because of his over-enthusiasm, though, of course, we have faith in his honesty, and the law is violated. If he does not do that, then he is retarding our business. On every occasion, because of the practical effect of this, the Branch Manager has to come to the Board or to the General Manager.

Shri Nathwani: If I have understood Mr. Morarka's point correctly, you can delegate certain powers to the branch officer. You feel that it involves delegation of vast powers. It is not necessarily so. You delegate power to the extent of Rs. 25 lakhs. Further if the branch officer wants to invest more, the General Manager can be empowered to extend further powers to the branch officer. Where is the difficulty?

Shri C. H. Bhabha: As the section reads, the General Manager has no powers to do that; the Board has powers.

Shri Nathwani: I beg to differ. The Board can say, the branch officer has power up to Rs. 25 lakhs and beyond that, the General Manager has powers. What is there to prevent such a course?

Shri C. H. Bhabha: The legal interpretation that we have got is that the delegation has to be by the Board under this section. As the hon. Member says, there is delegation to every Branch Manager, since the section requires it. But it is not *via* the General Manager. The General Manager has got three times or ten times more power than the Branch Manager, but the General Manager at that stage cannot increase it to Rs. 25 lakhs.

Shri Nathwani: It is the Board of Directors which gives power up to Rs. 25 lakhs to the branch officer. Beyond that, the General Manager would be authorised to extend the powers.

Chairman: The General Manager also shall have only delegated authority. He cannot increase his own authority or delegate his own delegated authority.

Shri Morarka: On page 3, there is another amendment dealing with the definition of temporary loans in section 293. According to this explanation, every demand loan is a temporary loan.

Shri C. H. Bhabha: The loans are generally given on demand. "On demand" is one of the documents taken by banking companies. But the review of the loan takes place once a year by the Board of Directors. They are all demand loans. We feel that since now the definition of a temporary loan, which was non-existent, is sought to be made as a loan given for six months, it would cause great hardship to banking companies. They are supposed to be demand loans in theory, but they come up for review once a year. Here you specify that a temporary loan should be for 6 months. So we say that in accordance with the practice of reviewing this loan once a year, you may kindly incorporate 12 months instead of six months.

Chairman: The witness has said that ordinarily all loans are really temporary loans, but they are reviewed every 12 months. Now if the limit is put at 6 months, that would dislocate the existing practice. He is putting forward that difficulty.

Shri P. T. Leuva: All the loans have been categorised as repayable on demand or repayable within six months. Loans which are repayable on demand can still be reviewed annually. But if a loan is made with

the condition that it should be repaid within six months, then the explanation would apply.

Shri C. H. Bhabha: I am prepared to explain. All loans are demand loans as provided by the Banking Companies Act. We take as one of the documents a demand promissory note. That does not necessarily mean that you demand it back from the customer after a week or six months. Generally the understanding is that these loans will be reviewed at the end of the year. In some cases, there are certain instalments to be paid. If you reduce the overdraft—if your turnover is X and if you repay Y out of that—then we shall be prepared to consider a renewal. We do not say we will not renew. They are all on demand, but that is the practice. The hardship to the client will arise if a demand loan is to be treated as a six-month loan and if we call it up at the termination of the six months. The alternative will be that the Board will have to review the position every six months. There are so many loans in the course of transactions during the six months—new and old—and it will be physically impossible for the Board of Directors in large companies to review them every six months.

Shri Morarka: On page, you are suggesting an amendment to section 293(5), which is not covered by this present Bill.

Shri C. H. Bhabha: This is an old request of ours and we wanted to mention it when the law is being amended.

Chairman: But you will appreciate that it will be outside our sphere now.

Shri C. H. Bhabha: Then I will drop it.

Shri Morarka: Your next amendment is to section 301(5).

Chairman: We can consider only amendments in the Bill.

Shri C. H. Bhabha: It is a correlated section which is sought to be amended. Clause 111(3A) (b) says:

> "in the case of a banking company to any contract or arrangement (to which section 297, or as the case may be section 299 applies) by the banking company for the collection of bills in the ordinary course of its business."

If the exemption is given only for collection of bills, what happens if certain secret arrangements or contracts are made? How shall we be able to maintain our secrecy? What will prevent an outsider from asking for a copy of that? As bills which are also in the nature of secret transactions between the bank and the customer are sought to be exempted, we request that the exemption should be extended to such contracts in the ordinary course of banking business. If there is a general exemption that will meet our demand.

Shri Morarka: Section 301, sub-section 5 is not being amended at the moment.

Chairman: We need not argue that with him. We will take into consideration all that. We need not argue with him. He feels this is correlated and a part of it. We will decide whether this is so or not.

Shri Morarka: What I want to know, Sir, is that this provision was there even in the old Act of 1913. Since the Act was amended in 1956, I would like to know whether they had any practical difficulty during these years.

Shri C. H. Bhabha: Sir, my hon'ble friend has referred to the Act of 1913. There is a material difference. In the first place, all these details which are sought to be incorporated were never in existence in 1913 Act; secondly, 1913 Act never sought that any copies could be given; 1913 Act never wanted this thing should be filed with the Registrar and there will be no guarantee of secrecy now. If you

will refer to 1913 Act, you will find all that.

Shri Morarka: Now, I come to Section 228 in the Memorandum dated the 1st June. They are giving reasons why the branch offices should not be audited: firstly, because the State Bank of India does not audit; secondly because the cost of compulsory audit will be high in relation to the turnover of business at small branches and thirdly, that purpose is already being served. Could you please explain to the Committee how this purpose is already being served?

Shri C. H. Bhabha: As I said in my opening remark, these statutory auditors, particularly under the Banking Companies Act have to be sanctioned by their share-holders. In a general meeting, a resolution is usually passed , laying down their duties, that these auditors shall examine X, Y, Z branches and call for such information, etc. Now, already by way of test audit, as and when an opportunity occurs, they examine these small officers. That is what we have said, that the purpose has been served under the present legislation.

Shri Morarka: But at the present moment all branches of the Banks are not audited.

Shri C. H. Bhabha: That is correct, Sir. But if the general meeting wants that all the branches should be audited, the general meeting can decide so. The words are: "unless the general meeting so decides."

Shri Morarka: Now, I come to Memorandum dated 17th June. Clause 64 wishes to amend section 209. Is it your impression that if this amendment is carried out, then all the books of the branches also will have to be kept at the head office?

Shri C. H. Bhabha: No, Sir; we do not visualise that. Every branch has got its main books and subsidiary books. The head office may be the custodian of the shares registered, the central office books, certain main books, inter-branch accounts and things like that. But every branch that is opened or permitted to be opened has to be sanctioned by the Reserve Bank. In addition to that the Reserve Bank has a right of inspection of any small or big branch, which they exercise. A regular inspection takes place. So, we say that through this amendment of section 209, you are casting an unnecessary and unwarranted responsibility. As soon as a small branch is opened, the Patna Registrar will have to be informed that we have opened a branch at Moga or wherever it is and that the books are here. That is what we are trying to point out.

Shri Morarka: On page 2 of the same Memorandum, section 293, you want that the Reserve Bank and Finance Corporations, etc. should be incorporated. Would you please explain his thing because sub-section 4 of the above section deals with only your accepting deposits from the public?

Shri C. H. Bhabha: Sir, quite often, the surplus money of these specialised institutions for temporary period remains with them and since many of these institutions have as their share-holders banking companies themselves or are directly or vitally interested in banking companies, they choose to keep their funds with them or distribute their funds with banking companies. If the section is kept as it is, we have drawn the attention of the Hon'ble Members that there is a little difference in our thinking which should permit us to retain these funds which temporarily may be surplus to the needs of the specialised institutions like, Finance Corporation. Supposing they issue bonds in the market, great portion of the bonds are taken by the banks themselves. Now, during a period when they have collected the money and when they have fulfilled their objective of dispersing

these loans, during that interregnum period, they choose not to keep those amounts with them not earning anything.

Shri Morarka: Is it not true that the borrowing needs of a bank generally depend upon the withdrawals by the public and, therefore, you cannot exactly forecast as to what would be your borrowing from the Reserve Bank or any other scheduled banks or from others? Therefore, the section should exempt banking companies.

Shri C. H. Bhabha: That is an internal working. It does not exclusively depend on the withdrawals of the public. That is an incorrect statement to make with due deference to the Hon'ble Member. Banking companies adjust their needs as they want finance from time to time and if finance or borrowing is attractive from one source, say, the Refinance Corporation, banking companies would go there. That is why we have suggested that these other institutions may also be included.

Shri Morarka: On what grounds can the banking companies ask for special treatment as compared to other companies?

Shri C. H. Bhabha: We are not asking for special treatment. We are pointing out that occasionally the deposits from other specialised institutions remain with banks and this is what has been somehow not noticed in this amendment.

Shri Naushir Bharucha: I am referring to section 301, sub-section 5 on page 4 of the Memorandum. Subsection 5 relates to the maintenance of a register of contracts of companies and firms in which Directors are interested. The argument advanced by the witness is that banks have the paramount duty of maintaining secrecy and that they should be exempted. My question is, since the very purpose of the amendment is to expose any transactions in which Directors are interested, how does your argument stand?

Shri C. H. Bhabha: Sir, as I have said a little earlier, it is incumbent on every banker—that is the basis of banking—to maintain secrecy of the transactions of his customer. We apprehend that if this basis is in any way sought to be exposed to public gaze of this type—it is for the Government and the hon. Members to take a policy decision, it is not for us—then banking business in India will be greatly impaired, and the basis of banking business will be shaken very rudely if the clause permits the disclosure of the details of the principal terms and conditions of contracts or arrangements made.

It may happen that there are common directors in large corporations along with a bank. The corporations may not have any direct stake with the bank or *vice versa*. But, for good business of banking, a certain share of the business of the corporation may be passed on to the bank. Now, if the details of all those terms and conditions are to be (a) noted in the register, and (b) made available to anybody, then it will create a very harmful effect on banking. That is our opinion.

Shri Naushir Bharucha: At page 6 of the memorandum relating to the question of certain risk regarding retrenchment compensation not being amenable to precise calculation, you say that it is an incalculable risk. Are you aware of the fact that under section 25 of the Industrial Disputes Act, it has been held that *bona fide* closure is not retrenchment? Therefore, a maximum amount equal to three months' wages as compensation has been provided. So, if three months' wages are definitely provided, and you know the wage bill, what is the difficulty in calculating the amount?

Shri C. H. Bhabha: The hon. Member is trying to differentiate or put a line between *bona fide* closure and....

Shri Naushir Bharucha: The Supreme Court has done it; it is not I who am doing it.

Shri C. H. Bhabha: All right; the Supreme Court has done it. I am not a lawyer of repute like my hon. friend.

Further, from the banking angle, we feel that such sort of unknown liabilities which cannot be put down on paper and which are not known at the time when a loan is made, should arise later. There are risks that a banker takes; but if more and more unknown or uncertain factors of this type are on the statute-book, we feel that there will be a shrinkage in the attitude of bankers towards industrial advance.

Shri Naushir Bharucha: I would next invite your attention to page 2 of your memorandum dated the 17th June, regarding clause 76 amending section 234. Section 234 relates to the powers of the registrar to call for information or explanation. In that memorandum, you suggest that the powers of the registrar should be so limited as to prevent him from calling for information of a confidential nature from banking companies. Who decides whether the information is confidential or not?

Shri C. H. Bhabha: Our contention is that all information, confidential or otherwise, is exposed to the Reserve Bank of India through its regular checks and inspections. All information, good, bad or indifferent, vital or not vital, confidential or otherwise, is known to the central banking authority of the country.

We are also familiar with the powers and functions of the registrars. If registrars, however competent they may be, are given the powers to call for information, we feel that (a) we shall not be able to continue with our banking secrecy, (b) that we cannot be indemnified by the registrar or any other person against any claim or suit that may be instituted against us, and (c) that there will be a certain amount of impairment of our own credit and stature, if certain clients come to know that we have been called upon by the registrar to submit some information

In addition, the registrar is given powers to call for our books from any branch. I would like my hon. friend and you, Sir, to visualise a case where a small branch with six or seven staff members—since there are many branches all over the country, for the spread of banking, and otherwise—is called upon to produce certain books at the registrar's office, which may be half a mile away, for a particular *bona fide* purpose. If that is to be during banking hours, is it possible for the bank to carry on its banking business?

Shri Naushir Bharucha: That does not answer my question. Who decides the confidential nature of any information?

Shri C. H. Bhabha: Well, naturally, the registrar, and not we.

Shri Lal Bahadur Shastri: Why should it be necessary that those documents should be sent only during banking hours?

Shri C. H. Bhabha: If you so choose, they may be sent after banking hours. But the very fact that the documents are removed from a branch by a registrar is....

Shri Lal Bahadur Shastri: That is a different matter.

Shri C. H. Bhabha: My point is that those are the general business hours.

Shri Naushir Bharucha: Regarding section 293 which deals with restriction on powers of the board to borrow

money beyond the particular limit, your request is that as has been done by the amending Bill in the case of section 292, a sub-section may be added to section 293 exempting the borrowings by banking companies from the Reserve Bank of India, the State Bank of India or any other corporation. If this is done, then do you not think that the purpose of the section would be defeated, which is to prevent over-borrowing?

Shri C. H. Bhabha: No. Inter-bank borrowing is permitted and is permissible and is common practice also in the course of natural banking business. The State Bank is also a lender to a large extent, because the State Bank's agency is employed for free transmission of funds from one place to the other. In other words, where the Reserve Bank has not got its own offices, the agency of the State Bank is used by all. But, generally, the Reserve Bank is the bankers', bank. But where the bankers' bank has not got its own branch office or organisation for these facilities, then, naturally, the State Bank comes into the picture. In addition, under the Banking Companies Act, for various guarantees given by banks for various purposes in the natural course of banking business, the State Bank gives a line of credit. That is technically and literally a sort of borrowing from the Reserve Bank. Sometimes, there is an adverse balance against one of the banks, in a clearing; and at that time, a temporary loan is given, which has been laid down, as per the terms and conditions under the Banking Companies Act; the Reserve Bank is bound to advance that to that bank for that period. Quite often, the banks go to the Reserve Bank for borrowing. My hon. friend may think that it may lead to over-borrowing. But the over-borrowing aspect does not come into the picture, because all these loans are carefully known to the lender, but the lender puts a limit for everything.

As I said, even the Reserve Bank, according to the turnover of the institution says that 'You can extend guarantees for your clients to the extent of Rs. 2 crores or Rs. 5 crores, Rs. 2 crores in one case, and Rs. 5 crores in another case. So, there is no overborrowing.

Shri Naushir Bharucha: My last question is in regard to what you have stated at page 3 of the memorandum on clause 180 dealing with section 531 which relates to fraudulent transfers during liquidation. Your suggestion is that the transfer to a banking company of property, in the course of liquidation, should be exempted from the operation of this clause. Do you not think that this would defeat the very purpose of the section, first, by the property being transferred to a third party through a bank, and secondly, by the bank being nominally brought in in the transaction?

Shri C. H. Bhabha: I beg to differ from my hon. friend. A banker would never be a party to that.

Shri Naushir Bharucha: Not a party, but it may be a tool in the hands of designing persons.

Shri C. H. Bhabha: You may call it a tool or party or anything. Generally, a banker would not sell or stake his reputation. What we are objecting to is this. In the course of banking business, very often, the banker refuses to extend the credit. The borrower is unable to pay then and there; and there may be a specified asset of his which is unencumbered, which the banker may be willing to accept in order to continue that facility. Now, that is an unencumbered security which the borrower gives to the lender, that is, to the banker, in the ordinary course of business. Otherwise, the issue would be forced that you either pay us or go into bankruptcy. So, quite often, an additional security is taken so that the business continues and the business is nursed through a period so that it comes on its proper bearings. That is what we feel.

Shri Naushir Bharucha: Since transfers for valuable consideration without notice and in good faith have been excluded, where is the fear of a banking company's inability to prove its good faith?

Shri C. H. Bhabha: The bank will be able to prove good faith. But at a particular moment it may not be possible for it may be a continuous business of the bank.

Shri Avinashilingam Chettiar: Please refer to page 2. You point out certain difficulties. But may I point out that the resolution that is passed by the Directorate would provide for these difficulties. The conditions can be incorporated in the resolution itself.

Shri C. H. Bhabha: I bow to the views of the hon. Member; but our lawyers say that such a resolution may not hold the field if it is contested.

Shri Avinashilingam Chettiar: Do you mean to say that any resolution that may be passed must be applied to all branches with the same conditions? If an amendment is made that it will be subject to the conditions etc. will that satisfy you?

Shri C. H. Bhabha: Yes.

Shri Avinashilingam Chettiar: In page 3, you have referred to some local committees. I understand that in many banks local committees are doing a useful job. In your resolution you can also provide for consultation with the local committees.

Shri C. H. Bhabha: Consultation with local committees would not give them any power. There is a specific delegated authority to the local committees to transact business. And, the local committees, when they are performing effective functions, exercise these powers. But very often, as I have said, they are handicapped in the exercise of those powers when the powers are restricted or specified. The local committees cannot be given powers by a flexible resolution or a wide resolution.

Shri Avinashilingam Chettiar: The functions of your local committees are not merely advisory.

Shri C. H. Bhabha: They advise; and they have also specific powers.

Shri Avinashilingam Chettiar: You have given reasons for exemption from compulsory audit and one of the reasons given is that the State Bank is not compulsorily audited.

Shri C. H. Bhabha: That is incidental.

Shri Avinashilingam Chettiar: But that is one of the important reasons you have given.

Chairman: He says that it is only incidental.

Shri Avinashilingam Chettiar: You must have some reasons. What are the reasons that promoted you for this non-compulsory audit?

Shri C. H. Bhabha: Because the statutory auditors are very responsible people; they know their own responsibilities. In cases where they have felt that there is sufficient evidence before them, namely certified returns—which they have tested or checked occasionally by sample tests and satisfied themselves that they are correct—they have felt that they can certify the balance-sheet with full knowledge of their responsibility and also knowing the liability attached thereto.

Shri Avinashilingam Chettiar: With regard to wages being given priority, I can understand that because till now they are an undefinable quantity. But once they are defined by law, will they not cease to be an undefinable quantity?

Shri C. H. Bhabha: Definition by law does not specify the amount in actual practice.

Chairman: He has given his opinion on this point. We need not labour it further.

Shri Mulchand Dube: You pointed out in your opening remarks that the banking companies should be treated separately from the others. In that connection you also pointed out that you are governed by the Banking Companies Act. In this connection, may I draw your attention to section 3 of the Banking Companies Act which says that the provisions of this Act shall be in addition to and not, except in so far as is hereinafter provided, in derogation of the Indian Companies Act and any other law for the time being in force. The difficulties that you have pointed out with regard to the working of the Banking Companies Act can, I think, be very properly placed as amendments to the Banking Companies Act and not to the Indian Companies Act. I think that Act is also being amended and it would be more appropriate for you to place all these objections and difficulties before a committee appointed for that purpose.

Chairman: So far as this particular Bill is concerned, he has expressed what special treatment the banks desire. We need not go into the background or the case they make out for special treatment because they have specifically mentioned their points with regard to the clauses concerned.

Shri Mulchand Dube: The special difficulties which the banking companies are likely to encounter by enacting the various clauses have been mentioned in the memorandum. These difficulties will apply generally to all companies. If the banking companies want special treatment for themselves, that has to be governed by the Banking Companies Act and not by this Act.

Chairman: We have to discuss whether we are going to agree with the views put forward by him or not. But he has put forward his views why they want special treatment.

Shri Mulchand Dube: If they want special treatment, a treatment different from the one meted out to other companies, they should go to the Banking Companies Act and not to this.

Shri C. H. Bhabha: We agree.

Chairman: The witness says he agrees with the hon. Member.

Shri Bisht: In your memorandum, page 23, you have raised certain points. I may draw your attention to the Shastri Committee's Report, pages 106 to 109. These very points were raised before the Shastri Committee; and, in order to meet these points, the Shastri Committee has recommended a new proviso, an extension of which would amply meet your points. For instance, the Shastri Committee says that in order to cover cases where large sums have to be raised, the practice is to have local boards of directors or local committees to advise and guide the Branch Manager and the principal officers in regard to the sanctioning of loans. Previously, the sanction had to be obtained from the headquarters before granting such loans.

Chairman: That is exactly the ground why these companies have submitted their memoranda as to why they do not agree with the Shastri Committee's observations.

Shri Bisht: I am drawing his attention to this that the words 'with such conditions as the Board may prescribe' were not there in the existing law. Therefore, when the Board is delegating power it can prescribe the conditions. The delegated authority shall have to take the prior consent of the General Manager or the delegated authority shall have to consult the local committees—all these come under 'such conditions as may be prescribed'. These words did not exist before.

Chairman: Shri Morarka also raised the same point. He has answered the point. If we do not agree with

him, we need not argue the point. We can discuss it when the witness is not here. But he has answered that point. Whether the answer satisfies us or not is a different thing.

Shri Bisht: I wanted to know if that point has been made.

Shri C. H. Bhabha: I am aware of the Shastri Committee and we represented to that Committee about that, but we feel hat this little amendment is not necessary. And we have been so advised legally also.

Shri Tangamani: You referred to section 228. What I would like to know is whether there are any branch auditors for branch auditing, in any of the branch offices. That is the first point I would like to know.

The second point is, would you not consider it desirable to have such branch auditing to prevent irregularities and fraud and such other things in the branches themselves?

The third point arising out of the same is this. You referred to section 41(7) of the State Bank of India Act, 1955. Would you like the same control to be imposed on the scheduled banks also?

Then you also referred to section 7 of the Companies Act.

Chairman: You may put the questions one after the other, after each question is answered.

Shri Tangamani: They deal with the same point.

Chairman: Perhaps the witness may find it difficult to answer them at one and the same time.

Shri Tangamani: Would you consider the returns contemplated in section 27 to be the same as the audited report?

Shri C. H. Bhabha: In most of the cases the returns are recorded not by us but by statutory auditors who know their responsibilities and liabilities. They sign the balance-sheet. It is sufficient proof and evidence for them to incorporate them in the consolidated balance-sheets.

Shri Tangamani: At page 3 of your first memorandum, you referred to section 292(4),—the purposes for which the loans may be made. You want that to be deleted. But is it not the practice now that before loans are sanctioned the banks know the purposes for which the loans are going to be utilised? Would you not consider it necessary to know the purposes for which the loans are advanced to them and are to be utilised. Perhaps the loans may be utilised for speculative purposes like hoarding of foodgrains.

Shri C. H. Bhabha: Very correct. The purpose is the consideration that the banker looks into. Quite often, he also keeps a watch whether the purpose for which the loan is given is adhered to. But both in the accounts of the borrowers as well as in the day-to-day conduct of business, very often, there is no compartmentalisation or demarkation of the loan, to the effect that this Rs. 50,000 is used specifically for this purpose and so on. It may overlap in some cases.

In the accounts of the borrowers also there is no such specific thing that the loan of Rs. 50,000 borrowed from a bank has to be exclusively used for such and such a thing. There is no legal obligation about it although they may tell us what it is for and we also see that it is done. That is why we have felt that it will create practical and onerous responsibilities for us and so we will not be able to fulfil our functions in letter and spirit. That is what we have tried to show there.

Shri Tangamani: At page 4 of the memorandum regarding section 303(5) you say that shareholders have become more conscious of their rights. Then you proceed to show in the memorandum that chances of abusing their rights have considerably increas-

ed. Is it your contention that things must be done behind the back of the shareholders who are conscious of their rights?

Shri C. H. Bhabha: No, Sir. I am sorry if the hon. Member has got that feeling and comes to construct that sentence in the way he has done. I say it with due deference. What we have tried to show is that banks are essentially credit institutions and credit being a very tender plant it can be adversely affected by even the smallest sort of mischief even if that mischief be unintentional. There have been very solitary cases but, those cases have been salvaged or saved because the Reserve Bank steps into the picture and says to the shareholder that the Bank is satisfied. The examination by the Reserve Bank or the chit from the Reserve Bank allows the credit institution to function. Nobody can check rumours,—leave aside the shareholders. Even rumours affect the credit institutions. That is what we have tried to point out. Under this amendment there will be a bigger chance for that sort of mischief, unintentional though it may be, being played against the credit institutions specifically.

Shri Tangamani: I put the last question. Several questions were asked about the compensation payable to the employees. Section 531B deals with the arrears of wages up to a maximum of four months as a preferential payment in the winding up of a company. The section limits that maximum to a thousand rupees. In the Industrial Disputes Act, as amended, in 1953, Chapter V clearly says what will be the quantum that is payable to each employee. Do you hold that at the time when a particular loan is advanced at any particular period of time, we do not know what will be the compensation payable to the employees?

Shri C. H. Bhabha: I have replied to that.

Shri Tangamani: Can you not fix a percentage in terms of the annual wage bill? That could be done for a particular period of time.

Shri C. H. Bhabha: I do not agree with the hon. Member. I still maintain that this is a contingency, an undetermined liability, so far as the banker is concerned. I do not wish to go into the policy underlying this but I do feel that as lending institutions banks would be chary hereafter of making, to the full extent possible, industrial advances in this country. That is what I wanted to say. I am not concerned with the policy decision.

Shri Chinai: May I know how the audit of the branches of the banks is conducted at present? Also, may I know what would be their effect or will there be any effect of the auditing, in view of the amendment suggested for section 228?

Shri C. H. Bhabha: I have briefly answered that. Statutory auditors as determined by the general meeting carry out the audit but for most of the branches, although they owe a responsibility to the shareholders, they have to comply with their liability to the members of the company, and otherwise.....

Chairman: The hon. Member knows the answer but I think perhaps he is driving at some other point.

Shri Chinai: You have answered that in the beginning. But I wanted to have a detailed knowledge about it, namely, whether the auditor at present does come in the way of branches.

Shri C. H. Bhabha: He does not; not at present.

Shri Chinai: If he does not, why do you object to the amendment of section 228?

Shri C. H. Bhabha: Because, the amendment as it has been put here, would compel every banking company to appoint a chartered accountant for even the smallest branch employing five to seven people, or alternatively, through a resolution of the members, the Board would be authorised in consultation with the auditors of the company,—the statutory auditors—to appoint X, Y or Z to declare who

should be qualified auditors. We feel that if this process is applied to banking companies, which at times have 400 or 500 branches—the State Bank has got 700 branches—then the accounts of the banking companies would (a) never be audited in time; (b) the expenditure would be enormous; and (c) it would not be worthwhile to challenge the responsibilities and liabilities of the statutory auditors who know their business and who have been so far satisfied in accepting certified returns from those branches. In spite of the certified returns, they take sample audits in branches with their full powers and they are doing it occasionally.

Shri Chinai: Regarding the amendment to section 292(1), why would it not be practicable to give effect to this scheme?

Shri C. H. Bhabha: As I have explained, this is one of the great practical difficulties which bankers have been confronted with after this new section was incorporated in the Act of 1956. It compels directors of banking companies to delegate directly authority to Managers. As I have explained, quite often the managers in their over-enthusiasm or over-zeal may step beyond their authority for keeping a customer. Again, quite often he may have come to the limit of his powers, but an old customer comes and he cannot turn him away. Thirdly, he cannot, as he used to do formerly, telephone to the General Manager, or one of the senior officials. Formerly the delegation from the Board was to half a dozen senior officials who in their authority could give sanction on the telephone or telegraph. To that extent it will create hardship to the banking companies.

Shri Chinai: Is it not a fact that the managers of these big companies are very high-powered personalities and they have very wide powers? If that is a fact, is it not possible that the Board may delegate some power to their managers who can take decisions for themselves, so far as the branches are concerned?

Shri C. H. Bhabha: No, that is not possible; as the section stands and as the Act stands it is not possible. That is what we pointed out to the Shastri Committee.

Shri Chinai: Would the suggested amendment to section 301, sub-clause (5) have any harmful effect on the business of banking?

Shri C. H. Bhabha: I have already explained that.

Shri Chinai: What will be the harmful effect on the banking business as such if we amend this section?

Shri C. H. Bhabha: It will shake the very basis of banking business, namely secrecy.

Shri Lal Bahadur Shastri: Mr. Bhabha might have seen the present Act. I merely want to draw his attention to sub-clause (d) of clause 9, which says that for clause 9 the following clause shall be substituted —definition of a branch:

> "But does not include any establishment as specified in any order made by the Central Government under section 8."

The Central Government has got the powers to exclude any branch from compulsory audit. It may be banking companies, branch offices. Does this not satisfy you?

Shri C. H. Bhabha: So far as banking companies are concerned, we are anxious to expand or increase the number of branches. Quite often if a branch at the end of one year or so becomes unremunerative, it is shifted with the permission of the Reserve Bank in every case. Now at every stage an exemption in the course of the year is sought to be asked. The statutory auditors themselves will get confused.

Shri Lal Bahadur Shastri: If general permission is given?

Shri C. H. Bhabha: That is a matter of policy so far as you are concerned. The section as it stands is

applicable. Whether you give sanction or you do not is a matter of government policy. We felt it our duty to point out the hardship that would be brought on the banking companies and on the growth of Indian banking.

(The witnesses then withdrew)

M. Tata Industries Private Limited, Bombay

Spokesmen:

1. Shri J. D. Choksi.
2. Kumari G. N. Cowasjee.

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

Chairman: We have all read the memorandum submitted. Have you anything to say in addition to or supplement of it?

Shri J. D. Choksi: I should like to make a few preliminary observations and also to refer to certain salient provisions in our memorandum.

Sir, the Group that I represent appreciates that Company Law is essentially a matter of regulation and you must expect more regulations in matters concerning companies than in the ordinary affairs of an individual. But, Sir, it is our feeling that the stage has now been reached, with the Companies Act of 1956 and this Bill, where regulation has been stretched to a point that it prevents companies from really exercising their ordinary rights of carrying on business. That may appear to be a very general statement, but I would like to illustrate it. I would only say this that you have increased the responsibility on those in charge of management enormously and you have reduced our powers and authority, which is not good; because, when you increase one's responsibility, whether it be an individual or a company, you should let him have the authority to match that control which you have chosen to impose on him. We feel that that is not there.

Today those in charge of management cannot even appoint a selling agent for a village for their goods without going to the shareholders for sanction. It may seem ridiculous, but in the result, companies are forced to commit a breach of the law. I have to go to my shareholders to sanction the appointment of a sole selling agent to sell my sewing machine. If he dies or if I find that he is not sufficiently honest or honourable, I have to go back to my shareholders. Otherwise my business comes to a standstill.

I think this body, which is representative of the public of India, if I may say so, is aware that in large companies like the Tata Iron and Steel Company, it costs Rs. 50,000 to call a general meeting of the company. Am I to call a general meeting just to appoint an agent because the former agent has died? There should be ways and ways of getting over these difficulties. The trouble is every time the company administration finds there has been some malpractice or dishonesty, they promptly think there is need for legislative control. If I may say so, that is a wrong approach. Punish the wrong-doer, but for goodness's sake, you have already placed a strait-jacket on management and now you are putting shackles to his feet and it is very difficult to run companies.

There is a general penal provision that if there is a breach of any of the provisions of the law, the companies will be liable to be prosecuted and penalised. I have asked the department to tell me to which section does this apply but I think they are unable to say so, because there are a number of provisions of the law which are purely regulatory. If you want to increase your capital and if you do not go through a particular procedure, your capital is not increased. But that is not a case for prosecution. Those in charge of management can only proceed on the basis that every section has a penalty attached to it, which makes things

very difficult. I do plead that this Joint Committee should do something to break some of these fetters. There is a further illustration under section 346, Government's sanction is required for making changes in the constitution of a managing agent of a company. In fact, there is a provision that you have to get the consent of Government when a managing agent's partner dies. God, of course, does not wait for Government's sanction. If I may say something personal, I have been a member of the Company Law Commission which dealt with these applications running into thousands, some of which were of the most trivial character. A share of a managing agency company changes by virtue of the death of a member. You have to go to the Government for the sanction of the transfer of that share from the dead man's name to his successor. The law is somewhat onerous. If Government does not grant sanction, the consequence is not that the share cannot be transferred, but that the managing agent ceases to hold his appointment as managing agent, which is a rather curious result.

From my experience of that Commission, I have found that about 90 per cent of the changes in the constitution are as a result of forces of normal occurrence. I do beseech this body, after hearing me, to make that section applicable only in the event of a certain number of shareholders applying to Government to control any change in the constitution of the managing agent. We have now a very fine code under one of the sections that where 100 shareholders or such number of shareholders as represent 10 per cent of the capital apply, Government is entitled to take certain action to prevent oppression and mismanagement. I request that the same principle be applied to section 346 also. Let not every alteration in the constitution of a managing agent be subject automatically to Government's sanction. It is a waste of public funds; waste of time of the Company Law Commission and waste of Government's time.

Take the case of a director retiring in the ordinary course of events. Mr. Homi Mody, one of my colleagues, is just retiring, but his retirement is not effective till the Government of India sanctions it. I know it is going to sanction it, but in the usual way, it will take about 2 months to get the approval of the Commission. Why is this necessary? So, I ask that these changes in the constitution should be made automatically provided the managing agents give notice to their shareholders and the shareholders have the right within a stated period of time to apply to Government that they should approve of the change in the constitution and then it would be effective only if Government agrees to the change. I have that proposal at page 26 of my memorandum and I do earnestly request the Joint Committee to be kind enough to consider it. It will save an enormous amount of time.

If you look at page 27, there I have made certain proposals, which I will not read because I trust they have been read. There is a proposal which provides that the death or retirement of a director should not require approval. A sub-clause has been added providing that it will be obligatory on managing agents within 21 days to notify the shareholders of such a change. In the event of such notification being given, the powers exercisable by the Central Government under clause (1) shall only be exercised if within 90 days thereafter an application is made for that purpose in the case of a company having a share capital by not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less, and in the case of a company not having a share capital by not less than one-fifth of the total number of members. That formula of representative shareholders has been adopted in other sections of the Act also. So, I do plead that it would go a long way to in-

crease the despatch of business by operating companies. As it is today, we find ourselves in a difficulty. Sir, that is one of the important suggestions we wish to put forward.

Now, Sir, there is another section which affects my group of companies very seriously and if it is put into operation—I refer to clause 124—it will mean that Tata Industries which are the managing agent of a very large group of companies, simply disappear from business, completely disappear from business. I do not understand how that section, if I may say so, crept into the Bill. Frankly speaking, I think, there has been some serious misunderstanding in this position. The Shastri Committee held a very elaborate enquiry, as this body knows, into the working of companies and they made a number of suggestions and a number of witnesses were examined by them. The proposed section provides that no subsidiary company can be a managing agent. No such evidence was laid before the Shastri Committee. I make bold to say, that no such evidence has been produced before Government that there has been any abuse of authority by subsidiary companies which are managing agents or has any malpractice been found at their doors? Surely, I am entitled to ask, if you are going to deprive certain groups of companies of their ordinary business activities, you should only do so provided you find that there has been some serious misconduct by such groups or their position as managing agents led to serious abuse of authority. There is no instance of that. When I read the Bill, I turned to the Explanatory Note to find out what was the reason for this amendment and all that I find in the Explanatory Note is a paraphrase of the clause. If you will kindly look at page 112, all that it says is:

> "Clause 124—The proposed new section provides that no company shall appoint or employ as its managing agent any body corporate which is itself a subsidiary of another body corporate."

Shri Morarka: No legal language.

Shri J. D. Choksi: It is merely a paraphrase of the section. May I say this, the Hon'ble Minister himself has pleaded for decentralisation in the affairs of company. May I say that the creation of subsidiary companies is a form of decentralisation. I think, it is hardly necessary for me to say that before this body. In fact there are a number of sections of the Act dealing with subsidiary companies. Perhaps, the name 'subsidiary' is a misnomer. It gives the impression that it is an inferior type of animal. It is not so. It is merely that it is a specialised company in the sense that 50 per cent of its capital is held by another company and ultimately, Sir, the capital of all companies is held by individuals. Ultimately it is the individual who owns companies. In the case of subsidiary companies, a holding company has been supervened. In other words, the original share-holders form a company called the holding company and then for certain purposes, to which I will briefly refer, the holding company forms subsidiary company in which it holds either the whole or a majority interest in the capital with the object of transferring some particular field or activity of the parent company to the subsidiary company. There is as much delegation in any company management, whether it be a principal company or a holding company, as there is in subsidiary company. All management of a company is a matter of delegation.

Now, it has been said that a subsidiary company is not qualified to become a managing agent. Why? In my own group the subsidiary company which is the managing agent is more competent than the holding company to be a managing agent, because Tata Sons, the original firm

which was created by late Mr. J. N. Tata had a number of activities, trading and otherwise and today its share capital is mainly held by two large public charitable trusts created by the Tata family. In fact, the constitution of that company is such that it is difficult to appoint other Directors to its Board. So, Tata Sons devised in 1945 a formula whereby they created Tata Industries to take over all the managing agency activities of the parent firm and as a result of that creation of Tata Industries we were able to invite outstanding administrators from Government service, from public life, specialists, financial experts, technical experts and we have a very large Board of 13 or 14 Directors today, each a specialist in his field or a tried administrator including administrators that have grown up through the ranks of the various Tata companies.

Now, we claim that a company of that type which is solely devoted to managing other companies and which is, therefore, skilled in the technique of management, and which make it their study to understand the techniques of management is far better qualified than a trading organisation to be a managing agent and it is by creating such a body of specialists that you get the type of managing agents which Government want. In fact, Government itself have suggested that they must improve the standard of secretaries of companies because a large number of companies have not got the secretarial assistance they need and suggestions have been made to improve the qualifications of the secretaries and make them more fit to perform secretarial services. Well, Sir, this is actually what we have done. It is a process of decentralisation which has merged into this managing agency company all the functions of management and nothing else. They are not concerned with buying cotton, selling cotton; they are not concerned with acting as selling agents. They have no other interests. Their interests are to protect solely the operations of their principals and I say, with all the emphasis that I can, that that body is much more qualified to act as managing agents than any other type of managing agents.

Well, Sir, under the provisions of this Bill such managing agents disappear completely from the field without any investigation into their activities, without any evidence of malpractice, without any evidence that they are less competent. On the contrary, if the share-holders of the Tata Group were to be asked, they have appointed these managing agents unanimously. When the time came for appointments of the managing agents, the Government have approved these appointments. I deal with the practical facts of life and companies also have a practical life and I do earnestly submit that there is no case for abolishing managing agencies in the hands of subsidiary company. That is my point No. 2. Otherwise, the result will only be this. If you destroy that particular type of managing agent, it only means that you will weaken the managing agent by converting him to a non-subsidiary of a powerful holding company with large financial resources. How does a subsidiary company become a non-subsidiary company? By transferring shares in the holding company to the share-holders of the holding company. What purpose does it serve Government? What purpose does it serve the Company Administration? In my own group Tata Sons' resources are about Rs. 10 crores. The managing agency company, apart from the individual status of the structure, has not resources beyond a sum, may be of a crore of rupees. Now, as a matter of fact, it is well known that all responsible holding companies underwrite the obligations of their subsidiaries, and in our own case the managing agents have stood guarantees to the extent of about Rs. 38 crores for the member companies of which they are managing agents and the holding companies have joined

in the guarantees. Why destroy that set-up? It is a perfectly sound set-up. It is not a question of control of authority in a few individuals at all. It is a question of the whole of the resources of an industrial house being put at the service of the companies which they have promoted. I will say no more on that.

Shri Morarka: Before the witness goes to the next point I want one small clarification. His objection to the provision that no subsidiary companies should be appointed managing agents I can understand. There was a discussion that no subsidiary company should have the managing agents. Has the witness any objection to that—a subsidiary of another holding company should not have managing agents?

Chairman: We are discussing clause 124. We shall come to that later.

Shri J. D. Choksi: That will be a fundamentally different point which I shall answer later.

As regards clause 124 it is proposed that it should apply only to future appointments of managing agents, after this Bill becomes law. As the Joint Committee knows all managing agencies cease on the 15th of August, 1960. So all appointments effected from that date will automatically come under this ban. That is all I have to make clear.

I should like to make a suggestion here and it is right that I should do it. Under the law as it stands today holding companies of managing agents are not subject to the control under section 346, that is, any change in the constitution of a holding company does not require government sanction. Although there have been no cases where it has been said that as a result of lack of control there have been abuses on the part of holding companies of managing agents, I would submit that clause 127 should be made of general application, namely that in future a change in the constitution of a holding company should be deemed to be a change in the constitution of the managing agents. Government thereby will have effective control not merely over the change in the constitution of the subsidiary company but also a change in the Board of Directors of the holding company. In other words, I am suggesting widening the control which is given under section 346, which I want to extend to all managing agencies.

I have briefly in my preliminary remarks referred to the plight, if I may say so, of selling agents. We, the group of companies I represent, which is a fairly important group, agree that the duties of selling agents and of managing agents are incomparible with one another. We do not believe that managing agents should be interested in any form or even remotely with the sale of the products of their principal companies, because there is a conflict of interest.

A managing agent is there to protect the management of the companies he manages and to control the activities of selling agents. But we do say this: do not prevent companies, and the large majority of them have honest managing agents, from carrying on their business. You will thereby be handicapping companies as against business partnerships and other firms which carry on business. When you say in the case of selling agencies that they should not only have the approval of the shareholders but also Government's approval, you are placing those companies in an inferior competitive position as regards foreign competitors. Today if I want to sell my cloth in Australia—I do sell my cloth in Australia—if I appoint a sole selling agent, I have to go to the shareholders of my company to get their sanction. If this Bill becomes law, I may have to go to Government to get Government's sanction also. With all respect to Government, no self-respecting selling agent in other countries would

be prepared to submit their appointment as selling agents to the control of the Government of India. If we sell in another country we have got to sell according to the conditions that exist there and it puts me in an entirely incompatible and in an inferior competitive position with foreign interests selling in that market. Under this section Government has to approve the appointment and also the terms and condtions on which it is made. Surely it is not our intention, but we are leading—I do not like the use of that word—to a totalitarian regime in matters of business. We do not want that; we want to see that our business activities expand and I say it is wrong to place these companies in this inferior sort of competitive position with foreigners.

The trouble is that not merely does it apply to sales abroad, but even within the country. Powerful international corporations can sell within this country without these restrictions. But if I have to sell my soap or my household goods or my sewing machines in competition with them, I have to go through this rigorous, time-consuming, money-consuming procedure. As I told you in some companies it costs Rs. 50,000 to hold a general meeting and Government may take two or three months to give its approval or sanction to the appointment of the selling agents. And if I am dissatisfied with the selling agent, or if I want to alter his terms in some small respect, I cannot do so till I get the sanction. This is not the way for any company in any country to run business. By all means punish us; have the most drastic penalties if we commit a breach of the law which you consider as corrupt; but do not let us have this form of control. It does not serve any purpose; it only tends to create, if I may say so, a monolithic structure in the company organisation where every time they have to come up to Delhi for approval. We do not want that sort of situation. That is not the decentralisation which the hon. Minister himself pleaded for. We want decentralisation. We frankly do not want anything else. We want to be able to run our business in an effective manner, competitive with every other competitor, and we want to see that we do a good job of our business. And we are prepared to disclose everything afterwards and report it to our shareholders. We can maintain registers about the appointment of selling agents. Suppose I appoint a selling agent in a district, a sole selling agent, because that is the normal way of carrying on business; and if he is satisfactory, I do not want to appoint another to compete with him. Why should I, when I want to change his appointment, go to the shareholders? After all, I am responsible to the management. Give me the authority of management. If I have a business of my own, without shareholders, I could do it. And frankly, if the partnership law were to be changed and if we were allowed to have partnership of more than ten persons, what would be the position? Now ten persons only can form a partnership; if it is more than ten persons, you must have a limited liability company. I am confident that a number of businesses would convert themselves into unlimited liability partnerships—if they could take thousands of partners, I am quite sure that numerous members of the public would like to become members of that partnership—, rather than go through this procedure.

I would like to make this plain that in my expreience of the last nine years I have not come across a single instance where Government has not done the right thing in approving applications under the Company Law. I will say that I have not come across a single instance. But I will say this that I have had to wait quite a long time to get Government's answers and that is what matters. It creates only expenses on the part of the Government as well as the company. We have nothing of this in any other country where you have joint stock enterprise.

We are not allowed to carry on ordinary activities. We are not allowed to sell in the markets that we select and through the agencies that we select, except by control.

And finally I say this, and I say it with a great deal of emphasis, that as selling agents are not really a creature of the Company Law, this distinction between selling agents of limited liability companies and selling agents of ordinary individuals is really, if not an actual breach of the Constitution, against the spirit of the Constitution. Because, in pith and substance, it is not a provision relating to Company Law at all. It is a provision dealing with trade and commerce. If the Government of India feel that certain commodities have to be controlled, they should do it quite independently of the Company Law administration. If the sales of certain commodities, in the public interests, have to be controlled and selling agents have to be approved, by all means Government have the right, and they should exercise the right, but not by virtue of Company legislation. Company legislation is concerned with the administration of companies. Then it would apply to all bodies that deal in those particular commodities and not merely to limited liability companies, and that too to Indian companies and not to foreign organisations.

I have had my say. I may say that we personally are not so much interested on this point, but we consider it is a matter of important principle, and that is why we want to represent, with all the emphasis we can, our point of view to the Joint Select Committee.

The next one is a new creature under the law—Section 43A Companies. We accept without question the principle that when you have public funds in private companies, there should be full control. But when you have private funds in private companies, the mere fact that there is a body corporate which is a shareholder, should not convert an essentially private company into a public company. We have dealt with that at p. 3 of our Memorandum (Clause 15). We straightway agree that when 25 per cent of the capital—we would rather have it at 40 per cent, but if the Legislature feels that it should be 25 per cent.—when this percentage of capital is held by a public company in a company, then that other company, even if it is a private company, should be subjected to the liabilities of a public company under the law, because then that private company is dealing with public funds, although indirectly. That principle is conceded. But that situation is a different one from the case of one or more private companies holding 25 per cent. of the capital. You might have private companies with two or three members each, individual members. Surely it is not suggested, when they form a new private company for the purpose of business convenience so that its accounts are separated from their own, that when they form such a separate entity, there are public funds invested in it. There are no public funds. It belongs to, maybe, twelve or twenty individuals. The law itself allows fifty persons to form a private company. So our suggestion is a simple one. It is that when you have a group of private companies holding shares in another private company, so long as the total membership of the group including the private company in which they hold shares does not exceed fifty, it should not be treated as a public company. That is very desirable and I must say it is quite necessary, because some of the provisions which are applicable to public companies cannot by any stretch of imagination apply to such a company. For instance, if that were not so, many managing agency companies would become public companies. And we have the curious situation that while the law provides that the managing agent should only get up to a maximum of 10 per cent. of the net profits of the company he operates, the actual remuneration of the direc-

tors of the managing agents who will probably be the sole shareholders of the managing agents will not be the total remuneration received as managing agent but only 10 per cent of the net profits after deducting all expenses of their management, which makes it impossible. In fact, the hon. Mr. Deshmukh, when he was the Minister in charge of the Companies Bill in 1956, pointed this out on the floor of the House and said: what we seek to control is the total remuneration paid to managing agents, we do not care how it is distributed among those entitled to it. And not to control the individual remuneration of the directors of the companies to whom the managing agency remuneration is paid. Now, that situation surely should be preserved here. And I do submit that it is desirable that we limit section 43A companies to genuine public companies.

If that suggestion is not accepted, I submit in the second alternative, that when you come to this type of companies which are mainly managing agency companies, they should not be subject to the control under section 198, namely that the remuneration of the directors of that company should be 11 per cent. of the net profits; in practice, they are over 150 per cent. of the net profits.

The only purpose of the managing agency remuneration is not to create an asset but to pay for services on the basis of what the services are worth; and if a dozen people perform those services as the managing agents, they are entitled to distribute the managing agency remuneration amongst themselves. But the imposition of this section provides that they cannot get that remuneration at all. That is not a situation which should be accepted.

So, I do feel that the section 43A class of companies should be limited, and in any case, should not apply to managing agency companies, so that the limitation of section 198 should not apply to them. I have dealt with all that in the memorandum. I shall not read the paragraphs, but I shall merely point out that I have dealt with all that from page 3 to page 7 of my memorandum; and I do hope the Joint Committee will see their way to accept that representation.

There is one further serious objection, although I think it is more a matter of form than of substance. The proposal in the Bill states that these companies shall be public companies. My suggestion is that instead of that, the language of the section should provide that these companies should be subject to the liabilities of public companies. Otherwise, there will be the following difficulty. There are a number of companies which have been promoted as a result of a partnership between a foreign interest and an Indian partner. These are closed partnerships. We have them in our own group. They have the approval of Government. If these are converted into public companies, and their membership is to be extended, the original bargain—and there was an international contract as the basis of that bargain—will be destroyed. But, if you say that they will be subject to the liabilities of a public company in the matter of disclosure, but they can retain their qualities as mentioned in section 3, namely that their membership will be limited so also the rights of transfer etc., then it is understandable. So, I do feel that that amendment should be made.

In connection with this I have dealt with section 198. There is only one matter there, under section 198 which provides for a 11 per cent maximum, and that is the case of the managing directors. It has often been, I am sure, the experience of the department that companies managed by managing directors have to pay more than 11 per cent of the net profits to the managing directors in bad years. After all, in trading companies, lean years alternate with good years of business. In good years of business, 11 per cent of the net profits may be a very generous maximum for the re-

muneration of managing directors. In lean years, they are a very bad one, and Rs. 50,000 does not cure the situation at all. You cannot get certain types of managing directors for large organisations on that basis.

So, the suggestion is this. It is again a matter of simplification—that when Government approve—and they have to approve of the apponitment of managing directors, and have to sanction their remuneration—and sanction the remuneration, which in terms of salary, is so much a month or so much a year, that should not be subjected to the limitation of 11 per cent. Government can take care to see that the remuneration they give to the particular gentleman should be a certain figure, and it should apply irrespective of whether the company makes a loss or a profit. Therefore, it would remove the overall limitation of section 198 of 11 per cent to any remuneration sanctioned by Government on the basis of a salary. I agree it applies to profits. You cannot give a share on net profits, but any basic salary should be left out of consideration so long as it is sanctioned by Government. The next suggestion I have is in the matter of dividends. It is in relation to clause 62, and it appears at page 11. It relates to the question of deduction of depreciation. The provision there is that depreciation should be deducted from the profits of a company before the profits are made available for distribution of dividends. We agree to that in principle. But the depreciation provided is the income-tax scale. Now, there are several objections to that in the case of some companies.

As a matter of fact, the electricity companies have their own formula under the Electricity Supply Act, under which their dividends are controlled by a formula under that Act. It should not be the law that an electricity company declaring a dividend should be subject to both limitations, because the depreciation scale under the Sixth Schedule to the Indian Electricity Act is an entirely different type of depreciation from that provided under the income-tax law.

Shri Naushir Bharucha: I think Shri Choksi is referring to the Indian Electricity Supply Act.

Shri J. D. Choksi: The hon. Member has rightly corrected me. I was referring not to the Indian Electricity Act in reality but to the Indian Electricity Supply Act of 1948. There are very rigid financial principles there which control the profits of electricity undertakings. Therefore, we suggest that the provision should read that the depreciation should be deducted but that the basis on which the depreciation should be deducted should be left to the directors of the company, because they are the best judges.

Even in an ordinary trading company, I may say, under the income-tax scale, when you undertake large-scale expansions, it is not possible for companies to set aside the full income-tax depreciation, because that is a very large figure in proportion to the assets of the company. Under the income-tax scale, the depreciation in the first five years often knocks off 75 per cent of the assets; then it tapers down considerably, and it is very low. Many companies would prefer to have a more even spread of depreciation in their accounts. So, let us not over-regulate matters.

We agree in principle that adequate depreciation should be provided, but let us not legislate for the type or the scale. As you will see, we have suggested certain alternative scales. For instance, there is the straight-line basis of depreciation as opposed to the written-down basis provided in the income-tax law.

There is also the compound interest basis, different from the income-tax basis. All these are different types of bases. Some of them suit particular types of businesses more than the income-tax basis. So long as adequate depreciation is provided, let not the

law regulate the actual basis of depreciation. That is the suggestion I have to offer.

I have incidentally referred to clause 200 in my general comments. I do not want to add much to it except to say that I do not think you should have a general omnibus clause like the one we are dealing with for penalties and penal control. You should specify it in the section itself. If the department feels that it is unequal to it, I would be glad to sit down with them and specify the sections. I do not think the department is unable to do that. They can easily specify the sections. Let those who run the companies know which are the sections violation of which is likely to attract penalties. Let us not have a general provision of this character.

Shri Mazumdar: Trying to avoid unnecessary work.

Shri J. D. Choksi: But they do a lot of work; let them do more and specify the sections.

There is one thing which is not dealt with in the Bill but which arises indirectly. That is on page 25 of my memorandum. I think there is some mistake in the existing law which needs to be rectified. The existing law provides that no managing agency can hold more than ten managing agencies. We agree with that in principle. But the provision is rather peculiar in that every director shall be deemed to be a managing agent. One interpretation of the section, as it is, therefore, is that if one single director happens to be a director of 2 managing agencies, then for the purposes of this section the two managing agency companies are grouped together and they together cannot hold more than ten. I do not think that that was the intention; but it is there in the section. The principle should be that no managing agency can hold more than ten. If the majority of the directors of one managing agency company are also the directors of another managing agency company, then the two managing agencies can be treated as one for the purpose of calculating that number ten. That seems to be fair enough. If there are two companies A and B and if 5 or 6 directors of company A are also the directors of company B, it is all right. It is also right if there are two companies, one with 5 directors and the other with ten, and three directors of the company with 5 directors are directors of the other with ten; because a majority of the company with 5 directors are directors of the other company. They can be grouped together. But, surely, one individual common directorship should not make both companies together subject to a total number of 10.

In our own group, just for purposes of investment—we have moneys invested in other managing agencies, may be 3 or 4, we have a single director in these companies. If these managing agencies are grouped together, that is really not quite fair and it is going far beyond the requirements. There is really no abuse which requires to be rectified. There is no connection between the management of these companies and the companies of this group. But still the law brings them all into one body of managing agents. So I submit that this provision requires rectification.

There is one other point that I would like to refer to—page 34, clause 202. In our view this section is quite unnecessary. It provides that where the Central Government is required or authorised by any provision of the Act to accord approval or sanction or to give directions or to grant exemptions, it may do so subject to such conditions or limitations as it may think fit to impose. If I may say so, the lack of this provision has not been felt at all. In fact, when they impose conditions on applications made by parties, they do it with the consent of the parties. They say, 'either you accept these conditions or we reject your application.' It seems to me quite unnecessary to have this provision. It really amounts to legislation by executive action, because conditions may

be attached which are not germane to the particular provision. The right to impose the conditions is absolute here. I think that should be restricted.

That is all my representation. I will be glad to answer questions.

Shri Tangamani: I would confine myself to only the points which you have explained. Lastly, you referred to certain penal provisions, particularly, to clauses 200 and 190. In what form would you like to have these penal provisions?

Shri J. D. Choksi: My suggestion was a simple one.

Shri Tangamani: Do you not agree that any violation of certain things laid down here will have to meet with penalties? Don't you think that such a provision is necessary?

Chairman: He said that many of the provisions are regulatory only and there is an omnibus clause that any violation would be liable to punishment. He has stressed the point that all the provisions, which if violated, would meet with punishment, should be specified.

Shri Tangamani: There are certain clauses which lay down penalties; for instance clause 190 deals with a particular type of offence. The witness referred to clause 200—that is section 629A—where it is said that any default made by the company and every officer of the company in complying with the provisions of the Act will be met with certain penalties. Would you not like to have a kind of residuary clause like that? What is your objection?

Shri J. D. Choksi: I would like you to place yourself in the position of those actually concerned with the management of business. We should like to know whether we are liable to penalties and, if so, for violating what provisions of the law? Surely, we must know what is the crime for which we are liable to be penalised. Is there any objection to set out in the sections themselves—in this clause 200 itself—the sections to which the penalty applies?

If this provision is allowed to remain here, the department may take action—the local registrar may take action—in cases which are not fundamentally penal. Supposing a company sets out to increase its capital without going through the required procedure—the law is that that increased capital does not exist. There are civil proceedings which can rectify this. But the Registrar may choose to prosecute the company and then the magistrate will have to go into the question whether this section applies or not. Why create all these problems?

Shri Tangamani: What is your objection to punishment being given without any option to five in the case of section 614A?

Sub-clause (2) of the new section—section 614A—says:

> "Any officer or other employee of the company who fails to comply with an order of the Court under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months."

That is without any option to fine in such cases.

Shri J. D. Choksi: There may be extenuating circumstances and that is all that I have to say, because after an order is passed, conditions may change and it becomes impossible for the particular officer to comply. That is why imprisonment should not be peremptory under the clause.

Shri Tangamani: My next point is regarding clause 15, namely, the creation of 43A companies. I find that the explanation that you have given now shows that you have considerably watered down the stand you have taken in the memorandum. May I take it that you are welcoming this 43A companies with all controls as if they are public companies?

Shri J. D. Choksi: I have not watered down what I have said in the memo-

randum. I have merely referred to the salient features of the memorandum. I have first of all said that the application of 43A should be restricted to those companies which really deal with public funds. I accept that. But I say it should not be applied to a group of private companies in which no public funds are invested.

Shri Tangamani: Then what is your objection to 11 per cent. under clause 60 which has been allowed?

Shri J. D. Choksi: As I said, if you accept my proposal of limiting the 43A to genuine public companies, as I call them, then the limitation about section 198 does not apply. But if you do not accept my proposal regarding 43A and you cover a whole group of companies which according to me are not really public companies or do not deal with public funds, then I say that some of these companies are purely management companies whose only business activity or whose principal business activity is that of management like my own company. In my own company we have paid more than a 100 per cent of the net profits as remuneration to the directors of the managing agents. It is more than 100 per cent of the net profits, because the whole remuneration is there for those who run the managing agency. So, what you do then is, you create a 11 per cent. on a 11 per cent. You first say that a managing agency company should get 11 per cent. and then you say that the directors of the managing agency company should only get 11 per cent of that 11 per cent. Is that not so? That makes it one per cent.

Shri Tangamani: I will come to the next point. At page 11 of your memorandum you have referred to clause 62—section 205. You said in the introduction that this company law and the amendment thereto are for regulating various companies. Would you not like to have a proper regulating of the depreciation? You yourself have said this namely, under various formulas amounts go towards depreciation. In the case of the Electric Supply Company there is a particular depreciation allowed, as you said, according to the Income-tax Act another quantum is allowed. Would you not like to have a particular quantum fixed by the Companies Act?

Shri J. D. Choksi: I realise the force of your question but different companies have different provisions for depreciation and by its very nature, the basis for depreciation in a trading company would be different from that in mining company. A mining company would be different from a textile company. The provision is too rigid even for the electricity company, although its own profits are regulated under a special Act. When it comes to pay dividends, it would have to comply both with this section and with their own section, which would make it impossible for electricity companies in certain areas to pay any dividend at all which again would have adverse effects.

Shri Naushir Bharucha: They are exempted.

Shri J. D. Choksi: We do not exempt. It is only when there is an inconsistency.

Shri Tangamani: You were telling us about the selling agents. Do you agree that after the 1956 Act, many of these managing agency companies and managing agents have become selling agents?

Shri J. D. Choksi: Whose fault is that?

Shri Tangamani: I would like to know whether it is not a fact that managing agency companies and managing agents have now become selling agents and some kind of restriction is necessary if you are to carry out the spirit of the 1956 Act.

Shri J. D. Choksi: Unfortunately, the legislature did not appreciate the services of managing agents and in fact managing agents are now under oppro-

brium. As managing agencies have got nothing but opprobrium some wanted to give up management of companies. Some of them were interested in the sales of the products of their companies and they applied for and became selling agents. What is wrong with that so long as they do not have to deal with management, and provided they are selected by the companies as suitably qualified selling agents?

I can understand that there should not be dual functions; that there should not be people who are both managing agents and also selling agents. But if there is no dual function, I do not know why people who have nothing to do with management should be disqualified from being selling agents because at one time they were managing agents. That is what I do not appreciate. I may have to sell motor-cars if the provision of the law again if managing agents is further strengthened. So, do not prohibit me from becoming a motor-car agent or a salesman. I think I may be qualified to do that.

Shri Tangamani: I understand that you are opposing section 325A by the new clause 124:

> "After the commencement of the Companies (Amendment) Act, 1959 no company shall appoint or employ as its managing agent any body corporate which is a subsidiary of another body corporate."

But if you are opposing it, are you not attacking the very basis of the amendment itself? Do you not see that by opposing this particular clause, you oppose the very basis of this amendment itself? Are we to take it that you are opposing the entire amending Bill itself?

Shri J. D. Choksi: I do not follow.

Shri Tangamani: If you are going to oppose this clause, are you not opposing the very fundamentals of this amending Bill itself?

Shri J. D. Choksi: Not a bit. You realise that this has not appeared before the Shastri Committee at all. There has been no enquiry into this matter. It has got nothing to do with the rest of the amendments.

Shri Tangamani: The Shastri Committee also have addressed themselves on the question of managing agents.

Shri J. D. Choksi: And never dealt with this point at all.

Shri Tangamani: What will be the alternative which you would suggest now, apart from what you have stated in the memorandum?

Shri J. D. Choksi: The alternative is already stated in the memorandum. I have no other suggestion.

Shri Tangamani: One more point. In your memorandum, I find that at page 9, against clause 58, section 197, you have referred to the Chairman's speech. What can be your objection if the Chairman is particular about publishing his speech and does it on his own instead of doing it at the expense of the company?

Shri J. D. Choksi: The Chairmen do not care whether you publish the speech or not. But the organisation they represent do care. Sometimes you have to educate and promote public opinion. And it serves that purpose. So, I cannot see any objection to publishing the Chairmen's speeches.

Shri Ajit Singh Sarhadi: You have opposed the amendment to section 285, in clause 2, on the ground that the tax-level on the depreciation would be too harsh, and you have said that it should be the fair and equitable depreciation that the director may fix. Supposing the depreciation is not equitable and fair, what check would you suggest otherwise?

Shri J. D. Choksi: The auditors are there. If they make a statement that in their opinion the depreciation is not sufficient, then it would be for the shareholders to agitate and bring the matter to the attention of the Registrar and the Government.

Shri Ajit Singh Sarhadi: That would be leaving it to the shareholders after the report of the auditors. But before that what check would you suggest?

Shri J. D. Choksi: After all, before the dividend is paid, it has got to be sanctioned by the shareholders. Before the shareholders sanction the dividend, they have before them the accounts of the company and the auditor's report. They can say at the general meeting that proper depreciation has not been fixed and they will not sanction the dividend. They can raise the objection there. Even individual shareholders can bring it forward if there is a breach of the law.

Shri Ajit Singh Sarhadi: Would you suggest here that in case a certain percentage of the shareholders do not agree with the quantum of depreciation, they should take up the matter to the Government?

Shri J. D. Choksi: I would have no objection. I think it is a good suggestion to give them that power.

Shri Jadhav: May I know the maximum amount of remuneration that has been earned by the managing agents of your group of companies?

Shri J. D. Choksi: The highest remuneration earned by managing agents of the Tata group—there are about 15 or 20 companies in the group—is about Rs. 45 lakhs to Rs. 50 lakhs. There expenses of management have been over Rs. 30 lakhs and a bulk of the balance of Rs. 20 lakhs has gone to public charities.

Shri Jadhav: How does it compare with the earnings of English companies?

Shri J. D. Choksi: I am unable to answer that question.

Shri J. S. Bisht: In page 15 of your memorandum, regarding clause 84 seeking to amend section 250, you have raised certain objections. May I just remind you that certain events took place in the group of companies controlled by the British India Corporation in Kanpur and a few other firms in Calcutta and if the Government had these powers at that time, that tragedy could have been averted.

Shri J. D. Choksi: I think the powers should be there, but they should be vested not in Government officials, but in court. I think the principle is sound and I accept it. But I say let there be a judicial enquiry into it straightaway.

Shri J. S. Bisht: A judicial enquiry may take 2 or 3 years.

Shri J. D. Choksi: You can get interim relief within 2 days, pending the hearing. The court will grant interim relief on a *prima facie* case.

Shri Mazumdar: My experience of courts is quite different.

Shri J. D. Choksi: May be you had not a good case.

Shri J. S. Bisht: In page 29 you have raised certain objections with regard to clause 138. You want to delete the first proviso to sub-clause (2) of section 372. You also want that sub-clause (3) of section 372 to be omitted. Why?

Shri J. D. Choksi: It is against the interests of the development of industries in the country.

Shri J. S. Bisht: That is a very vague thing.

Shri J. D. Choksi: It is not a vague thing. To control the past investments of companies is a very difficult thing to do. That is why we suggest, let the past alone and forget about what has happened. How can you cancel what has already happened?

Shri J. S. Bisht: If the Government is given this power, in exceptional cases, it might grant permission.

Shri J. D. Choksi: I know sometimes Government is treated like the archangel Gabriel. Sometimes I am doubtful if Government should be entrusted with so much powers.

Shri T. S. A. Chettiar: Section 198 fixed the maximum managerial remuneration at Rs. 50,000 in the case of loss. That was without the sanction of the Central Government in the original Act. The present Bill introduces an amendment that you must take the consent of the Government of India in fixing the remuneration subject to a maximum of Rs. 50,000. There may be even smaller companies which cannot afford to pay Rs. 50,000. I agree that to give so much power to the bureaucracy to administer the law may not always be desirable. Can you suggest a method by which this can be satisfied and also natural justice can be done for the companies, say, some sliding scale by which you can fix the remuneration so that only cases above Rs. 50,000 may go to Government?

Shri J. D. Choksi: As I understand, the present law is whenever directors and managing agents are appointed, Government have to decide whether the maximum is Rs. 50,000 or not. I was a member of the Company Law Commission and I know that in several cases, we actually had a sliding scale for companies with smaller profits or smaller capital. In some cases it went down to even Rs. 5,000. So, the present law is strong enough. I am not quarrelling with the fixation of Rs. 50,000. I only say that when Government sanction the appointment of managing directors, they should sanction it irrespective of the fact that their remuneration may in bad years come to more than 11 per cent of the profits of the company. Some companies may have need to have 4 managing directors. If Government were to sanction all their appointments realising the need for that, all I say is, because it will be a deterrent to the appointment of such managing directors, let us not provide in the letter of appointment that you will only get this salary, provided the aggregate salary for top management does not exceed 11 per cent of the profits.

Shri T. S. A. Chettiar: Now, I come to section 205. This is with regard to depreciation. You agree to the deduction for depreciation. . . .

Shri J. D. Choksi: Absolutely.

Shri T. S. A. Chettiar: The only difference is on the rate of depreciation to be allowed.

Shri J. D. Choksi: The basis of depreciation.

Shri T. S. A. Chettiar: You say, the basis of income-tax scales is rather harsh.

Shri J. D. Choksi: What I said is, the income-tax rates are not flexible enough. I think, my own group, Tata Iron & Steel is the biggest company in the country. This year, or the next year if we were to calculate depreciation on income-tax scales, there would be no profit to distribute.

Shri T. S. A. Chettiar: What is your straight-line method?

Shri J. D. Choksi: I will come to it. There is another method called written down basis. Supposing depreciation is 10 per cent and the asset is Rs. 100. In the first year you take Rs. 10, which is 10 per cent of Rs. 100. In the second year, you take 10 per cent of Rs. 90, which is Rs. 9. Then, you go on deducting like this. This is called the written-down basis, with the result that you will find that as years go by, the depreciation in the earlier years is extremely high and the depreciation in the remaining years tapers off substantially.

Now, I will explain to you straight-line basis. Supposing, the life of a plant is 15 years, then the average depreciation every year will be about 7 per cent or 6⅔ per cent. The Electricity Act has an alternative basis called the sinking fund basis which means, you create every year a certain figure of depreciation and to it you add the interest.

Shri T. S. A. Chettiar: Now, I come to section 294 which deals with sole selling agents. You say, the appoint-

ment of small selling agents may be left with the management and that in the case of bigger selling agents, share-holders may be consulted.

Shri J. D. Choksi: Yes, Sir. If you will kindly look at the proposal on page 19, it reads:

> "(i) In sub-section (1) of Section 294 for the words "for any area" substitute the following: "for the whole of the area for any State or States within India".

Shri T. S. A. Chettiar: I have got only one question to put. You have not referred to amendment to section 530?

Shri J. D. Choksi: I do not support that point because it will be difficult for trading organisations now to go to Banks to borrow money because the banks would want to know not merely about the security they would offer, but of the wages bill and what would be the compensation likely to be paid on retrenchment and if the company were to go into liquidation what would be the liability. It looks fair if you look at it from social justice. I do not think it fits in with business life.

Shri Naushir Bharucha: Mr. Choksi, I have seen your Memorandum but it has raised many questions. I am afraid, I have to ask many questions.

I come to page 2, clause 6, Section 17(4). You object to the Registrar's Joining as a party before the Court. What is your apprehension if the Registrar intervenes?

Shri J. D. Choksi: It is not a question of apprehension. It is merely this. Older companies have been formed in this country with limited objects clause. New companies have been formed without the objects clause. They today go in for manufacture of ships and electrical equipment. Now, if we were to equalise the competitive power of the two groups, those with those defective clauses in the Memorandum and those with this, then we should automatically give the power to the old companies to alter their Memorandum to bring them into line with modern Memorandum.

Shri Naushir Bharucha: What is the objection?

Shri J. D. Choksi: Well, the proposal is much more than that. There should be no need to go to the Court at all. There is no question of the Registrar's apprehension. The English law does not require approval. Why should we require it in India? The English legislators in their wisdom thought it unnecessary. Individuals are allowed to expand their business activities, why not Corporations?

Shri Naushir Bharucha: Page 3, clause 11, section 31. You say that in view of clause 15, it would seem unnecessary once these requirements are fulfilled, for Government to approve of the conversion of a public company into a private company. Even in spite of section 43A which is proposed to be inserted now, there would still be many companies outside the scope of clause 11. It will be necessary to retain this clause.

Shri J. D. Choksi: Personally speaking, I do not see the reason for retaining this clause. But if my suggestion for reducing the impact of section 43A is acceptable, then I agree that my proposal under clause 11 should be withdrawn. It is only because Section 43A is so wide now that there hardly seems to be need for clause 11 at all.

Shri Naushir Bharucha: Page 5, paragraph (H) which says that the actual draft of the new Section 43A is defective. One of the defects is regarding the passing of ordinary resolution. Suppose, the company's share-holders, as they are entitled in law, refuse or fail to pass an ordinary resolutions in terms of sub-clause (2). Does the conversion of the private into a public company take effect? Why do you say that such a contingency would arise, whether the resolution is passed or not, the law would take its course.

Shri J. D. Choksi: There should not be a provision requiring the conversion of a company at all to be approved by the Company in general meeting.

Shri Naushir Bharucha: Supposing they want to change name or whatever it is, a resolution may become necessary.

Shri J. D. Choksi: It is not merely the name. I think, there are some drafting amendments which are called for and perhaps the Department is already undertaking them.

Shri Naushir Bharucha: I was just giving you an illustration. It is not a very material thing. Now, on page 6, referring to one of your objections against Section 43A, you say that a number of such companies prohibit the transfer of shares except that a member may transfer a share to a lineal descendant or other relative. If these special rights, which form the basis of the original promotion of the company, are cancelled by virtue of the new Section 43A(1), a forfeiture of property rights may result. Why do you say, forfeiture of property rights? I am laying stress on the word 'forfeiture'. It means expropriation without compensation.

Shri J. D. Choksi: Expropriation of contractual rights.

Shri Naushir Bharucha: You refer to that?

Shri J. D. Choksi: Yes.

Shri Naushir Bharucha: Page 7 of your memorandum. You approve of Section 43A with some modifications. Supposing the membership fluctuates from 50 to 49, what happens?

Shri J. D. Choksi: It is quite plain. If the membership in any year exceeds 50 that becomes a public company for that year.

Shri Naushir Bharucha: Your suggestion suffers from the same infirmity.

Shri J. D. Choksi: A company which wants to preserve its integrity will take care to see that the total membership does not exceed 50.

I agree with you: when a public company owns more than 25 per cent or more, whether the membership is only 2, let it be a public company. I am only referring to private companies. As the test of a private company is limitation of 50 members, you apply that test here.

Shri Naushir Bharucha: In regard to your proposal II, you are prepared to take the label of a public company without the substance of it.

Shri J. D. Choksi: I am prepared to make this company by that test a private company, subject to all the rigours and obligations of a public company under the law. Otherwise, you will be defeating a number of international contracts which have been entered into.

Shri Naushir Bharucha: Page 8, clause 54, section 193: You say that it is too much to ask the Chairman to sign on each page. Are you really suggesting that the Chairman cannot put his initials on all the pages.

Shri J. D. Choksi: When there are a number of meetings, it is quite a lot and it is unnecessary. You do not want to paralyse his right hand before he dies!

Chairman: Page 9, clause 59, Section 197, Publication of the Chairman's speech: You say that the Chairman's speech deals with trends in the commercial world and has an educative value in the commercial and investing world. Why should the shareholder of a particular company pay for educating the commercial world?

Shri J. D. Choksi: Because it helps the progress of the company of which he is a member. I have suggested that if you like you may put in a provision that it may be published with the sanction of the shareholders' meeting. If you do not do that what is going to happen is this. In England you do not have Chairman's

speech; you have Chairman's statement which is issued before the meeting.

Shri Naushir Bharucha: Thanks to the witness pointing it out it can be remedied at the time of drafting.

Your main argument is educating the commercial world. Don't you think that there are enough number of articles in the newspapers for this purpose?

Shri J. D. Choksi: As a matter of fact the Chairman's speech of our group go abroad.

I may tell you that our printing bills and advertisement bills have gone up a thousand per cent since the Companies Act of 1956.

Shri Nathwani: The witness said that publication of the Chairman's speech is welcomed by the public. Will he say the same thing about his photograph also?

Shri J. D. Choksi: It depends on whether he is a good-looking man or not!

Shri Naushir Bharucha: Page 10: In regard to annual general meetings it is said that the bulk of the proceedings is of no interest to the general public as they relate to domestic affairs of the company. This may concern several lakhs of shareholders.

Shri J. D. Choksi: Not more than 50,000 to 60,000 shareholders usually. We do circulate the proceedings of the meeting of shareholders.

Shri Naushir Bharucha: Page 11, clause 62. You have said that the requirement of the deduction for depreciation to ascertain the net profits for payment of dividends would work hardship. I quite appreciate that. But you do not tell us what should be the basis with regard to depreciation. You have referred to depreciation accounting so far as the Sixth Schedule to the Electricity (Supply) Act is concerned. You have made reference to straight line basis. As this straight line basis is a merely accounting procedure and it has no meaning whatsoever unless you fix the basis on which the straight line procedure is to proceed.

Now you have also said in answer to one of the hon. Member that you would like it to be left to the shareholders to raise a plea that depreciation in a particular year is not adequately set aside. When a shareholder raises that plea you will appreciate that in order to judge about the adequacy or otherwise of the depreciation you will have to have certain basis by which you will judge it. For instance, in respect of electricity supply companies, their depreciation has to be calculated on what is known as the capital base. Before a shareholder can object that this is inadequate depreciation, the law will have to prescribe what is the capital base. If we do not prescribe that, how do you suggest that the shareholder will have some yardstick by which it will be possible to measure the adequacy or otherwise of the depreciation?

Shri J. D. Choksi: Frankly, this is not a matter on which shareholders are the best judges. The directors who are in control of the company are the best judges as to what the basis should be. If you like, we could provide in the law—though I think it is unnecessary—that the directors shou'd disclose their basis to the shareholders. And I have actually stated in the Memorandum that once the basis is adopted it should be followed. I quite agree with you that the shareholders are in no position by themselves to suggest the basis. So I say that the directors are the best judges. They are concerned with the fortunes of the company from day to day and from year to year, and they will decide the basis. And if it is a fair basis it will be accepted by the shareholders. But they will disclose the basis to the shareholders.

There are controlled industries. May I take this case? Many industries in my group are controll d industries. The Tariff Commission lays down the basis of depreciation which is not the same as the Income-tax basis. For

instance, in the steel industry the Tariff Commission has laid down a basis of 6¼ per cent on the gross block; in the chemical industry it has laid down a basis of 10 per cent on the gross block; in other industries it has laid down a basis of 8 per cent. So why should we stick to this particular basis? In fact, if you are to comply with the Tariff Commission's requirements in these cases you will find that in some years you will not be allowed to distribute the dividend because the Tariff Commission basis applies; in other years you will not be allowed to distribute it because the Income-tax basis applies. I could go into all this. I can assure you as a practical administrator that there are going to be enormous problems of this kind. I would far rather go to Government and tell them, "this is my basis, please put your o.k. on it"—though it will take time. I personally think this sort of regulation does not serve any purpose.

Shri Naushir Bharucha: I will tell you the purpose it serves. The remuneration of managerial or managing agents is dependent on the net profits. Net profit in its turn is dependent on the amount you set apart for depreciation, large or small. It is possible for a company, by providing inadequate depreciation, to camouflage losses or small profits and show that larger profits are being made.

Shri J. D. Choksi: May I answer that? First of all, I entirely agree that for managing agency basis there is a specific provision—which is the income tax provision—and I accept that. For my managing agency agreement I want not the company basis but the harsh Income-tax law. Take my own company, Tata Steel. As I mentioned a little while ago, for the next two or three years the managing agents will get no remuneration because the depreciation is high. So far as the managing agency remuneration goes, under section 250—which is another section—you will have to calculate the depreciation on the Income-tax scale. And I accept that that is right and sound. But for the purposes of the accounts of the company we must follow a certain regulation which has regard to the realities of the regulations applicable to the particular industry: *e.g.* for electricity, the Electricity Supply Act; for steel, the controls under the Steel Regulations.

Shri Naushir Bharucha: Unless the law lays down any particular basis on which depreciation has to be accounted, the straight line method would be a mere formality or only an accounting and book-keeping procedure. Unless we fix some basis for depreciation it will be left to the sweet will of the board of directors to set aside whatever depreciation they choose and thereby show more profits and virtually eat out of the capital of the company. That is possible. Therefore, in order that any authority, whether it is Government or the shareholders, may be able to judge about the adequacy of the depreciation, unless you fix the basis that this depreciation is to be calculated in relation to, for instance original cost, including so many things—or, unless you define it as has been defined in the Electricity Supply Act for instance, how on earth is it possible for anybody to calculate whether it is adequate depreciation or not? Suppose two directors differ. Who decides what is adequate depreciation?

Shri J. D. Choksi: What you want, If I may say so, is to protect companies and shareholders in general from the directors frittering away the assets of the company by showing little or no depreciation when there is substantial depreciation. I submit that if you put in the words "fair and adequate depreciation", you will find that the auditors will not pass the accounts unless they are satisfied—and they are men with a good deal of commercial experience—that the basis adopted by the directors is some suitable standard basis of depreciation. It will vary from company to company, because the problems of companies are different.

Shri Naushir Bharucha: You are simply shifting the question one step forward. The auditors will decide..

Shri Khandubhai Desai: From company to company in the same industry also?

Shri J. D. Choksi: No, Sir.

Shri Naushir Bharucha: It will under your suggestion.

Shri J. D. Choksi: Normally it won't happen.

Shri Naushir Bharucha: The auditor will look to the fact that there is a reasonable amount. But what is the basis on which the auditor has to satisfy himself? He must have some standard. Unless the law lays down..

Chairman: The witness says that the auditor has sufficient experience and he can judge, without any particular basis being laid down, as to what fair depreciation would be. That is his opinion.

Shri Naushir Bharucha: I am just trying to get at it. He says it is left to the discretion of the directors, in which case I say the depreciation provision would be a matter of complete chaos; because, even in the same type of industries, the directors may think one basis is correct and auditors may think that another basis is correct. Therefore, if you feel that depreciation under Income-tax is harsh, you can suggest some specific basis on which depreciation can be calculated.

Shri Lal Bahadur Shastri: If it is provided "or on any other basis for which approval will have to be taken from Government", will it satisfy you?

Shri J. D. Choksi: I will accept it. I agree to create a situation where we have again to come to the Government!

Shri Lal Bahadur Shastri: That, of course, is there.

Shri Naushir Bharucha: May I give a friendly warning to the hon. Minister that he is inviting a hornets' nest around his ears? Because, on the question of calculating depreciation, the proceedings can be lengthened for months togetner, and still we would be nowhere. Because, Government would ask, "what is the standard by which I shall judge whether the basis is adequate or not"?

Shri Lal Bahadur Shastri: There are standard methods under which it is done—there is, for instance, the Electricity Supply Act, and some other provisions.

Shri Naushir Bharucha: I can understand your saying with regard to electricity concerns that you will go by that; or about chemicals. But apart from these few industries where depreciation allowances are regulated, there are thousands of industrial establishments in which there is no regulation whatsoever for accounting purposes. Therefore I am asking, what is the standard? Assuming that Government takes upon itself the responsibility of saying "o.k." to a particular basis adopted by a particular industry, what is the standard?

Shri D. L. Mazumdar: Government will not regulate the actual amount of distribution but only the basis.

Shri Naushir Bharucha: What is the basis?

Shri D. L. Mazumdar: It is well known. Good accountants know it.

Shri Naushir Bharucha: Accountants can only apply the basis which the law lays down.

Chairman: These would be for our internal discussion.

Shri Naushir Bharucha: Laying down a basis for depreciation calculation is a legislative procedure, not an accountancy provision.

Shri Lal Bahadur Shastri: I merely made the suggestion. We need not discuss it now.

Chairman: We shall discuss it amongst ourselves separately.

Shri J. D. Choksi: May I make just one observation? First of all, Shri Naushir Bharucha is an optimist if he thinks that there are thousands of companies which are not regulated. Under the conditions that exist today, about 75 per cent or the bulk of industrial output is regulated in this country. Secondly, I would like to tell Shri Naushir Bharucha—and that is a point which I should have made when I argued it—that this clause has also provided for retrospective effect; I hope that will be rectified. It should not apply to past profits, and dividends paid out of past profits when there was no regulation regarding depreciation.

Shri Naushir Bharucha: Are you suggesting that the back-log or arrears of depreciation should be given the go-by?

Shri J. D. Choksi: No, I am not suggesting that at all. All that I say is that the companies have built up reserves on a certain basis. Let us not now recalculate the reserves and re-write the balance-sheets for past years; If they pay dividends out of the past taxed reserves, they should be free to do so without a recalculation of the depreciation.

Shri Naushir Bharucha: At page 12 regarding depreciation, you have made a proposal after para E in which you say that an explanation be added requiring the directors to fix the depreciation which should be charged to the accounts of the year having regard to all the circumstances including the profits of the company for the year. What have profits to do with depreciation? Depreciation exists independently of the profits.

Shri J. D. Choksi: May I say this? I may be guilty of it, but in our own group, when there are good years, we provide more depreciation than is needed; when there are bad years, we provide a little less than is adequate, and we tell the shareholders so. We balance the one with the other. Maybe, you consider that illegitimate, but I consider it fair and sound business practice.

Shri Naushir Bharucha: So, is it your intention that when discretion is to be left, it has to be exercised on what is known as the rule-of-the-thumb method, providing when you can and not providing when you cannot?

Shri J. D. Choksi: No, we shall have to disclose some basis. I can assure you that the auditors will naturally catch us out if we do not regulate our depreciation properly.

Shri Naushir Bharucha: Would you agree to the proposed amendment being varied to admit of some such formula that depreciation should be calculated in the case of regulated industries on the basis of such regulation, and in the case of the other industries, let us say, on the income-tax basis less by a rule-of-the-thumb allowance, say 25 per cent or 30 per cent as the case may be.

Shri J. D. Choksi: That is for you to decide.

Shri Naushir Bharucha: I would like to know whether that would meet with your approval.

Shri J. D. Choksi: That, if I may say so, is providing a very flexible thumb, as big as this or that. I do not quite know frankly what it will be.

Shri Naushir Bharucha: You would not mind this being regulated, in the case of the regulated industries, on the basis of such regulation?

Shri Kanungo: May I suggest that these points may be discussed amongst ourselves later?

Shri Naushir Bharucha: I want to know his views, whether this will result in any hardship in practice.

Shri J. D. Choksi: It would certainly mitigate the hardships.

Shri Naushir Bharucha: At page 13, while making a reference to dividend

amounts being deposited in scheduled banks, you say in your note that such provision might cause hardship to those shareholders, particularly small shareholders, who do not wish to be paid by cheques. That is one objection as to why the amount should not go into the bank. What is the objection if the company makes the payment in cash to the small shareholders and draws a cheque on the bank?

Shri J. D. Choksi: That would meet that objection, if you provide for it that way, so far as the small shareholders are concerned. But there are many more objections to that. For instance, the steel company pays Rs. 2 crores in dividends. Why should we set aside a separate account for Rs. 2 crores and pay from that? I suggest that so long as we pay it regularly according to a method, that is all right. We, in fact, pay our dividends from our overdraft account. Surely, you do not want us just to pay interests to the banks on transfers to a dividend account from the overdraft account.

Shri Naushir Bharucha: I appreciate that point.

At page 14, you say in regard to seizure of documents that the application should not be made to the magistrate but it should be to the appropriate court. Is it your intention that the civil court should have power to seize without issuing notice on the other side to show cause why the documents should not be seized, or the same powers of the magistrates to seize without hearing the other side?

Shri J. D. Choksi: I want the civil court to have the same powers in the matter as the magistrate,—that is, no notice at the preliminary stage.

Shri Naushir Bharucha: I now come to page 15 of your memorandum relating to clause 84 and section 250 where you say that

> "By 'aggrieved shareholders' should be shareholders either holding ten per cent of the capital or being one hundred in number or 1|10th of the total number of shareholders.".

So, that is the qualification?

Shri J. D. Choksi: That is the present section 408.

Shri Naushir Bharucha: The present section 408 deals with oppression and mismanagement which is a much more serious issue than this.

Shri J. D. Choksi: This is also very serious.

Shri Naushir Bharucha: As a practical businessman, do you think that in the present unorganised state of shareholders, it is ever possible to get 10 per cent of the capital holders to come forward to apply to the court?

Shri J. D. Choksi: I think you can; but if you feel that ten per cent is too high, you may reduce it.

Shri Naushir Bharucha: Coming to the question of selling agency, which you have dealt with at page 17, in your opening speech you made a very eloquent representation and said 'Why should a business concern be put to the disadvantage of having to come before Government for approval of selling agents?'. But you missed the basic fact on which the section had been enacted, namely, that the bestowing of selling agency, like the bestowing of managing agency, is an act of patronage; if the law refuses to allow patronage in one form, why should it allow you patronage in another form? It is from that angle that I want to look at the proposals which you have made.

Shri J. D. Choksi: My answer is that I refuse to accept the position that selling agency is a matter of patronage at all. I think in these competitive days, especially when there is difficulty in selling one's goods, there is no question that the companies will get the best selling agencies that they could get. So, there is no question of patronage. I know many

selling agents who refuse to take up products if they are not satisfied with them. I am associated with a selling agency company myself. We subject proposals which are put up to us for taking over selling agency rights with a good deal of scrutiny, and we do not accept them. So, there is no question of patronage.

If you look at it from the point of view of patronage, your argument is right. But I submit that selling agency is not a matter of patronage at all. It is a matter of getting your goods to the largest number of consumers, consistent with good quality; and for that, you need highly skilled people. For instance, you cannot sell pharmaceuticals except through suitably qualified selling agents; you cannot sell machine-tools except through suitably qualified selling agents; you cannot sell a number of specialised products except through suitably qualified selling agents. So, all that has got to be borne in mind.

Shri Naushir Bharucha: At page 18, you agree to reconcile yourself to a period of one year to intervene between the termination of the managing agency and the taking over of the selling agency. If you reconcile yourself to one year, do you not think that the same disadvantages to which you have made a reference in your opening speech would affect your business in this case also? You stated: that you should be able to act promptly, and you have to have your selling agents nominated.

Shri J. D. Choksi: No, my reason is this that because a particular party has been either a managing agent or managing agents I think that is a disqualification to become a selling agent. So, he must shed his spots, and it takes about a year for him to become completely disassociated from management. Today he gives up the managing agency and temorrow he becomes a selling agent. I do not believe in that. There must be some period of time between the two.

Shri Naushir Bharucha: Turn to page 18. You say that this sort of restriction should not be imposed on partnerships and individuals.

Shri J. D. Choksi: Yes.

Shri Naushir Bharucha: You say that it is discrimination to single out Companies only; but in the case of a partnership or an individual it is private money absolutely and in the case of a compnay it is public money. Where is discrimination.

Shri J. D. Choksi: In many cases it is not public money. Take private companies; it is not public money. Even if it is public money it is a question of selling the products of the undertaking. Why should those in charge of the management be not as qualified as Government to select the right type of selling agents?

Shri Naushir Bharucha: Then, on page 19, you say:

> "Sub-section (4) (c) is not in 'pith and substance' legislation relating to company law and companies. In 'pith and substance' it is a form of control introduced in the operations of trade and commerce. A sole selling agent is not a creature of company law. Selling agents are independent organisations and do not form part of a company's organisation."

You contradict yourself on page 18 when you say that the desire to centralise the effective powers of joint-stock enterprise.

Shri J. D. Choksi: I do not think there is any inconsistency. All I say is that you are interfering in the matter of joint-stock enterprise selling its products.

Shri Naushir Bharucha: You say these are effective forms of joint-stock enterprise to sell their products.

Shri J. D. Choksi: It is a matter of opinion; my opinion is that.

Shri Naushir Bharucha: Now, please come to page 19. You have made an effort to find out a concrete proposal to get over this difficulty. On page 19, you make the proposal:—

> "In sub-section (1) of section 294 *for* the words 'for any area' *substitute* the following: 'for the whole of the area for any State or States within India' ".

Your objection is that even for the sole selling agency in a taluka you would have to go to Government and so you want a bigger unit to be fixed.

Shri J. D. Choksi: Yes.

Shri Naushir Bharucha: But don't you think your proposal will circumvent the section. In Bombay there are 43 districts and if you appoint a sole selling agent for 42 districts, then you need not go to Government.

Shri J. D. Choksi: It is then for the Legislature to step in if there is any abuse.

Shri Naushir Bharucha: Supposing you say 'everywhere in India—minus a small taluka'. Then in every State you can leave out one taluka, and evade this section altogether.

Shri Kanungo: It may be the whole of India or the whole of one State minus one taluka.

Shri J. D. Choksi: I have not that discerning type of mind as Shri Bharucha.

Shri Kanungo: No law can be full-proof.

Shri Naushir Bharucha: Never lawyer-proof.

Then, coming to section 314 which relates to relatives of directors. You say that once an appointment is made after going through the formalities, for purposes of promotion, you should not have, every time, to go through the same formalities. Supposing a director's relative is appointed on a salary of Rs. 100|- per month and sanction is given on that understanding. Next year he is promoted to a post on Rs. 500|-. The spirit of the section is violated.

Shri J. D. Choksi: It should be disclosed in the register of directors contracts so that the shareholders can inspect it. They would naturally ventilate their grievances against the promotion at the next Annual General Meeting. You have put your point of view. I will put mine.

Supposing a relative is appointed and is found to be exceptionally able and he is promoted as a result of some vacancy arising in another department. Obviously, you do not want the whole machinery of a company meeting to be called just with the object of approving the promotion of that particular individual. It may cost an amount equal to 10 years' salary.

Shri Mazumdar: I think there are other brilliant people—other than relatives also.

Shri J. D. Choksi: There are dull relatives; I do not deny that.

Shri Naushir Bharucha: Then coming to page 21, what is the remedy you have in cases where cartels or trusts are sought to be created for the purpose of controlling commodity prices or for other objects? How can you break them without injuring the subsidiary companies?

Shri J. D. Choksi: The creation of a subsidiary company has got nothing to do with cartels. You have to judge the cartels in a different way altogether. With great respect, I say it has nothing to do with the subject of cartels.

Shri Naushir Bharucha: Then we will take up page 26, section 346, changes in the constitution of the managing agents to be approved by Government. You were very eloquent when you said that for every little thing the director does he will have to come to government. What measures would you suggest to distinguish between things of a trifling nature and changes of a substantial nature in the constitution of managing agency firms which affect the character of the firm?

Shri J. D. Choksi: Whenever there is a change in the constitution, the managing agents inform the shareholders. If the shareholders approve of the change they will do nothing. If they do not approve of the change, they will approach the Government to control it. What is wrong in that?

Shri Naushir Bharucha: If your proposal is accepted, then the purpose of the entire section would be neutralised completely. In course of time, the entire board of directors will be changed —gradually one by one—and still the Government will not be able to control unless there are sufficiently diligent shareholders who in the first place will read your notice—which is doubtful—and in the second place will organise the necessary number of people to start action.

Shri J. D. Choksi: Why do you assume that the directors in our country are less honest and less honourable than directors in other countries? That is the first assumption. This form of control does not exist in other countries.

This was introduced in 1951 as a result of the conditions brought about by the war. It was brought in by Ordinance, as a temporary measure; then, it was passed into law in 1956. We pleaded with the Finance Minister at that time to drop it. He said that we had not had sufficient experience. Today I am suggesting a way out and I say this with all sincerity. The cost of applying to Government, the advertisement to the shareholders, sending circulars etc. have all gone up out of all proportion.

You are obsessed with the idea that Government is better qualified. You are no friend of Government, I think. And I do not see why you feel that Government is better qualified to select a director, than the Board of Directors themselves.

Shri Naushir Bharucha: I think against the Tatas I have nothing to say. I am talking of those who know the tricks of the trade.

Shri J. D. Choksi: There is no trick in being a director. Directors are the same all over. I say with great respect.

Chairman: Then, only the approach is different.

Shri Naushir Bharucha: Then at page 27, regarding section 346, what is worse is,

> "....the consequence that follows is serious. Such consequence is not that the change in the constitution," etc.

That occurs in the third line.

Shri J. D. Choksi: We have suggested a remedy.

Shri Naushir Bharucha: If the director alone ceases to be director—assuming that position—there will be no harm in every director trying to violate it, because, what is the consequence? The consequence is, at most that he will cease to be a director. Everybody would be induced to violate law.

Shri J. D. Choksi: What I suggest is a *locus poenitentiae.* With your background you will appreciate that. You will give notice saying that unless you do this, your man will be punished.

Shri Naushir Bharucha: What you suggest at page 27—proposal I—is that the company would be allowed to restore the *status quo.* If the director dies, then—

Shri J. D. Choksi: I agree there.

Shri Naushir Bharucha: When changes of this nature take place it is because they are inevitable. It is not just for the fun of it. A change in the constitution is made because it is inevitable. Then it is very difficult to restore the *status quo.*

Shri J. D. Choksi:. With great respect, I suggest that when a director dies, what is inevitable then?

Shri Naushir Bharucha: If it is a change, then there is another party.

Shri J. D. Choksi: It is not inevitable.

Shri Naushir Bharucha: Unless it is very inevitable, you would not change the Constitution of a directorate.

Shri J. D. Choksi: We will ask the director to go out. If you do not approve of our taking an officer of the company as a director on the board of managing agents, we will tell the director that the Government of India do not approve of it. We cannot afford to lose our managing agency. It is very simple.

Shri Naushir Bharucha: At page 27, under proposal II you say:

> "The permanent retirement of a director due to superannuation, ill-health or like cause shall not be deemed to be resignation of the director for the purposes of this sub-clause".

If this suggestion is accepted, so many directors would resign for reasons of ill-health and make way for others.

Shri J. D. Choksi: Then the others would have to be approved. It is only on retirement that we say that it need not be approved. When some director dies, some other person may go to the Government of India and my good friend Shri Mazumdar will be able to approve of it!

Shri Mazumdar: It is done by the members of the Advisory Committee.

Shri Lal Bahadur Shastri: Do you want to make any distinction between Government and the Advisory Committee of which you also happened to be a member for some time?

Shri J. D. Choksi: I happened to be a member. I do say this. The interposition of the advisory committee is certainly a safeguard. After all, it is not an official organisation. I do say that it certainly makes a difference, and a difference to the good. I am not disputing it. My objection frankly is.....

Shri Lal Bahadur Shastri: You referred to the fact that "we have to go to Government" etc. In most of the cases, these matters are considered by the advisory committee. Generally the Government agrees with the Committee.

Shri J. D. Choksi: Ultimately, the Government agrees with the Commission.

Shri Lal Bahadur Shastri: It is almost a formal affair.

Shri J. D. Choksi: My objection is, it is not so much the quality of the decision which is finally taken, but to the procedure and it seems to me quite unnecessary. I can assure you that I have been through the mill and I have felt rather humiliated at this: some person in the South wants to be a managing director on Rs. 300 a month and to come to this Committee which is convened at great cost to the public. I want to simplify and streamline the procedure. After all, these are mainly matters of management and indoor management at that. As such, let us not raise them in this august place, Delhi, unless there is special need. When there is a small percentage of 10 per cent, they say, "will you kindly control this activity of the company?" Let us do it that way. That is my suggestion.

Shri Naushir Bharucha: Page 29, clause 138, section 372. It deals with the purchase of shares of one company by another company. You say about the proposed new sub-section that no company other than an investment Company can invest in shares of other companies more than 20 per cent of the subscribed capital of the investing company. I do not think that your point is correct.

Shri J. D. Choksi: You may be right.

Shri Naushir Bharucha: We have to see to it. Now, what measure would you suggest to prevent unhealthy cornering of shares as distinct from *bona fide* investment for industrial development?

Shri J. D. Choksi: For unhealthy cornering of shares, we have a group of sections: sections 398 and 399 onwards. They are there. They must remain. They have got nothing to do with this. It is the interlocking of funds that is sought to be controlled. It is a bad thing, of course. I agree.

Shri Naushir Bharucha: By interlocking of funds, that practice can be developed.

Shri J. D. Choksi: You want to bring in new industries into the country. Many of these industries require very large capital, which you cannot get from your own shareholders. So, what you do is, you make an arrangement with the foreign concern and it says, "I will set up a unit in India provided a certain large industrial company joins hands with me". It may be for the moment that that industrial company would have to put in more than 30 per cent of its capital or 40 per cent.

Shri Naushir Bharucha: I wanted to know whether you think that the practice of interlocking of funds, if permitted, would lend itself to corrupt practices. What did the Mundhras do?

Now, I pass on to page 30—clause 153—section 408. It deals with the powers of Government, to prevent oppression and mismanagement. You have made a proposal that "no increase in the number of directors for the time being in office shall take effect...."etc.

Shri J. D. Choksi: Frankly I think there is a mistake in the proposal in the Bill. Why cannot ordinary elections take place for directorship? I am quite sure the department will appreciate that.

Shri Naushir Bharucha: That is to prevent undesirable characters coming into the electorate.

Shri J. D. Choksi: This does not happen.

Shri Naushir Bharucha: According to you, is it not your intention that section 408 should be scrapped?

Shri J. D. Choksi: It is there. The present Bill provides that no change should be made in the direc ors so long as the directors appointed by virtue of this section are in office, without Government's approval. All I say is, what is intended really is that no additional appointment of directors should take place. Say that. Do not prevent directors being elected in the ordinary course supposing that the Government director continues for two or three years.

Shri Naushir Bharucha: I follow. say no additional director should be appointed, what is the position? Supposing there are eight directors in a Board and if the Government approve of it, knowing that they are good directors, and if you remove two and put in undesirable two, the number does not increase, and the Government's purpose is defeated.

Shri J. D. Choksi: You can only remove a director at a general meeting. Supposing the existing two are undesirable and the shareholders remove them and put in two good people, why should that not be done? Why should it go to Government?

Shri Naushir Bharucha: I follow-I come to page 31—clause 165 —section 456. It deals with liquidation proceedings. Power is given to the liquidator to obtain possession of property even from a third party. You say, why should it be the third party. Would it not defeat our purpose if your proposal is accepted, and if the property of a company is transferred to a third party, on the eve of disbanding its business, would it not defeat our purpose?

Shri J. D. Choksi: My answer to that is this. In that case the third party will be holding the property on behalf of the company. What I was trying to say is this. Supposing there is a pledgee of goods, why should not the pledgee have a right to retain control over those goods. That is the point.

Shri Naushir Bharucha: There is nothing to prevent the District Magistrate from holding an enquiry.

Shri J. D. Choksi: He can pass orders straightaway. That is the point.

Shri Naushir Bharucha: With regard to clause 190, I quite see the force of your proposal. I think your objection could be met if we say 'without reasonable cause'.....

Shri J. D. Choksi: That is what I have said in my proposal. I am glad that we are agreed on one clause.

Shri Naushir Bharucha: In your comment on clause 200, you say that section 629(A) is against the principles of jurisprudence. May I invite your attention to section 63 of the Indian Penal Code? It says that where no sum is expressed upto which a fine may be imposed, an unlimited amount of fine may be imposed.

Shri J. D. Choksi: Quite right. You are a far better criminal lawyer than I am. But may I say that there I would have no objection. There it is a question of the extent of punishment. It is a much smaller field than contemplated here.

Shri Naushir Bharucha: With regard to clause 202, is it your proposition that it would be much better and in the interest of the companies to discuss the terms and their application and that they would be accepted rather than rejected....

Shri J. D. Choksi: That is exactly what I say. Government often imposes terms and conditions and it is done with the consent of the company because that is permitted here. But as stated here, Government may impose conditions which may have nothing to do with the subject matter. This is rather sweeping.

Shri Naushir Pharucha: With reference to the proposal contained in item 43 of your memorandum, you have said that. . . one such item is item (4) in which the estimated amount of contracts remaining to be executed on capital account and not provided for are required to be stated.' Can you really maintain that it can not really be estimated? Is it merely a guess work.

Shri J. D. Choksi: It is an item of budgeting.

Shri Naushir Bharucha: Therefore, it is only an estimate.

Shri J. D. Choksi: Therefore, it should be in the directors' report so that the shareholders can come to know that capital costs are being incurred commensurate with the construction. In general the shareholders are entitled to know what is the magnitude of the outstanding commitment. Therefore, make it compulsory there. That is what I suggest.

Shri Morarka: About clause 15, new section 43(A) I have heard you saying that in principle you have no objection when the public funds are involved, in a private company being made a public company. If a private company borrows huge funds from Government corporations or from companies to which Government guarantees are given or private companies which borrow a lot of money from the banks, do you not think that public funds are involved in those private companies?

Shri J. D. Choksi: No, Sir, for the simple reason that it was up to the Government or to the banks to lend or not to lend. They have chosen to entrust their money to a private individual. The Government or the bank knew the character of the individual or the company that came to borrow the money. Therefore, I do not think that public funds are involved.

Shri Morarka: That is not my point. Are these public funds or are they not? That is the only question.

Shri J. D. Choksi: It is a matter of opinion. I think the character of the funds had completely changed. What were originally public funds have been converted into private funds.

Shri Morarka: If the Government gives a loan to a company, do you

mean to say that those funds are not public funds? If a loan is given by the Government to a private company, is that loan made out of the Government funds public fund or not?

Shri J. D. Choksi: Quite right. They are public funds in the hands of the Government.

Shri Morarka: These public funds when given to the private companies are involved in that private company?

Shri J. D. Choksi: Right, Sir.

Shri Morarka: You said some thing about this 11 per cent and you also said that ten per cent of this 11 per cent would be one per cent. I could not follow that.

Shri J. D. Choksi: What I was saying was that under this proposal, many genuine private companies will become public companies because a private company in which another private company has 25 per cent of the share capital becomes a public company though that other company remains a private company. Many managing agency companies are of of that character and these managing agency companies will become public companies. The main source of income of these managing agency companies is the managing agency remuneration which is ten per cent of the profits of the companies they manage. The remuneration is for distribution among the organisations of the managing agency company which earned it because the remuneration is so calculated that in the eyes of the legislature and the law, ten per cent is sufficient remuneration for the group of people who are managing the company. If you make this a public company, the directors of the public company who are responsible for the management or perform the services of the management will not be entitled to have the ten per cent which they get but ten per cent of that ten per cent. That is my objection. In fact, if I may say so, this point was very fully explained far better than I am able to do so now, by Shri C. D. Deshmukh on the floor of the House when he dealt with the managing agency remuneration. I have given the reference already.

Shri Morarka: You have said while dealing with clause 43(a) that subsidiary companies lead to some sort of a decentralisation. Could you explain how this formation of subsidary companies leads to decentralisation of managerial powers?

Shri J. D. Choksi: I think I have not said as much as you have said just now. In my memorandum I have not talked of decentralisation at all.

Chairman: But the word 'decentralisation' was used today when you said that the formation of subsidiary companies was also a step towards decentralisation.

Shri J. D. Choksi: In that sense I am right in this way. When you have a large trading organisation as the holding company and that trading organisation also wishes to become the managers or managing agents of other bodies corporate, you find in one corporation an aggregation of multifarious activities. If you create a subsidiary company which is solely devoted to management of the principal companies, then you have decentralisation. You have specialised and fuller service to perform for the principal company, because the only activity of the subsidiary is to inform itself of modern management tecniques and to put them into operation. The directors of that company are not concerned with any trading activity. Their only concern is operating to the best of their ability the various companies of which that particular subsidiary are the managing agents. To that extent there is decentralisation.

Shri Morarka: In essence, decentralisation would depend on the ownership of this subsidiary company.

Shri J. D. Choksi: No, Sir; it would not. After all, management is a form of delegation. I say clause 124 is a

mischievous provision because it prevents companies which are admittedly fully qualified to manage companies from continuing to be managing agents. When you have a company which is solely devoted to exercising managerial function over other companies unfettered by any other trading activity, that company is better qualified to do full justice to the managed companies, because then they have no conflicting interests.

Shri Lal Bahadur Shastri: Instead of forming a subsidiary company, which, you say, will be completely independent, if the holding company constitutes management boards—more than one board if necessary—there will be much closer contact between the management board and the holding company with the same results.

Shri J. D. Choksi: That is a good point. We had thought of it ourselves in 1945. We rejected it because it did not give full status to the directors of the subsidiary board. We have recruited eminent men from public life like Dr. John Mathai and other people in Government service. To give proper status to these gentlemen, you could not make them directors of a subsidiary board. You have to create companies to do it. In fact, I have written a letter to you on this subject pointing out how, for instance, the peculiar situation of the Tata Sons makes it difficult to appoint directors directly to the board of Tata Sons.

Shri Morarka: Regarding clause 124 which deals with new section 325A, I had put a question which the Chairman ruled you would answer later on. Could you explain whether a subsidiary company should have managing agents or not, particularly when the holding company has already a managing agency?

Shri J. D. Choksi: My answer to that would depend on the particular type of subsidiary company. I agree that normally a subsidiary should not have a managing agent. But supposing a subsidiary company consisted of a large textile mill, why should that subsidiary not have a managing agent and why should another company which does not happen to be a subsidiary and which has a smaller textile mill have the right to have a managing agent?

Shri Morarka: The only logic is, because the holding company has already a managing agency, they should manage the subsidiaries as well.

Shri J. D. Choksi: You should make them managing agents of the subsidiaries as well, if they are to be responsible for the management, with or without additional remuneration.

Shri Mazumdar: Without additional remuneration.

Shri J. D. Choksi: Yes; in fact, I do not think the remuneration should be taken twice over. I agree with you.

Shri Morarka: You made a very impressive plea against the scheme of this company law, the tendency towards totalitarianism, etc. Don't you agree that for the proper and effective management of these companies, you must have independent and effective Board of Directors?

Shri J. D. Choksi: I agree.

Shri Morarka: When we speak of independent and effective Board of Directors, would you like to concede the right of representation to the minority shareholders?

Shri J. D. Choksi: Yes.

Shri Morarka: On page 20 of your memorandum there is a small point about entering of details of contracts in the register. You seem to think it cannot be done within 3 days from the date on which the contract is entered into. But actually the Bill says "3 days from the date it is approved by the Board of Directors".

Shri J. D. Choksi: Many of the contracts do not require approval of the Board of Directors. In fact, a

large majority of contracts do not require approval of the Board.

Shri Morarka: Is it not that this section would apply only to contracts which require approval of the Board of Directors under section 297?

Shri J. D. Choksi: The section which requires registration applies to all contracts in which the directors are interested, irrespective of whether the contracts have to be sanctioned or approved by the Board or not.

Shri N. R. Munisamy: Would you throw some more light about section 346 and your suggestion regarding it? You say, whenever there is a change in the constitution of a managing agency, the managing agent should notify the shareholders, and the powers shall be exercisable by the Central Government if an application is made for that purpose by not less than 100 shareholders or not less than one-tenth of the total number of shareholders. I want to know what is the sanctity behind fixing this 10 per cent of shareholders? Does it mean that only number counts and not the contents of the application to the Government? What is it you have got in your mind?

Shri J. D. Choksi: I think, you might address this question to those who framed Section 398. I am taking my words from Section 398. There it is said, minority interest is sufficiently represented by 10 per cent of the share capital or 100 shareholders. I am only following that principle. There must be something at stake. One share-holder is far too a small number. You must have some real figure.

Shri Munisamy: We need not go by number. One intelligent shareholder can still do something in the matter. There is no sanctity with regard to 10 per cent or 100 shareholders.

Shri J. D. Choksi: I am afraid, I cannot agree with you. There must be a representative number. The last gentleman who addressed me said, minority interests should have their representation. I agree, but there must be some definite number, not a single shareholder.

Shri Dave: Now, I come to section relating to depreciation. Your argument is that depreciation charges which are provided for in the income-tax law are not realistic and that they are purely notional, at least during the initiative and development stages. Are we then to understand that the scale that is provided for in the income-tax law is purely notional, devoid of any reality?

Shri J. D. Choksi: I do not think they are devoid of reality. They serve a very definite purpose. They serve a purpose in the initial stages when the companies have to spend very large sums on new plant, etc. The Legislature in its wisdom has thought fit to give them higher depreciation so as to enable them to recoup a part of the cost of their plant. So, it serves a very beneficial purpose. But I disagree with the view that the plant in the early stages suffers greater depreciation than in the later stages of his life, I mean actual wear and tear of the plant. Very often certain plants suffer very little depreciation in earlier years. You will find in the experience of plant histories that plants require far more maintenance and renewals as they grow older in existence.

Shri Dave: Would that mean that when the company has to pay income-tax it would deem to have earmarked a particular sum for depreciation?

Shri J. D. Choksi: That argument, if I may say so, sounds very attractive. But if you kindly look at it over a period of years, it works out to the same thing. Supposing we assume the workable life of a plant as 15 years, now under the Income-tax scales, you will find in the first five years about 70 per cent of the plant will be written off and in the remaining 10 years only 30 per cent is provided for. So, in the remaining

10 years there is an average of 3 per cent. But if you take, what we call straight-line basis and allocate the same life to the plant, say, 15 years, then there will be an even spread of approximately 7 per cent per year throughout the life of the plant. Ultimately, 100 per cent is provided over the same period. In one case, a much larger proportion is provided in the earlier years and a much smaller proportion in later years. In the other case, it is an even spread. That is called a straight-line basis. In the case of the Electricity supply Act, companies are compelled to adopt a certain basis for depreciation. Again, for instance, in the Steel Industry, the prices are regulated having regard to the costs of manufacturing steel and depreciation is an element and the Tariff Commission has laid down that 6¼ per cent on the gross block is a fair provision for depreciation. In other words, the same straight-line basis spread over 15 years.

Shri Dave: In other words, the straight-line basis is more in conformity to reality than the income-tax scale.

Shri J. D. Choksi: In certain industries, yes. In certain fast consuming industries, where the plant is used up quicker, then the income-tax scales may be better.

Shri Dave: Now, I come to clause 104 which relates to the appointment of sole selling agents. You say in your evidence that the type of provisions which are thought to be incorporated in this Act are not found anywhere else in the world. Your argument was two-fold, one was administrative and the other was legal. As far as the legal aspect is concerned, you suggested that discrimination between one selling agent and the other selling agent was not quite in conformity with the spirit of the Constitution. As far as this section is concerned, all that it tries to do is to prescribe a procedure in order to appoint a particular selling agent and that procedure is prescribed for the joint stock company. It is not prescribed for the selling agent at all. Just as under the Constitution everyone has a right to work, but whether I get work or not depends upon the employer, similarly in this case also though every selling agent has a right to be a selling agent of any company he likes, the law tries to prescribe certain procedures to be followed before any joint stock company can appoint a particular person as a selling agent. So, I am not able to appreciate how this section is not in conformity with the spirit of the Constitution.

Shri J. D. Choksi: I will first deal with administrative aspect of the matter. As I said earlier, it is wrong in principle that selling agents should be subject to the approval of the Government because they may be for such a small area and they may be for small periods; they may have to be changed or there may have to be changes in the terms of their remuneration to suit a particular business or a particular product that is being sold. It would be very very difficult to effect these changes without causing a lot of business loss to the companies.

Now, I come to the legal aspect of it. After all, selling agent is not a creature of Company Law at all. Industrial organisations which are not companies have also selling agents. When you regulate corporations who have selling agents on a different basis, you create a difference between the method of treatment between an un-incorporated body and an incorporated body. I have pointed out the practical disadvantages of the incorporated body. Now, I suggest that there is no reason why there should be this disparity. If you want that the sales of particular commodities should be controlled, then you do not need this Act. You have other legislation to do that and you can do that. In fact, you do control the sale of certain commodities under the law. You can do it if you find that certain

commodities, certain products, require to be controlled, their sales and their distribution. Do not have recourse to this legislation; you have powers otherwise. Then that would apply not merely to companies, but to all organisations which produce those goods. That is what I said.

Shri Dave: Here the question is when a particular person is appointed a selling agent by a corporate body which is definitely a creation of law, that corporate body is subjected to certain conditions and certain procedure. As far as the selling agent is concerned there is no restriction on him. He could be a selling agent wherever he likes. Provided he is a selling agent of a corporate body that corporate body has to go through certain procedure.

Shri J. D. Choksi: I agree with all that. But you are placing the corporate body at a very grave disadvantage. That is what I am saying. You are suggesting that there is no technical breach of the letter of the constitution, but I am suggesting that there is a breach in the spirit of the constitution, because after all ultimately it is the shareholders or individuals who own the corporate body and their business suffers.

Shri Dave: Your proposal would be against the constitution, because you are only expanding your area.

Shri J. D. Choksi: I am submitting to an illegality, but I am hoping that by submitting to some illegalities larger illegalities will not be imposed on me.

Shri Dave: You said a little while ago that a distinction is being made, or certain restrictions are sought to be imposed on Indian directors which are not found anywhere in the world. May I draw your attention to the fact that this section only tries to control managing agency companies and not companies generally, because the managing agency system as such is peculiar to this country. Whenever any attempt is made to control that particular system there is bound to be certain conditions and certain provisions which will be peculiar to this country and which will not be found anywhere else in the world. May I submit there is therefore no cause for any feeling of being hurt. It is only an attempt on the part of the legislature to control a system which has outlived its purpose.

Shri J. D. Choksi: I am not quite as hurt as all that. I will say this that this distinction of managing agents as something peculiar to India is not altogether sound. I have some experience of companies abroad in the past and in the present and I know certain American companies approximate somewhat to the managing agency system. And in the shipping lines in Britian they used to have a system whereby companies become managers of those lines with full powers of management very much akin to managing agencies. So it is not quite so distinct. Ultimately companies have to be managed. Whether you call it managing directors, or managers, whether you call it a whole board of directors or whether you call it managing agents, the functions are essentially the same. It is true there have been acts of misconduct, which have been committed by people who have been managing agents. But if you analyse those acts you will very often find the root cause is not they were managing agents but because they were corrupt. That form of mismanagement would have taken place whether you had managing agents, managing directors or any others.

I may tell you that the Cohen Committee in England went into the activities of managing directors and they had a lot to find in regard to mismanagement. Therefore you have got the group of sections which we have copied which enable minority interests to be protected. It is really bad management which has got to be put down and which should be put down. I can assure you it is nothing peculiar to managing agents. I have the same influence as a managing director, the same type of mind; I do the same type of service. It is only because of my

label that you look upon me as an object of suspicion. That I say is wrong and that is what I am trying to correct.

I was a Member of this Company Law Commission. During my short period of service there was no less than 5,000, perhaps more, applications and it seemed to me quite a considerable proportion of those applications should never have come to us. They dealt with a person dying, his shares to be transferred to his representative in the managing agency company. It was quite informal. Why should those things come. So I suggested a procedure whereby unless the company's interests were hurt and shareholders brought the matter to the attention of Government it should not automatically come to the Advisory Commission and to the Government.

Shri Nathwani: You say that a considerable minority of shareholders should be given representation on the Board. I think the best way to secure this is to appoint directors by the system of proportional representation. How will you secure due representation of minorities on the Board of Directors?

Shri J. D. Choksi: There are provisions in the present law which enable that to be done.

Shri Nathwan: There is that section about optional representation.

Shri J. D. Choksi: Since the 1956 Act I have not heard of any representative bodies wanting to appoint directors on the basis provided in that section. But the section is there and the powers given in it can be exercised.

Shri Nathwani: You say you are totally in favour of a substantial minority of shareholders being given representation on the Board of Directors. What is your way for securing that? Is there any other system except that of proportional representation, or leaving the matter to the Government to nominate two Members as directors.

Shri J. D. Choksi: What has been just pointed out is an objection which I have found exists in practice. You cannot label individuals as belonging to a minority or majority except in regard to specific resolutions.

Shri Nathwani: When it is a question of appointing directors: supposing seven directors are going to be appointed, 20 per cent of the voters want to elect one of their nominees as a director. Their representation can only be secured if you adopt the system of proportional representation. According to the present, distributive, system, often though they have 49 per cent of voting strength they cannot appoint even one of them as directors. So, when you accept this principle of a minority, a substantial minority, being represented on the board of directors, is there any other way except that of proportional representation? Or, of course, you may leave the matter to the Government who have the power to appoint two of the members as directors. That was a compromise which was accepted by Shri Deshmukh at that time in deference to the strong plea raised by myself and Shri Morarka.

Shri J. D. Choksi: The difficulty I find in this matter of minority shareholdrers appointing directors is not a difficulty in regard to the principle. I accept the principle whereby all interests of the shareholders are represented on the board. I accept that principle. But the difficulty arises in providing a suitable machinery to enable, what is called, a minority of shareholders the right to have their own director on the board. If you say that when 20 per cent of the directors come and say "we want to appoint a director of ours on the board", it has to be done, another 20 per cent may come forward and say "we want to appoint a director", and a third 20 per cent will come forward and say "we want to appoint one".

Shri Morarka: What is wrong there?

Shri J. D. Choksi: The result will be that you will have groups and you will have directors who do not

represent the shareholders as one body. That may not be to the advantage of the company; in fact, very often it is not an advantage. It is far better that all the directors have the approval of all the shareholders.

Shri Nathwani: Certainly not. I quite see that depending on the number of the directors on the board, even a substantial minority will have no other way of appointing their nominee on the board except by this system. Suppose four directors are to be appointed. Even if you have 40 per cent votes, a group which commands 51 per cent of the votes will have all its nominees appointed as directors on the board. Even if 49 per cent of the voters want a single nominee, that nominee will have no place under the present system.

Shri J. D. Choksi: I appreciate that. But the only feeling I have is the practical difficulty.

Shri Khandubhai Desai: Your memorandum and suggestions, I take it, have been based on your experience in your own group of companies.

Shri J. D. Choksi: Not entirely, Sir. I hope you don't think I am not experienced outside my own group.

Shri Khandubhai Desai: The proposed amendments are mainly based on the recommendations of the Sastri Committee which has gone into the question of the law as it should be applied to thirty thousand odd companies. So, naturally, we cannot follow in our consideration all the good suggestions that you have made from your point of view.

Shri J. D. Choksi: That is my misfortune, Sir. But may I say this that the Sastri Committee has made no report on the proposed clause 124?

Shri D. L. Mazumdar: The rest you accept?

Shri J. D. Choksi: No, no I do not accept the rest.

Shri Kanungo: About clause 47A you have suggested that as long as the total membership does not exceed fifty, it should be considered as a private company.

Shri J. D. Choksi: Yes.

Shri Kanungo: That means that fifty should be considered as the total membership of all the holding companies?

Shri J. D. Choksi: Including the companies in which the shares are held—the holding companies plus the company in which the shares are held.

Shri D. L. Mazumdar: Do you mean individuals or persons?

Shri J. D. Choksi: The question that was put to me was different. There again I accept that if in a company there are corporate holders, they have got to be brought in. So you have fifty individuals ultimately.

Shri Kanungo: You would like to limit it to fifty individuals?

Shri J. D. Choksi: Yes.

Shri D. L. Mazumdar: That is, a legitimate, *bona fide* private company is one where it does not exceed fifty individuals? But that is not the law today.

Shri J. D. Choksi: When I say fifty, I include corporate bodies, I mean provided they do not hold more than 25 per cent.

Shri D. L. Mazumdar: Suppose a corporate body holds 5 per cent in a private company it will still be a private company.

Shri J. D. Choksi: Yes. I never suggested anything else.

Chairman: Thank you very much.

(*The witnesses then withdrew*)

III. The Indian Merchants' Chamber, Bombay Spokesmen:

1. Shri Lalchand Hirachand.
2. Shri Gopaldas P. Kapadia.
3. Shri R. G. Saraiya.
4. Shri Tanubhai D. Desai.
5. Shri C. L. Gheevala.

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

Shri Lalchand Hirachand: I would like to submit one thing. It is nearly quarter past one of the clock, and I understand that you usually adjourn at half past one of the clock. Would it not be desirable if we meet tomorrow morning instead of for just ten minutes or so now?

Chairman: But we understood that there was your parent body also which was going to come and tender evidence before us. We thought that perhaps you might not have much to add to what they have to say.

Shri Lalchand Hirachand: No, the views of the two bodies are independent. We have submitted our memorandum already.

Chairman: We have got it. If we start it just now, we can continue the rest tomorrow morning.

Shri Lalchand Hirachand: All right.

Chairman: Your memorandum has been circulated to all the Members, and they have read it. If there is any particular thing that you want to add or supplement, you may do so; or the Members might begin directly with their questions, and you might give your answers or explanations in reply to the various questions.

Shri Lalchand Hirachand: At the outset, I may make a few preliminary remarks. My Chamber feels thankful to the committee for having given us this opportunity of explaining in greater detail the views expressed in our memorandum. The Chamber which we have the honour to represent this morning is a leading organisation of business people and industrialists in the Bombay State. In fact, it is the leading organisation on that side. It has 130 associations of different trades and industries as its affiliated members, and nearly 2000 individual members.

The main points that we have made in our representation are as follows. We feel that the overall objective underlying the new legislation has been that joint-stock enterprise in the country should subserve the larger national economic policies. The company law that was enacted in 1956 was a huge piece of legislation which changed considerably the old company law; and it was feared at that time that this big change might cause a lot of difficulties to the business community; and it was expected when the committee was appointed to investigate how the company law was operating, that they would go into the various difficulties that the business community has been experiencing. There have been various suggestions in that committee's report which are certainly helpful in removing those difficulties. But the proposed new legislation is also another big piece of legislation which has again brought into existence new ideas and will result in a lot of thinking on different lines. No doubt, it is the intention of the Bill to safeguard the legitimate rights and privileges of the shareholders. But my Chamber feels that in some respects it does much more than that, and it puts restrictions on the companies and the management. It will not be helpful in that respect. We have given in our memorandum the details of that, and we feel that further control on company management may not be useful. Government have got large powers already, and if they are judiciously used, they can regulate the working of the companies for the benefit of the shareholders, and any further controls should not be introduced.

There are certain provisions in the Bill which are of an avoidable nature, and could be safely removed from its scope, since they can in no way be said to involve issues of public policy from the point of view of protecting the interests of the community at large.

I would like to refer in this connection to the provisions of clause 71 of the Bill requiring a private company to file with the registrar its profit and loss account. The provisions of clause 75 require the company to have the accounts of its branch offices audited; and clause 90 introduces the need for a special resolution for appointing additional or alternate directors.

Another point that I would like to refer to relates to the large number of provisions vesting in Government vast powers of interference to which I have already made a reference. That, from the Chamber's point of view, will not be helpful for the proper administration of the companies or for the proper management of the companies. Powers such as for the seizure of documents by registrars, and powers of inspectors to examine employees of a company, sought to be conferred by clause 79, are some of the additional powers which are included in the amending Bill. In the exercise of these various powers, there is every scope for arbitrary action, and undue interference in the day-to-day affairs of the joint-stock companies.

I would, therefore, submit that it is necessary that these powers should be kept to the minimum and there should also be provided such checks so that the exercise of such powers by inexperienced officers does not come in the way of the management of joint-stock companies.

Shri Moraka: Regarding your comment on clause 3 (c) which appears at page 8 of your memorandum, could you please explain a little more clearly how the formation of Indian subsidiaries with foreign collaboration etc. would be affected?

Shri R. G. Saraiya: If the foreign company owns the entire capital of the Indian private company, then the Indian company will be treated as a private company. But, if you seek the collaboration, in which the foreign company does not own the entire capital, then the Indian company will be treated as a public company and will be subject to the handicaps which are there to a public company as compared with a private company with the result that the formation of private companies with foreign collaboration of say 50-50 or 75-25 may not be encouraged; or it may be positively discouraged.

Shri Morarka: Is it your contention that if Indians own shares in a private company together with foreigners then the company would become a private company and not otherwise?

Shri R. G. Saraiya: I have not followed the question.

Shri Morarka: Is it your understanding that a private company would become a public company if the Indian nationals hold shares along with foreigners and not othrewise?

Shri R. G. Saraiya: If there is a company with foreigners and Indians, then it becomes a public company unless the foreigners own the entire capital. It will go against the registration of companies in which there are both foreigners and Indians. It will encourage the entirely foreign owned company as against a mixed venture or a joint venture.

Shri Morarka: What is the position under the existing law?

Shri Lalchand Hirachand: There is no restriction like this at present.

Shri Tanubhai D. Desai: At present there is no restriction of the type spoken by the hon. Member because there is no provision that Indian companies like this are to be treated as public companies.

Shri Morarka: You are confusing clause 3(c) with clause 15.

Shri P. T. Leuva: Clause 15 relates to private companies.

Shri Tanubhai D. Desai: At present it would not be treated. But, ultimately it would be treated as a public company and all the disabilities, if I may say so, would apply to it.

Shri Morarka: Is it your suggestion that even those private companies which are wholly owned by foreigners or foreign companies should be treated as public companies?

Shri Tanubhai D. Desai: We do not suggest that. We do not suggest a worsening of the situation. We want collaboration to come and, therefore, we do not want this provision that private companies which are subsidia-

ries of foreign companies should be treated this way. We do not agree with the insertion of this provision.

Shri Morarka: Do you agree with the principle that if public funds are invested in private companies then the private companies should submit themselves to the regulations of public company?

Shri Lalchand Hirchand: In our memorandum we have accepted the principle. The only consideration that we have suggested is a two-fold one. We have suggested that 25 per cent. is too small and that it should be raised to 33 ⅓. The second thing we have said is that if private companies invest in a private company, that should not be treated as a public company, because private company is after all a private company and, therefore, it need not be treated as public investment.

Shri Morarka: Apart from the question of share capital, if public funds are invested by way of loans or otherwise, then don't you think that public funds are involved in private companies?

Shri Lalchand Hirachand: That is not the criterion. A private company may take loans from a bank. A bank is a public concern. What we mean by funds is the share capital involved and it is the share capital that should be the criterion and not loans or any other form of money obtained.

Shri Morarka: Surely, when you accept the principle of public money being involved in private companies, whether it is investment in the form of share capital or in the form of loan, what difference does it make?

Shri Lalchand Hirachand: From the business point of view it does mean quite a lot of difference. A loan is quite different from invested capital. A party giving a loan has got ample opportunties of getting back his money and for dictating the terms of the loans, while capital invested is differently treated.

Shri Morarka: I think, on the other hand, the shareholder has got an opportunity of selling his shares and washing his hands off. But, in the case of a loan one cannot do that. In any case, once you accept the principle that public funds are involved in a private company, then it should become a public company.

Shri Lalchand Hirachand: We do not understand loans to be public funds. By public funds we mean the capital invested in the company and by capital we mean only or mainly equity capital coming from public companies and not from banks.

Shri Morarka: If a bank buys shares in a private company—say to the value of Rs. 50,000|- constituting 25 per cent, then, according to your memorandum, that company would become a public company; but, on the other hand, if the bank gives a loan to the extent of Rs. 5 lakhs that should not become a public company.

Shri Gopaldas P. Kapadia: When considering this question we must distinguish between the persons contributing the funds. The source from which the money comes is immaterial. What I mean is this. If a private company gets loan from outside, they do not become funds of the outside source. They are funds of a private person and that makes the difference. We are concerned with entity and entity. Therefore the source from which a particular entity acquires finance is not quite relevant or matter for the consideration.

Shri Morarka: If the private company is given a loan by Government of an autonomous corporation belonging to Government, don't you think public funds are involved in that?

Shri Gopaldas P. Kapadia: That is a much larger issue. Here we are discussing the question in terms of the ownership of the companies. We are discussing the Companies Act where the regulation of the interests of the investors—the shareholders—

are concerned. In that light, the only relevant issue, in the humble opinion of the Chamber, is the contribution of funds by an entity and, therefore, no outside factor should be the material for consideration.

Shri Lalchand Hirachand: In this respect I would draw the attention of the hon. Member to this. The Bill says 25 per cent. of the share capital. It does not refer to public funds as loans or in any other form. From that point of view the memorandum says that the Chamber would like to make it clear that it is the paid up share capital and not loans or other financial assistance.

Shri Morarka: I will continue tomorrow.

Chairman: I would request hon. Members just to wait for a couple of minutes because we have to fix the time when we meet tomorrow. Members might agree to sit in the afternoon also tomorrow so that we might finish with the witnesses whom we have called for tomorrow.

Shri Morarka: Five hours are too strenuous. We have to study all the papers.

Chairman: We follow these timings so that the witnesses might not be put to much inconvenience. We might finish tomorrow, and perhaps we might not feel any difficulty afterwards if we can finish tomorrow with the witnesses whom we have called, and then I would not request you to sit in the afternoon. So, shall we meet at half past eight tomorrow?

Shri Lalchand Hirachand: We begin at half past eight tomorrow, and the spokesmen of the shareholders who have been called, may perhaps wait a little longer.

Chairman: We shall continue with you tomorrow at half past eight.

(*The witnesses then withdrew*)

The Committee then adjourned.

JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL 1959

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959

Wednesday, the 8th July, 1959 at 08.30 hours

PRESENT

Sardar Hukam Singh—*Chairman.*

MEMBERS

Lok Sabha

2. Shri H. C. Heda
3. Shri Satyendra Narayan Sinha
4. Pandit Dwarka Nath Tiwary
5. Shri Shivram Rango Rane
6. Shri Radhelal Vyas
7. Shri N. R. M. Swamy
8. Shri Jaganatha Rao
9. Shri Ajit Singh Sarhadi
10. Shri Radheshyam Ramkumar Morarka
11. Shri G. D. Somani
12. Shri Feroze Gandhi
13. Shri Mulchand Dube
14. Shri Rohanlal Chaturvedi
15. Shri Arun Chandra Guha
16. Shrimati Sucheta Kripalani
17. Shri Narendrabhai Nathwani
18. Shri Nityanand Kanungo
19. Shri K. T. K. Tangamani
20. Shri M R Masani
21. Shri Yadav Narayan Jadhav
22. Shri Tridib Kumar Chaudhuri
23. Shri Surendra Mahanty
24. Shri G. K. Manay
25. Shri Naushir Bharucha
26. Shri Lal Bahadur Shastri

Rajya Sabha

27. Shri Khandubhai K. Desai
28. Shri T. S. Avinashilingam Chettiar
29. Shri P. D. Himatsingka
30. Shri Babubhai M. Chinai
31. Shri J. S. Bisht
32. Shri P. T. Leuva
33. Shri M. P. Bhargava
34. Shri R. S. Doogar
35. Shri J. V. K. Vallabharao
36. Shri Rohit M. Dave.

DRAFTSMAN

Shri S. P. Sen Verma, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS.

Shri D. L. Mazumdar, *Secretary, Department of Company Law Administration.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

WITNESSES EXAMINED

I. *The Indian Merchants' Chamber, Bombay.*

Spokesmen:

1. Shri Lalchand Hirachand
2. Shri Gopaldas P. Kapadia
3. Shri R. G. Saraiya
4. Shri Tanubhai D. Desai
5. Shri C. L. Gheevala

II. *The Bombay Shareholders' Association, Bombay.*

Spokesmen:

1. Shri Jagdish J. Kapadia
2. Shri Tanubhai D. Desai
3. Dr. R. C. Cooper

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

Spokesmen:

1. Mr. J. D. K. Brown
2. Sir Walter Michelmore
3. Mr. D. S. Gorer.

I. The Indian Merchants' Chamber, Bombay.

Spokesmen:

1. Shri Lalchand Hirachand
2. Shri Gopaldas P. Kapadia
3. Shri R. G. Saraiya
4. Shri Tanubhai D. Desai
5. Shri C. L. Gheevala

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

Shri Morarka: I wish to refer to page 15 of your memorandum where regarding clause 60 you say:

"According to this explanation, the remuneration payable to a managerial personnel will include expenditure incurred by the company in providing rent-free accommodation or any other benefit or amenity free of charge or at a concessional rate. It cannot be contended that all amenities provided to the managerial personnel at the expense of the company are for the benefit of the personnel concerned, as some of them would be expenditure incurred for the purpose of the business of the company. In such cases, such expenditure cannot be termed as remuneration paid to the personnel concerned."

I want to know what exactly you mean and what you want.

Shri Gopaldas P. Kapadia: Here the question is of a wider nature. All amenities as such need not be taken to be amounts paid with a view to meet the personal needs of the incumbant in office. For example, if a person has been appointed in a particular position and he is also given the charge of looking after the customers of the company and those customers when they come stay with him, it would be expenditure incurred on behalf of the company and a fixed allowance may be given to him or reimbursement of the actual expenditure incurred. In the case of actual reimbursement, there is no difficulty, but where an allowance has been given, out of which he meets the said expenditure for the comfort of the customers or other people who come in relation to the business of the company, that amount will not be a personal benefit to that incumbant in office. This is one example.

Shri Morarka: You have no objection to including those items which are incurred by the company exclusively for the benefit of the employees.

Shri Gopaldas P. Kapadia: In relation to that question, I should say that it is very difficult to lay down a hard and fast rule. Even for income-tax purposes, when one begins to value the perquisites, it is a question of making a broad analysis. For example, in respect of the premises used by some of the persons in Government service, if attempts were made to value the houses they are occupying today, it would give us a fantastic result, because it would be out of all proportion to the salary. The actual rent for that house would be much higher. It is not a question of trying to value that sort of amenity on that basis. On the same lines, when you consider the amenities provided to persons serving in business, a broad approach of the nature which is made in relation to the service of an administrator requires to be made.

Shri Morarka: Is it, therefore, your suggestion that no amenities provided by the company should be treated as a part of the remuneration irrespective of their nature?

Shri Gopaldas P. Kapadia: If it is a personal amenity given to him of which he takes full advantage, certainly it should be included.

Shri Morarka: If a residential site is given exclusively to a director for his use, would you like to include it or not?

Shri Gopaldas P. Kapadia: Would he be just a director in office or a full-time director of the company? We will have to make a distinction between the two.

Shri Morarka: Suppose he is full-time.

Shri Gopaldas P. Kapadia: In that case, he makes full use of the residential accommodation and there is no reason why we should not include it.

Shri Lalchand Hirachand: There is one thing which I might say. That director may be going out of town to visit the factory.

Shri Khandubhai Desai: That is only temporary.

Shri Lalchand Hirachand: When he goes out to visit the factory, naturally he has to be given a residence and certain amenities there.

Shri D. L. Mazumdar: That will not be taken into account.

Shri Gopaldas P. Kapadia: At the time some legislation is made, the intention is something different, but when it is translated and interpreted afterwards, difficulty arises. It is our endeavour to put our views before the Joint Committee so that such a position may not arise.

Chairman: If the words are not clear, our intentions and objects here are the same and those words can be properly conveyed. It is for the courts to interpret them, but as you have said, it is only our endeavour to put it properly; whether we succeed or not is a different matter.

Shri Lalchand Hirachand: It is not only the courts that interpret, but even the Income-tax Officers interpret the letter of the law and many times lots of difficulties arise.

Shri Morarka: I refer to clause 62 on page 16 which relates to the payment of dividend after providing depreciation. Could you please tell us, what is your objection if depreciation is provided before dividends are paid?

Shri R. G. Saraiya: The difficulty arises because in the present context of the companies expanding their work and production and putting up new plants, they are not able to earn depreciation on the plant which is being added up and it takes three or four years before it can be provided. As a result, any company which has got an expansion programme, even if it is an old-established company, cannot pay a dividend unless, of course,

it has got past reserves. The real sufferers would be the share-holders and particularly the smaller share-holders because they have to depend more on the dividend than the bigger share-holders. For the bigger share-holders if there is no dividend for five years, they benefit by capital appreciation, and so on. For the smaller share-holders it is a great handicap and, therefore, it has been represented particularly by the share-holders that the companies should be enabled to pay dividend after making the necessary stipulation or note in the balance sheet of the company to the effect that shortfall in depreciation, if any, will be made up.

Shri Morarka: Would you, therefore, suggest that there should be a smaller scale of depreciation or there should be no provision at all about this depreciation?

Shri R. G. Saraiya: That should be left to the discretion of Directors. I do not suppose, even the share-holders would allow the capital to be wiped out and pay dividend.

Shri Morarka: Capital cannot be wiped out in one year. But if you pay dividend without providing for depreciation, then certainly it means reduction of capital.

Shri Tanubhai D. Desai: It is not payment out of capital. Even today there is no law which requires that depreciation should be provided.

Shri Morarka: Because there is no law, the Bill seeks to make the law. That is quite clear and if you pay dividends without providing for depreciation, then does it not mean that you are paying dividend out of the depreciated capital assets and to that extent your capital depreciates and you are making payment out of capital. What I want to ask is, whether you want a lesser scale of depreciation or no depreciation at all.

Shri Tanubhai D. Desai: That should be left to the discretion of the Company and the share-holders. Share-holders will know better to do it or not.

Shri Morarka: That would apply to everything, to each and every clause.

Now, I come to page 17, clause 63. Could you please let us know whether any instance has come to your notice where the dividends once declared have not been paid either in time or fully.

Shri Gopaldas P. Kapadia: There are only a few cases of companies which issue the dividend warrant only on request. It is something unusual to our mind and that is the only case which would be a case of difficulty. Otherwise, in Bombay there is no such difficulty.

Shri Morarka: I think there is a provision in the present Bill that dividends once declared must be paid within one month; otherwise, there will be a penalty.

Shri Lalchand Hirachand: That is right.

Shri Morarka: Do I take it there is no specific instance that you can quote where the company has failed to pay the dividend within a stipulated time?

Shri Gopaldas P. Kapadia: Not to our knowledge.

Shri Satyendra Narayan Sinha: I have got only one question to ask. On page 21, with respect to the audit of the branch offices, the Memorandum says that there are practical difficulties in implementing this particular provision and it is further suggested that the Central Government may be empowered to waive the proposed requirement of branch audit also in the case of any Public company, which is likely to experience genuine difficulties in instituting branch audits. Are you not satisfied with the provision in section 8 of the Act which empowers the Central Government to exclude any branch office from auditing.

Shri R. G. Saraiya: We do not want that the audit for branch offices should be made compulsory because

often branches are just purchasing agencies, say, for cotton and oil seeds. Sometimes the branches are opened for 15 days during the seasons. It is not proper that the auditors from Bombay or Calcutta, wherever the head office is located, are asked to audit these branch offices. It would be a great hardship and it will cost a lot to the company.

Chairman: The Hon'ble Member says that you yourself have suggested in your Memorandum that the Central Government may be empowered to waive the proposed requirement of branch audit, etc. Now, under Section 8, the Central Government has already got that power.

Shri Gopaldas P. Kapadia: The definition of the 'branch' is attempted to be changed by this Bill. That puts us in a typical position. Actually, as a Member of the Company Law Committee, I had the privilege of having full discussion regarding this definition. We found inherent difficulties in defining 'branch'.

Chairman: You will excuse me. My question was rather a simpler one. You have made a suggestion that there will be too many difficulties. It may not be practicable. These branches are spread out in far flung areas and that would cause hardship. That is all right. So far, I agree. Then to remedy that, you have put two suggestions. One is, that this may not be compulsory audit. That is one thing. Then you say that the Central Government may be empowered to exempt any branches or companies. The question was, already there is a provision under section 8, that the Central Government has that power. Do you mean to say by this suggestion any other thing or the same power that is already there?

Shri Gopaldas P. Kapadia: No, Sir. What I say is that the question of branch audit is linked up with the definition of the term 'branch'. If you widen the definition of 'branch', then the difficulty will be of a grave nature. As it is, 'branch' is defined as something which is described as such by the company. If you attempt a definition of the term 'branch' to include in its scope all the purchasing centres, all the sales centres and also the processing and manufacturing centre, then the difficulty will be all the more greater.

Shri Tanubhai D. Desai: There is a little confusion. Section 8 provides that the Central Government may declare that certain establishments will not be treated as branches. What we want is that even if an establishment is a branch within the meaning of the section, if there are practical difficulties, the Central Government should take powers....

Shri Satyendra Narayan Sinha: Power is there under section 8.

Chairman: What he says is that that power is not enough as it does not apply to every branch. Under the present power, they can exclude some establishments. They want an express provision to exempt certain branches.

Shri Satyendra Narayan Sinha: Under clause 2(d) of this Bill....

Chairman: You need not pursue that. He has given his point of view. We can consider it.

Shri Satyendra Narayan Sinha: Now, I come to page 13, clause 53. The objection raised against this clause is that the requirement of filing with the Registrar any resolution of the Board of Directors of a company should be waived because that will contain information regarding the interest of the particular Director or Directors, which will not be in the interest of the company. They say that all such information will be available in the Register of Contracts to be maintained by companies and that will safeguard the interests of the investing public. By merely filing with the Registrar the resolutions of the Board of Directors it does not mean that the entire public will come to know of this information.

Only such persons as are interested in knowing it will come to know of it. What is the particular objection to this provision?

Chairman: In one of the memoranda—it may be here or elsewhere—I remember to have seen it stated that they have suspicions against the Registrar's office on the ground that things may leak out from there.

Shri Satyendra Narayan Sinha: It is not stated here. That is why I am asking this question.

Chairman: Even if it goes to the Registrar's office, things may leak out from there. Secret information may not be kept there; this was the reason.

Shri Satyendra Narayan Sinha: That will leak out only to those who are interested in it.

Shri R. G. Saraiya: What about the procedural difficulties both on the side of the companies as well as on the side of the Administration in regard to maintenance of the registers and duplication of work in the office of the Registrar? I should think it will entail enormous amount of work both by the companies as well as by the Registrar with regard to information which will be available under the Companies Act. Why should the whole thing again be duplicated and kept in the Registrar's Office. And there is also the possibility of leakage of information because after all the clerks and other staff are human beings.

Shri Satyendra Narayan Sinha: What I submitted was this: Only such persons as are interested in knowing the secret would come to know of it. I understood the witness saying that this system will multiply the work in the office. Would they supply the information to those who are interested in knowing the information from the company?

Shri R. G. Saraiya: They have got a right to see under the existing Act.

Shri Satyendra Narayan Sinha: Any member of the public?

Shri Tanubhai D. Desai: Any member of the company.

Shri Satyendra Narayan Sinha: Not any member of the public?

Shri R. G. Saraiya: Any member of the public will also. . .

Shri Satyendra Narayan Sinha: The prospective shareholders of the company.

Shri R. G. Saraiya: Not only the prospective shareholders, but also the prospective competitors. If they manufacture certain products, they will be more interested in this as prospective competitors, than as prospective shareholders. That is why we referred to the possible leakage of the information, because all possible use will be made by them. . .

Shri D. L. Mazumdar: Not the staff of the Registrar's office.

Shri R. G. Saraiya: I always maintain that the staff of the Registrar's office and of the companies are the same Indians who are equally honest or equally dishonest.

Shri N. R. Munisamy: New section 240-A is introduced with a view to empower the inspector to enter, search and seize documents. You have taken objection to this. Instead of the inspector applying to the First Class Magistrate for the seizure order, you want him to apply to the District Court. Could you give us your reasons why you want this change in jurisdiction?

Shri Lalchand Hirachand: The reason is that the district court is a higher judicial authority and in such cases as these it is desirable that the district court should give permission.

Shri N. R. Munisamy: The district court and a First Class Magistrate have the same powers. I do not find any justification for this change.

Shri Lalchand Hirachand: For the inspector, it makes little difference whether he goes to the district court or to the First Class Magistrate.

But from our point of view, I think it is more desirable to have a higher authority rather than the lower authority.

Shri Nityanand Kanungo: When you say district court, do you mean the District Judge?

Shri R. G. Saraiya: Yes.

Shri N. R. Munisamy: Then you say that you should be given a chance before the orders are passed. Do they pass order *ex parte*?

Shri Tanubhai D. Desai: Usually, orders are passed *ex parte* because there is a danger of tampering with the record. The order is obtained on that ground. Therefore, it is all the more necessary that the highest judicial authority in the district should do this.

Shri R. G. Saraiya: We have said that the company concerned should be given an opportunity to appear before the court.

Chairman: Has the district court authority to order seizure?

Shri Tanubhai D. Desai: At present there is no power. The suggestion with regard to clause 77 is that the man should take the power of seizure from the First Class Magistrate. What we are suggesting is that there should not be power given to the First Class Magistrate, but it should be given to the District Judge.

Chairman: Unless we amend the Criminal Procedure Code, we cannot do it.

Shri Tanubhai D. Desai: In fact the District Judge is dealing with companies. He is vested under the Act with the various powers relating to companies. As the District Judge will be knowing the provisions of the Companies Act and the methods of their working, he should be vested with this power.

Shri Nityanand Kanungo: I suppose that your point is understood. For this purpose the Criminal Procedure Code has to be amended.

Shri Rohit Manushankar Dave: On page 5 of the memorandum it has been stated that some of the provisions of the amending Bill are meant to take away the rights of the shareholders. It has also been argued that it would mean a curtailment of the rights of the shareholders. May I know from the witnesses whether, as practical businessmen, they have come across any instances where because of the peculiar nature of the shareholdings and the discretion thereof and because of the peculiar nature of voting at the shareholders' meeting, they have felt that there are cases in which the shareholders' meeting is not a proper forum to safeguard the interests of a sufficient number of shareholders and in which case some supervising authority is necessary in order to see that these interests are safeguarded?

Shri Gopaldas P. Kapadia: In the first place the Companies Act contains provisions for regulating the voting rights of the various categories of shareholders. That is a safeguard by itself. As regards instances where the shareholders' privilages are being taken away, according to the present statute the minimum remuneration of Rs. 50,000 can be paid to the managing agents by the company. An attempt is now being made to regulate that privilage of the shareholders and give that privilege to Government.

Actually in the administration of the Companies Act, 1956, cases have also arisen and I can relate it from my personal experience where although the companies were prepared to sanction this amount of Rs. 50,000, the Company Law Administration with the privilege of renewing the agency agreement made it a condition that they were prepared to renew the managing agency agreement provided they would reduce this Rs. 50,000 to a lower figure. In certain instances the varying of the amount went by a pair of scales, that instead of Rs. 50,000 we will sanction Rs. 45,000.

These cases came before the Advisory Committee also. These are cases where the voting rights could not be said to be controlled. This is an instance of a *bona fide* nature. This is an instance where the rights and privileges should be left to the shareholders to be regulated by themselves.

Shri Nityanand Kanungo: That means the Advisory Committee is not an adequate safeguard?

Shri Gopaldas P. Kapadia: I will put it in a different way. Actually, when the Company Law Technical Advisory Committee was formed I had my fears about it. I felt that the utility and value of the Commission should not be jeopardised. Today, the position is that the functions of the Advisory Commission have been limited to an extent.

Shri D. L. Mazumdar: Not in the least.

Shri Dave: Assuming that the Company Law Administration is not in a position to safeguard the interests of the shareholders, have you got any other suggestion whereby these interests in case they are jeopardised are safeguarded?

Shri Lalchand Hirachand: Taking more powers for Government is not a solution for this.

Shri Dave: What else is the solution?

Shri Lalchand Hirachand: Our solution is to give more scope for the shareholders.

Chairman: He means educating the shareholders so that they may be aware and conscious of their rights.

Shri Lalchand Hirachand: Taking more powers every time and vesting them in the executive is hardly a useful solution. It only creates vested interests.

Shri A. C. Guha: Continuing the same issue raised by my hon. friend on my left, will the witness be good enough to say whether he has come across cases where some speculators might have cornered some shares of the company and in the shareholders' meeting have forced something which is not to the interests of the company as a whole or to the interests of the shareholders also?

Shri Tanubhai D. Desai: There is provision in the existing Act. Government have got adequate powers in their hands. See section 409.

Shri A. C. Guha: I think there have been instances where in Calcutta, and maybe in Bombay also, Government have not been able to prevent such undesirable activities of speculators.

Shri Tanubhai D. Desai: In such cases Government may not have thought it desirable to do so.

Shri A. C. Guha: If Government have sufficient powers why should they have incorporated these new provisions in the Bill?

Chairman: This should not be argued with the witnesses.

Shri Tanubhai D. Desai: So far as Bombay is concerned, we do not know of any such instances as the hon. Member has pointed out.

Chairman: In Bengal, or any other place than Bombay, such cases might have arisen.

Shri A. C. Guha: Another matter raised here is about private companies holding shares in public companies. Does the witness not know that some private companies have controlled many public companies?

Shri Lalchand Hirachand: This question is rather complicated. What we are discussing is if a private company gets investment from a public company, then should not that private company be treated as a public company. If a private company controls a public company I do not think that question arises from this section. It is difficult to answer how a private compnay can be prevented from controlling a public company if the public company is small and the private company has chosen to invest a

large amount in that public company. This section does not apply to that.

What the memorandum emphasises is this that if a private company invests in a private company, then it should not be treated as a public company. If a private company is treated as a public company and if the public investment goes down then a new complication will arise as to whether that private company should continue to be treated as a public company or again it should revert as a private company. A variety of complications would arise when a new idea is introduced in this manner.

Shri A. C. Guha: There are private companies which control many public companies. Why should general exemptions be given to private companies?

Shri Lalchand Hirachand: The whole principle is this that Government have allowed private companies, and Government have allowed public companies. The functions, or the regulations affecting the two are different. And it is not the intention of the Government, by this amending Bill, to eliminate private companies. A private company gets investment from a limited number of people and amongst them another private company may be investing. Therefore it would not be right to treat a private company differently simply because another private company is investing in it. Government wants to safeguard the interests of the public as a whole. If the public as a whole are not coming to invest in a private company, I do not see how the public interests can be affected by the investment of a private company in a private company.

Shri A. C. Guha: A private company is given certain exemptions in the expectation that it would limit its operations also and not extend them beyond certain limits. But when the private company goes on investing in further private companies, does it not come within the purview of public companies, as a result of the extension of operations beyond certain limits?

Shri R. G. Saraiya: So long as a private company invests in another private company, it does not mean that public interests are involved. There may be two private companies, just like there may be two individuals.

Pandit D. N. Tiwary: Please refer to the last paragraph on page 5 about the creation of a fresh advisory committee. It has been suggested in the memorandum that the present Advisory Commission or the Technical Advisory Committee does not serve the purpose. What is the sort of organisation you want, and with what power and constitution?

Shri R. G. Saraiya: The recommendations of the Bhabha Committee were clear on this point, namely, to have a central authority which would serve as an independent authority with some semi-judicial powers. I think my friend who was a Member of this Committee may be able to enlighten the Committee further on this point.

Shri Gopaldas P. Kapadia: The recommendation of the Bhabha Committee was of a crucial nature. The Bhabha Committee recommended the institution of a central authority of an independent nature, in which authority the public would have full confidence; and instead of centralising all power in the hands of Government it was thought desirable then to make a recommendation that there should be an independent body on the lines of what is obtaining in the United Kingdom, something like the Board of Revenue which we have today and which functions more or less as an independent authority and is not an administrative unit of the Government of India, as we understand it. The institution of a central authority of that nature would inspire confidence in the minds of the public. It would also be able to

safeguard the interests of the individual shareholders, and with that confidence it would be able to administer the Company Law in a much better manner.

Shri Nityanand Kanungo: May I interrupt the witness for a minute? This recommendation of the Bhabha Committee was discussed by the Select Committee and Parliament and it was rejected.

Shri Gopaldas P. Kapadia: That is history, Sir. Still we feel that that recommendation is a recommendation which weighs with the Indian Merchants' Chamber.

Pandit D. N. Tiwary: What will be the difference or distinction between the present Advisory Commission together with the Technical Advisory Committee and the new organisation that you have proposed?

Shri Gopaldas P. Kapadia: We would have to revert to the advantages of a central authority of an independent nature. This is a very wide issue. Unless the desire of the Committee is to discuss the merits and demerits of a central authority, the considered opinion and the humble opinion of the Indian Merchants' Chamber is that the constitution of a central authority is certainly something much superior to having an Advisory Commission or a Technical Advisory Committee.

Pandit D. N. Tiwary: Please refer to page 22 (clause 77) and page 23 (clause 80). In case it is feared that there would be interpolations or destruction of records, they have suggested that companies should be given the opportunity to represent their case. In that case it will certainly take time and in the meanwhile the registers may be destroyed or interpolations made. What safeguards do they suggest in this respect?

Chairman: The hon. Member says that you have suggested that an opportunity should be given to the company to show cause etc. In the meanwhile, he says, that these documents might be destroyed as notice is given and the show-cause time is given. What safeguard do you suggest for that?

Shri Tanubhai D. Desai: An undertaking can be taken from that company.

Chairman: Why should they? The danger is there that the documents might be destroyed or done away with.

Shri Tanubhai D. Desai: Suppose there is a frivolous complaint by somebody and on that complaint an application is made.

Chairman: Another witness gave the answer—I think that was a plausible answer—that the courts have authority to give interim orders and then decide the issue.

Shri Nityanand Kanungo: I think Shri Bharucha threw that suggestion to the witnesses.

Shri Lalchand Hirachand: There have been cases where these officers may be Income-tax officers where omnibus orders have been issued and papers have been asked for. And when companies have contended, the courts have given orders restricting them. So, when such cases are there of omnibus orders, it is but fair, in the name of justice, that the other party should be immediately called and given a chance.

Shri Nityanand Kanungo: That is within the discretion of the court.

Pandit D. N. Tiwary: In that case there is fear of misuse of power. If we take it as a general rule, then no law can be made.

Chairman: There may be extreme cases on both sides. We have known the point of view of the witness. Why should we labour the point further? Let us go to the next point.

Shri R. G. Saraiya: May I supplement the reply given by my friend? There have been cases of mass raids, in regard to Sales Tax, of whole localities. We have written this on

the basis of experience; it is not based on irrational fear of the Government.

Shri Kanungo: And there have been cases of companies destroying the document.

Shri R. G. Saraiya: As the Chairman said, there are extreme cases on both sides. We want protection against both.

Shri Somani: I want to raise the point that was raised earlier by Shri Guha in regard to the cornering of shares. Where an existing managing agent is holding 5 or 10 per cent of the shares of the company and 90 per cent is in the market, if somebody acquires 60 per cent of the shares, what policy will the witness advocate—whether Government should step in or whether the existing managing agents with 5 per cent shares should continue to manage the company?

Shri Lalchand Hirachand: The principle in the management of a company is that the selection made by the shareholders should prevail. If the company's shares are held to the extent of 60 per cent by somebody, naturally, he will be guiding the policy—unless it is found by the shareholders that dishonesty is being practised. There are ample provisions in the existing Act whereby such dishonesty can be prevented. And the management knows fully well that the Government can step in and bring that management to book, under the present rules and laws. Even those laws are very severe in several cases.

So, there is no point in extending or giving increased powers to the Government. The principle is there that the shareholders as far as possible manage their own affairs.

Shri Somani: Regarding clause 15 relating to private companies, I would like to have some more elucidation. You know that the Company Law Amendment Committee has said that where any private company employs public capital directly or even indirectly, that private company should be put under certain restrictions. What is your reply to that recommendation of that committee?

Shri Lalchand Hirachand: The Chamber's view has been that where public capital is invested to any appreciable extent, then, to that extent, a private company may be treated as a public company. In the memorandum, they have suggested that instead of 25 per cent investment, 33-1|3 per cent, basing on other provisions, may be treated as the criterion for consideration of the private company as a public company.

But the Chamber do not agree with the view or with the provisions of the Bill that when a private company invests in a private company, that should be treated as a public company; nor does the Chamber agree that investment in the forms of loans or bonds should be treated as investment; only share capital, and mainly equity capital, should be the basis of this consideration.

Shri Somani: May I take it that you mean that any advances or loans by banks or any other capital that comes into the hands of the private company should not be taken into consideration for treating it as a public company, because that capital can be recalled by the bank at any moment, and in that sense, therefore, this cannot be called as a public company?

Shri Gopaldas P. Kapadia: Yes.

Chairman: The question has given the answer also.

Shri Gopaldas P. Kapadia: The answer will be of a different nature. I shall give the answer in quite a different way.

Chairman: The way might be different, but the answer would be the same.

Shri Gopaldas P. Kapadia: The nature of the answer also may be different. May I attempt it?

Chairman: Yes. I said it only by the way.

Shri Gopaldas P. Kapadia: We are making a distinction between the share capital and the borrowings for the simple reason that if we extend the principle to borrowings, every individual or every partnership, unless it does business with its own capital, will be a public undertaking. The extension of this principle to borrowings will go to that sort of peculiar interpretation that every undertaking or every business, whether it is a corporate body or not, will become a public undertaking or a public body.

Shri Nathwani: May I take up this last point? Shri G. P. Kapadia has suggested that if borrowings were to be taken into consideration in deciding the character, namely whether it is public or private then individuals and even partnerships would amount to public undertakings. But in those cases, the fundamental difference is that they are of unlimited liability. If an individual borrows or a partnership borrows, there the liability is unlimited. But here it is limited; and this is a great advantage which the companies enjoy.

Shri Gopaldas P. Kapadia: You have made the exact point which I am trying to make; inasmuch as while in the case of the partnership, the share in the partnership is the substance of his ownership of the business, and in the case of the individual, he is the owner of the business of all the moneys, subject to liabilities, similarly, the ownership of a private limited company is related to the shareholdings and not to the borrowings.

Shri Nathwani: I have not been able to follow. If we were to take into consideration the borrowings of a private company from several sources, then, you say, that even in the case of an individual or a partnership, because they borrow from outside, it amounts to a public undertaking. But what is the difference then? Here, we want to subject it to certain restrictions, and provide that the company should comply with certain provisions. That is the only object here. The reason for our doing so is that it is a question of limited liability.

Shri Gopaldas P. Kapadia: Whether it is a corporate body or a partnership or an individual, the share capital in the case of a company, or the capital contributed by the partnerships or the individuals represents the ownership interest, and the borrowings will represent the liabilities whether it is an individual, or whether it is a partnership, or whether it is a limited liability company.

Shri Nathwani: In reply to a question put by Shri Morarka, the witness Shri Saraiya stated that the objection to declaring dividends after providing for depreciation as provided in section 350 was this that new ventures or companies embarking upon expansion programmes would not be able to declare dividends, and therefore the shareholders may not get any return for some years to come. Did I understand him properly?

Shri R. G. Saraiya: Yes.

Shri Nathwani: Is that the only objection?

Shri R. G. Saraiya: That is the main objection.

Shri Nathwani: What is the other objection?

Shri R. G. Saraiya: The other objection is that the indirect effect of that would be that the enterprises would not be able to collect capital, once it is found that any new ventures do not give proper returns.

Shri Nathwani: That is connected with the first objection, and it flows from that, that because there would

be no return, therefore, there would be no inducement for the investors to come forward.

Shri R. G. Saraiya: Both for investment and expansion.

Shri Nathwani: But the main thing is that there would be no return, and, therefore, there would be no inducement. But will you kindly turn your attention to section 208? Will that not meet the eventuality which you contemplate? Section 208 amply provides for the contingency which is visualised by you.

The section reads thus:

> "Where any shares in a company are issued for the purpose of raising money to defraying the expenses of the construction of any work or building or the provision of any plant,....the company may—
>
> (a) pay interest on so much of that share capital as is for time being paid up, for the period and subject to the conditions and restrictions mentioned in sub-sections (2) to (7)....."

So, even if there is no profit, and, therefore, no dividend can be declared, still the shareholders would be able to get interest at the rate of four per cent per annum.

Shri Tanubhai D. Desai: In the first place, this refers to the power of the companies to pay interest on their capital; and what we are talking of is not payment out of capital but out of the gross profits of the company which is quite a different thing. Again, the restriction of 4 per cent is there.

Shri Nathwani: First of all, it was stated that during a long period, the shareholders would not be able to get anything, though the venture is a sound one and would ultimately thrive and would be able to pay. In the interregnum there would be no return or yield to the shareholder. But that is fully provided for in section 208. They are contemplating a case where the concern is a sound one and where the moneys are required for expansion and the only question is paying some interim remuneration or interest.

Chairman: Four per cent may not be enough inducement; according to the witness, it may be as good as nothing.

Shri Tanubhai D. Desai: Not only that; the other objection is that section 208 provides for payment out of capital.

Shri Nathwani: Ultimately, in the case which we are contemplating, there would be enough resources available at the end of a certain period. We want to satisfy the shareholder during the period during which the company acquires a certain prosperous condition.

Shri Tanubhai D. Desai: There is another thing. If you look at subsection (3) of section 208, it provides for the written sanction of Government.

Shri Nathwani: Certainly; Government would exercise its discretion properly. You know the natural presumption is that Government would exercise its powers properly.

Chairman: The witness tries to free himself from the fetters that are imposed.

Shri Nathwani: What I am trying to show is that in a genuine case there would be no difficulty.

Shri Lalchand Hirachand: I would like to mention one point here. Under section 208 Government have gone to the extent of allowing 4 per cent out of capital. That means that Government want to be more liberal; while the new clause is trying to restrict payment even out of gross profits of the company. Now, the liberal provision in section 208 is being restricted by the substitution of this clause.

Shri Mazumdar: We are not substituting it.

Shri Lalchand Hirachand: Here you are introducing a restriction on payment out of gross profit whereas under the existing provision you have allowed payment out of capital if the gross profits are not there.

Chairman: The witness says that when you have got that liberal provision why should you have any strictness here?

Shri Lalchand Hirachand: When you are prepared to give a liberal provision, there is no point in restricting this.

Shri Nathwani: As regards private companies being treated as public companies you have agreed that the test should be that if public monyes flow into private companies, then, they should be deemed to be public companies—flowing into share capital, of course. Now, it is proposed by your association that holdings of private companies should not be taken into consideration. But is there not the danger of a public company holding shares in a private company through the medium of private companies?

I can give you an instance. Suppose X is a private company. There are two other private companies Y and Z holding shares in X company. According to you, the holdings of the private companies Y and Z should be excluded and they should not be converted into a public limited company.

There is another company A, a public limited company, which holds shares in both Y and Z to the extent of 20 per cent so that Y and Z are not public limited companies. Therefore, through the media of Y and Z companies which are private, A company does hold indirectly shares in X, a private company. If you exclude the holdings of private companies there is the danger of the provision being circumvented by public companies lending through private companies.

Shri Lalchand Hirachand: This expression of 'danger' means that you are suggesting legislation for individual cases. I do not think it is the intention of the Legislature to pass legislation for individual, hypothetical and very extreme cases.

Shri Nathwani: If you do not like the word 'danger', I won't use it. But there is the possibility of the law being circumvented in this manner.

Shri Khandubhai K. Desai: In the absence of compulsory normal depreciation before paying dividends, most of the concerns have come to grief. You know that; it was so in the case of textile mills.

Shri Lalchand Hirachand: No.

Shri Khandubhai K. Desai: According to my information, most of the textile mills.....

Chairman: The answer is 'No' according to the witness.

Shri Lalchand Hirachand: Most of the textile mills have already provided all the depreciation.

Shri M. P. Bhargava: On page 30—about clause 200—you say that the new clause 629A will be against the fundamental principles of jurisprudence. It is a question of taking residuary powers. In almost of all statutes residuary power is taken. How do you say that it would be against the fundamental principles?

Shri Tanubhai D. Desai: The objection is against the approach. If every default in compliance with the provisions of the law were to be made a criminal offence, then, we would be living in a police State. If we want to penalise there should be a specific provision and not that every default may be made a criminal offence. An omnibus provision like this would not find a place in comparative legislation anywhere else.

Chairman: Would you be satisfied if the penalty is given in every clause instead of putting it that every default will be punished?

Shri Tanubhai D. Desai: The question is whether you want every non-compliance to be into an offence as it is purported to be done now.

Chairman: Then the question comes to this. There are certain defaults or offences which are only technical. You want that there should not be a penal provision for that. Is that the objection?

Shri Tanubhai D. Desai: Every default is not necessarily a technical default and every default is not necessarily a criminal offence. It depends on the circumstances of each case. In certain cases it may be a technical default which can be proved to be so but still it would be a criminal offence according to the provision.

Shri Gopaldas P. Kapadia: Nowhere in the world have they got such an omnibus clause as this.

Shri Mazumdar: Section 46 of the Banking Companies Act provides exactly for the same thing.

Shri P. T. Leuva: There might be companies in which the branch offices might be transacting business which might be more or less as substantial as the business of the head office itself. In that event would it not be necessary to audit the accounts of the private companies?

Shri Gopaldas P. Kapadia: That is exactly the point which was referred to when the question of body corporate was being discussed. It is very difficult to say that a particular branch enters into the same or substantially the same business which the company does. What are the normal operations of a company? The manufacture of goods; the purchase of raw materials; the sale of finished products and placing of orders in respect of all things and activities that are carried on in the course of business. Now, what happens in the branch offices? A branch office as such would be of a different type. A branch described as such may be doing the work of purchasing raw materials as well as the sale of finished products. Or, it may be a mere purchasing centre; it may be a mere sales centre. It is only at the head office that the board of directors, the managing agents and the officials of the company function and where the business of the company is conducted, and it is not possible to say with a degree of accuracy that the same activity or substantially the same activity that is carried on by the company at the head office with its board of directors and managing agents and officials will be carried out at some other place. It will be to a very limited extent.

Shri P. T. Leuva: My point was quite different. What I said was this: assuming that the business is carried out at the branch office, the business being substantially of the same nature, the volume of business of a branch office is the same as that in the head office. So, will you not think it desirable to audit the branch office accounts? I am assuming that the same nature of business is carried out.

Shri Gopaldas P. Kapadia: I do not agree with the assumption that the branch office will be carrying out the same activity as in the head office. It will be of a very restricted nature.

Shri P. T. Leuva: Assuming that for the purposes of argument the branch office is deemed to be a branch office because it is carrying out substantially the same type of business as in the head office, then, I am asking the question as to whether it is not desirable to audit the accounts of a branch office if the volume of business is to such an extent and corresponds to that which is carried on in the head office. I am putting the question in so far as the volume of business is concerned.

Chairman: That comparison might be left out. The hon. Member wants to know this: there are certain branches that are doing large amount of business. That will be conceded, I think.

Shri Gopaldas P. Kapadia: That is why the existing Act says, and contains a definition, namely, that a branch is described as a branch by the company.

Chairman: It should depend upon the company—whether the company dubs or describes a branch as a branch or not. But the hon. Member says

that when there are branches and when it is conceded that they are doing a large volume of business, is it not desirable that they should be audited.

Shri Gopaldas P. Kapadia: As I pointed out earlier, it is very difficult to take into consideration the various factors and describe a particular place as a branch in an artificial manner. You cannot give an artificial definition to a place of business and call it a branch. A branch is a branch provided all the things that flow from the head office are there.

Chairman: Your objection is that though there would be certain branches that would be doing large amount of business, if this provision is adopted, even smaller branches which are doing very restricted business would also come under those restrictions and would cause hardship. Is that your view?

Shri Gopaldas P. Kapadia: In addition, there will be purchasing centres or sales offices and there is only a partial activity which is not related to the whole activity and they may come within the definition of a branch.

Shri P. T. Leuva: May I know the criterion which is being adopted and which might be adopted by the witness for describing a particular place as a branch office? They say that if the company says that a particular place should be a branch office, that would become a branch office. What is the criterion on which you describe a particular place as a branch office?

Chairman: According to the witness it is very difficult to define it.

Shri P. T. Leuva: They say that under the present Act if a particular place is described by the head office of the company as the branch office, it becomes a branch office. May I know what is the criterion for them to describe a particular place as a branch office?

Shri Gopaldas P. Kapadia: Under the definition, they rope in the branches of a banking company because it is only with respect to banking companies where the same or substantially the same activity as that of the head office is carried on can obtain. In respect of non-banking companies doing normal business of other types, it is very difficult to describe them as branches and the definition of a branch as such can be extended only to banking companies.

Shri P. T. Leuva: My question has not been still answered. What I wanted to know is, what is the criterion adopted by the companies today for the purpose of describing a particular place as a branch.

Shri R. G. Saraiya: Could it not be left to the discretion of the shareholders who are ultimately the judges?

Chairman: That is an admission of inability to define it!

Shri P. T. Leuva: They must be having certain criteria in order to define a particular place as a branch.

Chairman: The witness says that only in the case of banking companies it can be described. In the case of others, it cannot be done. Whether we accept it or not is a different thing.

Shri P. T. Leuva: Is it the view of the witness that no other industrial concern has ever established a branch and described it as a branch in its articles of association?

Chairman: They have been doing it at their discretion. There are no criteria which the witness can give at present to us.

Shri R. G. Saraiya: It is very difficult to give a hard and fast definition?

Shri P. T. Leuva: My question related to the volume of business. That has not been answered still. If the volume of business in a branch is as big as that of the head office, may I know whether it would not be desiable to audit its accounts?

Shri R. G. Saraiya: I leave that judgment to the shareholders.

Shri P. T. Leuva: I want to know whether it is desirable or not. I am not asking who should have that

power? We will decide about the power. I am asking whether it would be desirable to audit the accounts of such branch offices?

Shri Gopaldas P. Kapadia: If the hon. Member means other activities such as the purchase or sale of raw material as well as finished products and other incidental activities which the head office is carrying on and if that volume of business is as that of the head office, then the head office will cease to be the head office.

Shri P. T. Leuva: How will it cease to be the head office? Are there not instances where the registered office of a company is situated in a small village and the main business is carried on somewhere else?

Chairman: I would advise the hon. Member to go to the next point. We will draw our own conclusion and inferences from the answers given.

Shri P. T. Leuva: I will take up clause 15 relating to section 43A. So far as the question of investment by public companies in a private company is concerned, will you accept this position that such private companies might be treated as public companies? Suppose the public limited companies have invested a share capital to the extent of 25 per cent.

Shri Lalchand Hirachand: 33-1/3 per cent.

Shri P. T. Leuva: I am confining myself to the present provision as is in the amending Bill. Will you accept this position, because 25 per cent and 33-1|3 per cent do not make much difference between them. Will you accept this principle that if money is invested by a public limited company in a private limited company, such a private limited company might be treated as a public limited company? For the present I am leaving out the question of a private limited company investing in another private limited company.

Shri Lalchand Hirachand: That has been accepted.

Shri P. T. Leuva: Now, am I right if I assume that you accept the position that if monies are invested by a public limited company in a private limited company,.....

Chairman: When once the confession or acceptance of the witness is made, we should accept it. Does the hon. Member want the witness to rescind from what he has said?

Shri P. T. Leuva: I thought that the witness did not follow my proposition.

Chairman: Then it is all the good for us, because he admits it and it goes on the record.

Shri P. T. Leuva: I do not want the witness to remain in doubt.

Chairman: All the four gentlemen present here gave that advice to the witness who answered it.

Shri P. T. Leuva: If a public limited company invests money to the extent of 25 per cent in the share capital of a private limited company, you accept that such a private limited company should be treated as a public limited company.

Shri Lalchand Hirachand: That is right with this limitation that there should be a substantial amount.....

Shri P. T. Leuva: 33-1|3 per cent.

Shri Lalchand Hirachand: Yes.

Shri P. T. Leuva: If a private company and a public limited company together invest more than 25 per cent of the share capital of a private limited company, will you accept that private limited company to be a public limited company?

Shri Lalchand Hirachand: Of course not. It is a wrong idea to say that if one individual and one public company invest 25 per cent, it should be taken as a public company. That is not the idea; private company is a private company and a public company is a public company. What we have accepted is if a public company invests to the extent of 33-1|3 per cent of the share capital, then only it will be treated as a public company.

Shri P. T. Leuva: I know what is stated in your memorandum. The principle of this amending Bill is that we do not want that there should be too much concentration of economic power in a few hands. That is one of the reasons why such a provision is being made. When a public limited company has invested money in the share capital of a private limited company, you accept the position that such a private limited company be treated as a public company. But if a public limited company and a private limited company together invest, what is your objection to that company being treated as a public limited company?

Shri Lalchand Hirachand: I have already explained the objection. A private company is a private company and it cannot be combined with a public company. The two ideas are quite different.

Shri P. T. Leuva: You are also making a private company a subsidiary of a public limited company and that subsidiary becomes a public limited company because it is the subsidiary of a public limited company. That position is being accepted. The difference between this and the subsidiary company is that the share capital which is invested by the public company is less and that is why you are objecting to it. But if you invest 51 per cent of the share capital, then it becomes a public limited company, even though it is a private limited company.

Shri Lalchand Hirachand: I do not understand how this idea of restricting economic holding comes into this. When a public company invests Rs. 33,000 in a Rs. 1 lakh company, that becomes a public company. It has nothing to do with restricting concentration of power.

Shri P. T. Leuva: A public limited company, which has a share-capital of Rs. 1 lakh, may have financial resources of Rs. 1 crore. That does not mean that it can invest only to the extent of Rs. 33,000.

Shri Lalchand Hirachand: When it is a public company whose capital is distributed among a large number of people, it does not mean concentration of power in a few hands.

Shri P. T. Leuva: Power is concentrated, though money may not be concentrated.

Please turn to pages 12 and 13 regarding clause 53. The witnesses will accept that the law has treated the contracts made by directors on a separate footing. That is why special provision is made under section 297. Those contracts are registered in a register maintained for that purpose. What is your objection to filing the resolution in which the consent of the Board of Directors is given? There are certain contracts in which the directors are interested for which the sanction of the Board of Directors is necessary and a resolution is passed. What is your objection to filing that resolution with the Registrar?

Shri Lalchand Hirachand: We have already explained it and there is no point in repeating it. Any shareholder can inspect not only the resolution but even the contract itself. Where is the point in saying that X, Y or Z, who has no interest in the management of that company, should try to peep into somebody else's business. It is absolutely undesirable.

Shri P. T. Leuva: The reason for filing this resolution with the Registrar is to find out whether the particular director is taking any undue advantage of his position or not. That is the main reason, because in a public limited company, not only are the members interested, but the public also are interested.

Shri R. G. Saraiya: This matter has been fully answered. In the first place, we feel that this is an unnecessary addition to the work of the company and of the administration. The Chamber thought that the total implication of all this legislation will really

add to the cost of running public companies as well as the company law administration. This will be one further addition to the total cost. The other point is that information of a secret nature may pass on to competitors. Whether to accept it or not, it is for Government to decide.

Shri Lalchand Hirachand: The Registrar has the right to call for these papers if he feels doubtful. What is the fun in sending each and every paper or resolution to the Registrar?

Shri P. T. Leuva: Please turn to page 21, regarding clause 76 you say:

> "Section 234 of the Act is proposed to be amended with a view to empower the Registrar to call for and inspect such books of accounts, etc. as he might require in relation to the documents filed with him as well as in cases of complaints by a member or creditor."

Under section 234, formerly the Registrar had no power to ask for documents, books of accounts, etc. His only power was to ask for explanation and information. Now section 234 is sought to be amended. What objection have you got if the power of calling for books of accounts and documents is exercised by the Registrar when a complaint is made by a member or a creditor?

Shri Tanubhai D. Desai: Section 234 of the existing Act empowers the Registrar to call for information or explanation and that completely protects the Registrar's powers. For what purpose do you want more powers? We are not in favour of the extension of his powers.

Shri P. T. Leuva: Your grievance is that the Registrar should not be empowered to call for documents and books of accounts in case a complaint is lodged with him by a creditor or member. But this power is concomitant to the power given in subclause (1). The provision is already there under section 234 that on a complaint made by a creditor or member, the Registrar can ask for explanation and information.

Shri P. T. Leuva: The power is the same so far as the complaint is concerned, whether the complaint is made by the member or the creditor, or the registrar on the basis of documents filed for it.

Shri Tanubhai D. Desai: We are not in favour of such powers.

Shri P. T. Leuva: The registrar should not exercise such powers.

Shri Tanubhai D. Desai: Yes, Sir.

Shri T. S. A. Chettiar: I come to page 2 of your Memorandum. You are agreeable to the recommendation of the Committee.

Shri Lalchand Hirachand: No.

Shri T. S. A. Chettiar: Page 5. You have said that the conferring of rights on Government is against the rights and privileges of the shareholders, but you are aware that once you have got 51 per cent of shares, you can do anything.

Shri Tanubhai D. Desai: That is not correct. In many cases, a special resolution means 75 per cent majority and in many cases we have to take the sanction of the Government. It is not that with 51 per cent shares you can do whatever you like.

Shri T. S. A. Chettiar: If something is being done which may be wrong, the minority sharehouders may protest against it.

Shri Tanubhai D. Desai: There are enough provisions in the existing Act. One can refer to sections 397-398 and 408-409.

Shri T. S. A. Chettiar: Page 8, that is about clause 9. Will you please specify the sections that you want to be exempted from?

Shri Gopaldas P. Kapadia: In actual practice, insurmountable difficulties have been experienced by associations of trade and industry and

other Chambers of Commerce and other people where the Directors have to be elected and a very complicated procedure has to be resorted to.

Chairman: The question put was, which are the sections that you wanted to be exempted from. That is the question.

Shri Gopaldas P. Kapadia: It would run to a number of sections. I would say with regard to the election of the Board of Directors, with regard to the filing of the statements of Directors' interests. Now, if I am a member of the Committee of a Chamber of Commerce or of a particular trade association, I have to disclose the particulars relating thereto and I have also to find out the position with regard to the election. Actually, all these sections have been enumerated in clause 9 of the Bill. They are all enumerated there. The difference is between giving Government power to exempt as against having a statutory provision, because every trade organisation or Chambers of Commerce has found it difficult in carrying on its usual activities. Therefore, exemption should be granted by the Act. That is our request.

Shri T. S. A. Chettiar: Page 24, clause 104. You are agreeable to this clause being there provided, as you have suggested, the draft notification is placed before Parliament for approval. That is a very important clause.

Shri Tanubhai D. Desai: Yes.

Shri T. S. A. Chettiar: You are agreeable to that clause being passed with this proviso.

Shri Tanubhai D. Desai: Yes, we have said it so.

Shri T. S. A. Chettiar: There was a great deal of discussion about depreciation. Do you agree to the principle that depreciation should be provided before profits are given?

Shri R. G. Saraiya: This has been discussed already. In certain cases depreciation cannot be provided by stages and still shareholders would require to be paid some dividend and, therefore, it should be permitted to give a dividend from the gross profit even without providing full depreciation, provided a note is made in the balance-sheet to the effect that the short-fall in depreciation will be carried forward.

Shri T. S. A. Chettiar: There are people who agree that the depreciation should be provided, but the manner in which depreciation should be paid is under dispute. Have you any definite suggestions to make as to in what manner depreciation should be made. For example, it may be straight-line method, or it may be on the basis of income-tax scales.

Shri R. G. Saraiya: We are not discussing the whole problem of depreciation. I do not think this is the proper forum. For the purpose of this Memorandum, we are agreeable to the manner in which the depreciation has been allowed in the income-tax law. The only thing is that where the normal depreciation has not been provided. that statement should be made in the books of account of the company. The dividend may be distributed even if the normal depreciation is not provided. We are not discussing the question of manner of providing depreciation. That should be left according to the existing law.

Shri Tangamani: Yesterday you made it perfectly clear that you resented any inspection by the registrar and also seizure of documents by inspectors if so authorised by the court. What I would like to know is, clause 76, to which some reference has already been made, merely empowers the Registrar to call for and inspect such books of account etc, as he might require in relation to the documents filed with him as well as in cases of complaints by a member or creditor. You know, in similar circumstances, a trade union which is registered, has to submit annual returns. Even these trade unions are subject to inspection.

Can you advance any special reason why you resent even this kind of inspection by the registrar under clause 76?

Shri Gopaldas P. Kapadia: There is a distinction between the provisions of clause 76 and clause 77. With regard to clause 76, as it stands today in the draft, it may be possible for the Registrar to cover the grounds not relating to the documents and other papers filed. If it is an inquiry relating to the documents filed, the drafting should make it very clear that the inquiry of the Registrar should be limited to the documents and other papers which are required to be filed in respect of which the explanation has been received. It should not be a roving inquiry or inspection.

Shri Lalchand Hirachand: If I understand the hon. Member rightly, his grievance is that since the Trade Union Act has a similar provision, why should it not be introduced in the Companies Act. My reply to that would be that we do not like this kind of a provision and if it is the grievance of the trade union, they should rather have the Trade Union Act amended rather than allowing such an objectionable provision to remain in that Act.

Shri Tangamani: On page 26, with regard to Clause 124, it is stated here that the new Section 325A prohibits a subsidiary of a body corporate from being appointed as Managing Agent. The reason advanced is that this point has not been convassed in the Shastri Committee. This is the reason why they are opposing the introduction of section 325A.

Shri Tanubhai D. Desai: We do not see any objection in that. For instance there is a private company and there is a subsidiary company of that company. What is the objection of that subsidiary company being appointed managing agent?

Shri Tangamani: Now I come to page 9. Many questions have already been asked regarding 43A. We can understand your point about private companies. But in the case of public companies you say if 25% is increased to 33⅓ %, you will have no objection. Why are you so fond of 33⅓ %?

Shri R. G. Saraiya: We have made it already clear. You please see the definition of the word "associate" where the idea of control comes. There 30½ % is stated to be the controlling idea.

Shri Tangamani: On page 14 of the memorandum you speak about the publication of Chairmen's speeches. Why are you very particular about Chairman's speech being published at the expense of the company?

Chairman: We had good elucidation on it.

Shri Tangamani That was yesterday.

Shri R. G. Saraiya: We want it to be published because it gives a general account of the company with its economic background. It is a well-studied document.

Chairman: The answer is the same.

Shri Tangamani: About depreciation, on page 16 of your memorandum, I have not been able to follow the reasoning. Clause 62 refers to Section 350 of the Act. All that it states is that the normal depreciation provided for under the Income-tax Act alone should be considered, and not the initial depreciation, or the special depreciation, or any development rebate, or any arrears of depreciation. Are you opposing even normal depreciation being taken up first before the dividend is declared?

Shri R. G. Saraiya: We are not opposing. But we find that in actual practice a large number of new companies, and existing companies which are in the process of exemption are unable to provide even the normal

depreciation, because the capital which is invested or the machinery which is erected does not yield manufactured products which can be sold. Therefore, profit is not made. The principle of normal depreciation is accepted but before the produce is sold or money made, in the meanwhile, some payment of dividend should be permitted.

Shri Tangamani: In the case of new companies, under the Income-tax Act, you will be allowed initial depreciation which will be more than the normal depreciation.

Shri R. G. Saraiya: Till you sell or make money, initial depreciation has often become ineffective or infructuous because the company does not earn enough to get exemption.

Shri J. S. Bisht: On page 15, regarding clause 59, you say in paragraph 2 that "Where it could not result in additional expenditure, the appointment of more than one type of managerial personnel should be allowed. My Committee would also like to point out that some of the State undertakings in this country as also concerns in foreign countries have more than one category of managerial personnel enumerated in this Section". Would you please explain which is the State undertaking which you refer to?

Shri Tanubhai D. Desai: So long as the ceiling of remuneration fixed by the legislature is not exceeded, what is the objection to employ whatever personnel is necessary for the company? So long as the objective of the legislature is not infringed, what is the objection of a company choosing its own method of management? There is also this difficulty. For example, even in public undertakings, there is a Managing Director, a Chairman, a General Manager, etc. If that is possible in a public undertaking, we do not see any reason why private enterprise alone should be stopped from choosing its own method of management and personnel and from paying its own remuneration.

Shri J. S. Bisht: Remuneration is fixed for the managing agent. Supposing there is also a Managing Director. There is no ceiling for him.

Shri Tanubhai D. Desai: 11% is the ceiling. Section 198 provides for that.

Shri J. S. Bisht: What is meant by 'more than one type'?

Shri Tanubhai D. Desai: There may be a Managing Director and there may be a Manager.

Shri Jadhav: What I have to say is based on your preliminary observations on page 4, paragraph 3.

Chairman: Why should the preliminary observations be made a subject of controversy?

Shri Jadhav: I want some clarification. You say that the Companies Act, 1956, contains a large number of provisions vesting in Government vast powers of interference in company management, in some cases, even in apparently minor matters. I want to know specific instances of this sort, specific instances of interference by Government.

Shri R. G. Saraiya: We have already given a reply to this, the question of remuneration, for example. When the proposal for minimum remuneration goes to the Government, it is reduced from 50,000 to 45,000 and from 40,000 to 30,000 and so on. So also is the question of appointment of Managing Directors.

Chairman: There are very many clauses and sections under which Government can interfere. Let us take up clause by clause.

Shri Jadhav: I only wanted to know whether their fears are imaginary ones.

Shri Lalchand Hirachand: No.

Shri Jadhav: You are not able to quote instances.

Shri R. G. Saraiya: We will prepare a note on that if desired. It will be difficult to remember all of them.

Shri Jadhav: You are not afraid of the powers of the Government; but you are afraid of the inexperienced officers.

Shri R. G. Saraiya: Power is there and officers are bound to be both experienced and inexperienced, same as everywhere.

Shri Babubhai M. Chinai: From page 92 of the Bill you will find a reference to expenses under various heads. Salary and wages should be allocated to repairs account and figures allocated under each such head should also be indicated in the balance-sheet. Will Mr. Kapadia explain whether it is feasible and how you are going to do it?

Shri Gopaldas P. Kapadia: I have not been able to understand the implication of this provision. That is my difficulty. If the desire is to so allocate them to various heads of expenditure, then it would be necessary not only to take into account expenditure relating to the stores and other articles specified.

But then all the salaries of the management, the general overheads and other things will have to be *pro rata* casted and on the basis of such casting they will have to be added on to the different heads of expenditure with the result that there will be nothing like salary or wages, but everything will be cast under the various heads of expenditure. I do not think that is the desire to have it so wide. Is it the intention to restrict it or to make it wider. I should like to seek clarification and then give an answer.

Shri Mazumdar: This is a matter of accounting procedure. This is based on the recommendation of the Shastry Committee. This is also based on the advice of another past President of the Institute of Chartered Accountants and Mr. J. D. K. Brown, who is also President of the Associated Chamber of Commerce. They said it would give a true and better picture of the affairs of the company than the present system. So it is a matter of difference between experts.

Shri Gopaldas P. Kapadia: The only submission I would make is that it will be of a very wide nature. Even in regard to the restricted nature of the approach I would like to make a cautious approach. It is difficult to make that sort of allocation and the company management and the auditors will find it a difficult task to make these allocations to the satisfaction of the administration. We have to examine all the implications.

Shri Chinai: Please refer to clause 9 of the Bill.

Chairman: Is he asking for clarification on the Bill or on the memorandum. We have to confine ourselves to the memorandum.

Shri Gopaldas P. Kapadia: There is a mention of it in our representation also.

Shri Chinai: As a Chamber of Commerce registered under the Companies Act, have you experienced any difficulty in complying with the requirement of the Act? Do you feel some provisions of the Companies Act are not suited to the bodies constituted like you? What is the experience of your Chamber, particularly to amendments in clause 9? Will it remove the difficulty?

Shri Gopaldas P. Kapadia: This particular Chamber is not a limited liability company, but I happen to be a member of the Committee of the Federation of the Indian Chambers of Commerce and Industry. I also happen to be the auditor of the East India Cotton Association, Ltd. From personal experience I can relate the difficulties of these two bodies which are generally experienced by all bodies of that nature.

So far as the Federation is concerned, by registration as a company it has landed itself into so many difficulties for disclosure of interest, for filing of documents for passing of accounts. We have to hold a meeting, prepare the accounts and submit them

to the Board of Directors for their prior approval and then again have them adopted at the annual general meeting. Disclosure of interest has to be noted every time and communicated. This has resulted in such a difficult position that we would request the Joint Committee to examine the implications and see that all these restrictions are removed and so far as non-profit making bodies are concerned they are given statutory exemption.

For the East India Cotton Association the last election had to be postponed by several months—nearly 20 months—and they had to apply for special extension of time to the Registrar and with great difficulty they were able to get it.

Shri Kanungo: That was for different reasons.

Shri Gopaldas P. Kapadia: What was the other reason?

Shri Kanungo: The reason was that a new panel system of election came into force.

Shri Gopaldas P. Kapadia: That was one additional reason.

Even otherwise they had to face unsurmountable difficulties out of which they could not come out. Therefore a statutory exemption from all the requirements from the sections enumerated in clause 9 of the Bill should be given instead of leaving it to Government.

Shri Naushir Bharucha: Page 7 of your memorandum; clause 2(a). Your Chamber objects to the widening of the definition of associates. Unless the definition was widened, how do you expect the provision to be foolproof?

Shri Tanubhai D. Desai: As it is it is wide and now it is sought to be made wider. If you see the wording it is liable to be interpreted in such a manner that it will create more confusion.

Shri Naushir Bharucha: Page 15; clause 60; amending section 198 of the principal Act. This fixes the maximum limit of managerial remuneration and you very rightly observed that certain amenities such as cars provided for the benefit of company use should not be included in the remuneration of the director.

Now, could you tell me how would you draw the line of distinction, or where to limit the allocation just as the Income-tax Department makes. Assuming for instance that a car is provided to a director of a company. The director also uses it for his private purpose. How would you draw the line in the case of amenities provided to directors, such as a car ostensibly for the benefit of the company of which domestic use is also made?

Shri Gopaldas P. Kapadia: The distinction will come in this way. You will have to make a distinction between a full-time employee and those directors who are not full-time employees.

Shri Bharucha: I have understood your point of view. What I want to know about is the drafting difficulty. How do you get over that?

Shri Gopaldas P. Kapadia: I would rather leave it to the Income-tax Administration to disallow a part of it and add it and not anything in the Companies Act.

Shri Bharucha: You will follow the income-tax method.

Shri Gopaldas P. Kapadia: It will not be quite correct. If any benefit is given of a personal nature to a director, the Company law will automatically come through the income-tax statute and there is therefore no need for a regulation in the Companies Act.

Shri Naushir Bharucha: Page 16, clause 62, amending section 205 relating to depreciation. You have said that provision of depreciation, that is actual allocation of depreciation, must be left to the discretion of the director. Assuming for a moment that there is a dishonest director who wants to

inflate the price of his holdings, he does not provide for depreciation for a number of years and gives dividends on a larger scale than would be warranted, with the object of having capital appreciation of his holdings, and leaving it to the subsequent people to provide for the back log of arrears of depreciation. How would you provide for such a case, if your suggestion is accepted?

Shri Tanubhai D. Desai: There is no such thing possible, because it is not in the hands of one man or one director. Moreover, it is for the shareholders to provide how the profits are to be distributed. The dividends are decided in a general meeting and not by the directors.

Shri Lalchand Hirachand: After all, the auditors make a statement in the balance sheet that depreciation has not been provided or that adequate depreciation or less depreciation has been provided. Therefore, every shareholder and any person who wants to know the position of the company can see that statement and then decide whether any fraud is being done by not providing for depreciation or not.

Shri Naushir Bharucha: I follow your point of view. Assuming for a moment that there is a foot-note saying that adequate depreciation has not been provided, what happens to the assets of the company when you keep on giving dividends without giving adequate depreciation for a number of years?

Shri Lalchand Hirachand: The assets as shown in the balance sheet will be at the value less depreciation.

Shri Naushir Bharucha: The point I am making is this. Assuming for a moment that there is a directorate which wants to defraud the public, acceptance of your suggestion leaves open the door of fraud on the public, and it is this way. Take a public company. The foot-note says that this year the depreciation is not adequate. But after all, the public judge about the prices of shares on the basis of the dividends; they do not go deeply into the other details. And the dividends are kept at a higher rate by not providing for depreciation from year to year. If your suggestion is accepted, the possibility of fraud on the public exists. How would you safeguard that?

Chairman: The answer of the witness was that because the auditor has certified that there has been adequate depreciation provided....

Shri Naushir Bharucha: Even where it is not provided, still the dividend must be given.

Shri Tanubhai D. Desai: May be given.

Shri Naushir Bharucha: You may exercise your right.

Chairman: When there is a certificate, the shareholder will come to know of it.

Shri Tanubhai D. Desai: There is an express note in the balance sheet.

Shri Naushir Bharucha: After all, by and large, the masses of the shareholders go by the declaration of dividend while buying shares.

Shri Lalchand Hirachand: Not necessarily.

Shri Naushir Bharucha: They do not minutely look into the other details.

Shri Lalchand Hirachand: The feeling that the prices of shares are regulated only by dividends is not correct. And if perchance a single shareholder or a prospective purchaser may not see the balance sheet, the stock brokers do check all these balance sheets and they advise the prospective buyer. Therefore it would be incorrect to assume that mere dividends rule the prices of shares.

Shri Naushir Bharucha: Then I come to page 18 of your memorandum with regard to the maintenance of the books of the company from the date of commencement of the Act. I quite see the force in your statement that

it would amount to retrospective application of the new provision. Would it satisfy you if the provision is made that with effect from 1952 the books should be maintained? You are expected to maintain the books at least for three years. If the 1956 Act came into force on 1st April 1956, in that case you should be expected to have the books of 1952 by that time.

Shri Tanubhai D. Desai: You cannot make a rule of that kind. You are assuming that because the 1956 Act came into force on 1st April 1956, therefore there was a statutory obligation like this.

Shri Naushir Bharucha: Not a statutory obligation; but you are expected to preserve the books at least for three years.

Shri Tanubhai D. Desai: The question is of being treated as defaulters.

Shri Naushir Bharucha: Would you be satisfied if it is like that, or would you like it to be eight years from 1956?

Shri Tanubhai D. Desai: Eight years from 1959.

Shri Naushir Bharucha: Then I come to page 22 of your memorandum, clause 79. That is about the examination of the employees of the company, to which you object. Do you suggest that an accountant who has made an entry should not be examined by the inspectors or any other authority?

Shri Tanubhai D. Desai: We are not suggesting that. We are only pointing out that a wide power like that to examine the employees would lead to serious trouble; because, for example, the employees would be put in an awkward position. And apart from that, suppose there is an ex-accountant who has been dismissed for certain reasons. He would come forward to make all sorts of allegations. Where is the limit?

Shri Naushir Bharucha: If he is an ex-accountant and has been dismissed, he is not in your employment.

Shri Tanubhai D. Desai: Suppose there is an accountant who is prepared to give some information which is damaging, for some reason. Where is the line to be drawn in exercise of these powers? That is our main contention.

Shri Naushir Bharucha: Then I come to page 23 of your memorandum. With respect to shares which are the subject of investigation you say that Government should not restrict the voting rights in respect of these shares. Don't you think it would defeat the very purpose of the section which seeks to prevent the mischief as a result of those voting rights? It would then be a *fait accompli.*

Shri Tanubhai D. Desai: Government has the power under section 409 to take necessary action preventing the transfer of management. Therefore, why should there be this kind of power interfering with the rights of voting?

Shri Naushir Bharucha: Please refer to page 24, clause 104. How do you propose to get over the difficulty of ceiling on managerial remuneration being circumvented or evaded by the device of sole selling agency?

Shri Tanubhai D. Desai: You are well aware that under the existing provisions no associate of the managing agents can at all be appointed as sole selling agent. So there is no question of evasion. He cannot be appointed sole selling agent.

Shri Naushir Bharucha: Please refer to page 29, clause 147. You are referring to the liberty of the company to have executive officers who may be managers. What if a whole-time director is appointed under the guise of a manager? That would evade the provision of the Act. You simply label a whole-time director as Manager, exclude him from the operation of the Act and give him any salary.

Shri Tanubhai D. Desai: What we are trying to point out is that if you insist on a manager being approved by the Central Government before his appointment, it would lead to serious

troubles with the management. For example, if a manager is appointed there is always a dispute as to whether he is a manager within the terms of the section or not. How will you get over that point?

Shri Lal Bahadur Shastri: I want to ask one question from Shri G. P. Kapadia. A suggestion has been made relating to the question of audits of branch offices. The suggestion is that if a proper change is made in sections 227 and 228 of the Act to the effect which may be somewhat on the lines adopted in the USA, that the company's auditor should satisfy himself regarding the adequacy of the system of internal audit in force throughout the company's organisation and should certify that he is so satisfied than in that case, if the auditor is prepared to give that certificate for the different branches of the company, would that be all right and suffice? How he will satisfy himself is a matter for him to decide. For example, if he audits one or two branches and feels satisfied that proper accounting is being maintained, and gives a general certificate, that should satisfy the Government, and it should be enough for our purposes. Will our auditors be prepared to undertake this responsibility, as they do in the USA?

Shri Gopaldas P. Kapadia: No, the matter will have to be viewed a bit cautiously, because the internal audit department in every organisation cannot be of the same nature. While in some instances it may be a perfect internal audit department, in several cases, it might be just a sort of check over particular items or particular transactions, and there cannot be any uniformity. Beyond that, the auditor of a company will not be able to vouch for the adequacy of the internal audit. The only opinion that he can communicate to Government would be that this is the set-up of the internal audit department, these are the functions which the internal audit department is performing, and in the performance of these functions, these are the things which are likely to be checked, and these are the difficulties relating to the department owing to which a full check cannot be made. So, he will not be able to give a uniform certificate. The certification will also vary according to the set-up of the department.

Moreover, the internal audit as such in this country has not reached the perfection that is there in the USA. And unless we reach that stage, it would be a rather difficult attempt to make and having an internal audit department to be relied upon absolutely would also not be desirable from that point of view, because you would not get anything substantial. What you want is that the internal audit should be of that nature that the audit may not be conducted. Unless we are able to ensure that, the objective which Government have in view will not stand fulfilled. So, the problem is a little different.

I am mentioning this as a past president of the Institute of Chartered Accountants of India. The views of the Indian Merchants' Chamber in this respect may be communicated by the president of the chamber.

Shri Lal Bahadur Shastri: I asked you the question in that capacity of yours.

Chairman: Thank you.

(*The Witnesses then withdrew*)

II. The Bombay Shareholders' Association, Bombay

Spokesmen:

1. Shri Jagdish J. Kapadia.
2. Shri Tanubhai D. Desai.
3. Dr. R. C. Cooper.

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

Chairman: We have got your memorandum here, and you can presume that we have read all that is put down there. Have you anything further to say?

Shri Tanubhai D. Desai: We want to mention two or three important things which, we believe, have not been pointed out by other associations.

The first is about the question of the distribution of dividends before providing for depreciation. The Shareholders' association is of the view that the imposition of the statutory obligation namely that full depreciation should be provided or the nominal depreciation of the year should be provided should not be there. The shareholders do feel that something should be allowed to be paid. The question may arise what the safeguard is against fraudulent companies or other companies paying dividends excessively.

We have made some suggestion in this behalf, and we want to elaborate that point to some extent. We have got evidence before us to show that the new companies which have now come up could only come up because they did pay dividends in spite of there being not enough profits for providing for depreciation. And we have got balance-sheets to show this, if only the learned Members of the Joint Committee would like to see the evidence of certain companies.

Chairman: Why should the witness say that he is pressing a point which has not been put forward by other associations or other witnesses? This point has been put forward before the committee by other witnesses as well.

Shri Tanubhai D. Desai: They have made it a question of principle. What we would point out is that the Shareholders' Association, which stands for the rights of the shareholders, does feel that the small shareholders are in need of even payment of dividends. A small shareholder who lives on dividends expects dividends to be regularly paid and the fact that in certain years, because of expansion, there should be no dividends would be harmful to the interests of the shareholders.

We have suggested a formula that in such cases the dividends should be restricted to 6 per cent of the paid-up capital and that, in future, whenever there is profit, the arrears of depreciation should be made up and until it is made up a limitation should be put on dividends—say 6 per cent. I do not think other associations have suggested that formula. What we want to emphasise is that.

We are pointing this out because we do feel that it would not be possible for new undertakings to pay dividends—also existing companies which take up schemes of expansion.

The second point which we want to emphasise is this. We have stated that there should be a scaling down of the Managing Agents commission. What we find is this. The existing Act provides for 10 per cent as the maximum. And, in most cases, the maximum has turned out to be the minimum. We want scaling down and we have suggested the basis of a sliding scale.

Shri Mazumdar: Can you give a list of companies which make more than one crore of profit.

Shri Tanubhai D. Desai: We would be able to quote about 20 to 25 companies

Shri A. C. Guha: Is there any company getting a profit of more than Rs. 3 crores?

Shri Tanubhai D. Desai: There are companies; I can give the names. The Government have all the information, we believe.

Dr. R. C. Cooper: Our experience shows that there are several well-managed companies earning a profit of more than a crore of rupees which are managed by managing directors or full-time directors and the remuneration which is being paid in such cases comes to about 2 per cent of the profits; whereas in the case of managing agents it comes to about 10 per cent.

For instance in case of first class companies like Dunlops, Metal Box Company, and Lever Brothers which are not managed by managing agents

but by full-time directors, there are profits of Rs. 170 lakhs or so and these men are paid on an average about 2 per cent.

In the case of the Scindia Steam Navigation Company the managing agency agreement has not been renewed since 1957. We have got comparative figures to show that since then as the company is being managed by full-time directors there has been very considerable drop in the remuneration—from about Rs. 25 lakhs to about Rs. 4 lakhs.

Shri Tanubhai D. Desai: There are also cases in which the managing agents of the holding company take about 10 per cent of commission from that company and also take 10 per cent on the basis of the profits of the subsidiary company. We are opposed to this because the same work is being done and double commission is being taken. We can show that. That is why we want to suggest that if the holding company has its managing agents the subsidiary company should not have managing agents.

The problem of the Tatas is quite different. In the Tata Group one of the private companies is the subsidiary of another private company. That is quite a different matter. What we are saying is that if there is a public company and it is a subsidiary of another public company, the managing agents of the holding company should not take commission from the holding company as well as from the subsidiary company as managing agents thereof. Therefore we say that there should be no managing agents appointed by the subsidiary company.

In this connection we would like to point out the example of the Premier Construction Company Ltd., which is one of the big companies in India. It holds as subsidiaries the Indian Hume Pipe Co., and the Hindustan Construction Ltd. These are public companies. In addition to taking commission from the main company additional commission is being taken from the Indian Hume Pipe Co., and also from the Hindustan Construction Ltd.

It may be interesting to you to note that that total dividend paid to the shareholders is less than the commission of the managing agents. We are only pointing out that this is undesirable from the point of view of the shareholders.

Chairman: Shri Bharucha says that it is an indication that it is very well managed.

Shri Tanubhai D. Desai: We are only pointing out that the managing agents are getting commission in this manner.

Another important point is this. There is no provision whereby the rights of the founder shareholders are to be converted. Under the new Act there cannot be any deferred shares. There is no provision whereby it can statutorily be done. The existing shareholders insist on their rights. The Companies Act provides that there should be no disproportionate voting rights. For example, there are shares which have got special dividend rates—I would call them disproportionate. There is no procedure for converting these shares and equalising the capital. Then what will happen? The scheme for conversion of these rights can be on fantastic terms and may not go through even. The Company Law Administration knows all these difficulties.

Shri Mazumdar: We know it too well.

Shri Tanubhai D. Desai: That is why we are pointing out that there should be a procedure under the law by which these rights can be converted. That is what we are pointing out.

Another thing which we wanted to point is the one that relates to the increase of capital and issue of shares. We would like to refer you to section 81 of the Companies Act which provides that if new shares are increased, they must be offered to the existing shareholders *pro rata* but that right can be abrogated or affected by passing a resolution. That resolution

would be an ordinary resolution. What we demand is that it should be a special resolution, because with the control of 51 per cent, the right can be abrogated to the shareholders prejudice. We find in certain cases that such resolutions are being passed to the detriment of the smaller shareholder. We might give the example of the Metal Corporation.

Shri Nathwani: What is the percentage of such cases where those shares are issued? In how many cases there has been a general resolution passed whereby that order which is indicated in section 81 is not followed. In how many cases has that rule not been observed. I would like to know that.

Shri Tanubhai D. Desai: There are some cases. I quoted the example of the Metal Corporation where it was recently done.

Shri Nathwani: I wanted to know whether that is done or not.

Shri Tanubhai D. Desai: I can only quote cases which have happened, and therefore we wish to safeguard by inserting a provision that there should be a special resolution and not an ordinary resolution.

These are main things which we wanted to point out.

Shri Feroze Gandhi: I would like to know your opinion regarding the subsidiary company of one company becoming managing agents of another company just as in the case of Tata Sons and the Tata Industry. Could you enlighten us on that situation which is going to be abolished in the Bill?

Shri Jagdish J. Kapadia: Where the private companies are there, the shareholders are not affected at all, because the shareholders are generally in the public limited companies. That is why we do not have any objection in having a subsidiary of the private company becoming a managing agent of any other company.

Shri Feroze Gandhi: Public also?

Shri Jagdish J. Kapadia: Yes; in those subsidiary companies, the public are not at all interested.

Shri Chettiar: At page 2, it has been mentioned that while the dividends of the preference shareholders are being paid, the rights are not mentioned. What rights would you like to give to them?

Shri Tanubhai D. Desai: The preference shareholders have now no right to attend and speak, under the articles of association. We want them to have the right to attend and speak at the meetings. That is what we have said.

Shri Chettiar: You would like the publication of the President's or the Chairman's speech even at Government cost?

Shri Tanubhai D. Desai: Yes; we are in favour.

Shri Chettiar: In clause 60, you have elaborated the fixation of remuneration at a lower rate. Would it be by statute or at the discretion of the administration?

Shri Tanubhai D. Desai: Of course by the statute.

Shri Chettiar: Would you like these things to be mentioned in the statute? You think what you have mentioned is foolproof.

Shri Tanubhai D. Desai: Not foolproof; but humanly foolproof. That would be the maximum ceiling.

Shri Chettiar: You will fix these as the maximum and allow the Company Law Administration to exercise their further discretion. That is your idea?

Shri Tanubhai D. Desai: Yes; why not? We do not suggest that there should be the exact ceilings in all cases. These are the maximum in these cases.

Shri Chettiar: With regard to depreciation, you said that the ordinary shareholders would like to have the money back and the profits as soon as possible and that has been responsible

for building up your institutions. It is also not true that not providing for the depreciation is a big reason for many of the falls of your companies?

Dr. R. C. Cooper: We are not against the principle of depreciation being provided before dividend distributions are made. We are only suggesting a modification in the case of new industrial undertakings and other existing concerns which are having very substantial expansion programmes. In such cases, if there is an expansion programme, much new capital has to be called for from the shareholders and if the expansion programme is going to take from three to six years, it is but fair that a reasonable return which the shareholder would get elsewhere should be available to him. That is why we are suggesting that no further increase in percentage could be made unless all the arrears of depreciation are made good. So, that is full safeguard against the difficulty which you have in mind.

Shri Chettiar: Kindly give us the formula. Suppose the profits are not as much as 60 per cent, and you may like to give profits and not provide for depreciation for five years.

Dr. R. C. Cooper: If there are no profits, there is no question of distribution.

Shri Chettiar: Suppose a six-percent profit accrued and that is minus depreciation, in that case, you would not give depreciation?

Chairman: They said these arrears would be made up in the subsequent years.

Shri Tanubhai D. Desai: Yes, and till that time no dividend should be distributed beyond 6 per cent.

Chairman: Yes; unless the arrears of depreciation have been made up.

Shri Tanubhai D. Desai: May I mention one case: It was a case where even the State of Bombay was concerned—the Bagalkot Cement Company. They realised that the shareholders should get something and guaranteed the dividend even in the initial period of five years.

Shri Chettiar: About the selling agents the provisions for which have been incorporated in the Bill, you have not made any reference. Are they of use?

Chairman: Why should we ask them to go into those points particularly? We can presume that they have no objection to those provisions!

Shri Chettiar: There are fresh restrictions placed on managing agents. Do you think in the present state of the company law those restrictions are correct. Would you like to have all those fresh restrictions placed?

Shri Tanubhai D. Desai: We have pointed out one case—the case of an inter-company investment outside the group management where the sanction of the Central Government should not be taken. We are not in agreement with that principle—that for investment in outside group companies the sanction of the Central Government should be taken.

Shri Chettiar: It has been put to us that it is overriding the wishes of the shareholders if after the shareholders pass even by an extraordinary resolution it is not necessary for the Goverment to confirm the resolution so passed. Do you think you are satisfied that shareholders' wishes are respected even when that is necessary?

Shri Tanubhai D. Desai: What we have suggested is that so long as there is a special resolution for increasing the investment in non-group companies it is not necessary to get Government sanction.

Shri Chettiar: There is one clause for that. Your reference was to the issue of capital by allotment.

Shri Tanubhai D. Desai: No, no. Kindly look at page 4, clause 138. It is a different issue.

Shri Chettiar: It has been generally put that it is overriding the wishe

of shareholders when it is necessary for the Government to confirm even after a special resolution has been passed. You think differently, and say that confirmation by Government is necessary and that is consistent with the rights of shareholders.

Shri Tanubhai D. Desai: We have not said so. On the contrary we have said in clause 138 that the Government's interference is not called for. We do not agree that Government's interference is required in all cases. Wherever we think that Government's interference is necessary and the Companies Act has provided for it, we have not taken objection to it. But it does not mean that we accept the principle that in all cases Government's interference is called for.

Shri Tangamani: I take it that you are for advancing the interests of the shareholders. In the very first page I find that you oppose the creation of the new section 43A companies. Can you advance any special reason for 25 per cent being advanced by the public companies? How does it advance the interest of the shareholders?

Dr. R. C. Cooper: The Bombay Shareholders' Association is not against this principle at all as far as public companies are concerned. But we are anticipating certain very serious difficulties where a private company is holding more than 25 per cent shares in another private company. That is the only thing we are opposing. For instance, if a private company is holding more than 25 per cent shares in another private company, there are cases in which both companies have a small capital of Rs. 25,000 or Rs. 50,000. In such cases, various formalities which today are not applicable will have to be brought into force, as for instance, change of name. If after 15 days or even a year, the interest falls below 25 per cent, once again there will have to be a change of name. All these complications will arise. So, we are only against a private company holding more than 25 per cent shares in another private company being treated as a public company, we do not oppose the principle generally.

Shri Mazumdar: There are private companies whose magnitude of operation transcends that of public companies.

Dr. R. C. Cooper: Even in such cases, if the holding company is also a private company, our view is that "body corporate" should be substituted by "public company".

Shri Tangamani: Arising from that, where the company employs public money directly or indirectly, do you or do you not oppose control as if it was a public company?

Dr. R. C. Cooper: The section speaks of holding of shares; it does not speak of loan or assistance. May I point out in this connection that as far as shareholding is concerned, the position is entirely different from loans made to companies. Supposing a loan is made by a bank, the credit-worthiness of the company is gone into and it gives guarantee and security. But as far as shareholding is concerned, the position is fundamentally different from loans.

Shri Tangamani: In page 4, regarding section 203, you say that a person convicted of an offence in connection with the formation of a company should not be allowed to become a director and even the court should not give permission.

Shri Tanubhai D. Desai: We are pointing out the necessity of it.

Chairman: That is not before us; that is not within our purview.

Shri Tanubhai D. Desai: We only took the opportunity of pointing out the necessity of it, so that if they think it fit, hon. Members may take it up in the House.

Chairman: We can keep that in mind for the future.

Shri Tangamani: Regarding clause 58, would you like the director's

specches and all the things made out in the general body meeting to be published at the expense of the company? Do you want the shareholders to bear the expenditure?

Shri Tanubhai D. Desai: In fact, the Chairman's speech gives a complete version of the company's progress. There are so many shareholders who are not resident in the town where the meeting is held and they would come to know the position of the company from the Chairman's speech. The Press is the best medium for it not only for the shareholders but also for the prospective investing public. We do not see any objection to that.

Shri Tangamani: So you consider that in this particular matter the interests of the shareholders and the directors are identical.

Shri Tanubhai D. Desai: The directors may not like, but the shareholders would like to see it in the Press. It is more in the interest of the shareholders.

Shri Jadhav: What is the membership of your Association and how many companies do they cover?

Shri Jagdish J. Kapadia: Our membership is 500 covering roughly 2,000 companies.

Shri Morarka: I want one clarification from the witness. He said subsidiaries should not have managing agents. I would like to know whether according to him subsidiaries should have managing directors or should not have even that.

Shri Tanubhai D. Desai: That is a matter of their choice. What we want to prevent is double payment of managing agents' commission in the shape of managing agents' profit from the holding company and from the subsidiary company.

Shri Morarka: If the managing agents are different for the holding company and for the subsidiary, would you have any objection?

Shri Tanubhai D. Desai: If they are not the same managing agents we do not object to it. We only object to double payment to the same person in two shapes for the same work.

Shri Morarka: I would like to know whether your Association has received any complaint about non-payment or late payment of dividends?

Shri Jagdish J. Kapadia: According to the Act, the management has to pay the dividend within 90 days. Most of the managements are paying dividend within 90 days of the passing of the dividend.

Shri Morarka: Have you received any complaint that the dividends are not fully or regularly paid according to the existing law?

Shri Jagdish J. Kapadia: Not such complaints.

Shri Morarka: Do you remember any case where the payment has not been made?

Shri Jagdish J. Kapadia: There was one case where the payment was not made. When the regional director enquired of the company the company said that they had posted the dividend bonds to the particular shareholder and it was complained that they might have been lost in the post. That is the only case we have come across.

Shri Morarka: Please turn to page 4 of your memorandum regarding clause 138 dealing with section 372. What is your precise objection? Do you want the limit of 30 per cent which the amending Bill seeks to impose to be removed.

Shri Tanubhai D. Desai: We say that so far as non-group companies are concerned, if investment is to be made, the sanction of a special resolution of the company should be sufficient. What we object to is to go to the Government even after the special resolution is passed.

Shri Morarka: Since you are representing the shareholders, what

objection would you have if the investment beyond this limit is made subject to Government's sanction? What hardship would your association suffer?

Shri Tanubhai D. Desai: It is not a question of suffering hardship by the association. Our suggestion is that sanction of the shareholders should be sufficient, because if the shareholders approved of it by a special resolution, it is not necessary to have Government sanction, because it is a non-group company. We do not welcome Government interference in every case.

Shri Morarka: In clause 60, you want the remuneration of managing agents to be reduced and put on a sliding scale. Would you not like that to be regulated by a special resolution likewise? Why do you want a satutory provision for that?

Shri Tanubhai D. Desai: Because we feel that there is necessity for a statutory regulation being made.

Shri Morarka: You must say something more than that. We know you feel like that, but you have to explain it to the committee.

Shri Jagdish J. Kapadia: If scales are laid down in the Act, then all the companies will have to abide by the law. At the moment, Indian Iron & Steel Company is charging 5 per cent. on its profits and Tata Iron & Steel is charging 7½ per cent. Such things will not happen in future if scales are laid down.

Dr. R. C. Cooper: In certain cases there may be substantial holding by the persons concerned and we feel this is a case in which this type of restriction is necessary. By virtue of this substantial holding, the persons concerned may be in a position to pass a special resolution also.

Shri P. T. Leuva: If a person has got substantial interest, it would be to his interest to decrease the remunration.

Dr. R. C. Cooper: The point which I was trying to explain is, persons who are incharge of management may be having substantial holding by virtue of which they may be in a position to pass a special resolution.

Shri Morarka: Please refer to clause 153, section 408. You want that only a member of the company should be nominated as a Director by the Government, not an outsider.

Shri Tanubhai D. Dasai: Why we suggested this is, that a shareholder who would be appointed a Director would be conversant with all the facts and he would be in a much better position to know what the affairs of the company are going on. If a non-shareholder is appointed as a Director by the Government, then the position would be that he will not take so much interest as a shareholder would. We suggest that a shareholder should be appointed as a Director.

Shri Morarka: Are you in favour of giving representation to the minority shareholders on the Board of Directors of Companies?

Shri Tanubhai D. Desai: We are not opposed to that.

Shri Morarka: Are you in favour of it?

Shri Tanubhai D. Desai: We are in favour of it.

Shri Morarka: Can you suggest a way how the minority shareholders can be represented on the Board?

Shri Tanubhai D. Desai: I do not think that is the subject matter of the Bill. If you want to expect us to say something outside the purview of the Bill, we may submit a separate Memorandum on that.

Shri Morarka: You kindly refer to the last paragraph of your Memorandum; there is section 408. I am asking a question whether it is very much concerned with your Association.

Shri Tanubhai D. Desai: We are only pointing out that the Government wants the power to appoint Directors who are not shareholders of the company. We are only pointing it out.

Chairman: Their objection is that the Directors should not be non-members, but that they should be out of the members.

Shri Morarka: The company by itself can also appoint among the minority shareholders the Directors on the Board and for that purpose I wanted to know from them whether they have got any suggestions to make.

Shri Tanubhai D. Desai: This is not covered by the Bill.

Shri Morarka: Since the witness is saying again and again about the Bill, I take it that there is nothing in the Memorandum which is outside the purview of the Bill.

Chairman: You are going out of the purview of the Bill. Therefore, I do not allow discussion on that.

Shri Morarka: Then, I take it, at the present moment, the witness has no views to offer and that they cannot give any opinion on the question that I have asked.

Dr. R. C. Cooper: Since this point does not arise out of the Bill, we have no definite views to offer at this stage.

Shri P. D. Himatsingka: Please refer to clause 153, Section 408. Is the Shareholders' Association aware that there have been cases where Directors appointed by the Government were not registered as shareholders and, therefore, they could not function?

Shri Tanubhai D. Desai: Under the existing law, the shareholders alone could be appointed Directors.

Shri P. D. Himatsingka: Shareholders who were there were not willing to become Directors, but at the same time Government felt that somebody else should be appointed as Director and they nominated some. They were not registered shareholders of the company and, therefore, they could not function.

Shri Tanubhai D. Desai: So far as shareholders' Association is concerned, we do not know of any such case, where no shareholder has come forward to became the Director.

Shri P. D. Himatsingka: This has happened in Bombay.

Shri Tanubhai D. Desai: That is not correct.

Shri P. D. Himatsingka: Clause 60, Section 198. You have suggested sliding scale. Is it on the slab basis-

Dr. R. C. Cooper: We are suggesting slab system.

Shri Dave: From the Memorandum that you have submitted, it appears that you contemplate certain cases and certain problems especially dealing with the managing agents, their appointment, their remuneration etc. in which you feel the shareholders as a body by themselves are not in a position to safeguard the interests of the shareholders and, therefore, certain amount of Government supervision and control is necessary. Is that impression correct?

Dr. R. C. Cooper: In certain matters, Government restriction is welcome, but we are not for too much Government interference. Where we consider it absolutely essential, we have suggested it.

Shri Dave: But in two cases, firstly in the case of appointment of managing agents, for instance, of a holding company and a subsidiary company and secondly, in the case of the remuneration of the managing agent in certain companies, you do welcome Government restriction. Is that go?

Dr. R. C. Cooper: That is so.

Shri A. C. Guha: Page 3, clause 60. Your Association has suggested some modification in the remuneration of the managing agent on a sliding scale. Would you make any distinction between a managing agent of only one com-

pany and managing agent for a group of companies?

Dr. R. C. Cooper: No, Sir. We are going by each individual company separately. The profits of each separate company would vary.

Shri Tanubhai D. Desai: It is not possible to define the remuneration of managing agents in terms of groups or any thing of that kind. We can only take the case of each separate company and come to a definite conclusion.

Shri A. C. Guha: Clause 124. You have suggested certain modifications regarding subsidiary companies and holding companies, do pou suggest restrictions on remuneration of the managing agent also.

Shri Tanubhai D. Desai: We have suggested that there should be no managing agents, not restriction on the remuneration. But no managing agency should be permitted.

Shri A. C. Guha: How would that company be managed?

Shri Tanubhai D. Desai: The company would be managed by the Board of Directors of that company, through the Managing Director, or the Manager.

Shri A. C. Guha: In such cases, if there is a nominee of that firm as the manager of that company and if he enjoys all the remuneration, what happens?

Shri Tanubhai D. Desai: He would not get the heavy commission which the managing agent would get.

Shri A. C. Guha: Regarding clause 62 you have suggested that dividend should be paid at the rate of 6 per cent even without deducting depreciation for the first five years. Would it not be better for the shareholders to wait for five years instead of spending from the working capital?

Dr. R. C. Cooper: The Shareholders' Association stands for a large body of shareholders belonging to the middle-class and lower middle-class. When they go on investing, it is not possible for them to wait even five years without getting any return at all on the capital. That is why we have suggested a nominal amount of 6 per cent. dividend.

Shri A. C. Guha: Would it not be just eating away the working capital of that company because in the first five years the company is not expected to get any loan.

Dr. R. C. Cooper: Our suggestion is based on a policy which is being continuously followed by the Government for several years and by various corporations including the State Financial Corporations where the Government have guaranteed from the first year.

Shri Tanubhai D. Desai: That shows the necessity of declaring dividends.

Shri Nathwani: In your Association, out of the 2,000 companies, how many of them are private companies?

Shri Tanubhai D. Desai: Very few private companies.

Shri Nathwani: You have stated that certain type of managing agents sometimes have received remuneration twice over for the same kind of work. Will you kindly give illustrations?

Shri Tanubhai D. Desai: We have the Premier Construction company. That company is holding 100 per cent shares of the Hindustan Construction company and the India Hume Pipe Company. Those companies are carrying on big contracts. The Premier Construction company does nothing else except that they charge 10 percent of the Premier Construction Company's profits which are mainly coming from the dividends of those companies and they take commission here and there as managing agents of those two companies.

Shri Khandubhai K. Desai: What is the commission they get?

Shri Jagdish J. Kapadia: The managing agent's commission is about Rs. 13 lakhs in respect of these three companies.

Shri Khandubhai K. Desai: Is it the same agency?

Shri Tanubhai D. Desai: Yes.

Shri Nathwani: As regards small shareholders I would like to know whether section 208 will not give them some relief. I know the views of Tanubhai Desai.

Shri Tanubhai D. Desai: Please do not talk of personal views.

Chairman: What he says is the view of the Association and that is what we want. If one of them gives his views and the other is not giving, we should presume that what is given to us is the view of the Association.

Dr. R. C. Cooper: I may, however, explain that as far as those section are concerned, they may be enforced only in exceptional cases and for that special sanction of the Government is necessary and various other formalities will have to be gone through We want this principle to be extended. It is a general principle for general application.

Shri P. T. Leuva: Will not the cost of management increase as the profits are also increasing? When a company is entitled to 7½ per cent. commission, you envisage that the profit should be Rs. 1 crore. As the volume of business in the concern is expanding, will not the cost of management also increase?

Dr. R. C. Cooper: The suggestion of ours is that a slab system should be introduced because we feel that the increase in cost is not in proportion to the increase in profit of the company.

Shri P. T. Leuva: You have suggested that the maximum remuneration of managing agents should be reduced from 10 per cent to 7½ per cent.

Dr. R. C. Cooper: We are not suggesting that. What we are suggesting is that on the first slab the commission should be 10 per cent.

Shri P. T. Leuva: When the profit is less than Rs. 1 crore.

Dr. R. C. Cooper: If it is more than Rs. 1 crore, the percentage also will vary as shown in the statement.

Shri P. T. Leuva: Will it not discourage the companies from running more efficiently? Because, if the profits of the company go on increasing, the remuneration of managing agents will not correspondly increase, but on the other hand, it will go on decreasing

Dr. R. C. Cooper: Our experience is otherwise. We have first-class companies like Dunlop and Liver Brothers. There is no lack of incentive even though the remuneration is less there.

Shri P. T. Leuva: If your slab system is introduced, will there be an incentive to expand business?

Dr. R. C. Cooper: The incentive would be more if he gets remuneration on the slab system.

Shri P. T. Leuva: If the percentage is reduced from 10 per cent to 7½ per cent. will there be more incentive?

Dr. R. C. Cooper: We are equating the interests of shareholders.

Shri P. T. Leuva: But the shareholders are not running the company. The Board of Directors are running the company. Do you mean to say that you decrease the remuneration, there will be more incentive?

Dr. R. C. Cooper: We feel that, if anything more is to be paid over and above what we have suggested, it is not reasonable according to the views of our Association.

Shri P. T. Leuva: What I am asking is whether this is a general principle. If you decrease the remuneration, will there be incentive to work harder?

Chairman: They only say that even with the decrease in the remuneration there will be sufficient incentive.

Shri P. T. Leuva: Generally if a person is paid more, he will work harder...

Chairman: They have modified their position. They say that even with this decrease there would be enough incentive for them to work hard. You need not press it further. Thank you gentlemen.

(The witnesses then withdrew.)

III. The Associated Chambers of Commerce of India, Calcutta

Spokesmen:

1. Mr. J. D. K. Brown.
2. Sir Walter Michelmore.
3. Mr. D. S. Gorer.

(Witnesses were called in and they took their seats)

Chairman: We have gone through the memorandum submitted. If you wish to clarify or amplify any points made in it you might do so.

Mr. J. D. K. Brown: In regard to certain clauses we would welcome an opportunity to comment in greater detail than we have been able to do in the memorandum.

I would first refer to a series of clauses which raise an important practical issue.

Clause 2(d) *Definition of "branch office."* In this connection I would like to refer to what we regard as connected clauses, clauses 46, 48, 65, 70 and 75. The short point is that the definnition of a branch office, combined with the revised audit provisions contained in the Bill, will mean that company managements will be put in a position of some difficulty in a number of cases in getting their accounts completed in time. We entirely accept the principle that all companies' transactions have to be audited. Our objection is on the practical basis. The way in which it is put in the Bill will make it very difficult to have it done.

I should like to explain one particular clause—the clause which proposes to take away from the Registrar the power to grant an extension of the date within which a company has to hold its meetings. The effect of that is that every company willy-nilly will have to complete their acocunts and put them before the shareholders before nine months from the end of the financial year. There are circumstances which do sometimes make it very difficult to prepare the accounts, so that the auditors may complete their work in time.

We have noticed a recent notification of the Department of Company Law Administration wherein they have made it clear that simple delay in audit will not ordinarily be treated as sufficient cause for giving an extension and we naturally support that. But just to take away the power of the Registrar, altogether, combined with the provisions relating to audit is going to make things a bit difficult and we would suggest that this matter be given further consideration. These provisions will also mean that a very great deal of additional man-hours will have to be spent; in some cases this will mean duplication of work. Many organisations have very good internal audit arrangements for their own satisfaction. They keep an internal audit organisation and if this work is to be done all over again by equally qualified auditors from outside, there will be duplication of work and it will lead to delay.

We would like to see sections 227 and 228 amended in such a way as to get over this duplication of work. To the extent organisations do not at present employ internal auditors, if our proposals are accepted, it will lead to this practice becoming more widespread which will be a healthy development in company management. It will incidentally lead to probably more employment among the young chartered accountants who are an under-employed class at the moment. I do not wish to say anything more on these provisions. It is a practical

point which I think merits the attention of the committee. The next point we come to is with reference to clause 3(c), that is the conditions under which an Indian subsidiary company of a foreign company is to be treated as a subsidiary for the purpose of the Act. The Companies Act Amendment Committee in this respect left the policy decision to Government. That policy decision has apparently been taken and it will be appreciated that where a company is wholly owned by a foreign company the necessity for the control that exists over the public companies in India is not quite the same. The basis of this argument is that the Indian law must look after the interests of the Indian shareholders. That presumes the proposition that directors in companies have a considerable degree of freedom in fixing their remuneration and things like that. The law has provided that where it is a public company, Government approval has to be obtained. As far as Indian private companies which are subsidiaries of foreign bodies corporate are concerned, the same consideration does not apply, because the directors of the Indian private company concerned have no share-holding interests. They are nothing more nor less than pure employees: they have no influence over the voting control as to how much remuneration or anything like that may be paid. They are nothing more nor less than outright employees of the foreign company.

And it is a reasonable presumption, we submit, that the foreign company which is the principal company is well able to see that it does not pay anything more than is necessary.

The practical difficulties are, if these companies are subjected to the same regulation as applies to Indian companies, it does render things difficult for an Indian subsidiary of a foreign body corporate which works on a worldwide basis, because to some extent it is necessary for them to be able to transfer their staff from one country to another. And, obviously, there has got to be some degree of parity of remuneration. You cannot expect a man, possibly on promotion, to do some special job for the Indian company if he is going to be paid considerably less than he is being paid while working in some other country.

Of course it is correct that even if this amendment is given effect to, the position will be all right for an Indian private company which is a subsidiary of one foreign company. But there are an increasing number of cases where foreign companies collaborate either with one another and have joint organisations or even with some element of Indian capital. Where that element of Indian capital is public capital, of course we do not object to this principle at all. And the whole basis of the Companies Act Amendment Committee report was where Indian public money is involved, even in a minor degree, the company must submit itself to the Indian laws in this respect. That, of course, is perfectly acceptable. But where there may be some small element of Indian private money, or on Indian money at all, and it is a combination of two or three foreign companies, I do not think the same principle can be applied.

Shri Lal Bahadur Shastri: We propose to amend that provision like this.

> *For* "by that body corporate", *substitute* "by that body corporate whether alone or together with one or more other bodies corporate incorporated outside India".

Will that meet your objection?

Mr. J. D. K. Brown: We are very glad to note that. It does not quite cover cases where there may be small—five or ten per cent—Indian capital, which we would ask the Committee to consider.

The next point that we are concerned with is about the matter of private companies in clause 15 introducing section 43A. And on this matter my colleague, Sir Walter Machelmore,

would submit a few remarks to the Committee.

Sir Walter Michelmore: I agree with what Mr. Brown has said. We do not dispute the policy which is set out in the notes on the Clauses. Where substantial public money is involved, the company concerned should be treated as a public company. But there are quite a number of private companies at this time which happen to have shares in them held by other corporate bodies where the private companies are trustee companies, charitable trusts and things of that sort, all of which would be brought into the net of the public company if the wording now followed is adopted. We therefore suggest an amendment which would leave out from that, companies which we consider serve a definite purpose as private companies and many of which have virtually been of a sort of family business nature. It is a plea really for the private company which is in our opinion genuinely a private company but which would be brought within the definition of public company under the wording as it is now drafted in the Bill.

Mr. J. D. K. Brown: The next point we have is in regard to clause 53 where it is proposed to add a new subclause (eee) to section 192(4). Now, we can appreciate, in some ways, the purpose of this proposed amendment, but we have two objections to it. We do not think that it is sound to have Board resolutions filed with the Registrar. It is quite a revolutionary departure, and there is a clear line drawn between Board resolutions and resolutions of a company. Some are, and some are not, filed with the Registrar. but the importance ones are filed with the Registrar. But frequently more than nine-tenths of Board resolutions are purely matters of relatively small importance. I admit that where some large transaction of a capital nature is involved, there may well be a case for doing something about it. But the practical effect of this is going to be that not only would resolutions have to be filed with the Registrar—which is merely an administrative difficulty—but also copies of the resolutions have to be added to the copies of the articles which every company has to have available for the shareholders on demand. Every time you pass a resolution it has to be attached to the articles. These are fairly long and the net result over a period of years would be that the articles of the company, which are about fifty pages or less, would become volumes. And the vast majority of these resolutions would deal with matters which are of importance only for a week or a month; they have no permanent effect on the company at all.

We object to it in principle, I should make it clear. But partly, we have an objection from the point of view of the practical effect also.

With regard to the next point, we welcome the opportunity to address the Committee on clause 124 which deals with the question of subsidiary companies being employed as managing agents and I would ask Mr. Gorer to address the Committee on this point.

Mr. D. S. Gorer: The proposal under section 325A seeks, as I understand it, to legislate as if the relationship between a holding company and a subsidiary company—the latter being a managing agency company—is the same as exists in respect of a managing agency company having its own managing agent (which has been barred by section 325 of the Act). I would like to suggest that the relationship is not the same, because the basis of employment of a managing agency company or any managing agent is solely on the merits of the managing agent. The terms of the managing agency have to be approved by the Government, and if Government do not think that the proposed managing agency company is fit, then Government have powers to refuse the agreement.

In addition, Government have powers for the control of the managing agency company, that is to say,

over the constitution of its board and also of the constitution of its share capital. The job of the managing agent is to look after the day-to-day running of the managed company. I would submit that it would seem that the idea behind the suggested section 325A is that the board of the holding company would have in some measure control over the day-to-day running of the managed company through the managing agency company. And that, I submit, is not what happens in practice, because in many cases, the holding companies are not even Indian companies; they are often foreign companies with their control away from India, and it will be quite impossible for them, even if they wanted to, to exercise control over the day-to-day running of the managed company.

In regard to matters of policy, certainly, the board of the holding company can, and no doubt, such boards do, express their views to the managing agency company; but in matters of policy, the final decision must rest with the board of the managed company itself.

For these reasons, I do submit that the relationship between a managing agency company, and one which might in turn be its managing agents—which has been barred—is not the same as that between a parent company and a managing agency company which is its subsidiary.

I have no doubt that the committee is aware that there are a number of cases in existence now, of managing agency companies, which have been in existence for many years, managing important public companies which are, in fact, subsidiary to other companies.

For these reasons, I would ask that clause 124 be given further consideration.

Mr. J. D. K. Brown: The next point we have to raise is in regard to clause 128. It provides in effect for a further reduction in managing agency remuneration in certain cases. We are not taking exception to the clause as a whole, but what we feel has been overlooked is the difference between personal services, which are outside the scope of the duties of the managing agent, and the services of the managing agent. I am referring here to services which an individual necessarily renders in a personal capacity. A managing agency company may have one or more representatives on the board of the managed company; that individual, whoever he might be, has to act in a personal capacity, although, no doubt, he may reflect the views, on certain matters, of his colleagues on the managing agency company; but he bears a personal responsibility as director of the managed company just like any other director who is not connected with the managing agency; and he is subject to the same penalties and all the other provisions of the Act.

Furthermore, while managing agents have the right at present and frequently and most commonly, do nominate a director, this clause will also apply to secretaries and treasurers who have no such right; therefore, if an individual is on the board of a company, besides being a director of the secretaries and treasurers company, he is there by virtue of the voting power either of the secretaries and treasurers and/or their friends or the shareholders generally.

Then, there are cases of men who are technical men and who render technical services to the managed company. As a matter of administrative convenience, and with a view to give the necessary status and authority, it is frequently found desirable to have such men being employed as directors of the managing agency company, but the services which they are rendering are in most cases distinguishable from the managing agency services as such. It is not seen by the Associated Chambers why what are essentially personal services should not be remunerated as such, without impinging on the remuneration of the managing agents.

Where devices have been used to, in effect, give more remuneration to managing agents through creating artificial jobs—we are not concerned with that here—we do not dispute the object of the clause at all, but where *bona fide* personal services are being rendered, we think that this clause is going to create a hardship. We would not go into the details. We have referred to certain circumstances or cases which we know of, in our memorandum, where considerable hardship would be suffered not only by the managing agents, but probably by the individual employees, because they will be forced to sell their shares and give up a good investment. So, we would ask that that principle of personal remuneration for personal services be considered.

Our next point which we consider to be of quite considerable importance is in regard to clause 136. This clause *inter alia* seeks to enlarge the definition of the term 'bodies-corporate.... under the same management'. Now, it is proposed to do this by in effect providing that if company A is controlled by another company or individual holding only 33 1|3 per cent of the capital of that company, and company B is similarly controlled by the same company or individual, then these companies are to be treated as under the same management.

If I am a director of company A, I am in a position, almost certainly, to know who controls the shareholdings in my company; I may, but I need not, but I very probably do; and to that extent, this is quite reasonable.

Furthermore, loan transactions which are primarily dealt with in section 370 are not of such every-day occurrence that this need cause great difficulty; although you may be unwittingly lending money to a company and you do not know who controls 33 1|3 per cent of the shareholding of the other company; you do not know who does; and even if you did know, you do not necessarily know that it is the same person, because so frequently these shareholdings are in the name of nominee companies or other *benami* names, that it is very difficult to know it; you may know it, but with the best will in the world you cannot be sure that you would know. As I said, loan transactions are not indulged in every day, and these may not be part of the company's regular business.

But there is a further practical difficulty. In the balance-sheet found in Schedule VI, we are required to show both under the head of 'Sundry Debtors' and under the Head 'Loans and Advances' separately, amounts owing by companies under the same management, not only amounts owing, but the maximum amount owing at any time during the year.

The effect of this amendment, clause 136, will be that any company selling goods to another company will theoretically have to ascertain who controls 33 1|3 per cent of the shares of that company. I suggest that this is impracticable.

In the vast mass of daily transactions it is quite impossible to verify in respect of every sale and every purchase who has the controlling shareholding. And, yet, if you do not verify that how are you to know how to make up your balance-sheet? The position of the directors may be difficult. I suggest that the position of the auditors, who may not have access to the same inside information as the directors, would be made quite impossible. In short, we feel that however desirable this amendment may be in itself in order to deal with the abuses, it is impracticable as far as the day to day working is concerned. We would, therefore, earnestly request that it be given consideration on that basis.

Our next point is one which, I am sure most witnesses must have already raised with the committee and I would not like to take too much of the committee's time. We regard clause 138 as of very great importance indeed from the point of view of the future development of companies. I think I am well aware of the reasons which have motivated this amendment. But I do suggest that the procedure envi-

saged will make very desirable transactions impracticable.

We have dealt with the various difficulties—some of them are of a minor degree and others are of great importance—in our memorandum. I do not want to repeat them. But, in short, if a deal involves the purchase of shares, which under the new provisions would require the approval of the shareholders and then of Government, it will mean that where the shares in question are quoted in the Stock Exchange, the transaction will generally become impossible because as soon as you send notices to the shareholders calling a meeting and telling them what they are asked to approve, the prices of the shares in question will either go up or go down. If the buying company's shareholders are going to get the shares at a smaller price, then the directors of the selling company are going to be attacked vehemently.

In these matters, the normal procedure is negotiation between the buyer and the seller with the aid of professional advisers, legal advisers, chartered accountants and so on. After a good deal of bargaining, possibly, a fair price is agreed upon. It may be the market price or a little above or a little below the market price; but it is an agreed price. The procedure envisaged in the Bill will make such perfectly *bona fide* and, in many cases, desirable transactions just impossible. We do not think the restriction proposed is a reasonable one.

The next point concerns clause 179. This is a very important matter from the point of view of labour intensive industry. I am thinking particularly of the like of tea companies, jute mills, cotton textile mills where the ratio of labour employed is high and where, as it so happens, much of the finance that is employed for working capital comes from banks. If this clause is given effect to, we foresee that, probably, the object which is sought to be achieved, that is, to protect the worker and give him preference for retrenchment compensation in the event of the company going into liquidation, would be frustrated because what will happen is this. Instead of the company getting through a difficult period with the aid of the bank, the bank will certainly have to take into account the liability for retrenchment compensation etc. and the limit of their advance will be reduced accordingly. That means that just when you need the money most—maybe to get through a bad season such as is there at the present time in the tea gardens in Cachar (practically half the Darjeeling gardens are faced with difficulty)—instead of being able to lend more, the bank will have to consider reducing the advances. Then, what has the company to do? It means, in effect, that workers may be laid-off, units closed down earlier than would otherwise be the case—and in some cases they would be closed down though with a bit of good luck and good management they might have got through their difficulties.

For these reasons we suggest that clause 179 be very carefully considered.

We foresee great difficulties. I know them from personal experience of two or three years ago, in the case of jute mills, where many of the jute mills were borrowing up to the limit of their capacity because they had spent large sums of money on the modernisation of their mills—only part of which was raised in the form of permanent finance—and they were using part of their working capital and temporarily using bank funds. It so happened that this large capital expenditure, occurred during a period of very great trading difficulty and large losses were incurred. Many of the companies were borrowing from their managing agents sums greatly in excess of the absolute limit of bank advances. If bank advances had been restricted at that time, it would have been necessary to make special arrangements through some agency—how it could be done, I do not know—to enable some of these companies to get through and weather the storm. It

is for these practical reasons I submit that this clause be reconsidered.

The next clause is clause 211. All we ask for is that as far as the balance-sheets are concerned, our comments be given consideration because balance-sheets are concerned, our comciple, but they indicate the practical difficulties which will arise in the working of the Act later on. We would state that the principle of this amendment is taken but we hope these anomalies would be reduced and clarified—as far, that is, as the balance-sheet is concerned.

We have some fundamental objections to the revised paragraph 4 in Part II of Schedule VI. That paragraph, in our opinion, seeks to equate trading transactions with remuneration and will certainly cause misunderstanding among share-holders, the vast majority of whom are not trained accountants and can hardly be expected to interpret the balance-sheets in a professional manner. We would, therefore, request that paragraph 4 be considered in the light of our comments.

As far as paragraph 4A is concerned, we suggest that there is no need for it and, in any case, it is misleading. Paragraph 4A requires the amounts paid to auditors for services in other capacities to be disclosed. There is a great danger in this. Supposing my company employs the company's auditors, who are the best people to employ because they know our business, to investigate the possibility of amalgamation with any other company or to investigate the purchase or sale of one or other of our companies. The shares of these companies may be quoted in the Stock Exchange. The paragraph as drafted in the Bill requires *detailed* information to be given. As I put it, if it is a case of amalgamation, information regarding the amalgamation just going on will, in some cases, make it impossible for such amalgamation to take place; and, amalgamation might otherwise be desirable from the point of view of both the companies. The services which an auditor renders in another capacity are quite separate. The amount might vary much from year to year, depending upon what work is actually done, and the audit fee is a fixed fee. But in the course of a year you may not pay the auditors sometimes when they may not have any other work at all, and in the next year you may employ them to deal with the income-tax officer over a very complicated taxation point which might occupy their time and then they send in the bill. That is the remuneration for services. Certainly it has to be disclosed when it has to be disclosed. But our main objection is to the disclosure where it will have a bad effect on the future business of the company in matters like amalgamation and so on which I have mentioned.

These are the main clauses on which it is our view that the consideration of the Committee is required. We have no other points on which we should particularly like to stress. We have mentioned many others in our memorandum and we hope that they will be given consideration.

Shri Naushir Bharucha: Mr. Brown, will you please turn to page 3 of your memorandum wherein it is said:

> "Clause 3(c) of the Bill purports to give effect to this view but unfortunately deals only with the case of a private company being a subsidiary of a body corporate incorporated outside India, *the entire* share capital of which is held by that body corporate."

The hon. Minister has indicated certain proposed amendments. I take it that that meets with your case completely.

Mr. J. D. K. Brown: If the amendment meets with 90 per cent of our case, perhaps that is enough! I have suggested an amendment to that effect, stating why we would like, if possible.....

Shri Naushir Bharucha: You are satisfied with that? Now, coming to page 5, clause 11, I would like to point out that it deals with alteration of the articles in relation to the conversion of a public company into a private company. You have suggested some amendment. But, if that is accepted, it might defeat the purpose of that section, because, you would want to substitute the words "the purpose of which is to convert" for the words "which has the effect of converting." If those words are incorporated, the Board of Directors will say that "our purpose is not to convert the public company into a private company" and therefore there is no question of the approval of the Government. That question will not arise. Your difficulties are there, but we would like you to see our difficulties also.

Mr. J. D. K. Brown: I think this is very much a matter of legal interpretation. I am not a lawyer, but for the laymen we thought that the present wording, if used, might also defeat the purpose. We say no alteration can in fact have an effect of converting a public company into a private company unless the approval of the Government is obtained first. I think I see Shri Bharucha's point but, as I see, it is really very much a matter for legal interpretation.

Shri Naushir Bharucha: We leave it at that. Now, let us turn to page 9, clause 24. I quite appreciate your anxiety to avoid the burden being taken up by the companies, to get themselves satisfied with respect to certain certificates which have been lost. Instead of the words "proved to the satisfaction of the company", I would like to ask, from your practical experience, whether you suggest that a procedure can be laid down, such as, for instance, swearing by an affidavit. That would meet your point.

Mr. J. D. K. Brown: The position at the moment is that we do get affidavits from people who lose the share certificates. They wish to take an affidavit and that is with the guarantee of an insurance company or a bank or something like that. Many small shareholders lose their shares and they get duplicate shares which are stamped 'duplicate' and there is an end of the matter.

Our point here is that the penalty provisions are sought to be imposed, and the company managements praying for safety and thinking, "Well, what is this affidavit worth?"! Many shareholders will be put to additional expense. If it is a very small number of shares, we do accept an affidavit without having to incur the expenses on getting a bank guarantee. But I am sure if the penalty is imposed, every company will naturally try to secure the maximum indemnity.

Shri Naushir Bharucha: Not only maximum indemnity but maximum proof.

Mr. J. D. K. Brown: Yes.

Shri Naushir Bharucha: That is precisely the point that I am making. There is already a complaint that companies do not readily issue duplicate share certificates even in *bona fide* cases. I am trying to find a *via media* as to whether from your practical experience it can be prescribed by rule or an Act to see that the company, if it is satisfied with the affidavit and an advertisement and can issue a duplicate. Some such procedure might be laid down.

Mr. J. D. K. Brown: That would be giving a legislative effect to the present practice and I should not think that any of us—my friends Sir Walter Michelmore and Mr. Gorer—would object to that. In other words, if legislative effect is given to the present practice, namely, the affidavit and the letter of indemnity being filed and the company management being very adequately protected, then I do not think they would be scared by this penalty which is proposed.

Shri Naushir Bharucha: Let us turn to page 13, clause 44. It speaks of the appointment of a Registrar.

> "Quite apart from any question of appointment of registrars, the Chambers do not see why a company should not be permitted to keep its register of members and the other books and documents..." etc.

Do you not think that it might defeat the purpose, namely, to avoid the search of registers by any member, register may be shifted to a village where there is extreme difficulty of access to it?

Mr. J. D. K. Brown: The point is there, but the argument cuts both ways. You have companies which have established their registered offices in the mofussil districts in Bihar or elsewhere throughout India, where the shares are dealt with in the stock exchanges in Calcutta, Bombay, Madras and Delhi. Of course, there is great convenience and advantage as far as the negotiability of shares is concerned if registers are kept in one of those places where deliveries and transfers would be much more quickly secured.

This matter has been raised on two grounds: (a) some companies find it convenient to maintain their share registers through registrars and (b) a point was made to me by various people in Bombay that with the present shortage of accommodation which is very evident in all the cities where the offices keep expanding and expanding, the share department is a self-contained department; it does not require to be in consultation with a lot of other departments during the day, and it will be of very great convenience if they could move the share department with the registers and use the space for their trading and managerial activities in their existing building which is too small.

Shri Naushir Bharucha: I see your point of view. Shall we turn to page 15, clause 48? It deals with notice for calling meetings. Some previous witnesses made the same points and urged the same difficulty which you mentioned in the second sentence. What exactly is the difficulty and what is the concrete instance?

> "In particular, the extension of the period of notice required for calling meetings will cause additional difficulty in arranging for the preparation and presentation of accounts in time and the observance of the period may be impracticable in many cases."

Mr. J. D. K. Brown: There was a period of fourteen days. It was then extended to 21 days as recently as 1956, and in the initial stages it caused a little difficulty to extend it further. We visualised that it will cause difficulty in this way: particularly, if you are running for some reason or the other near the end of the time, when you have got to hold a meeting, the audit may not be very far advanced. And yet, you may have to take the chance of calling a meeting and most companies want to call their meetings as early as they can. But where they have got to give 28 days' notice, it means that they have to be surer of these things at a much earlier stage than what has been contemplated. I do not think I have made myself quite clear. The longer the period of notice, the greater will be the difficulty in deciding what is a safe date for calling the meeting.

Shri Naushir Bharucha: With regard to clause 53, you have in your memorandum on page 17, drawn a distinction between the resolutions of the company and the resolutions of the board. Can you suggest any practical line of demarcation between the contracts which are substantial, materially affecting the business and those which could be considered insignificant?

Mr. J. D. K. Brown: I think a distinction does lie, in effect, between capital transactions and ordinary trading transactions. Of course, if they are under Rs. 5,000 in a year,

the clause exempts them and they need not be recorded and approved at the meeting. But if they are over Rs. 5,000, they have to be approved at the board meeting and entered in a register open to inspection by the shareholders. We cannot see any point in having to do all these things. But I do admit that if, for instance, a company is proposing to buy fifty per cent of the share capital of another company from a director, I concede that there is a feature about it which makes it a capital transaction and there may be a wide range of difference of opinion as to whether the shares are worth Rs. 12 or Rs. 22. Such a transaction affects the future of the company and quite a large sum of money may be involved and some permanent record of it in the articles may be reasonable.

Shri Naushir Bharucha: My question was whether you could suggest any practical method of distinguishing the two because when we enact any law, we have got to be precise so that it might be implemented. Is it ever possible to distinguish transactions which are definitely of an insignificant character from the other types of transactions.

Mr. J. D. K. Brown: I cannot suggest any basis but I would suggest that the matter might be examined on the basis of the fact whether the transactions *vis-a-vis* the company are of a capital nature or are not of a capital nature.

Shri Naushir Bharucha: You have made certain observations regarding clause 62. Perhaps your intention is that the matter of setting aside a certain percentage should be left to the discretion of the board of directors. You suggest that as a safeguard for the shareholders, the auditors are there. Since you do not suggest any yardstick for measuring depreciation, on what basis is the auditor to judge whether the depreciation is adequate or not?

Mr. J. D. K. Brown: Recalling my own days as an auditor, I may say that you cannot be dogmatic on this subject but certainly the rates prescribed by the Indian Income-Tax rules do give the auditor in the normal course a very fair indication of what *prima facie* would be reasonable. But there are other cases. Take, for instance, a motor lorry. The Indian Income-tax rules lay down 25 per cent on the written down value. But if that lorry is employed on some construction project, it may be virtually unusable after 18 months. If the auditor is aware, as he must be, that the company is engaged in this work he ought to say that the 25 per cent depreciation would not be enough as the lorry would be finished in 18 months. The Indian Income-tax rules were last revised in relation to this aspect in 1940 and there have been considerable change in the types of modern machinery and highspeed machinery. These will not have the same long life like the older types of machinery. Now, that point is not very material. There are cases where the rates provided under the Indian Income-tax rules might be too great or too small and an auditor who is doing his job ought to take cognisance of that and most particularly, if the rates are inadequate.

Shri Naushir Bharucha: So far as your memorandum is concerned, the suggestion which you make precludes taking the Indian Income-tax rules as the basis for depreciation because you want the whole matter to be left to the discretion of the Directors or auditors. May I take it that you are prepared to take the income-tax basis as the yardstick of depreciation on which the auditors might go?

Mr. J. D. K. Brown: As a yardstick yes. Because of the difficulty of putting this into the Act, it has a practical significance. I think it would not be right as a yardstick to decide whether the depreciation is adequate or not.

I think, if I may say so, there is in the company law a great tendency to shield the position of the auditor. I do not think it is a healthy development at all. There should be nothing

in the Act which detracts from the ultimate responsibility of the auditor. By sheltering the auditor, we are not going to improve the position of the accountancy profession in this country and it is not going to develop as it should.

Shri Naushir Bharucha: It is not a question of sheltering the auditor. For instance, take the instance of the lorry which you gave just now. A lorry used in earth moving projects may last only for 18 months. The auditor may insist upon the service life to be estimated at 18 months but the board of directors may say that it will last for four years. Who is going to resolve the dispute? You refuse to go by the income-tax basis.

Mr. J. D. K. Brown: The Act provides the answer. The auditor qualifies his report and under the law the directors are required to comment on that qualification in the directors' report and the matter is thereby brought prominently to the attention of the shareholders and the Registrar when the accounts are lodged with him. The directors, as a class, I think, are very reluctant to see qualification appear in auditor's reports. Many a time I had personally argued with auditors, but one has to give way at the end, because there is a certain stigma attached to an audit report with qualification.

Shri Naushir Bharucha: Since it is your desire that the ultimate responsibility should rest with the auditors, would you agree to a clause being incorporated that the decision of the auditor on this matter shall be final?

Mr. J. D. K. Brown: I do not think we have got any objection to that, because if the auditors take a line which we do not approve of, we can on our own volition include a paragraph in the report stating our view. Again, I do not think the directors would be very ready to do that.

Shri Naushir Bharucha: May we turn to page 27? Round about the bottom of that page you say:

> "The effect of this proposal would be that companies which at present operate fully integrated internal audit system, employing qualified chartered accountants, would be enabled to continue these arrangements and would not be subjected either to additional expense or delay....." etc.

Would you be satisfied if power is given to Government, for the purpose of section 228, dealing with auditing of branches, to exempt from the operation of this clause such companies as operate a fully integrated internal audit system?

Mr. J. D. K. Brown: I think that would be acceptable to us.

Shri Naushir Bharucha: Please turn to page 33, clause 103, amending section 293—"Restrictions on powers of the Board". In the second sentence you say:

> "The Chambers hold very strongly to the view that the present form of the section casts an extremely unfair responsibility on the lender and one which might have serious effects on the willingness of banks and other financial institutions to provide accommodation."

Why do you say that it imposes an extraordinary burden? Do not the banks as a rule, before advancing money to a company, ascertain the extent of the company's indebtedness?

Mr. J. D. K. Brown: I would agree with you; the banks do that as a rule, but possibly if a relatively junior officer of a bank is negligent, the bank may be defrauded of money.

Shri Naushir Bharucha: If the ordinary common man suffers if he is is negligent, why should banks not suffer if they are negligent?

Mr. J. D. K. Brown: I agree with you.

Shri Naushir Bharucha: Please turn to page 34, clause 104, amending section 294—"Appointment of Sole Selling Agents". I quite appreciate the

difficulties which you may experience in appointing managing agents for small areas. The intention of the section is to prevent abuse of patronage. Could you suggest how it can be done—for instance, preventing ex-managing agents coming again in the guise of sole selling agents?

Mr. J. D. K. Brown: I have to confess that I have no answer to that question. I am afraid this attempt will be to some extent infructuous.

Shri Naushir Bharucha: Please turn to page 39, clause 124 "Prohibition on appointment as managing agent of a body corporate which is itself a subsidiary of another body corporate". You have said there:

> "Since clause 127, however, provides that where a managing agent is a body corporate and a subsidiary of another body corporate, any change in the constitution of the parent body will require the sanction of the Central Government, it appears that there is no intention to prohibit the continuance of existing arrangements under which a managing agent is a body corporate and is itself a subsidy of another body corporate."

In view of what clause 127 says, you think it does not prohibit the continuance of existing managing agents?

Mr. J. D. K. Brown: That is the way we interpret the clause. There does admittedly appear to be a conflict between clause 124 and clause 127 in this respect.

Shri Naushir Bharucha: Perhaps if you treat clause 124 as over-riding and clause 127 as a transitional safeguard, the conflict may not be there.

Mr. J. D. K. Brown: The use of the words "appoint or employ" in clause 124 seems to us to make that interpretation not tenable. I am not a lawyer, but that is the way we look at it.

Shri Naushir Bharucha: Please turn to page 41, clause 127, dealing with section 346—"Changes in the constitution of a managing agency firm or corporation to be approved by the Central Government". Would you experience any difficulty in implementing this clause by reason of the fact that on the death or retirement of any director, you may have to appoint another director, etc? Would this impose too heavy a burden on you to approach Government or could this be managed normally?

Mr. J. D. K. Brown: The truth is at present it is done. You have to approach Government for approval when somebody is retiring in the normal course. There is a feeling that it is an unnecessary formality, but we cannot claim that it imposes any undue burden. It is an additional work which has to be done.

Shri Naushir Bharucha: Please turn to page 42, clause 128, amending section 348—"Remuneration of managing agents ordinarily not to exceed 10 per cent of net profits". In your opening speech you have rightly stressed that where a special type of technical service is rendered, that person should be entitled to some additional remuneration. For instance, if you have a lawyer or an engineer, he is entitled to more remuneration. Would it serve your purpose if power is given to Government to exempt payment made to persons for *bona fide* technical service rendered to the company?

Mr. J. D. K. Brown: Yes, Sir; that would meet our case part of the way so far as technical services are concerned. We would also suggest that further consideration be given to the case where they are *bona fide* personal services and somebody has to accept the responsibility. Certainly the proposal which has been made by Mr. Bharucha would meet our case in part.

Shri Naushir Bharucha: Please turn to page 44, clause 130, amending section 350, relating to depreciation. You have made some very important observations in connection with the applicability of this section to electrical companies. You have said:

> "Having regard to the future relation between sections 205 and

350, it seems to the Chambers to be necessary to clarify the position regarding depreciation to be charged in the case of electricity companies."

Would you be satisfied if it was mentioned in the clause amending section 350, as follows:

"Provided that in the case of assets governed by the Electricity (Supply) Act, 1948, such depreciation shall be calculated on the basis prescribed in the Sixth and Seventh Schedules of that Act."?

Mr. J. D. K. Brown: I think that will meet the case.

Shri Naushir Bharucha: Would you consider that amendment under clause 130 is desirable or under clause 62 which deals with distribution of dividends out of profits only?

Mr. J. D. K. Brown: The amendment should be under section 350.

Shri Naushir Bharucha: Page 46, clause 136 amending section 370. I quite appreciate the force of what you say. It becomes extremely difficult to find out who has got the one-third voting strength. But could you suggest any practical alternative to get over the difficulty?

Mr. J. D. K. Brown: It will in the ordinary course be impossible for anyone to ascertain whether one-third of the total voting power of the two companies is exercised by the same individual or body corporate. What I would suggest is, if it has to apply to loans, at least, we should get rid of this complication so far as ordinary trading transactions are concerned.

Shri Naushir Bharucha: Page 47, clause 137—provision with regard to certain loans. Where the loan has been guaranteed, you are required to recall the loan as a practical businessman. Would you not find it difficult if your company guaranteed only such loans as to enforce its repayment?

Mr. J. D. K. Brown: I think, in many cases it will be found that its enforcement becomes impracticable and Government will have to give consent of extension of the date, probably for a very long period. I think, the point that has been raised by the Hon'ble Member is a very good one.

Shri Naushir Bharucha: Page 47, clause 138 amending section 372—Purchase by Company of shares etc. of other Companies. How do you propose to distinguish unhealthy cornering of shares from *bona fide* investment for development of industries?

Mr. J. D. K. Brown: Well, Sir, as many Hon'ble Members are aware, this matter has given a lot of headache to the Chambers of Commerce in past years, but I have to admit, with all the thought given to it, there is no practical way to stop it. You cannot argue that all cornering is bad because there is ample evidence to show, in certain cases cornering does not have an evil effect. Unfortunately, in many other cases, it has a very evil effect. But our opinion on this matter is that initial cornering is started by two or three individuals, not using funds of one company or two companies but of half a dozen or more companies. It is only when the cornering has been effected that something is done to avoid it. Other provisions of this section would have effect to stop cornering. How can you stop cornering except to use the other provisions of the Act?

Shri Kanungo: In other words, there cannot be any law which will be knave-proof.

Mr. J. D. K. Brown: Supposing, I learn that somebody is going to corner the shares of my Company then with the aid of my friends I can arrange the purchase of shares against the other man and I fight him and either he wins or I win, either the control over the company rests with us or with the other man. But by the time we issue a notice and call an extraordinary general meeting to pass a resolution, the corner will have been effected.

Shri Naushir Bharucha: I quite agree with you that calling a meeting to purchase a block of shares would immediately push up the prices, or push down the prices. But is there from your experience of working of so many companies any practical way out of it?

Mr. J. D. K. Brown: There is a provision in the Bill for the Government to step in and prohibit the transfer of shares for a certain period. I cannot say it would be fully effective, but it will be a deterrent.

Shri Naushir Bharucha: Suppose Section 372 is replaced like this:

(i) Companies should be allowed freely to invest anywhere they like;

(ii) If the investment exceeds 30 per cent of investing Company's capital or 10 per cent of the other Company's capital, investing Company desiring to exceed the limit should give intimation to the Government and ask for permission; and

(iii) Government may prohibit further investment or permit it on terms.

Would that in any way get over difficulties? Would you think that would help in any way?

Mr. J. D. K. Brown: I think, it would be a very distinct improvement on the clause as it stands now, provided that Government are prepared to give instant decisions. I had a case in my own Company only last week. I received a letter from our friends in London that in respect of a Company of which we are the agents another Company—a Trust Company—sent out a letter to the shareholders saying, "We will buy your shares and so on." The effect of that is, if they get a certain number of shares, they will get control over the company. Unless I am in a position to act instantly to defeat that move—nearly instantly, within a week or ten days—to take some effective steps, I may not be able to check that. The proposal which has been made by the Hon'ble Member would undoubtedly help provided that Government is able to take instant decisions. If it involves a lengthy inter-departmental consideration of the matter extending over a period of three months, I quite frankly say it would not be a noticeable improvement on the clause.

Shri Naushir Bharucha: Page 54, clause 179 amending section 530 dealing with Preferential Payments, particularly about retrenchment compensation. I have not been able to understand the attitude which certain witnesses, including yourself, have taken on this issue. I do not understand how this is going to be an extraordinary burden on industries who might require accommodation to tide over a period of crisis. When the bankers advance money they do take certain risks. In this particular case, even assuming that there is a labour-intensive industry, the liability would not be retrenchment compensation, because this will be a permanent closure. In the case of *bona fide* permanent closure the limit is upto 3 months' wages. if the banks are satisfied about the soundness of the company, why should they hesitate to advance money?

Mr. J. D. K. Brown: As I understand the position, the banks will advance money on cash and credit account or by way of overdraft, on the basis of a going concern and they do not at the present time take into account the potential liability for retrenchment compensation or closure pay. But if retrenchment compensation is going to be given preference, then it will create difficulties. At the present time, on jute manufactured goods they give 90 per cent and you get very adequate working capital to tide over the busy part of the year when you need it. But if you have 5,000 workers in a mill and if you are going through a period of depression, it is only ordinary prudence if banks take account of the liability. If it is a

capital-intensive industry where the number of workers in relation to the size of the company and the transaction is too small, then it is not so serious but some of these export industries which are subject to greater fluctuation and fortune are generally labour-intensive industries.

Shri Jadhav: May I know something about the practice in U.K. to give contributions to political parties by private or public companies?

Mr. J. D. K. Brown: There is no law in the matter in U.K. But it is a fact that these organisations do contribute sums to political parties in various ways without any disclosure. I think it is recognised that the Labour Party collects very large sums from workers by way of weekly or monthly contributions and nobody has so far raised a point over this in the U.K. There has from time to time, as you may know, been a clamour for publication of the accounts of the Conservative Party.

Shri Jadhav: I would like to know whether this practice is limited to the ruling party or it covers . . .

Chairman: That depends on the contributor. He has to see which party suits him.

Mr. J. D. K. Brown: In the course of my audit experiences in U.K., I can honestly say that companies contribute from their funds to the Conservative Party, the Liberal Party and the Labour Party.

Shri Jadhav: May I know what is the maximum amount of managing agent's remuneration in U.K.?

Mr. J. D. K. Brown: There is no maximum of remuneration in the U.K.

Shri J. S. Bisht: In regard to clause 15, you have said in your memorandum, page 5, that that clause which provides that under certain circumstances, private companies will be deemed as public companies is not acceptable to you. Do you really think that this clause would lead to some anomalies and difficulties?

Mr. J. D. K. Brown: Yes; we visualise that there will be considerable difficulties. The range of these difficulties will be quite wide. We do not think it will be possible to get equitable result by fixing a percentage. It may be that the shares of a private company are held by other companies which are tied up with charitable trusts and so on and will become a public company.

Shri Babubhai M. Chinai: Will you kindly turn to page 18. Do you think that the managerial remuneration at present allowed under the Act is sufficient, or not sufficient? Will the further reduction envisaged in clause 60 be considered as disincentive?

Mr. J. D. K. Brown: We find that in practice the remuneration provided in the Act is inadequate in a large number of cases. It is impossible to be dogmatic because if a company is highly profitable, you may get quite a good remuneration. But there are industries where ten per cent of the profit will be very inadequate.

Shri Khandubhai K. Desai: If it is inadequate you may suggest something.

Shri Babhubhai M. Chinai: Now I come to clause 62, on the same page. This provision says that dividends are to be paid out of profit arrived at after providing for depreciation. Will this retard capital formation?

Mr. J. D. K. Brown: I would say that I am all in favour of depreciation being provided before dividends are declared. But I do not think it will be even necessary to provide it by law because it is already there in the sense that the Auditor has to certify that the accounts show a true and fair view of the profits of the year. I quite see that this clause is perhaps put in here to ensure that the Auditor does not overlook this point.

As regards the hon. member's question whether it will slow down capital formation, I would say it will, to some extent because with this rather rigid rule, the Board of Directors will not be able to agree with the auditors that the depreciation of certain items of plant will be treated in a certain way . . . .

Shri Babubhai M. Chinai: Will you kindly turn to page 47, clause 138? Do you think that the restrictions on inter-company investment should not be extended as proposed? Under this clause, you cannot invest more than 30 per cent of the subscribed capital. Could you agree if the limit is fixed at 30 per cent. of subscribed capital and reserves?

Mr. J. D. K. Brown: Our attitude is that we do not like this at all; we do not think it would be effective for the purpose. We do not think this restriction should be imposed. But if it is imposed we would certainly agree with the hon. Memer that it should be capital plus reserves at least.

Shri J. S. Bisht: Page 11 of the Memorandum; clause 26. You say this clause as it stands today will prevent amalgamation or reconstructions and you want that the words "and is not prohibited by the terms of issue of the shares of that class" to be deleted.

Mr. J. D. K. Brown: You have companies—we have many of them—which were floated in the 1880's or 1890's and the share have some peculiar provisions attached to them. It does not cause any difficulty as long as the company carries on in its present form. But if you are going to undertake an expansion scheme and you have got to introduce new capital then you often have, as a preliminary, to reconstruct your existing capital on some basis or other . That is normally done by agreement of the different classes of shareholders *inter se* and by the company in general meetings. We see no reason why the terms of shares issued on certain terms in 1888 should not be altered by 75 per cent. majority of today's holders of the same shares.

Shri Ajit Singh Sarhadi: Page 20. You accepted the suggestion of Mr. Bharucha that you will agree to a proviso to section 205 that the decision of the auditor shall be final. Will it not be placing dictatorial powers in the hands of auditors?

Mr. J. D. K. Brown: I do not think so, as I explained, beause of the reluctance of the Boards of Directors to see qualified audit reports, which is the existing position. The auditor does have dictatorial powers.

Shri Ajit Singh Sarhadi: Would it not be better if the words are added: "after deduction of depreciation at a suitable and fair rate". That will be a guidance to the auditors without giving them final powers.

Mr. J. D. K. Brown: That is pefectly agreeable to us. The auditors' duties are quite clear, namely they have to certify that the accounts show a true and fair picture of the profits of the year and if he is doing his job conscientiously he has got to consider this matter,—the adequacy or otherwise of depreciation.

Shri Tangamani: Page 64, clause 179 relating to section 530. On the question of preferential payment to the employees, in case of winding up both under section 530 and also under the Industrial Disputes Act the total amount payable at a particular period is knowable. What will be the percentage on the annual wage bill payable to these workers in case of winding up in an industry say like jute?

Mr. J. D. K. Brown: I cannot say off-hand—I want notice of it.

Shri Tangamani: This Act puts the maximum at Rs. 1000. Rs. 1000 is the maximum that is fixed and also under the Industrial Disputes Act half a month's salary for every completed year of service, in which case will it exceed more than six months wage bill?

Mr. J. D. K. Brown: It would not be six months. There is a large element of

jute mill labour, as in many other industries, which turns over—quite a lot. I do not think it will be six months. It is very easy to calculate. There are three employees per loom which is considered to be a fair figure today. The total number of employees in a mill with thousand looms will be 3,000.

Shri Tangamani: In regard to depreciation you have referred to it at page 18 of your memorandum. Are we to take it that you are in support of depreciation being allowed before dividend is declared on the basis of section 250, namely only normal depreciation will be allowed as per Income-tax Act?

Mr. J. D. K. Brown: Normal plus shift allowances, etc., not development rebate and so on although they actually have to be deducted by reason of the provisions of the Finance Acts.

Shri Tangamani: Please refer to section 50. I would like a categorical reply from you whether you support the fixation of depreciation before the declaration of dividends on the basis of section 350?

Mr. J. D. K. Brown: As I have already explained, we agree it has to be provided. But we feel that it is not possible to provide a rigid formula, if you are going to get a satisfactory result in every case. We entirely agree that depreciation should undoubtedly have to be deducted before you arrive at the profits out of which you are going to pay dividends. We do not dispute that at all. But what we criticise is any rigid formula for the reasons which I have tried to explain.

Shri Tangamani: Clause 128, page 42. In regard to remuneration of managing agents it is stated that it should not be more than 10 per cent. Some witnesses have informed us that it is better to have it from 2½ per cent. to 7½ per cent. They were saying 10 per cent is on the excess side. How do you reconcile yourself with that view?

Mr. J. D. K. Brown: Remuneration by means of a percentage on profits is not absolutely equitable.

Chairman: What he means is that in certain cases 2 per cent. may be high; while in other cases even 10 per cent. will be a low sum. In the form of percentage it is difficult to assess in every industry and in every enterprise. It cannot be adequately dealt with by fixing a percentage.

Shri Tangamani: Would he suggest that in some cases less than 10 per cent. will do?

Mr. J. D. K. Brown: It is a fact that some companies do charge less than 10 per cent. of the profits and the fact that they charge so is proof that it is acceptable in such cases.

Shri Tangamani: Please refer to page 39 of your memorandum, about clause 124 (Prohibition on appointment as Managing Agent of a body corporate which is itself a subsidiary of another body corporate). What is your objection to this?

Mr. J. D. K. Brown: Our objection to this clause is that it is quite unnecessary. The relationship of a holding company to a subsidiary company is sought to be placed on the same footing as the relationship of a managing agent to a managing agent. The two, in our opinion, are quite different. Our objections are practical, in that there are many companies which are subsidiary. They may be public companies, but the controlling interest may be held by other bodies corporate either in India or abroad. And so far as the latter are concerned, they will have to revise their arrangements. In some cases it may put into their minds the idea of selling their investments in India. At the present time, when there is a severe shortage of foreign exchange in the country, it seems to us that it would be unfortunate to permit a clause of this sort to be put in.

Shri Tangamani: Please refer to pages 28 and 29 of your memorandum, clauses 76 and 77 which deal with inspection of the documents by the Registrar. I do not understand why you oppose even inspection under clause 76 which is a normal inspection by the Registrar.

Mr. J. D. K. Brown: It makes provision for the appointment of inspectors.

Shri Tangamani: This is about the Registrar himself. He is authorised to inspect the documents if he chooses or at the instance of a shareholder or creditor.

Mr. J. D. K. Brown: We do not see why any extension of the existing provisions is necessary at all.

Chairman: He can call for further information on any complaint.

Mr. J. D. K. Brown: He either gets the information he requires, or, if he does not get the information, we feel that the Registrar is at perfect liberty to take further steps, namely to go and get an order from the Court to inspect the books or it is for the Government to appoint inspectors. The existing provisions, we feel, are quite adequate if they are used. If the books are found to be not there when the inspector goes, *prima facie* there is something wrong. What we feel is that if the Registrar is drawn into the orbit of administration, by giving him equal powers with the director to inspect the company's books and that sort of things, it could be used as a defence on the part of a guilty party later on, "Well, I am a director, I never inspect the books, but the Registrar does". We feel that the existing distinction, which is quite clear, between the functions of the Registrar and the functions of the director should be maintained.

Shri Tangamani: With regard to your suggestion on page 3 of your memorandum, relating to clause 3(c), will it not amount to a discrimination in favour of the foreign company as compared to the Indian company, especially in relation to clause 15 for example?

Mr. J. D. K. Brown: We do not see any element of discrimination at all, here because one must presume that there would not be the necessity for this legislation unless it was to protect the shareholders whose money is involved. As I said earlier, the directors of a private company or of a public company may have voting control. But in respect of these Indian Companies which are subsidiaries of foreign bodies corporate, by virtue of the very fact that their entire capital is held by the foreign body corporate, the individual who may nominally be the Managing Director has no right to fix his own remuneration at all. There is no need for it.

Shri Nathwani: Could you tell us what are the provisions in U.K. for exempting private companies and how they compare with those sought to be placed here in this Bill?

Mr. J. D. K. Brown: The provisions as far as this matter in the U. K. is concerned are contained in the Seventh Schedule to the Companies Act, 1948. They extend to five fairly-closely printed pages. By and large, what it says is, if a company is owned by individuals and if there are any corporate holders or trusts, family settlements and so forth, held through limited companies in a nominal capacity, then, even if one hundred per cent of the capital is held by other companies, they will be exempt private companies. On the other hand, if the beneficial ownership of the private company is in the hands of another company where the ownership is at arm's length, an investment in a trading capacity in other words, then they are not exempted.

Shri Nathwani: Do you agree that on the whole they are more severe than those which are sought to be placed in this Bill?

Mr. J. D. K. Brown: It is not possible to say. They are more severe in some respects and not so severe in others. As I said, the proposal in the Bill....

Chairman: We will judge that severity ourselves.

Shri N. R. Munisamy: With regard to clause 179, about retrenchment compensation, may I know whether your objection is only based on the ground that it is not conducive to the prosperity of the company and the bankers may not lend money and so on, or whether it is based on the ground that this is an innovation in this country and that it does not obtain anywhere else in any other country of the world?

Mr. J. D. K. Brown: As far as I know, it does not obtain in any other country—but I say this subject to correction. Our objection is purely from the point of view of the management of company finances and the practical difficulties which we visualize may arise. We are not concerned with the labour relations aspect of it, which is properly a matter for the Industrial Disputes Act—where we have made representations on this matter on various occasions.

Shri N. R. Munisamy: The next question is about clause 3(c)—private companies, subsidiaries of foreign bodies corporate. You have said something here which I am not able to make out. For instance, you say:

> "Consistent with the distinction which is drawn between public companies and private companies and bearing in mind the proposals in this connection contained in clause 15 of the Bill, the Chambers are of the view that there is no reason why, even if as much as, say, 25% of the share capital of an Indian private company which is a subsidiary of a foreign body corporate is held by another Indian private company or companies, which will continue to be private companies notwithstanding the provisions of the new section 43A, the first named Indian private company should be treated for the purposes of the Act as a subsidiary of a public company".

Am I right in saying that in case you have got 25 per cent of shares of a private company which happens to be a subsidiary of a foreign company, it continues still to be a private company, because the 25 per cent share capital is also invested in the subsidiary company?

Mr. J. D. K. Brown: I am not quite sure if I have got the full meaning of the question. But our point is that where you have an Indian private company, the capital of which is to the extent of 75 per cent or more owned by a foreign body-corporate or bodies-corporate, it may not be totally advisable to treat it as a public company; if there is a limited Indian participation, and it is purely private. There are such companies, and some of them are of quite recent formation, to exploit processes; in the course of time, they will become probably public companies, of their own volition, but to subject them at this stage to all the restrictions imposed on public companies is not probably going to encourage the foreign partners in expanding their interests and building up that company. It is a thought that we put in the minds of the committee that a little latitude in this would probably have a very good psychological effect on foreign investment.

Shri Himatsingka: At page 12 of your memorandum, regarding clause 38, you have suggested some amendment in the proviso. How will that improve the present position? Dividend is declared as payable on a particular date, and that is generally the date of the meeting or some date prior to that. If the register is kept open after the dividend becomes due, how will it help shareholders who have not registered themselves?

Mr. J. D. K. Brown: As I understand the position, under the Securities (Contracts) Regulation Act, as soon as a buyer registers his shares within a fortnight after the dividend becomes due; he is entitled to that dividend, if he bought the shares before. Therefore, what seems to us to be important is that the share registers should not be closed during that fortnight where he is given the protection under the Securities (Contracts) Regulation

Act. In other words, the emphasis must be on the date on which the dividend is declared as payable or is due to be paid, not the date on which it is declared, because as the hon. Member has said, sometimes, the dividend is declared payable on the day of declaration, and sometimes it is declared today but it may not be payable for a fortnight. Different companies have different practices in the matter.

Shri Himatsingka: Do the companies not fix the date prior to the date of the meeting, generally?

Mr. J. D. K. Brown: No. In my own agency, our practice is that the dividend is declared at the meeting for instance, we have the shareholders' meeting on Friday, and we declared the dividends, and they become payable that day and the warrants are posted that night.

Shri Himatsingka: True, they will be payable later on to all shareholders who are on the register no a day prior to the date of the meeting.

Mr. J. D. K. Brown: My experience is that it is payable to shareholders who are registered as on the date of the meeting.

Shri Himatsingka: Therefore, even if you keep the register open for fifteen days after the date of the meeting or after the dividend has become due, those shareholders will not get the advantage.

Mr. J. D. K. Brown: But their position, as I have just said, is protected under the Securities (Contracts) Regulation Act.

Shri D. L. Mazumdar: What about the shares which have been transferred long before, three weeks or even before, but which could not be entered in the books?

Shri Himatsingka: Then, they would not get it.

Shri Morarka: May I refer the witness to page 5 of the memorandum, where he says:

> "While, broadly speaking, the Chambers accept the view of the Companies Act Amendment Committee that private companies which employ public money, directly or indirectly, to a considerable extent should be subject.....

Mr. Brown had said that before private company can be made into a public company, it must employ public funds directly or indirectly, and to a considerable extent.

Mr. J. D. K. Brown: That is what we have stated.

Shri Morarka: Could you kindly explain to the committee what you mean by the term 'directly or indirectly'?

Mr. J. D. K. Brown: Either by direct investments or held through some other company or body. Your shareholders may consist of individuals, either directly or holding through other companies or nominee companies. There are various ways of holding shares in a company.

Shri Morarka: If the public funds are invested in a private company, not necessarily through the shares but through other methods also, would that not be an indirect investment of public funds?

Mr. J. D. K. Brown: That is not an investment, in our opinion, within the meaning of the term, as it is understood in company law. I hardly think that it is an investment. For instance, in the case of debentures, the relationship is that between a debtor and a creditor; it is not an investment in that sense. The debenture-holder has got a charge on the assets; he is not concerned with the risks of the business.

Shri Morarka: Similarly, would you consider redeemable preference shares as investment or still as a loan?

Mr. J. D. K. Brown: If they are preference shares, whether they are redeemable or not, they are an investment. There is no doubt about it.

Chairman: Thank you.

(The Witnesses then withdrew)

The Committee then adjourned.

JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959

Thursday, the 9th July, 1959 at 08.30 hours.

PRESENT

Sardar Hukam Singh—*Chairman*

MEMBERS

Lok Sabha

2. Shri H. C. Heda
3. Shri Satyendra Narayan Sinha
4. Shri Shivram Rango Rane
5. Shri N. R. M. Swamy
6. Shri Jaganatha Rao
7. Shri Radheshyam Ramkumar Morarka
8. Shri G. D. Somani
9. Shri Feroze Gandhi
10. Shri Mulchand Dube
11. Shri Rohanlal Chaturvedi
12. Shri Arun Chandra Guha
13. Shrimati Sucheta Kripalani
14. Shri Narendrabhai Nathwani
15. Shri Nityanand Kanungo
16. Shri K. T. K. Tangamani
17. Shri S. Easwara Iyer
18. Shri M. R. Masani
19. Shri Yadav Narayan Jadhav
20. Shri Tridib Kumar Chaudhuri
21. Shri G. K. Manay
22. Shri Naushir Bharucha
23. Shri Lal Bahadur Shastri

Rajya Sabha

24. Shri Khandubhai K. Desai
25. Shri T. S. Avinashilingam Chettiar
26. Shri P. D. Himatsingka
27. Shri Babubhai M. Chinai
28. Shri J. S. Bisht
29. Shri P. T. Leuva
30. Shri M. P. Bhargava
31. Shri R. S. Doogar
32. Shri J. V. K. Vallabharao
33. Shri Rohit M. Dave.

DRAFTSMAN

Shri S. P. Sen Verma, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar, *Secretary, Department of Company Law Administration.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

WITNESSES EXAMINED

I. *Indian Chamber of Commerce, Calcutta*

Spokesmen:

1. Shri B. P. Khaitan
2. Shri A. L. Goenka
3. Shri B. Kalyana Sundaram

II. *Indian National Trade Union Congress, New Delhi*

Spokesmen:

1. Shri S. R. Vasavada
2. Shri N. K. Bhatt
3. Shri S. D. Desai
4. Shri M. B. Joshi

III. *Federation of Indian Chambers of Commerce and Industry, New Delhi.*

Spokesmen:

1. Shri Madanmohan R. Ruia
2. Shri A. M. M. Murugappa Chettiar
3. Shri Lakshmipat Singhania
4. Shri M. L. Shah
5. Shri Ramnath A. Podar
6. Shri Shriyans Prasad Jain
7. Shri S. M. Shah
8. Shri G. L. Bansal
9. Shri P. Chentsal Rao
10. Shri N. Krishnamurthi

I. Indian Chamber of Commerce, Calcutta

Spokesmen:

1. Shri B. P. Khaitan
2. Shri A. L. Goenka
3. Shri B. Kalyana Sundaram

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

Chairman: Gentlemen, we have got your memorandum. You may take it that we have gone through that. Would you like to give some clarification with reference to that or would you like the hon. Members to put questions to you?

Shri B. P. Khaitan: It would be proper if I emphasise a few of the points which we have made out in the memorandum.

As far as the proposed Bill is concerned, we understand that the object is to put right certain defects or inconveniences in the working of the Company Law as a result of the experience gained during the period after the new Act came into force. We find, however, that in the proposed Bill very extensive powers have been sought to be secured on behalf of Government or the Company Law Administration. Some of the powers are of a very far-reaching character. If these amendments are given effect to as they are, there will be very great concentration of power in the hands of Government and the Company Law Administration. It may be that the amendments will lead to another evil which will be far worse than the evils which are sought to be removed. Concentration of power, as you know, always leads to corruption or nepotism or whatever word you may choose to consider. One of them is, for instance, the power of search. Hon. Members will see that very wide powers have been invested. Those of you who are lawyers will bear me out that the order for search given by magistrates is always given as a matter of course. As far as the power of search is concerned, whenever an application is made that such and such

a company is about to destroy a document or if it is suspected that such and such a company is doing such and such a thing, the order for a search will be made as a matter of course by the magistrates.

If it were provided, for instance, that this power of search will be resorted to only if it is suspected that an offence has been committed which would involve imprisonment for two or three years or something like that, I can understand, but no such safeguard has been provided in the Bill.

A very wide power which has been sought to be obtained is that no appointment of selling agent will be made without the sanction of the Central Government. There are many companies which have selling organisations all over India. A large number of branches is started. Instances of companies producing consumer goods and having the necessity to appoint selling agents all over India in smaller areas are there. Perhaps, that number may run to 500 or 700 or even 800, having regard to the size of our country. If all these applications are to be made to the officials, not only will they be clustered with a large number of applications which they will not be able to deal with in time but it may lead, I think, to the necessity of contacting other people known to the officials before they can be promptly dealt with or suitably granted.

The amendments, if given effect to, will involve various serious difficulties in certain aspects and I am going to emphasize them one by one as and when I deal with the matter. The first and the most important matter is regarding the altered definition of associates of managing agents. Under the proposed amendments, subsidiaries of an associate are also to be regarded as associates of the managing agents. To that, there is no objection, but the objection lies in the consequential sections where the activities of the associates are barred. I am inviting your attention to sections 356, 358, 360 and 369 which are the most important sections which deal with the restrictions regarding associates.

I may tell you the contents of those sections one by one. Section 356 of the present Act relates to the appointment of selling agents. Before I deal with the various sections, I will explain to you why those particular sections are likely to create difficulties. Managing agents, in order to ensure continuity of their managing agency and also in order to ensure that they are able to stick to their office, have got to have at least 40 per cent. shares in order to be able to have a working majority. Otherwise, having regard to the present tendencies of cornering and acquisition of control of shares, the managing agents cannot hold on or stick on to the company management unless they hold at least 40 per cent. shares The resultant effect is that that company becomes the associate of managing agents. The managed company is not only a managed company but also *vis-a-vis* of other managed companies of the same managing agents, that particular managed company becomes an associate of the managing agents. If that associate starts a company, for instance, in England, for the purpose of having its own buying organisation or if it finds that it is more suitable to have its own organisation for distribution or sale of its own goods, and starts subsidiaries for this purpose, what will happen? For instance, it finds it necessary to start a pulp mill; two or three paper mills which get together may start a pulp mill, and two companies subscribe 50 per cent. and that pulp mill becomes a subsidiary of that paper mill. Therefore, that subsidiary will become an associate of the principal managed company.

Now, if this definition is adhered to, then it will be a total bar so far as the subsidiary is concerned, either to act as a selling organisation for the principal managed company or to supply its pulp to the selling agents of the company unless every time some sort of resolution under section 360 is passed, or there is a bar to monetary help being rendered by the

subsidiary company to the managed company, because no loan can be given. There is an absolute bar on the managed company for giving a loan to the associate of a managing agent. Therefore, the managed company will not be able to give loan to its own subsidiary because by virtue of this definition that subsidiary becomes an associate. Therefore, this aspect of the matter seems to have been overlooked, and in my humble submission, adequate safeguard should be made to see that sections 356, 358, 360 and 369 will not apply to subsidiaries of managed companies *vis-a-vis* the transactions between the managed company and its own subsidiary.

Then, I come to the definition of 'relative'. This definition of relative acquires great importance having regard to other amendments and provisions in the Act. One of the important provisions which have been sought to be introduced and which of course we are also opposing is that if in two companies one-third of the shares are commonly held by directors and their relatives, then those two companies will fall under the category of one and the same management. If the present extended list of relatives is adhered to, then, first of all, it will make the task of the management of the various companies very difficult so far as the ascertainment of the relatives' shareholdings is concerned. If we start thinking out who our relations are under the various categories, I think we will require assistance from the various family members before being able to ascertain whether they are such relations or not, and whether they are holding controlling shares. It is not merely directly registered, but the expression used is "control". So, it is a very difficult task because the company transacting with the other company will have to know not only what shares are directly registered in that category of relations, but also to find out, if at all they get the co-operation of all those relatives, what shares they are controlling through their nominees, and so on. So, to avoid difficulties in practical working and also to avoid the penal sections with which I shall be dealing later on, it will be desirable to have these relatives curtained.

In fact, the present definition has gone far beyond the recommendations of the Sastri Committee. Under the existing provisions, cousins are brought within the prohibited degree only if they are members of the joint family. But, now even if they have gone out of the joint family, they are kept in the category of prohibited relatives. As far as I know, there is no love even amongst brothers after they are separated, not to speak of cousins and other distant relations.

I am now taking up the question of 25 per cent. shareholding of one company in another private company causing it to be deemed to be a public company and also the prohibition of subsidiaries acting as managing agents. I have not been able to see the purpose behind constituting a public company simply because another company holds shares to the extent of 25 per cent. in a private company. In fact, I read the recommendations of the Sastri Committee; since you must have also read them, I will not take your time by reading them out again here. But hon. Members will see that beyond the dogmatic statement that this should be done, nothing else has been stated. In that case, the principle should be even if a public company holds 1 share in a private company with a shareholding of 3,000 shares, it ought to be considered as a public company. Why 25 per cent. of the shares? I would suggest that the safeguard which is already contained in the company law, namely the extension of the various restricting provisions relating to public companies, should be enough. It is not necessary to convert the company into a public company. Today a company may acquire 25 per cent. shares and it is converted into a public company. The next day the company may sell its shares and it ceases to be a shareholder. So, again that company should be reconverted into a private company. So, this process of conversion

and reconversion will go on. So, the better thing would be you may apply to such a company the restrictions imposed on the subsidiary of a public company. That will serve the purpose.

Here again, if the particular company happens to be a private company acting as managing agent, it will lead to a change of constitution if it is to be converted into a public company. In that case, again an application has to be made to the Central Government for sanction regarding change of constitution on the ground of conversion of a private company into a public company, quite apart from the fact that a change of constitution will be effected by reason of the shareholding. But by reason of the shareholding, an application for change may not be necessary, because the same company which is a shareholder acquires more shares or even without changing membership, there might be a change in the holding.

With regard to filing of returns, etc. with the Registrar, under section 297, the Board's sanction is required for certain class of transactions. I think you will have to provide for a big office for filing so many things with the Registrar.

Regarding clause 53 which provides, with regard to dividends, that you have to set apart the money and deposit it in the bank, I would like to emphasise the fact that most of the companies have to depend on overdrafts for carrying on their business. Big companies have to provide very large sums for dividends. If they have to withdraw that money and keep it in a separate account, they will be paying interest on the overdraft, but they may not be earning any interest on the money so kept. The time which lapses between the date of the transfer and the collection of the dividends is about 2 or 3 months and the loss of interest in some cases will be to the tune of Rs. 5 lakhs or Rs. 10 lakhs. This loss would be that of the company and consequently of the shareholders who would be interested in the dividend and the larger profits of the company.

Regarding clause 75, we have no objection to auditing of branches, because that means in addition to the head office, the factory accounts will also be audited. But beyond that, it would be a very expensive and difficult thing for companies having numerous small branches where some kind of production takes place and of which it can be said that the activity is similar to that carried on at the head office. My submission is that audit should be restricted to factory accounts or places where activity of a very substantial character is carried on and not extended to every place which may be characterised as a branch within the definition.

Then, Sir, I come to clause 116, remuneration of managing Directors. Five per cent has been fixed as a ceiling of remuneration of directors. It means this will cause us a bar to the appointment of technical and other administrative personnel as directors of the company. I think, Sir, it is our policy that we should give increasing participation to those who are not interested in companies as proprietors or hereditary proprietors, but people who by reason for their merit have achieved high position in companies. It should be possible for them to become directors of companies. They have been drawing a certain salary every month and they will be drawing it every month and they cannot anticipate at the end of the year whether there will be profit or not, or the totality of the salaries will or will not exceed 5 per cent. In that case it would be very difficult for them either to become directors or if they become directors, it will be a great hardship if they are expected to discard the salaries which they have earned by their hard labour. Therefore, either an exception should be made with regard to persons who are holding secondary managerial offices or their technical staff and all that, from the category of this 5 per cent ceiling, or some other safeguard should be provided. In fact, when a person is appointed managing director or when the direc-

tor's salary is fixed on monthly basis, sanction is taken by the Government. So far as the company is concerned, it takes into account in fixing the salary of a technical or other personnel as to what reasonable salary should be given to him, and it comes to the Company Law Administration for sanction. They also, I presume, take into account all the factors. Then, why should, when 5 per cent ceiling is exceeded, it be necessary to go to the Government again for sanction of condonation of the limit beyond 5 per cent?

Now, I come to clause 124 which provides that no subsidiary company can act as managing agent. I can think of many instances where subsidiary companies are acting as managing agents and I do not know what objectionable feature has been discovered to justify the introduction of this provision in the proposed Bill. Quite apart, there may be existing managing agents who may have collaboration with others with a view to become managing agents of some newly proposed venture. Sir, I submit, there is no objection in principle to subsidiary companies becoming managing agents. I think, the purpose will be served if all the restrictions which are applicable to managing agents are made applicable to subsidiary companies. But there should be no bar to subsidiary companies acting as managing agents. If a subsidiary is acting as managing agent, the provision regarding change of constitution may be extended to holding companies also, because—I know Mr. Mazumdar is smiling—say, for instance, section 346 allows a change in the constitution of that other body corporate. If there is a change of constitution of holding company, we cannot have control because ultimate control lies in the holding company. You may say, change of the constitution of the holding company will amount to the change of subsidiary company also and you may have that safeguard, but there is no objection in principle to the subsidiary acting as managing agent.

Then, I come to clause 130, which provides that no dividend shall be paid except out of net profits. This leads us to the present definition under the altered clauses regarding computation of net profits. The amendment under the clause provides that depreciation shall be calculated on the book-value of the assets of the company. Now, during recent years, many companies either for giving their balance-sheet a better look or for many other reasons, revalued their assets. Assets which according to the normal rules of calculation had depreciated to a considerable extent have been revalued. Now, among the shareholders there would be numerous persons who would be widows and others who would be depending on dividends for their livelihood and they must be holding shares quite in the expectation that they will continue to get dividends in the manner they have been getting. If depreciation is calculated on this revalued asset, then it will have various repercussions. It will affect the computation of the 10 per cent. overall ceiling provided in section 198. It will affect the calculation of profits for the purpose of dividends and—it is not coming to my mind—there is one more point which it will affect. This is the position. In my humble opinion, this position is not only discriminatory but also will result in hardship. It is discriminatory because companies which started life at the same time, some of them which did not revalue their assets, their shareholders will continue to get dividends, etc. on the basis of profits calculated on their written down assets, whereas those companies where assets have been revalued, they will suffer simply because their management at one time thought that the assets should be revalued either for the purpose of giving better look or for some other reasons. Therefore, my submission is, this position regarding calculation

of depreciation on revalued assets should not be introduced.

Then, I come to clauses 136 and 138 together because both of them relate to inter-company investments and transactions.

I am sorry, I will deal with clause 138 only, because I have already dealt with clause 136. This clause is perhaps put in order to fix a ceiling on inter-company investment. I presume that what is sought to be achieved is concentration of wealth. But at the same time we must not lose sight of the fact that today accumulation of wealth is possible under the present tax structure only in incorporate enterprises. Starting of new ventures or promotion of new undertakings or collaboration with foreign investors is possible only with the help of the accumulated wealth in the hands of incorporate companies. If there is a bar to the utilisation of accumulated wealth in the hands of incorporate enterprises such collaboration will not be possible. Then, many times it happens that prosperous companies issue rights shares and the existing companies hold shares to the ceiling and if they issue rights shares and those rights shares are often issued at par whereas the market value of those shares is at a high premium. It will not be possible for the companies to acquire those rights shares if the present position remains. If the objective be to control power only, there should be no objection at least to acquisition of non-voting shares such as preference shares or other shares.

Clause 179 provides for payment of compensation to workers. I thought that the objective of the amendments and the various regulations behind the Companies Act is to safeguard the interests of persons dealing with the companies and to safeguard the interests of persons making investments in the companies. No doubt, the interests of workers should also be safeguarded. But we should not, in our over anxiety to safeguard in every possible way the interests of workers, lose sight of the numerous persons who deal with the company. Quite apart from the fact that it may scare banks—many companies whose management is not powerful enough may find it difficult to secure loans and advances—I submit that the Select Committee should look after the interests of other persons also who have become the creditors of the company. Their interests should also be looked after. So far as workers are concerned, in principle, we are not objecting to any provision being made for safeguarding their interests. But what is the difference between safeguarding the interests of the workers in the hands of a corporate enterprise and safeguarding the interests of the workers in the hands of a non-corporate enterprise? You are, by making this provision here, no doubt safeguarding the interests of workers in the event of liquidation, so far as a corporate enterprise is concerned. But if a private individual, a multi-millionaire, runs the show and if by some misfortune incurs loss and becomes insolvent, what happens? In order to safeguard the interests of workers and ensure payment of compensation to them, some other method can be adopted, namely, compulsory insurance so that in the event of liquidation or insolvency, be it a corporate or a non-corporate enterprise, the interests of workers are safeguarded.

Then there is clause 200. It is an omnibus penalty clause. This, I am not able to understand. If I do any small thing or commit any small mistake that act will come under this provision. In the case of the Act, I will incur civil liability, but here it will be a penal offence. This clause should be deleted.

Shri P. T. Leuva: You have stated that you are in favour of protecting the rights of the workers. You have also said that if the retrenchment compensation becomes a prior charge in the event of liquidation, then it will affect the credit-worthiness of the

company adversely. In any event the liability would not go beyond Rs. 1,000. In that case how will it affect the company adversely?

Shri B. P. Khaitan: The ceiling of Rs. 1,000 is with regard to wages. If this limit of Rs. 1,000 is extended to retrenchment compensation, the amount will geometrically rise. My greater emphasis was on the discriminatory character of the provision as against corporate and non-corporate enterprises. As I said a provision like this is not germane to the provisions of the Companies Act. It should be a provision providing for insurance, or some other provision.

Shri P. T. Leuva: What I am driving at is this: With regard to arrears of wages, you admit that the limit is Rs. 1,000 and that it has got a prior charge. Now, retrenchment compensation is also a claim by a worker because he is losing his livelihood and that is the reason why in the law it has been provided that compensation should be treated as a prior charge in the event of liquidation of a company. What is the objection if the ceiling is Rs. 1,000?

Shri B. P. Khaitan: So far as workers are concerned, most of them are paid weekly and therefore there is no chance of their wages remaining in arrears for four months. The wages which are in arrears are in respect of the clerical staff or some other people whose total liability, even within this limit of four months, will be very small whereas the retrenchment compensation for a large firm will come to a very large figure. It may be Rs. 50 lakhs or Rs. 30 lakhs whereas under the present provision his liability would come to Rs. 40,000 or Rs. 25,000. It cannot be in lakhs.

Shri P. T. Leuva: That would also depend upon the size of the particular undertaking.

Shri B. P. Khaitan: The company is wound up, except in case of amalgamation or reconstruction, only when large liabilities accrue.

Shri P. T. Leuva: In case of amalgamation if the workers are retrenched then the company which is newly formed will pay the compensation.

Shri B. P. Khaitan: The assets will be there and they will be paid. The safeguard is not necessary.

Shri P. T. Leuva: The question is not in regard to safeguard. When a company goes into liquidation the question will arise whether the workers will have a prior right for the payment of dues.

Shri B. P. Khaitan: I cannot advance my argument any further beyond this that the quantum involved will be disproportionate to the quantum involved if provision is made.

Shri P. T. Leuva: The difficulty is that you are not in a position to advance your argument further and we are not in a position to understand you.

Chairman: We have to see what weight is to be attached to the evidence.

Shri P. T. Leuva: I got an impression while you were dealing with clause 15 that you will have no objection if the company in which the shares are held by any other body corporate is treated as a public company. Am I right?

Shri B. P. Khaitan: If all the restrictions now provided for in the Act with regard to subsidiaries of a public company are extended to that company, I have no objection.

Shri M. P. Bhargava: Please see page 49 of your memorandum where you begin a new point. Could you elucidate what is in your mind about that point? What do you want to be incorporated in the Bill?

Shri B. P. Khaitan: A company is not a citizen, as you know. Many times it is argued that the provisions

of article 19 relating to Fundamental Rights, are not available to a company. You are by making many restrictive provisions encroaching on article 19.

Shri M. P. Bhargava: Do you want any change in the citizenship rights, what is the idea?

Shri B. P. Khaitan: It is not that.

Chairman: Even if it were so, we are not competent to go into the question. Therefore the hon. Member need not labour it.

Shri M. P. Bhargava: In regard to next paragraph about the schedule do you intend giving a supplementary memorandum?

Shri B. P. Khaitan: I do not think you will allow me.

Shri M. P. Bhargava: Have you any comments to make about the schedule?

Shri B. P. Khaitan: I have none.

Shri Somani: As a spokesman of an important Chamber and as a senior lawyer is it your point that some of the far-reaching provisions are not necessary to ensure healthy and sound management of the corporate sector and they cause unnecessary diversion of time and energy in complying with these restrictions rather than that these should be utilised for productive purposes? Would you enlighten the committee on this point?

Chairman: The answer is obvious. The witness would agree with you.

Shri Somani: Regarding your point about dividend would it meet the requirements if distribution of dividend up to 6 per cent is made free of these restrictions about depreciation.

Shri B. P. Khaitan: Yes, Sir, or a provision similar to that in section 208 may be introduced. ... ...

Shri Somani: About cornering of shares do you suggest that when a businessman or individual obtains a majority of shares in any company then Government should not interfere in regard to the transfer of the majority shares?

Shri B. P. Khaitan: The views of the Chamber are already in the memorandum.

Shri P. T. Leuva: The section provides that in case of cornering of shares Government will intervene only in case such transfer is prejudicial to the interests of the shareholders.

Shri A. C. Guha: About the cornering of shares Government is only proposing to take a permissive authority, authority to interfere in certain cases. Will Mr. Khaitan object to that even?

Shri B. P. Khaitan: The memorandum does not say so.

Shri A. C. Guha: What do you say now? What is your objection to the provision as incorporated in the Bill?

Shri B. P. Khaitan: All that the memorandum says is that the member concerned should not be absolutely deprived of representation on the Board. That is a compromise between the view expressed in the proposed amendment and the existing situation.

Shri A. C. Guha: What is your objection to the provision in the Bill?

Shri B. P. Khaitan: The objection is to absolute deprivation of any representation on the Board. Suppose there is a board of four or five persons. Why should a person who has got certain shares, or acquired a large interest be absolutely excluded from the Board?

Shri A. C. Guha: Would you suggest anything in the ordinary course of things to protect the interest of the minority shareholders?

Shri B. P. Khaitan: The Act contains very far-reaching provisions for protecting the interests of the minorities.

Shri A. C. Guha: Do you think the provisions in the existing Act are enough for the purpose?

Chairman: He says they are far-reaching, not merely enough.

Shri R. M. Dave: Please refer to pages 5—7 of your memorandum. The general impression that is created when one goes through this part of the memorandum is that you have in mind the proximity and the remoteness of the relationship as defined in the law of succession and that you want that the same should be incorporated in the Company Law. The question is, in the case of Company Law the more relevant consideration is whether a particular person is likely to be under the influence of another person, rather than whether he has got the proximity or remoteness of a particular relationship. As the Schedule stands today the provision that any person belonging to a joint family should be considered a relative irrespective of proximity or remoteness of the relation is for the purpose of ensuring that a person under the influence of another person and likely to be under the influence of another person should be considered a "relative". Is there not a distinction between the law of succession and the Company Law in this matter?

Shri B. P. Khaitan: So far as the law of succession is concerned, that is quite a different subject and it has nothing to do with Company Law. But the relationship apparently has been regarded as the sole test by which the inference of control should be drawn. In my experience, relations are less dangerous for the purpose of control than friends and other well-wishers.

Shri N. R. Munisamy: Would you agree that the activities of the joint stock company have to be regulated by the Company Law Administration?

Chairman: He agrees.

Shri B. P. Khaitan: I fully agree, but....

Chairman: I have answered for you! He will come with the next question where you may put your 'but'.

Shri N. R. Munisamy: You also agree that the appointment of a selling agent is one of the activities of the joint stock company?

Shri B. P. Khaitan: Mr. Mazumdar will not be able to deal with all those applications, from ICI, National Tobacco Company, Bata Shoe Company etc., and he will have to appoint officers all over India, and I do not know what will happen in remote regions.

Shri D. L. Mazumdar: By 'Mazumdar' he means collectively the Government.

Shri N. R. Munisamy: If you agree that the appointment of the selling agent is one of the activities of the joint stock company and the managing agents, I think there is no special ground in your objecting to the appointment of the selling agent with the approval of the Government, as the appointment is one of the activities of the managing agents.

Shri B. P. Khaitan: I have serious objection to the concentration of power.

Chairman: Next question.

Shri N. R. Munisamy: I do not agree with the objection that there will be concentration of power. But I will go to the next question.

You agree that the appointment of a subsidiary company as a managing agent is only as an agent for the holding company. If that is so, if the holding company could appoint a subsidiary as managing agent—to which you disagree—, why should the subsidiary company have wide powers beyond the scope and functions of the holding company?

Shri B. P. Khaitan: My point has not been clearly understood. What I said was that managing agents, in order to secure the continuance of their managing agency, have to hold in many cases more than 30 per cent shares in their own managed companies. Those managed companies therefore become associates of their own managing agency companies, and if that managed company starts a subsidiary for having a selling or buying organisation or for other activities, in that case, having regard to the present restriction it cannot lend money to its own subsidiary, it cannot appoint its own subsidiary as buying or selling agent. That restriction should be removed by a suitable amendment in the Bill.

Shri N. R. Munisamy: Would you specifically state the particular section which, while removing the difficulties, creates fresh difficulties?

Shri B. P. Khaitan: It won't create. All that you have to do is to provide suitable exceptions in sections 356, 358, 360 and 369.

Shri Satyendra Narayan Sinha: With respect to the holding of annual general meetings, they say that the Registrar ought to have the powers to extend the time instead of the Government having it. What is the particular objection to the Government having the power?

Chairman: That was contained in the new point—they want freedom as citizens to do as they like.

Shri Satyendra Narayan Sinha: They want the Registrar to exercise the power and not the Government. What is the reason for it?

Shri B. P. Khaitan: That is not so. We say that the existing provision empowering the Registrar to extend the time, which is being taken away, should be continued.

Shri Satyendra Narayan Sinha: But this has been taken away by Government and Government should exercise the same power.

Shri B. P. Khaitan: It means that we have to come to Delhi every time.

Shri D. L. Mazumdar: Concentration of power!

Shri B. P. Khaitan: Not a question of concentration of power.

Shri Morarka: May I refer you to your letter dated 24th June which encloses this memorandum and read two lines therefrom? The letter says:

> "the Committee of the Chamber find that several other difficulties which the working of the Companies Act during the last three years or so have brought to light have been left untouched by the present Amendment Bill."

May I request you to enumerate some of those difficulties which have been brought out by the working and the experience of the Act which have been left untouched by the present Bill?

Shri B. P. Khaitan: Sir, I have not come prepared to answer that question.

Chairman: If he enumerates those difficulties, shall we be able to remove them?

Shri Morarka: Sir, that is a very pertinent question. My understanding of the powers of a Select Committee is that if some new points are made which are relevant to the purpose of the Bill, it has powers to go into them. For instance, the present Bill is to remove the difficulties in the functioning of the Company Law, and if the witnesses point out certain things and the Committee is convinced that some more provision is necessary in the Bill, the Committee has powers to make amendments to that extent. This was the ruling given by the previous Select Committees.

Chairman: I differ from it a little. In my view, when they have said in their memorandum that there are certain things in the Act which create difficulties and they have not been removed or touched upon by this Bill, our purpose is to look into the provisions of the Bill or anything that would follow as a consequential matter or a resultant thing; we can only look to these and not open those sections that are not the subject-matter of this amending Bill. Therefore I thought that even if they refer to other sections and say that there are certain difficulties created, we might not be competent to go into them.

Shri Naushir Bharucha: Even if they are very genuine difficulties.

Chairman: Therefore, when we have no power, why should we listen to them?

Shri Morarka: I bow to your ruling, but if you permit me, at a later stage, I may be able to quote some precedents.

Chairman: And then the witness says that he is not able to relate all those difficulties.

Shri Morarka: Then may I know why they made a statement like that in their letter?

Chairman: We should rather refer to those comments and suggestions that have been given in regard to the clauses than go into other things. They might have committed a mistake in the letter; we need not take notice of it.

Shri Morarka: That is probably a mistake; I do not know. There is another statement in the same letter, which reads thus:

> "Moreover, on a study of the provisions of the Amendment Bill, it is found that some of the changes proposed in it are of a far-reaching nature.".

May I know what those proposals are which according to the witnesses are of a far-reaching character, and which are not just for the purpose of removing the difficulties?

Shri B. P. Khaitan: I think I made them out in my opening address.

Shri Morarka: In his opening address, the witness has more or less paraphrased the memorandum which he has submitted.

Chairman: I would request hon. Members to remember that we need not comment on that when the witness is present. We shall have enough opportunities when we sit separately.

Shri Morarka: In regard to clause 15, the witness has said that he would have no objection if these companies are treated as a subsidiary of the public companies. May I know what difference it would make in practice whether a company is a subsidiary of a public company or whether a company is deemed to be a public company?

Shri B. P. Khaitan: The same difference which exists today in not converting a subsidiary into a public company, even though it is a subsidiary of a public company, will be there. For example, the present Act provides that the moment a managing agency company becomes converted or is to be converted into a public company, then you have to alter the articles, you have to change the name, and so on; whereas, a subsidiary of a public company today does not have to go through all those formalities. Again, the Act provides that if a public company ceases to be a public company and becomes a private company, it is obligatory again to take steps for altering the articles, for changing the name, for obtaining Government sanction and so on; when it is again converted into a public company, the same formalities will again have to be gone through. And this process may go on, that is, the conversion from public to private, and from private to public, may go on so many times, whereas, in case it is subjected

to all the restrictions and provisions of a subsidiary of a public company, as under the present Act, all these formalities will be eliminated.

Shri D. L. Mazumdar: Our understanding was, with particular reference to section 346, that the subsidiary of a public company, which has a managing agnt today, assuming that there is such a company, is as much subject to section 346 as any other public company.

Shri B. P. Khaitan: Quite so.

Shri D. L. Mazumdar: So, there is really no distinction between the subsidiary of a public company and a 'deemed' public company, for the purpose of section 346 today.

Shri B. P. Khaitan: I made an additional suggestion namely that in section 346 suitable changes be made where the subsidiary is a managing agent....

Shri D. L. Mazumdar: We have taken that power already. That is there in the Bill.

Shri B. P. Khaitan:..so far as the holding company is concerned....

Shri D. L. Mazumdar: That is what I have stated. That is covered already.

Shri B. P. Khaitan: I was trying to understand the implication of Shri Morarka's question. I did not realise that there was any appreciable difference so far as the treatment of these companies was concerned, as between a subsidiary of a public company and a 'deemed' public company. That was my understanding.

Shri Morarka: May I refer the witness to pages 20-21 of the memorandum? The memorandum says:

> "The committee wish to point out that there may be a case where a monthly salary is fixed for a manager or a whole-time director, and at the end of the year, the total amount so paid by way of monthly salary exceeds the prescribed percentage of the net profits or the prescribed minimum managerial remuneration, that is, Rs. 50,000. It will not be possible for the company to know this in advance...."

May I know why it is not possible, when the amount of Rs. 50,000 is already prescribed, to calculate whether the monthly salary of a director or directors or manager as the case may be would work out to more than Rs. 50,000 or not?

Shri B. P. Khaitan: The hon. Members is an important industrialist, and he knows that at the commencement of the year it is not possible to calculate it.

Chairman: Here, he is a Member of the Committee.

Shri B. P. Khaitan: He knows that he cannot anticipate at the commencement of the year whether at the end of the year, his textile mills will make a profit or a loss.

Shri Morarka: This figure of Rs. 50,000 has nothing to do with profit or loss. It is the minimum. I agree that so far as profits are concerned, you cannot forecast, but you can always provide for the minimum and calculate against that.

Shri B. P. Khaitan: That is exactly what we are suggesting, that so far as this minimum is concerned, we should not be subjected to Government sanction.

Shri Morarka: In regard to clause 63 which amends section 207, could you please tell us whether in the experience of your association, there has been any case where the dividend has not been paid in time or has not been paid fully according to the provisions of the present Act?

Shri B. P. Khaitan: After the present penal provisions, I have not come across a single case, and I do not see why such a provision should be made.

Shri Morarka: There is one point about depreciation, which the witness said, which I could not follow. He said that those companies which had

revalued their assets were at a disadvantage, as compared with those that did not revalue. I would request the witness to clarify the position, as to whether revaluing or not revaluing the assets would make any difference, so far as the normal depreciation is concerned.

Shri B. P. Khaitan: There are two aspects of the matter. So far as income-tax is concerned, they will allow depreciation only on the written-down value, as per the original cost. Whatever revaluation we may do, they will not allow us higher depreciation. It is not the company which will suffer by this; it is the shareholders and the managing agents or other persons who are remunerated on the basis of net profits, who will suffer, if the calculation of profits for the purpose of dividend is on the basis of the revalued assets. Suppose, for instance, the written down value is Rs. 20 lakhs, and it has been revalued to Rs. 1 crore; if you calculate depreciation on Rs. 1 crore, the amount of depreciation will be much larger. Therefore, a much larger slice of the gross profits will be taken out, leaving for the shareholders a much lesser amount; and therefore, it may be, that it takes away the whole amount of the profits, leaving nothing to be divided among the shareholders.

Shri Morarka: But if the same assets are revalued from Rs. 20 lakhs to Rs. 1 crore, do you suggest that you can allow depreciation on Rs. 1 crore?

Shri B. P. Khaitan: That is what you have provided for in the Bill.

Shri D. L. Mazumdar: No, there is no such requirement in the Bill.

Shri B. P. Khaitan: The language of the proposed amendment is 'valued as per books'. I do not know of any other meaning for this term. If I have revalued, it would be the revalued amount, because my books will show the revalued amount.

Shri Morarka: The Bill says only about the normal depreciation that is allowed.

Chairman: We have understood the witness as to what he feels about the interpretation of these words. We shall discuss amongst ourselves later whether there is really such an interpretation or not.

Shri B. P. Khaitan: From the Government representative's remarks it appears to me that these words are not intended to convey that meaning.

Chairman: That is not the intention.

Shri Naushir Bharucha: Referring to the definition of 'associate', you are suggesting the dropping of the amendment proposed or, as an alternative, you suggest a proviso being added to that section that 'the bar of that section will not apply to loans, guarantees and other financial assistance by a holding company to its subsidiary or *vice-versa*'.

In that case, what remedy would you suggest for preventing the interlocking of assets along the lines which happened in Mundhra's case?

Shri B. P. Khaitan: I think the hon. Member has not quite appreciated the point which I advanced. I said this, that under the modern conditions the managing agents have got to ensure continuity of their management because under the present Act a managing agency contract can be terminated by a simple resolution. Therefore, to safeguard against the termination of managing agency contract it is necessary for a managing agent to hold at least 35 to 40 per cent shares in the managed company. The managed company may be, say, Tata Iron and Steel Co., a big organisation. That managed company may have to start a subsidiary in England for purchasing stores. If this present provision is going to be given effect to, the Tata Iron and Steel cannot give a loan to its subsidiary in London; it cannot buy goods through that company or sell goods to that company. So, I am only suggesting an exception.

Shri Naushir Bharucha: I have followed that point of view. But you also say *'vice-versa'*. In your present illustration, you want the subsidiary company in England to give loan to the Tata Iron and Steel Co.

Shri B. P. Khaitan: Because it is Tata's money with them. So long as they can use it let them; but if they make a profit why should they not give a loan?

Shri Naushir Bharucha: I can understand your plea that where purchases have to be made the definition should be modified to cover such anticipated purchases. It may be permissible. But I cannot understand your saying that the subsidiary company in England, in this case, should advance money by way of loan to the Tatas.

Shri B. P. Khaitan: Even the existing provisions of law allow subsidiaries to grant loans to the holding company. That is not being taken away even under this amendment. I only say that in the case of the subsidiaries of such holding companies, some exception should be made.

Shri Naushir Bharucha: We understand and appreciate what you state. But can you suggest any concrete formula by which we can overcome this difficulty?

Shri B. P. Khaitan: I have not got it; but I think your draftsman can do it.

Shri Naushir Bharucha: Coming to page 16, at the bottom you have made a reference:

> "The power of the general meeting to give directions in respect of offer of new shares should, therefore, be so amended as not to extend to total exclusion of the existing holders of equity shares from participating in new shares to the detriment of value of their existing shareholdings."

Supposing the new shares are issued for amalgamation purposes, do you suggest that it must be obligatory that some additional shares should also be issued to existing shareholders?

Shri B. P. Khaitan: Under section 81 it is obligatory for a company which issues 'right shares' to take the sanction of the shareholders at a general meeting. Otherwise, they have to offer it to existing shareholders. I take it that this provision was introduced with a view to check abuses on the part of the controlling interest in taking over the shares themselves. A simple majority is not sufficient and, therefore, we have suggested that this should be converted into a special resolution.

As regards amalgamation and other things, our memorandum already states that there should be an exception.

Shri Naushir Bharucha: Coming to page 25, clause 64 dealing with section 209 regarding the power of inspection by the Registrar, you say:

> "Books of accounts are confidential documents relating to the internal management and administration of companies, and the Act does not permit their inspection even by members of companies:"

In this particular case, Parliament desires that these account books could be inspected by the Registrar. Don't you think that cases might arise when this would be for the benefit of the company?

Would it not be much better that the Registrar should have access to the books of accounts so that cases of frivolous complaints may be summarily rejected instead of having recourse to the process of search warrant?

Shri B. P. Khaitan: As it is couched, this power is very wide. The question of seeing the books with a view to satisfy himself as to whether a certain thing has happened or not is quite different from the question of powers which are now sought to be taken, namely the power to inspect, a thing which is against all canons known so far. It is well-known that there should not be a general power of

making a fishing enquiry and a roving inspection. This has been condemned by the judiciary all over the world and now we are trying to introduce this provision in the company law.

Shri Easwara Iyer: There has been no such condemnation.

Shri Naushir Bharucha: Then I come to page 28, clause 84 dealing with cornering of shares. While I quite appreciate what you say that preventing the holding of shares might tend to hamper genuine industrial development, what scheme would you suggest to distinguish between cornering of shares and the holding of shares for genuine investment?

Shri B. P. Khaitan: I am obliged to you for this suggestion. That is exactly the reason why we say that there should not be total exclusion of voting powers since it is very difficult to distinguish between genuine acquisition and *mala fide* acquisition.

Section 409 and other safeguards are already there and that power has been exercised rather liberally by the Company Law Administration. I do not see why this additional safeguard has become necessary.

Shri D. L. Mazumdar: For taking powers before the event, and not merely after the event.

Shri B. P. Khaitan: You have exercised it before the event because notice has to be given and that notice has to be 21 days' notice and Government has got the power to exercise this under section 409. The amendment gives powers to Government to pass an interim order. The power is already given to you. There are adequate safeguards under the present section 409.

Shri Naushir Bharucha: On page 33 of your memorandum, you object to the necessity of obtaining Government sanction after the appointment of a relative has been made—in cases of promotion: You ask why should they go again to the Government or the meeting. You as a lawyer would admit that this provision can be circumvented if after the appointment on a salary of Rs. 100 a month, promotion could be given to such relative of even Rs. 500.

Shri B. P. Khaitan: That is why I do not press it.

Shri Naushir Bharucha: I turn to page 38, clause 129, which deals with political contributions by companies. Will you say that this should be regarded as expenditure of a capital nature? I cannot understand that. Why should it not be an operating cost?

Chairman: Opinions can differ. One person might think that it is capital expenditure. It might give the benefit afterwards and not immediately, and you think that it is operating cost. These are only two opinions.

Shri Naushir Bharucha: Suppose they are getting any benefit out of it afterwards.

Chairman: It is only a difference of opinion.

Shri B. P. Khaitan: This point has been put on somewhat of a misconception, namely, that if it is treated as an outgo, then the amount available for dividends and other things will go down. I think that if by statute a certain thing is treated as an outgo, it will be treated as an outgo for all purposes such as income-tax and the rest. That is the only point.

Shri Naushir Bharucha: Do you want to treat it as capital?

Shri B. P. Khaitan: If it is capitalised, you get depreciation. If it is not treated as revenue expenditure, then only the shareholders suffer, whereas they do not get the benefit of taxes. That is the point behind it.

Shri Naushir Bharucha: There is another difficulty. If it is capital, then in the case of electricity undertakings, they would earn 6 per cent on the political contributions also, under the Act.

About depreciation, your colleague, Shri Goenka, has pointed out that the words are such that they may lend to a possible interpretation that the written down value may be of the revalued assets. I am referring to page 55 of the amending Bill wherein it is said:

> "The amount of depreciation to be deducted in pursuance of clause (k) of sub-section (4) of section 349 shall be the amount calculated with reference to the written down value of the assets as shown by the books of the country.. .." etc.

By that you mean that it might be the revalued amount and not the original cost as written down. But then you will realise that since there has been provision on the income-tax basis, the income-tax refers only to the written down cost as related to the original cost.

Shri B. P. Khaitan: It was construed by me that so far as the rates are concerned they will be those provided for in the income-tax provisions. So far as the quantum on which it will be calculated, it will be that as per the assets valued in the books. Since it is considered that it is not the intention, a clarificatory change may be made.

Shri Naushir Bharucha: In the case of companies which have revalued their assets, the difficulty still arises. Suppose the assets were revalued five years back. You have been setting aside the proportionate depreciation on the basis of the revalued assets. Supposing some companies have done that. How will you revert back to the original cost basis?

Shri B. P. Khaitan: I do not think that question arises from the present Bill, because, so far as those assets as per books are concerned, they will be arrived at after excluding, and making calculation for, the earlier period. They will be for that year. But since it is considered that provision has been made on the written down value calculated according to the provisions of the Income-tax Act, not only according to those rates but also according to the cost and other things, there is no difficulty.

Shri Naushir Bharucha: Do you think that in practical working you would not find any difficulty even where you have adopted the replacement basis for five years or so?

Shri B. P. Khaitan: Even today there is no difficulty.

Shri Naushir Bharucha: Coming to page 43, second paragraph, you have expressed some genuine difficulty about bonus shares and right shares issued, as a result of which the maximum fixed might be exceeded. What is the solution? Do you suggest that the bonus shares might not carry any voting right?

Shri B. P. Khaitan: What I suggested was that the debentures and preference shares do not carry voting rights at all. Therefore, so far as the debentures and preference shares are concerned, they should be totally excluded from this restriction.

Shri D. L. Mazumdar: From the computation of the percentage.

Shri B. P. Khaitan: Yes. That is why I suggest that if the limit is exceeded by reason of our taking bonus shares or right shares, they must be excluded even though they do not carry voting rights.

Shri Naushir Bharucha: At the same page—page 43—you are referring to section 372 in relation to the question of acquiring investing rights in other companies which requires sanction of the Government. What exactly is your difficulty about it? I suppose your difficulty is this: that industrial development may be held up or perhaps you go by going to the general meeting and advertising it make the deal impossible. Is that your idea?

Shri B. P. Khaitan: First of all, for a meeting, it will take time. Then, going to the Government for sanction will also take much time. Projects should not move so slowly, and they

should move fast. They should not move at bullock-cart speed.

Shri D. L. Mazumdar: Supposing the collaboration of the project involves licensing, would you not have to take time to get those licences?

Shri B. P. Khaitan: That is an example which should be cited. That is exactly another point. There is licence and there will be so many other applications.

Shri D. L. Mazumdar: Why cannot this be done simultaneously?

Shri B. P. Khaitan: If you want me to cite cases, I can say that the granting of licences takes inordinate time. Where the granting of licence should take not more than half an hour, they have taken three months, because the persons concerned do not know any authority personally. They cannot carry on.

Shri Naushir Bharucha: Coming to page 45, paragraph (f), you suggest that investment companies should be exempted.

> "The Committee consider it necessary that this section should not apply to companies which trade in shares, debentures and other company securities".

Shri B. P. Khaitan: The idea is this. Where shares have been bought, the word "acquire" has been used in the draft Bill. It should be "acquired and sold". I think so far as the verbal change is concerned it has come to the notice of the draftsman and it will be done.

But there are many companies which deal in shares. They buy shares and they sell the shares. Within a period of one month, both the purchase and the sale take place. Then there is no time to have it registered in their own name. That is the point. You have got purely investment companies doing no other business. In such cases if you impose a limit, that would be difficult. Is it your suggestion that such purely investment companies should be excluded?

Shri B. P. Khaitan: Yes.

Shri Naushir Bharucha: While I appreciate your argument that investment companies may have to be excluded from the operation of the clauses which restrict acquisition and sale of shares except with Government consent, would it not be possible for an industrialist who is bent upon knocking the bottom out of these clauses safeguarding the shareholder to manoeuvre and get these things done by floating a camouflaged investment company, which is not intended to be a genuine investment company?

Shri B. P. Khaitan: A company may have various activities, one of which may be dealing in shares.

Shri D. L. Mazumdar: Not one of the activities, but the principal activity.

Shri B. P. Khaitan: Under the present section, the word used is "principal" whereas the suggestion is that it should not be confined to "principal" only.

Shri Naushir Bharucha: You made a suggestion in respect of the workers' right being safeguarded in the event of liquidation. You suggested that some sort of insurance in case of liquidation might be provided, so that the workers' rights may be safeguarded. Do you think any insurance company in existence will undertake it?

Shri B. P. Khaitan: There is no difficulty, because this guarantee means nothing. It will be quite profitable to the particular insurance company which undertakes this, because the premium will be in relation to the amount provided.

Shri D. L. Mazumdar: The premium will be paid by the employer?

Shri B. P. Khaitan: Yes; because it is the liability of the employer.

Shri Jadhav: I hope your Chamber represents a number of companies. May I know whether there are any specific instances where the management of a company has been unduly interfered with by the Government officials?

Shri B. P. Khaitan: It is rather vague. There has been no occasion for undue interference by Government except that in the event of change of management and other things, applications have to be made, numerous queries have to be answered, most of which are not relevant to the particular application, etc.

Chairman: They might be harassed in future if they have not been harassed so far. The hon. Member suggests that if you have not been harassed so far and there has been no undue interefence, why should you be afraid of any such thing in future?

Shri B. P. Khaitan: Even though unlimited powers are given, sufficient safeguards are already there. The Act was passed in 1956 and sufficient time has not elapsed. Why should these extensive powers be given now?

Shri Jadhav: After the passing of the 1956 Act, what are your difficulties?

Shri B. P. Khaitan: Is it germane to the present discussion? Of course, I can enumerate quite a number of difficulties.

Shri T. S. A. Chettiar: Regarding clause 75 dealing with audit, you refer to bigger and smaller branches. Can you give us a guidance as to how we can distinguish a smaller branch from a bigger branch?

Shri B. P. Khaitan: That matter no doubt requires attention. Take for instance, insurance companies or banks. They have got branches all over India. Some of these branches may be in out of the way places and the cost of their auditing will swell like anything under the present provision. The objection is not to auditing. It is one thing to ask a qualified auditor to make the audit and it is another thing if some officer audits and checks those things. That should be sufficient.

Shri D. L. Mazumdar: I just want a clarification. Mr. Khaitan would agree that if that officer is a chartered accountant, that might serve the purpose.

Shri B. P. Khaitan: Yes, Sir.

Shri T. S. A. Chettiar: It is all right when you talk to say they are in out of the way places, etc. But when you want to put it in a Bill, how would you distinguish?

Shri B. P. Khaitan: That will be a drafting problem.

Shri T. S. A. Chettiar: Regarding the calculation of depreciation, you say that there should be some relief in the earlier days to attract capital. Somebody suggested a formula of 6 per cent. Have you any formula to give in this matter?

Shri B. P. Khaitan: I have given two formulas. 6 per cent is a very good formula. In the alternative, a provision like that of clause 206 may be provided.

Shri T. S. A. Chettiar: With regard to sole selling agents, would you like to fix any area beyond which you consider permission of Government is necessary?

Shri B. P. Khaitan: There are so many States. I think the area covering an entire State should be sufficient.

Shri J. S. Bisht: In your note on clause 138—page 43—your sole objection seems to be that preference shares and debentures should be excluded. If debentures are excluded and the operation of the clause is confined only to shares, you would have no further objection to this clause?

Shri B. P. Khaitan: We have pointed out our objection in regard to right shares, owner shares, shares in deal-

ing companies, etc. and we have mentioned about debentures and preference shares also.

Shri J. S. Bisht: If the word 'debenture' is excluded and only the word 'equity share' is put, then you are satisfied with the clause.

Shri B. P. Khaitan: No.

Chairman: He does not accept that.

Shri J. S. Bisht: You say, many well-managed companies have built up larger reserves by ploughing back the profits earned by them over many years and these reserves are being utilised for the purposes of the business as capital. May I know whether these large reserves are ploughed back in the same industry or in some other new venture?

Shri B. P. Khaitan: It must be in the same company. In olden days companies were started with a capital of Rs. 10 lakhs. In those days, it used to be a very big capital and they built up very large reserves. Therefore, these percentages should be fixed with reference to the paid-up capital and reserves, not with reference to the paid-up capital only.

Shri J. S. Bisht: What I am asking the witness is, the main object is to safeguard the interests of the shareholders of that particular company and to expand it. Why do you want the reserves to be utilised for other ventures?

Shri B. P. Khaitan: The question is, in what relation that 10 per cent should be fixed, whether it should be in relation to the paid-up capital only or it should be in relation to paid-up capital *plus* reserves.

Shri J. S. Bisht: Now, I come to your next point i.e. with regard to projects which require foreign collaboration. For example, there is an engineering project which wants foreign collaboration. You say, there is nothing to prevent in this section from their having foreign collaboration.

Shri B. P. Khaitan: I agree there is no bar to that, but the formalities, as I explained earlier, will take a long time.

Shri Tangamani: Will you please turn to page 48 of your Memorandum, clause 200 which seeks to introduce a new section 629-A? Now your objection is, it is an omnibus section. Then, would you like that for every default a specific provision must be made giving the penalty to be imposed? Will it not become an omnibus affair then?

Shri B. P. Khaitan: No. What I say is that in this particular clause the default for which punishment is provided should be listed either by a schedule or by some notification or by some other process. Under the present Act, if a technical or a minor mistake is committed, there is a civil liability provided. But this omnibus provision will make it a penal offence. This provision is all pervading. So, I say that the acts for which this section will apply should be listed.

Shri Tangamani: But there are many penal provisions already in this Act itself. What objection can there be to them?

Chairman: He means to say that there are certain provisions which are only regulatory and technical things for which under the present Act, only civil liability is provided. This clause, as it is framed, would be an omnibus clause by which even smaller things like technical ones, shall be punishable.

Shri Tangamani: Don't you concede that only where a prosecution is launched, you will be brought to book, not otherwise?

Shri B. P. Khaitan: The thing is this . . .

Chairman: The prosecution is likely to be launched. That gives the fear. This is the fear that prosecution can be launched.

Shri D. L. Mazumdar: Only if *mens rea* are proved, prosecution will take place. If nothing is proved, then there will not be any punishment.

Shri Naushir Bharucha: It may not be necessary to prove *mens rea* in all cases.

Shri D. L. Mazumdar: In most cases.

Shri B. P. Khaitan: I will say something about this *mens rea* business. If I am permitted, I can give one illustration. You pull the chain in a railway train somewhere, 500 miles away from your house and you had a very good reason for doing so and you come back to your house. The offence is committed at that particular place and the summons is issued by the magistrate. Then, you will have to go there at least half a dozen times before you are acquitted. Similarly, registrar's office may be at Bombay and I may be a resident of Delhi. I will have to travel at least half a dozen times before *mens rea* is proved.

Shri Tangamani: Page 38, clause 129. It deals with contributions to purposes other than the declared objects for which the company was formed. I heard you to say that you would like this thing as part of the capital expenditure, not revenue expenditure. Then, would you like the limit that is imposed under section 293(e), namely, Rs. 25,000/-, or 5 per cent of the average net profit for the three years, to remain as it is or increased? Would you like that limit to be imposed or increased from Rs. 25,000/-?

Shri B. P. Khaitan: There is no suggestion in that direction.

Chairman: He has no suggestion in that connection.

Shri Tangamani: You have no suggestion?

Chairman: If the Hon'ble Member has got any suggestion to make in that respect, he might do so.

Shri Tangamani: I would like to find out whether he wants to raise the figure of Rs. 25,000/- to Rs. 2 lakhs or 2 1/2 lakhs. That was the purpose for which I put that question.

Chairman: He does not want to commit himself.

Shri Tangamani: Then I leave at that.

Page 30, clause 104, about sole selling agents. Am I to take it that because Government is not having a suitable machinery, you do not have any control by the Government when you want to appoint a sole selling agent? That is one of the main reasons given by you.

Shri B. P. Khaitan: That is only a subsidiary objection, namely, there will be thousands of applications with which the Company Law Administration will be flooded. Apart from that, my essential objection is with regard to the concentration of power which will lead to corruption and nepotism.

Shri Tangamani: You consider that the appointment of a sole selling agent for a particular area is a very minor matter.

Shri B. P. Khaitan: Yes. I think it is a matter incidental to the normal carrying out of the business of the company.

Shri Tangamani: About branch auditing, you have stated in the memorandum that the banking companies will be put to a lot of difficulties. But are you aware that most of these banking companies have branch audit at present? Do you know any banking company which has no branch audit?

Chairman: He is in favour of internal auditing.

Shri Tangamani: He says that if there is branch auditing, then the banking companies will be put to a lot of difficulties. That is the reason given.

What I would like to know from the witness is whether he is aware that there is branch audit at present in existence in these banking companies.

Shri B. P. Khaitan: I think my suggestion was that a chartered accountant who is an officer of the company and who is the internal auditor may audit the branches and that is a good alternative relevant suggestion.

Shri Tangamani: Page 48, clause 179 [Section 530(1)(b)]—this is about winding up and liquidation when compensation has to be made to the employees. You will be connected with certain companies. Could you tell us what will be the percentage in terms of the annual wage bills which will have to be paid to the employees?

Shri B. P. Khaitan: The Act provides 15 days for every year of service.

Chairman: The hon. member wants it in terms of percentage.

Shri B. P. Khaitan: That I have not calculated.

Shri Easwara Iyer: Regarding the definition of the term 'associate' you have made some comments. You have said that the managed company will be debarred from giving financial aid to subsidiary companies through the managing agents. Am I clear on that point?

Shri B. P. Khaitan: I gave you an illustration.

Shri Easwara Iyer: I just want to know whether you say that the managed companies will not be in a position to help its own subsidiary company if this definition is accepted.

Shri B. P. Khaitan: That is correct.

Shri Easwara Iyer: Is it not equally dangerous if this definition is not accepted because then a bogus subsidiary company can be brought into existence by the managing agent and the funds of the managed company will be diverted to this bogus subsidiary company?

Shri B. P. Khaitan: I cannot conceive of a situation like this.

Shri Easwara Iyer: I could not follow.

Chairman: The witness says that he cannot conceive of such a situation or circumstance.

Shri Easwara Iyer: Well, we can conceive.

Chairman: We will conceive when we will sit separately.

Shri Easwara Iyer: Regarding the definition of 'relative', you have given a number of suggestions.

Is there any guiding principle for that?

Shri B. P. Khaitan: The guiding principle is that under the existing Act cousins, if they are members of the joint undivided family, come within a definition of 'relative'. Once separation takes place the position is that even among brothers there is no love lost, not to speak of distant cousins. Then, so far as wife's relations and mother's relations are concerned, they are bound to be very remote because they have long gone out of the family. These are the principles that have worked in our minds.

Shri Easwara Iyer: This is a matter for some enlightenment. You have said in your memorandum:

> "In connection with the definition of relatives, the Committee would like to suggest the following principle for consideration. When a female relation gets married she goes out of the family of her birth. So it is a matter for consideration whether female relations of the second degree and beyond should not be altogether excluded from the list of relatives".

You say that when a female relation gets married she goes out of the family of her birth. Don't you know that a daughter's daughter is still entitled to a share of the family pro-

perty. Do you mean to say that a daughter's daughter is a remote relative?

Shri B. K. Khaitan: Remote for this purpose. She may be more friendly to a friend's daughter. She may be very near to her heart.

Shri Easwara Iyer: Your guiding principle is based on remoteness. For the purpose of company law relationship should not be determined on the ground of remoteness.

Shri B. K. Khaitan: I do not see any danger in so doing.

Shri Easwara Iyer: Now I come to clause 64. Here, you say that the books of accounts of the company are confidential documents relating to the internal management. What exactly you mean by 'confidential documents'?

Shri B. K. Khaitan: Books relating to companies are confidential documents. It is quite clear. My essential objection to this provision is this: By this provision you are giving the Registrar much wider power than under the normal provisions of the Criminal Procedure Code meant for worse criminals.

Shri Easwara Iyer: Suppose there is a suit filed against a company by a stranger. Can you not then be asked to produce the books and accounts in a court of law? Or, can you plead any privilege on the ground of their being confidential documents?

Shri B. K. Khaitan: So far as that matter is concerned, both the parties to the dispute have to give an affidavit as to what documents are to be produced. It is covered by the law of Discovery.

Shri Easwara Iyer: The Registrar of Joint Stock Companies has to inspect the books of account in order to find out if there is any hanky-panky in the books of account.

Chairman: That is what he objects to.

Shri Easwara Iyer: When it is established that they could be produced in a court of law, why should he object to produce them before the Registrar?

Chairman: He has given his view. We might consider it.

Shri Easwara Iyer: Page 17 of the memorandum; holding of the annual general meeting. Are you suggesting that the existing provisions must be maintained regarding this notice period?

Shri B. P. Khaitan: Not all the existing provisions. I only wish that the power of the Registrar to extend the time should be retained.

(The witnesses then withdrew)

II. Indian National Trade Union Congress, New Delhi.

Spokesmen:

1. Shri S. R. Vasavada
2. Shri N. K. Bhatt
3. Shri S. D. Desai
4. Shri M. B. Joshi.

(Witnesses were called in and they took their seats)

Chairman: We have received your memorandum, which we have gone through. Have you anything to add to it, or any point to emphasise in it.

Shri Naushir Bharucha: It may be suggested to the witnesses that our competence is after all limited to the Companies Act and we will not be competent to entertain any suggestions beyond that.

Chairman: We shall restrict ourselves to the clauses which are contained in the amending Bill; we cannot go beyond those. Our competence is restricted to this amending Bill. This committee is not competent to go into the other sections of the Act. Bearing that in mind the witnesses may say what they like to.

Shri S. R. Vasavada: Sir, at the outset, I would like to thank you and the committee for giving us an opportunity to express our views on the various amendments contained in the Bill which was introduced in the House. We would also like to indicate the various measures which the sponsors of the Bill may take into consideration.

Chairman: There is one difficulty. That will benefit us the Members and the Ministers can also take note of them. But all this effort will be wasted. So far as the present Bill is concerned we are restricted by our authority not to go beyond that. If the hon. witnesses have to say something by way of suggestions that do not affect the provisions of the Bill, but are outside its scope, then a different opportunity can be found out. Today we may discuss only the provisions that are contained in the Bill itself.

Shri Naushir Bharucha: Regarding the other points they may make a separate representation to Parliament.

Shri Lal Bahadur Shastri: I shall always be available to them.

Chairman: They can sit with the hon. Minister at any time.

Shri S. R. Vasavada: I thank you for your kind instructions. I also thank the hon. Minister for the promise to give us an opportunity to put forward our case.

We have gone through the provisions of this amending Bill. In the first place I would like to submit that these amendments do not carry us any far. The object of the Companies Act is to see that companies are well managed and that the interests of the consumer and of the country are properly safeguarded and incidentally or consequentially production or work of the company does not come to a stop. When the first amending Bill was introduced there were certainly some good points in it. But after the working of the Act and after various new policies which the Government and Parliament have adopted we at any rate felt that the new Companies Act would lead to better management of companies. But, on the contrary we find that companies are still mismanaged even after the Act of 1956, losses are incurred, production so many times comes to a standstill and it is a pity that nothing has been done in these amendments to rectify these drawbacks so that the Companies Act may help the companies to have a sound management. Take, for instance, the managing agency system. I am not arguing on that point at all because it is irrelevant here.

Chairman: Which clause? Managing agency' is contained in many clauses.

Shri Naushir Bharucha: The witnes may not be able to point out the sections.

Chairman: I was going to enquire from the witness as to what he wants to press in that regard, so that we might look into the relevant clause. We will help them, certainly.

Shri S. R. Vasavada: While I was referring to that matter, I was not going to press now for a new point that the hereditary character of the managing agency system should now stop. I am not going to argue or complain that even though it was provided that the managing agency system will terminate by such-and-such a date, the Bill is silent about it. Even regarding the qualifications of the managing agents nothing has been said: only, the Central Government is to approve of the appointment of the managing agents. What is the approval? They are all being renewed. There are no qualifications. The Bill is silent about that also. I shall skip over all those points which I wanted to urge. And the hon. Minister has said that I can discuss them with him separately.

I will first take up the question of distinction which has been made

between a private company and a public company. Regarding the investment of the funds, it is suggested that the funds of the private company have also to be invested in a particular manner. I am suggesting that all distinctions between public and private companies should be completely abolished. There is no difference between a private company and a public company so far as the country is concerned. There is no difference in the management of private and public companies so far as business, production, employment etc., are concerned, and private companies are also mismanaged like public companies. I am suggesting that there should be equal restrictions on the private company as on the public company in respect of the appointment of managing directors or managing agents etc.

In regard to the remuneration of the managing agents the amendment says that certain other pre-requisites are going to be included in the remunration. But there is nothing about the business expenses in the Act or in the amendment. I find that the business expenses incurred by the managing agents or the company, not only at the place of their production plant but at so many other places in the country, amount sometimes to fabulous figures. And there is no check on these business expenses either by the shareholders or by the auditors or by the Government. Why I am bringing the Government into the picture is because I wonder why Government control over the companies is still so slack. Government is now an equal partner in this field of production. I should say there are four partners: Government, the managing agents or directors, the shareholders and the consumers. The consumers are represented by the Government, and Government should also have a share in the management of the company. At least they should have the opportunity to control the affairs of the company. When the affairs of the company go astray, Government should have a very fair opportunity under the Act to control the mismanagement of the company. I am therefore suggesting that these business expenses should also be controlled, it should be defined and included in the remuneration in section 349.

Then about audit. You have now provided under the amendments, the auditors to audit the accounts of the banches of the company. All these reports have also to be placed before the shareholders, etc. I am going to be very brief on this—we are very sore on the point. What are the auditors doing today? They are doing nothing but merely examining the vouchers and receipts. Whatever is placed before them they see; they are doing merely mechanical work. They do not actually guide the company as to what is right and what is wrong, what is the proper expenditure and what is improper expenditure. And even balance sheet which is prepared and approved by the auditors does not reveal many a time the true state of affairs to the shareholders. I am not going to say as to how the balance sheets are prepared and all that. I am suggesting that if the auditors have to reveal the real state of affairs before the shareholders, the Government and the public at large, there should be a proper amendment that an auditor should not only certify the correctness of the accounts but also indicate the propriety or impropriety of various expenditures incurred in the course of management of companies. The report of the auditors should be placed before the shareholders, and Government should also draw its own conclusions from the report of the auditors.

I shall come to the next point. Some investigating powers are there with the Government. But apart from examining the auditor's report and the balance sheet, Government should also equip themselves with the powers to investigate the whole business of

the companies by themselves, of their own accord, when their affairs go astray—when the balance sheet shows a loss, or when production comes to a stop. After all, the business of the company is to produce something. If it does not produce, if losses are incurred from year to year, if the same managing directors are still in charge of the company for a number of years and it is a losing concern, I think there should be an amendment whereby Government should be equipped with the power that whenever loss is made an investigation should be carried out. For this purpose I am of the opinion that the auditors should be appointed from a panel formed by the Government.

Chairman: You have suggested nationalisation of audit services.

Shri S. R. Vasavada: That may not be quite germane, as has been pointed by an hon. Member. So I will not touch that subject I am merely saying that appointment of auditors should be from a panel drawn by the Government; option may be given to them from out of that panel.

Chairman: Enforcement of the Act through prosecutors appointed by the Central Government—that also would not be germane.

Shri Naushir Bharucha: That would be germane.

Shri S. R. Vasavada: It is germane, Sir.

Chairman: Yes, I stand corrected. He may say something on it.

Shri S. R. Vasavada: The affairs of the company should be investigated not only as at present by the Registrar when the application is made, but even from the auditor's report or from the results as displayed in the balance sheet, Government should have power to investigate as to why loss is incurred. We have come across instances where in the same industry some concerns always show properous results while others show losses. There must be something wrong somewhere, and therefore I think Government should have these powers. The next point is about liquidation. I do not know whether this is germane, so, I would like to be guided in regard to this also. I have a number of grievances as to the manner in which the liquidation proceedings take place.

Chairman: That is a different thing altogether. You might come to representation of workmen in liquidation proceedings. Does it refer to remuneration, retrenchment compensation etc.?

Shri S. R. Vasavada: That comes at a later stage. All those clauses come at a later stage. I am merely submitting to the Committee that when liquidation proceedings take place, workers' representatives may also be made parties.

I now come to the amendment proper. Here, there is just one small point that I have to make. Provident fund, gratuity, the dues of the workers etc. are now included by the amendment and also by the original Act, in section 530.

Shri Naushir Bharucha: They are not included, for the purposes of preferential treatment. The amendment is for retrenchment compensation.

Shri S. R. Vasavada: It is for retrenchment and lay-off compensation. The other things are already there.

Shri Naushir Bharucha: All the other things are not there.

Shri S. R. Vasavada: I am thankful to my hon. friend for correcting me. My proposal, so far as this amendment is concerned, is this. Ten years have passed since the attainment of Independence, and during this period, numerous labour laws have been enacted. The workers, who were under-dogs before are now getting some status and it has come to be realised that they must also have

some provident fund, some sickness insurance, some gratuity, some lay-off compensation etc. Till now, the Act has provided that workers' wages alone will have priority at the time of liquidation. I submit that that is not enough. My submission is that workers' gratuity is also equally sacred. People have worked for twenty or twenty-five years and have accumulated this amount. This is the only thing which the worker can fall back upon in his old days. So far as provident fund is concerned, it is his own contribution.

Draftsman: That is in the Act.

Shri Nathwani: In the original Act, there is provision for gratuity, There are separate headings given there.

Shri S. R. Vasavada: I thought so, but I was corrected.

Draftsman: It is all given there in section 530 (1).

Shri S. R. Vasavada: If all these things are covered under the head of priorities, as has been pointed out by Shri Nathwani, then my only contention is that it is highly illogical and improper to restrict this only to four months' wages. It was four months' wages even when the Companies Act was on the anvil. I submit that four months' wages or Rs. 1,000 as the maximum would not cover provident fund, gratuity, lay-off compensation etc. If Parliament has decided that these are all the priority items, then if there is some arithmetical miscalculation, these various items may not be covered adequately by four months' wages or by the maximum limit of Rs. 1,000.

I would, therefore, suggest that the limit should be raised to a reasonable figure; I have suggested twelve months' wages. The Joint Committee may decide as to whether it should be twelve months' or ten months' or eight months' wages. I am quite definite that if a calculation were to be made, four months' wages will not be sufficient for meeting all these dues. Similarly, the maximum of Rs. 1,000, which is referred to at the end of the section will not also be sufficient.

There is one other point, namely that when liquidation proceedings are before the High Court.....

Chairman: That is not to be raised here.

Shri S. R. Vasavada: Whatever I wanted to plead I have already pleaded and placed before you. I do not think I have got anything more to say.

Chairman: Now, Shri M. R. Masani may ask any questions, if he wants.

Shri M. R. Masani: In view of the fact that you have practically ruled out most of the points in the memorandum as irrelevant, I do not want to ask any questions.

Shri Nathwani: Do I understand that trade unions require true and complete information from the companies, whether public or private, to enable them to assess the justice of the wage rates offered to the employees? That is how labour is interested in the information, I believe.

Shri S. R. Vasavada: My answer is in the affirmative, and a very emphatic affirmative at that. Without putting the true and correct picture about the balance-sheets before the tribunals, or the courts or the arbitrators, it will not be possible to decide about the wage increase or the bonus or even about the provident fund or gratuity. Even gratuity cases are decided on the merits of the balance-sheet. Unless we get a correct picture in the balance-sheet, we shall be nowhere.

Shri Nathwani: For that, it is necessary to have an absolutely independent audit of the accounts of the company.

Shri S. R. Vasavada: We have been agitating for that for the last seven or eight years. Before the last Joint

Committee also, I had appeared and pleaded for this. It is my misfortune that today also I am told that I have to go to Shri Lal Bahadur Shastri and to this committee.

Chairman: That should be a good fortune and not a misfortune.

Shri Nathwani: Do I understand it properly that in view the importance of independent audit, your suggestion is that instead of the problem being tinkered with in the manner indicated in the proposed amendment, Government should have powers to appoint independent auditors?

Shri S. R. Vasavada: I do not want to be discourteous to the draftsmen who drafted the amendments. If you merely say branch accounts should be examined, it is nothing but tinkering with the problem. The problem is a more serious and grave one. In fact, nobody believes in the balance-sheets today; and balance-sheets can be manipulated anyway one likes. I have got an instance where the chairman of a millowners' association submitted before an industrial court of Bombay that his balance-sheets could not be relied upon because they were being manipulated. It is there on record in the proceedings of the court.

Chairman: A very honest man he was.

Shri S. R. Vasavada: Therefore, it is no use merely saying that auditors should examine the branch accounts. To say like this even after seven years of experience is no solution to the problem at all. The problem is something more than that; it is one of lack of honesty; it is one of complete deception. Unless there are independent and impartial auditors who are responsible not only to Government but also responsible morally and mentally to the people at large, I do not think this problem can ever be solved.

Shri Nathwani: One of the main reasons why you want private companies not to be excmpted from various restrictions which are placed on public companies is that you want full and complete information. Is it not so?

Shri S. R. Vasavada: Yes. Not only that. Sometimes people are going in for private companies only to escape all these provisions.

Shri Tangamani: On page 12 of your memorandum, you refer to section 530(1)(b) which is now sought to be amended by clause 179. That gives a prior charge to the workers in the case of winding up. You say that 4 months' salary will not be sufficient and 12 months' salary will meet the ends of justice. This amendment and the Act suggest that the ceiling should be Rs. 1,000. Are you satisfied with Rs. 1,000?

Chairman: He has already said that he is not satisfied with Rs. 1,000 but he has not fixed the amount.

Shri S. R. Vasavada: What I said was that 4 months should be raised to 8 months or 12 months. As the hon. Member just now rightly pointed out, I am not satisfied because I want my actual dues. It represents the wages for work performed by me. What is after all gratuity? Gratuity is also provided from year to year?

Chairman: If the period is raised to 8 or 12 months, then, probably there is no necessity to have the ceiling at Rs. 1,000.

Shri Tangamani: May I take it that you want full compensation as provided for in the Industrial Disputes Act?

Shri S. R. Vasavada: If Parliament desires to have some ceiling, then, I have suggested 12 months' salary. If they want to have it reduced, let them have it reduced to 10 months or 8 months; and, in that case, consequential amendments can be made.

Shri Tangamani: You have referred to the amendment regarding the disclosure of donation to political parties....

Shri S. R. Vasavada: Yes; I have endorsed that.

Shri Tangamani: The amendment says that it will be treated as revenue expenditure and will also be taken for arriving at the net profit. The amount that is fixed is Rs. 25,000 or 5 per cent of the average net profits. Would you like that amount to be as it is or would you like that any other amount should be fixed for the contribution?

Shri S. R. Vasavada: It is on a par with donations and I think the amendment is quite all right.

Shri Tangamani: You refer to section 205 on page 12 of your memorandum. Clause 62 seeks to amend this section. It says that before dividends are declared, depreciation must be a prior charge and depreciation must be only normal depreciation as in the Income-tax Act. Would you like that normal depreciation be provided for before net profit is ascertained for the purpose of distributing the dividend and for the purpose of distributing bonus?

Shri S. R. Vasavada: I would place the highest priority on depreciation. I agree with the proposal.

Shri Feroze Gandhi: You stated that balance-sheets are invariably manipulated. This is a very wide and general statement. I would like to know specifically from you whether it has been your experience that balance-sheets of companies are manipulated. If they are manipulated, could you be able to tender some balance-sheets of prominent companies, say, 15, 20 or 25 companies, with your comments on those balance-sheets showing how they have been manipulated?

Shri S. R. Vasavada: That has been my job for the last 30 years.

Shri Feroze Gandhi: Could you send some 15 to 25 balance-sheets of companies which have been manipulated together with your comments as to how they have been manipulated. . . .

Chairman: He says that he stands by that statement. But does the hon. Member want them to be sent to the hon. Member or to the Committee, because the Committee is not very much interested in it?

Shri S. R. Vasavada: Before I undertake to send these balance-sheets as desired by the hon. Member, may I seek some clarification? We have been going to courts for certain claims or dues. The company says that the balance-sheet shows losses. When we want to enquire whether the balance-sheet is correctly cast or not and how these losses have been incurred, they say, come out of court and let us not enter into any controversy and let us go into the balance-sheet. This is what happens ultimately. I have felt that these balance-sheets have been manipulated and I am prepared to send you the balance-sheets of prominent companies. As I said, I need not put all these things before you because the Chairman of the Millowners' Association himself has stated that they were manipulating the balance-sheets. It is already there in the proceedings of the court. If you want, I will send that extract also.

Shri Feroze Gandhi: It would be very helpful to us.

Shri Naushir Bharucha: You have made a general statement on page 7. Is it your intention that the representative unions in a particular industry alone should get the information? There may be, say, several unions.

Shri S. R. Vasavada: By labour I mean the union. So far as the 'representative union' is concerned, that is an expression known only in one or two States. Whatever union is recognised for the purpose of these matters, it must have a say in the matter.

Shri Naushir Bharucha: In talking of fixing percentages of business expenses does it occur to you that it is impossible to do so because the expenses, the operating costs in different industries vary?

Shri S. R. Vasavada: I want to clarify our stand as to what we mean by business expenses. Sometimes, the officers, the managers, managing directors and managing agents come to the capital of the State or the capital of the country and they have to incur

some expenditure. I can understand that it is legitimate expenditure. But. when I find that. . . . .

Shri Naushir Bharucha: You are not answering my specific question. I said that the ratio of operating costs varies very largely in various industries and it is humanly impossible to fix a definite percentage.

Shri S. R. Vasavada: It may not be possible to have one uniform percentage. That I agree.

Shri Naushir Bharucha: Coming to your observations on page 11 which are very important, you say that there should be a check on the piecemeal disposal of machinery prior to the company going into liquidation with the object of defeating the claims of the workers. This has happened in my constituency also and I am particularly interested in it. Can you suggest what method can be adopted for preventing that?

Shri S. R. Vasavada: It may not be proper at all till liquidation proceedings are over.

Shri Naushir Bharucha: If a firm wants to go into liquidation, it makes preparations beforehand and starts disposing of its machinery piecemeal. This has happened in several cases. Section 294 restricts the power of the directors to dispose of the whole or substantially whole machinery. So, if they dispose it by bits, you can do nothing. Ultimately, when the company goes into liquidation there are no assets. Can you suggest any method to prevent that?

Shri S. R. Vasavada: You should have an amendment.

Chairman: He has nothing concrete at present.

Shri Morarka: I want to ask one question. Could you say from your experience what is the maximum loss that the labourers have suffered because of some complaint of some industry going into liquidation?

Shri S. R. Vasavada: Anywhere from Rs. 5 lakhs to Rs. 30 lakhs.

Shri Morarka: Could you kindly tell us in terms of the monthly salary? How many months' salary or emoluments have they lost? You are asking from four to 12 months.

Shri S. R. Vasavada: In one case recently I had to compromise a claim of Rs. 17 lakhs by Rs. 5 lakhs.

Shri Morarka: Still my question is not answered.

Chairman: He wants to know it in terms of salary.

Shri S. R. Vasavada: It requires some calculation.

Shri Morarka: How many months' salary have the workers lost?

Shri S. R. Vasavada: You want to know the actual months' salary lost? You may convert all the loss into months' salary.

Shri Morarka: You are asking that the emoluments which are provided in the Bill for four months should be increased to 10 to 12 months. I want to know from your experience what is the loss that the workers have actually suffered and which is not covered by the existing provisions.

Shri S. R. Vasavada: Anywhere from 24 to 30 months, in extreme cases. In extreme cases they have suffered like that.

Shri Feroze Gandhi: I want to know the name of that Chairman of the Bombay Millowners' Association who made that statement. What is his name?

Shri S. R. Vasavada: I am going to send the extract of the proceedings.

Shri Feroze Gandhi: I want to know his name and also when he made it. Could you give us some idea?

Shri S. R. Vasavada: If I say that I do not know the name it is incompetency on my part.

Chairman: He would like to send those extracts. From them it can be

found out. He is not prepared to give the name just now.

(The witnesses then withdrew.)

III. Federation of Indian Chambers of Commerce and Industry, New Delhi

Spokesmen:

1. Shri Madanmohan R. Ruia.
2. Shri A. M. M. Murugappa Chettiar
3. Shri Lakshmipat Singhania
4. Shri M. L. Shah
5. Shri Ramnath A. Podar
6. Shri Shriyans Prasad Jain
7. Shri S. M. Shah
8. Shri G. L. Bansal
9. Shri P. Chentsal Rao
10. Shri N. Krishinamurthi

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

Chairman: Your memorandum is before us. We can presume that every hon. Member is aware of it. Would you like that straightaway we might begin with questions? Or, would you like to say something in elaboration or clarification?

Shri Madanmohan R. Ruia: Before we begin first of all I would like to thank you for giving us this opportunity to be present before you.

Mr. Chairman: We thank you for coming over here.

Shri Madanmohan R. Ruia: Before you put us questions we would like to amplify certain points very briefly. There are particularly about eight to ten points which we consider to be very important and we would like, with your permission, to amplify those points.

First of all, the first point which affects an organisation like our Federation is clause 9, which affects the non-profit-making bodies like our Federation. I would like to say a few words about that. This particular clause—clause 9— makes the working of an all-India body like the Federation difficult because we have got in this organisation members from different associations and different parts of the country. We have had to take a certain new clause of members called associate members who are members of our primary body, the chambers of commerce and various organisations. No voting right were given to those associate members because they constituted a fractional membership of the total member bodies.

Section 29 provides that the articles of such bodies should be in accordance with Table 6. Table C provides that every member should have a vote. This would be very difficult because of the way in which the constitution of this body of the Federation has been made.

Then also the Federation's constitution has to provide for representation on committees, representing various regional interests because this is supposed to represent the all-India body. Under section 257, any member can stand for election and if he obtains a majority, he will become a member of the committee. That will affect the fundamental structure of a body like our Federation.

Section 265 that you have got provides for adopting proportional representation; more than two-thirds of the directors should be elected by such procedure. This again is against what we call the articles or the structure of the Federation as I explained to you. Therefore, we would like to reiterate that a body like the Federation, which is not a profit-making body, should be exempted from sections 29, 257 and 265 in addition to sections mentioned in clause 9.

Would you like to put questions on every clause?

Chairman: There are so many Members here and each of them would be putting questions, so that every

para of your memorandum will be covered. Besides that you have said in the memorandum, if you want to supplement it by emphasising or elaborating certain points, you may do so.

Shri Madanmohan R. Rula: We would like to elaborate certain points in regard to 8 or 9 clauses.

Chairman: We do not stand in the way of that.

Shri Lakshmipat Singhania: Clause 15 deals with cases in which private companies will be deemed to be public companies. There are two things here. Firstly, a private company the entire capital of which is held by another private company or by one or more foreign companies will not be treated as a public company. But where more than 25 per cent of the share capital is held by one or more bodies corporate, it will be treated as a public company. My submission is, in foreign collaboration it is not possible that 100 per cent capital is held by the other company. So, we submit that even if a part of the share capital less than 100 per cent is held by the other company, it should not be treated as a public company.

As far as 25 per cent is concerned, my submission is that this is a very small percentage for converting a private company into a public company. Even under section 23A of the Income-tax Act, the percentage is more than 50. So, we have submitted in our memorandum that the percentage should be slightly raised, at least to one-third, i.e., 33 per cent. It is not that we are afraid of private companies being treated as public companies, but it will not be practicable.

I come to clause 62 which deals with payment of dividend. When a new company is formed, the distribution of dividend will be most difficult, because first of all, all the accumulated depreciation has to be made up before you can distribute any dividend. I have calculated certain cases where I have found that in some companies, it might take ten years before the first dividend is distributed. Under these circumstances, it will be very difficult to attract new capital if the subscribers know beforehand that for 10 years they will get no dividend. So, my request is, from the point of view of more capital formation for new industries, this clause should be suitably amended.

Regarding clause 63, it is envisaged that the whole amount of the dividend must be deposited in a bank. Within our knowledge, no case has come up where after declaring the dividend, it has not been paid. But even the law as it is makes it obligatory that the dividend must be distributed within three months. So there is no reason why it should be deposited in a bank.

Secondly, after the dividend is deposited, in big companies there are some shareholders who may not take the dividend—they might have gone abroad, dead or something like that. In such cases, there is no provision for taking back the deposited money from the bank to the company. It will remain with the bank for ever.

The penatly clause says:

> "If he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to fourteen days and shall also be liable to fine."

My submission is it should be left to the discretion of the court to award suitable punishment. This is not an offence of such a nature as to call for such strong penalty.

There is one more small point.

Now, I come to clause 124. We have not been able to understand why a

subsidiary cannot function as managing agents of other companies? Why it should be prohibited from its acting as managing agents if it has such necessary qualifications to act as managing agents? My submission is after all managing agency has to be approved by Government. Under these circumstances, why there should be a complete bar for a subsidiary to act as managing agents. I may give you an example for your consideration. Supposing foreign collaboration is needed and foreign capital has already come in, in that case what is going to happen? Supposing, a subsidiary is formed for that particular business, why should we prohibit it from acting as managing agents, if they have all the necessary qualificatons to the satisfaction of the Government? After all, Government has got the final power to approve managing agency.

Then, with your permission, I will make certain observations on clauses 135 and 138 which deal with loan and inter-company investment. On this matter, a controversy is going on for a very long time and when the last Company Act was made in 1956, this point was also discussed at a great length. Our submission is this, that today any new venture or a new industry, beside the conventional industries, requires a large capital and that those types of investments cannot yield results in a very short time. Therefore, it is necessary that those companies should be financed out of corporate savings. But under this clause, a limit has been placed on inter-company investment. In olden days, capital structure of the company was very small and those companies have built up large reserves and if you put a limit, say, 30% of the paid-up capital, I am afraid, many companies will suffer. Supposing a company has got a capital of Rs. 25 lakhs and it may have a reserve of, say, Rs. 75 lakhs, then 30 per cent of Rs. 25 lakhs would come to only Rs. 7 or 8 lakhs. In other words, a company which has got a reserve of about a crore of rupees, cannot invest in other companies more than Rs. 8 lakhs.

Secondly, to bring new industries in existence, the private sector must collect funds from the available resources. Today, individual saving is very very limited and cannot contribute to a bigger capital formation. It is the corporate saving which makes people to invest in new industries. We have not been able to understand at all why, when we have the fund available at one place, we are not allowed to use it but that we should go to the public for borrowing funds. By amending 1913 Act you have given more freedom to the investors in the companies. Now, the company is managed by people who are collected at general meetings to take decisions. Now, why this power is being curtailed? That means a general body meeting is deprived of those powers of investment. I am only submitting it, because if you take the history of industrial development in India, you will find that conventional industries have developed all these new industries. These new industries have come up as branches of the conventional industries. This means, most of the funds of new industries have come up from the conventional industries. It is not practicable today that all the funds can be available from the general borrowing or from individual investment.

Therefore, my submission is that these clauses should be given a careful consideration. There may have been cases—I do not deny—but these cases have to be viewed in the way I have suggested.

Shri Lal Bahadur Shastri: There is no ban as such.

Shri Lakshmipat Singhania: But you must go to the Government for getting permission. I am fully aware of that. So far as I understand, the objective of the Companies Act is to regulate the functions of the company and avoid misuses by its manage-

ment. My submission, therefore, is that when the general body approves of a certain fundamental principle of a company, why should Government come in the way to have its final say in the matter? I am not at all challenging the rights of Government. Please do not misunderstand me.

Shri Kanungo: How do you make a distinction between *bona fide* investment and *mala fide* investment?

Shri Lakshmipat Singhania: If the shareholders of a company do not have the brains to understand what is a *bona fide* investment and what is a *mala fide* investment, then I do not think anybody esle could judge it.

Shri Madanmohan R. Ruia: May I supplement? We have all along proceeded in our observation on this basis that shareholders are the ultimate masters of a company and if a thing is approved by the shareholders, there should be no other body which should supersede the shareholders in giving any judgment. That is the basis on which we have proceeded.

Shri Lakshmipat Singhania: Then there is clause 200. I am surpised that this clause has been introduced here. The Company Act itself has about 650 sections and most of them contain penalties and prescribe punishments for various acts of omission and wilful negligence. There may have been some sections without penatly, but they are mostly not very important. I am surprised that this clause is inserted saying that if there is any contravention for which no punishment is provided, the company would be punished under this clause. In that case one penalty clause would have been more than enough. We are completely surprised why this clause 200 is being introduced at this moment nullifying all those provisions. We have serious objection to this clause.

Shri Madanmohan R. Ruia: There are a few other points which my colleagues would explain.

Shri A. M. M. Murugappa Chettiar: Clause 58 deals with the publication of the proceedings of general meetings. I think in our memorandum we have given the details of it and I would not, therefore, take much time of the Committee except to add that when we give a review to the papers and the papers also give a review of the working of the company. It helps the investors to pick and choose their investments. I think this is a very important matter. Moreover, it gives a general idea about the industry with regard to the generalised points. So, we feel that it is important that it should be summarised and published in the papers. As far as shareholders are concerned, they are sent all the proceedings of the meetings and they are in the full know of these things. They are not kept back from any such proceedings. This is only meant for the public and therefore I would request the Committee to consider this matter again.

Shri M. L. Shah: With your permission I would like to speak on clause 60. This clause seeks to introduce new section 198 in the place of the existing section. It deals with the overall managerial remuneration. The amendment defines 'remuneration' to include perquisites, such as rent-free accommodation, free motor car, free passage, free education of children, pension or insurance benefits provided by the company. Where there are no profits you say that the remuneration should not exceed Rs. 50,000 subject to the approval of the Central Government. We feel that the present section in the law is quite enough. In the Bill, Government approval is made necessary in respect of many more expenses incurred, like providing any benefit or amenity free of charge or at a concessional rate to the managerial personnel, and all these will be treated as remuneration. Sometimes the Managing Director or the Managing Agent has to go to the factory, be there and also he has to entertain his customers and he has to partake in it. These should not be treated as benefits or amenities.

Then, it is very difficult to define 'concessional rate'. On the whole, I feel that there is no need for this amendment so far as clause 60 is concerned.

Clause 84 on page 20 of the memorandum deals with imposition of restrictions on shares. At present, Government have power to approve of changes in the management. By this clause Government are trying to take powers to say that voting rights shall not be exercisable for three years and they can say that the shares cannot be transferred. The fundamental point is this: Whatever decision the majority take should prevail. That is a fundamental right of the majority. Therefore, I feel that there is no need for this particular clause. The majority must have their fundamental right to consider this matter of transfer of shares.

Shri Shriyans Prasad Jain: I have been asked by my President to explain to this august body clauses 128 and 104 of the amendment Bill. First, I would like to take up clause 128. I would rather like to draw the attention of the Select Committee to the fact that what is permissible in sections 309 and 314 will be nullified if this clause is adopted. This is an overriding clause and what is being permissible under sections 309 and 314 will be taken away by this clause. I do not think that is the intention of the Government. I would elaborate my point in this way. Under section 309 it has been permitted that a Director is entitled to have a sitting fee when he attends the board meeting. But if this clause is adopted the fee received by a particular director who happens to be a partner in the case of a firm or a director in the case of a body corporate will be deducted out of the managing agent's commission. I do not think it is the intention of the Government. This may be rectified. I would elaborate this point a little further. Section 309 empowers the Board of Directors to give remuneration to a director or directors appointed by the Board for a special service or for a special assignment, to the extent of 1 per cent and if the Board appoints or gives assignment to a director who happens to be a partner of a firm or a director of a body corporate, whatever the case may be, the remuneration drawn by him will be deducted out of Managing Agent's commission. I would submit that this point may be considered.

I would now take up section 314. Section 314 provides that by a special resolution passed at the general meeting an assignment can be given to a director and then that will not be considered as a disqualification. If after passing a special resolution under section 314, if a particular person happens to be a and acts as a technical person or works in any other capacity, and or if any remuneration is paid to him under section 314, in that case also the managing agent's commission will be deducted. I am not here to argue what should be the managing agent's commission. That has already been provided and that is a maximum of 10 per cent. But having given him permission to receive that 10 per cent, to take away that commission is not a proper thing. Similarly, to take away what is permissible to the other directors is not a proper thing. I would rather request you to reconsider this point sympathetically.

Clause 104 deals with two problems. One problem is that when the managing agent ceases to be a managing agent and takes the appointment of sole selling agent, this clause debars him to take up that appointment for a period of three years. The other point which is being dealt with in this clause is that the Government can notify that in a particular business or industry there is no need of a selling agent. My submission is that the shareholders are the proper judge to know whether in a particular trade or in a particular industry or in a particular area a sole selling agent is necessary or not. We do not want Government to assume the powers of notification. After all we should not treat a Board of Directors lightly; we should give them some weight. They

are the best judges; they know the circumstances; they know the necessities of each case; they will adjust themselves according to the exigencies of the situation. Even if Government assume these powers, it will be too much for the government servants to deal with these day to day problems.

So far as the managing agency is concerned it is being done once in ten years. But here in this case it will be a day to day matter and it may sometimes not be understood in its proper perspective and thereby create many difficulties. I am not making any allegation, but it may be possible that some times delays may take place and the industry may suffer thereby. In regard to export promotion and things of that nature delay may have the opposite effect. We want to accelerate our sales through the agency of somebody. If this clause remains on the statute book it will delay matters. I therefore wish that Government should not take powers so far as the appointment of selling agents is concerned. It may be left to the better judgment of the shareholders and of the directors.

Shri S. M. Shah: Page 60, powers of the Registrar to call for information and inspection of documents. Enough powers are already given to inspectors and to the Central Government to call for and investigate the books of accounts of the company. It is not necessary to further reinforce these powers by vesting this power in the hands of the Registrar of Companies. Registrars are supposed to be statistical officers who will register the documents and call for any information they like. The present provision in the Act already empowers them to call for sufficient information they want. If they think that the information is not forthcoming they are supposed to report to the Central Government and the Central Government might appoint investigating officers. There are sufficient powers with the Central Government already and it is not necessary to reinforce these powers by vesting them in the Registrar of Companies.

The second point is that if the books of accounts are transferred from the Head Office notice has to be given to the Registrar within seven days. Books of accounts in business offices have to be shifted for various reasons. There may be sales tax assessment in other States; there may be suits filed by the company or against the company in courts of law; there may be suits filed by other parties. For evidence purposes books of accounts have to be produced. Sometimes books of accounts have to be produced before a labour board. If the books are to be shifted for a temporary period it should not be made obligatory on the company to give notice.

It is also said that books of accounts should be maintained for at least eight years. It may be argued that for income-tax purposes the books are supposed to be maintained. But there is no statutory obligation there. If this provision is given retrospective effect, as is sought to be done, there will be great hardship to the companies. All the books of accounts may not have been maintained by a company; only some books may perhaps be necessary for income-tax purposes and some books may not be necessary.

My submission is that this clause should be re-examined.

Shri Madanmohan M. Ruia: We have finished with our observations. I would only like to mention one point. The substance of what we have been telling you is that too much power is sought to be taken by Government. Wherever it is absolutely necessary we have no objection. We have no objection that Government as the controlling body should have the ultimate authority, but they should not be such as to make the working of companies more difficult. It is with this aim in view that we have made the suggestions and we have nothing else at the back of our mind.

Shri P. D. Himatsingka: Clause 138—investment in companies. You suggest that shareholders should be the final authority if they want to invest more

than 30 per cent in other companies. Is that the suggestion that you want to make? The present provision is that if any company wants to invest more than 30 per cent such excess should be sanctioned by the general body of shareholders at a general meeting and it should also be approved by Government. You want that the approval of Government should not be necessary.

Shri Madanmohan M. Ruia: That is right.

Shri P. D. Himatsingka: So far as investment in companies under the same management is concerned, you do not want to suggest anything more than what has been provided?

Shri Mazumdar: In the present law the formula is that there should be shareholders' approval plus Government approval in the case of inter-company investment in excess of the prescribed limits. That is the law today, passed in 1955. Your objection to Government approval is to the law already passed or the new extension of it?

Shri Madanmohan M. Ruia: We have confined ourselves to the amendment. We cannot object to the old law.

Shri P. D. Himatsingka: Clause 9. You want more freedom for companies which are not for profit.

Shri Madanmohan M. Ruia: No restrictions should be put in the way of a body or organisation which is not making any profit, because there is no monetary complication.

Shri Lakshmipat Singhania: I want to add only this. Once the Government approves a body as a non-profit-making body and grants certain exemptions to it, why does Government want that for these exemptions we should again go to them for approval? They should *ipso facto* apply. Government work should not be added to on points which are not so important. Once you have satisfied yourself that a company deserves these exemptions, what is the necessity of going to you again and again for every exemption?

Shri P. D. Himatsingka: Regarding Section 43A companies which will be deemed to be public companies, the provision, as you know, is that even if a private company takes shares in another private company to the extent of 25 per cent, that would be deemed as a public company. Is it your view that if a public company takes shares to the extent of 33-1/3 per cent, it should be regarded as a public company?

Shri Lakshmipat Singhania: Yes, that is what we have given in the memorandum—that is, if a public company takes the shares. But if a private company takes all the shares of a private company, that is already exempted. That amendment has been brought in.

Shri P. D. Himatsingka: Under the Income-tax Act many public companies are not regarded as public companies.

Shri Lakshmipat Singhania: I have already submitted that according to Section 23A of the Income-tax Act any company in which more than 50 per cent of the shares is held is supposed to be a public limited company. Therefore I think that it should be 50 per cent. But in our memorandum we have submitted 33 per cent and therefore I could not go beyond that.

Shri P. D. Himatsingka: There may be public companies where there are only 7 shareholders and they may, according to the Income-tax Act, come within the definition of a private company. If such a company takes shares, do you want them to be regarded as public companies or not?

Shri Lakshmipat Singhania: It will be a very complicated affair. After all it is a matter that you have to agree under company law. And under the Company Law, whatever may be the companies, a public limited company is a public limited company.

Let us not misunderstand the issue. Section 23A of the Income-tax Act was enacted for a certain purpose, namely for division of the profits. That is, if the company is managed by such and such persons or group, the profit is divisible in terms of 60 per cent, 90 per cent, 100 per cent and so on. It was for that purpose. Therefore we cannot mix the Income-tax Act with the Company Law.

Shri Shriyans Prasad Jain: I visualize two types of companies: one, where the shares of a private company are held by another private company. In respect of those private companies, even if the shares are held by another private company—one or more—, in no case should they be treated as public companies. That is point number one.

The second point is, if the shares of a private company are held by a public company to an extent lower than 33 per cent, in that case also they should not be treated as public companies. But if shares to the extent of 33 per cent or more are held by a public company, in that case they should be treated as public companies. That is our submission.

Shri Morarka: I would like to understand about this clause 15 with which my predecessor was just dealing. May I request the witnesses to state what is the rationale behind their suggestion that where a percentage of the shares of a private company are held by a public company, the provisions may be applied. They know that in a private company there can be as many as 49 shareholders, whereas in a public company there can be as few as seven shareholders. If the funds of a public company which has got only seven members are invested in a private company and if that money could be considered as public money, why cannot the funds of a private company constituting 49 persons be considered as public money when that money is invested in another private company? The Sastri Committee made a recommendation the basis of which was that where public money is invested to an appreciable extent, the company in which that money is invested should be treated as a public company. That is the only criterion which was laid down by them. If that is so, how do these distinctions whether the money belongs to a private company or a public company or whether it is in the form of equity share capital or loan capital or debenture capital, come? It is one thing not to accept the basis at all. But once you accept the basis that if public money is invested it should be treated as a public company, how could these distinctions be made? What is the rationale behind it?

Shri Lakshmipat Singhania: Let us understand what is the meaning of a private company and what is the meaning of a public company—in my language. As the hon. Member just now said, a public company can be up to 7 members only and a private company can have 49 members. He was also good enough to explain that the Sastri Committee have recommended that investment in any shape is investment in the company. Investment and share-holding are two distinct things. You cannot mix up a loan, which is temporary and withdrawable at any time, and share capital. Once share capital is formed, it cannot be drawn unless you go to the court and have a reduction of capital. That is public investment in the share capital of a company, if at all it can be considered. Suppose a temporary loan is taken against some security. If the company holds certain securities, if a private limited company holds certain buildings, factory, etc., and if they mortgage it and take a loan from the bank, it does not mean that it becomes a public limited company. And immediately the bank loan is paid it is not possible that it becomes again a private limited company. It is not possible or practicable that a company can become a public limited company and immediately afterwards a private limited company. Therefore I feel that the amendment has been brought, ignoring what the Sastri Committee have observed—that is, the investment point

of view. Sastri Committee have taken a loan point of view also, and Draft Amendment is the pure and simple share-holding point of view.

Secondly, a private company should be treated as a private company so long as it has the character of a private company. Once it is treated as a private company all the provisions of the Act should apply to it. Immediately you try to make a distinction between a private company and another private company without any qualification, I do not think it is practicable or can be administered.

Shri A. M. M. Murugappa Chettiar: When we register a company we have an intention whether to have it as a private company or as a public company. The matter of minimum seven or maximum forty-nine does not count. When the minimum is seven, the maximum can be anything; it is unlimited. So the intention when we register a company as a private company—I think that should carry with it all the rights of private company

Shri Morarka: May I draw the attention of the witness to the Sastri Committee's report, where they say at page 19, in para 23 as follows:

> "At the same time, there is no doubt that private companies which employ public money directly or indirectly to a considerable extent should be subject to the same restriction....".

Shri P. T. Leuva: I would like to have some explanation as to the exact meaning of the term 'public money'.

Chairman: This question is directed to the witnesses?

Shri P. T. Leuva: I am asking this question because the hon. Member is saying that the Sastri Committee has recommended like this and used the phrase 'employ public money'. What is the exact character of that public money? Let us know that.

Shri Morarka: If this question is directed to me, I am willing to answer it.

Shri P. T. Leuva: You have been relying upon that for the last three days.

Chairman: The hon. Member Shri Morarka might continue his question now.

Shri Morarka: The wording is 'employ public money directly or indirectly to a considerable extent'. Even after the present amendment as proposed by Government is adopted or even after the suggestion contained in your memorandum is accepted, still, it would not comply with the requirements of the Sastri Committee's report, because there is nothing to indicate whether the money is considerable or inconsiderable. For, even if there is a private company, whose paid-up capital is Rs. 1000, and 25 per cent of the shares of that company are held by others, that is, to the tune of Rs. 250, still, within the meaning of this amendment, it would become a public company. Is that correct?

Shri Shriyans Prasad Jain: Every private money can become public money. But we have to draw a line as to where private money remains private money and where private money becomes public money. That is a very fundamental and important point.

The hon. Member has referred to the Sastri Committee's report. My reading of that report is somewhat different, as compared with the meaning that has been put into it.

Shri Morarka: I have not put any meaning into it. I have only read out the report.

Shri Shriyans Prasad Jain: According to me, the meaning is this. We should differentiate between investment and loans and borrowings.

So far as the question of loans and borrowings is concerned, if loans or advances are given to a private company, they are given against certain securities, which may be personal,

which may be against hypothecation, or which may be against mortgage. In that case, the lending company has looked into the case very thoroughly and properly, and on that basis, the loan is being advanced. Therefore, the question of utilising public money into this private company in this context does not arise at all, and I think it is out of context.

So far as the question of investment is concerned, I would consider it only in the shape of equity capital and not in any other shape. If the equity capital of a private company is held by another private company, both are private companies, and no public funds are involved, because both are private companies. Therefore, in this case, the question of employment of public money in a private company does not arise at all.

The only point which we have represented in the Federation's memorandum is that when in a private company, to the extent of 33 per cent or more, public money in the shape of investment is employed, then and only then, it becomes a public money, and not otherwise. That is our submission. That is the meaning which we have put to the Sastri Committee's suggested clause, and we have considered the Sastri Committee's clause in the context of this explanation.

Shri Feroze Gandhi: Does it mean that in private companies, no public money is employed?

Shri Shriyans Prasad Jain: The question as I have followed it is like this. The question is whether public money is invested in a private company or not.

I have explained my point of view very clearly, and I am prepared to explain it further. I have differentiated the employment of public money in a private company in two forms; one is in the form of investment in the shape of equity capital; and the other is money being employed in the shape of borrowings. So far as the question of borrowings of public money by a private concern is concerned, I rule them out; my submission is that public money is being utilised after careful consideration of the lending company, and in that sense of the word, public money is not employment in a private company.

So far as employment of public money in a private company is concerned, that is only in the shape of investment and not otherwise. If the investment is to the extent of less than 33 per cent—we have drawn a line at this percentage—even though it may be by a public company or more public companies, and it should be treated only a private company. But when the investment is more than 33 per cent we are prepared to concede that in that case, it should be treated as a public company.

I would also like to draw the attention of the committee to another point. According to the amending clause, when there is a hundred per cent subsidiary, it would be treated as a private company; but in case of foreign companies where the entire paid-up share capital is held by one or more companies, still it is treated as a private company.

There is a discrimination made here between a foreign company and an Indian company. If an English company or a foreign company holds shares to any extent, even if it is held by a public company, still it is being treated as a private company, whereas in the case of the Indian company, if the shares of a private company are held by another public company or private company, then, it is treated as a public company. I would point out that there should not be any discrimination between Indian companies and foreign companies in this respect.

Shri Madanmohan M. Ruia: That is not the intention.

Shri Morarka: I regret to say that my question still remains unanswered.

Chairman: That is my opinion also. When three of them have answered,

and it still remains unanswered, then we should be content with that. The hon. Member may proceed to his next question.

Shri Morarka: Let me make one more attempt. Even if the present suggestion of the witnesses is carried out, still would that satisfy the requirements of the Sastri Committee's recommendation, namely that public money is involved to a considerable extent, because in the amendment suggested by them in their memorandum, there is nothing to distinguish between considerable money and a little money, even if it is public money in both cases?

Chairman: Why should we ask from the witnesses whether the requirements of the Sastri Committee's recommendation would be satisfied or not?

Shri Morarka: I shall give you the reason which perhaps would satisfy you.

The present amendment is based on the Sastri Committee's recommendation. To that amendment, the Federation has suggested an amendment with their own reasons. Even if we were to accept the suggestion of the Federation, still it would not solve the problems which we are facing.

Chairman: The question might be put this way that it will not solve the difficulties that we are experiencing. Why should we say that it will not fulfil the requirements of the Sastri Committee's recommendation?

Shri Morarka: Because, when a suggestion is made, we are certainly entitled to know what is the rationale behind it.

Chairman: We have put that question; it is quite legitimate.

Shri Lakshmipat Singhania: I have already made my submission on that point. I do not think I am capable of finding out the difference between the Sastri Committee's recommendations and the amendment here.

Shri Naushir Bharucha: With regard to clause 15, would it meet your point of view if we say that in order to determine the public character of the capital of a company, there should be two qualifications, namely, the qualification of 25 per cent of the paid-up share capital and also the qualification that the number of shareholders should exceed 51. You are reconciled to the position that if there are 51 persons, then it is a public company.

Shri Lakshmipat Singhania: We have not said so.

Shri Naushir Bharucha: The law says that. So, supposing we put the additional qualification: 25 per cent share capital plus a membership of not less than 51.

Shri Lakshmipat Singhania: Capital is something and membership is something else. We have made a very simple suggestion here to raise the percentage from 25 to 33. Let us not mix up two things.

Shri Madanmohan M. Ruia: The present law does not permit any company with a membership of over 50. If you want to change the existing law, the answer would be quite different.

Shri Naushir Bharucha: The point I am making is this. You will be satisfied, according to your memorandum, if the percentage is raised from 25 to 33. Will it meet with your approval if it is not raised to 33 but if the membership is restricted as to remain round about 50 or 51? Have you any objection?

Chairman: There is no question of their objection if the law provides that. Their point of view is restricted to capital.

Shri Naushir Bharucha: So, the quantity of the capital is your criterion?

Shri Lakshmipat Singhania: Yes, Sir.

Shri Naushir Bharucha: On page 12, you have made reference to

certain expenditure and certain amenities provided to the managerial staff for company purposes. Could you tell me how you are going to distinguish between amenities which are really debitable for company's purposes and amenities which are going to benefit the managerial staff.

Shri Lakshmipat Singhania: I believe that such small amenities like the use of a car or telephone or the use of the directors' bungalow at the factory end or things like that are very difficult to distinguish. I do not know whether it is practicable for the Government to appoint an inspector for each company to find out how much mileage a car has done on somebody's personal account and how much on company's account.

Shri Naushir Bharucha: Would you be satisfied, as an alternative, if we specify certain sum and say that upto that sum it may not be included and over and above that it may be included?

Shri Lakshmipat Singhania: I believe that can solve the question.

Shri Murugappa Chettiar: But it also depends upon the size of the companies. A bigger company may require a bigger amount.

Shri Naushir Bharucha: I quite appreciate your comment on page 14 when you say that if the entire depreciation has to be set apart, there will be no dividend to declare. Would it meet your point of view if it is provided that no dividend exceeding six per cent over a certain number of years only may be given, if there is inadequate provision for depreciation.

Shri Lakshmipat Singhania: I believe that it should satisfy us. I only want to add that if there is a reserve fund or if the dividend is given out of the dividend equalisation fund, it should not be taken into account. Then, we have pointed out the difficulties regarding new companies.

Shri Naushir Bharucha: Are you reconciled to the fact that depreciation has to be calculated on income-tax basis?

Shri Lakshmipat Singhania: Yes, Sir.

Shri Naushir Bharucha: Regarding audit, certain companies have got a good integrated system of internal audit. In order to obviate the need for auditing the branch, would you be satisfied if powers were given to the Government to exempt certain companies where the Government is satisfied that the company has a good system of internal audit?

Shri Lakshmipat Singhania: We have no objection to that but my submission is that it will not be possible for all the smaller companies to have internal auditors. It depends upon the business and there are different types of business. Supposing a company is trading in cotton, it may have 50 branches.

Shri Naushir Bharucha: On page 19, you are objecting to the investigation of related companies. How do you get over the fact that these companies have vital information which should be disclosed to the investigation?

Shri Lakshmipat Singhania: The Central Government have got power to investigate under a distinct law.

Shri Naushir Bharucha: You circumscribe that power by saying that relevant evidence must not be brought in. How do you expect investigation to go on?

Shri Lakshmipat Singhania: I do not think that we have any such intention.

Shri Naushir Bharucha: Let us turn to page 24. I am asking you frankly for your opinion. With regard to the question of the appointment of the sole selling agent I want your frank opinion. The bottom of this clause can be knocked out completely—even if this power

is exercised—for instance, by appointing two agents instead of one sole selling agent. One of them can be a dummy. Would it be practicable to carry on a scheme in which you appoint one real sole selling agent (and one a dummy agent) and not call him a sole selling agent? To get over the provisions you appoint two agents in one area—one your real favourite and the other a dummy. I want to know from your experience as a practical working businessman whether such a thing would be difficult to operate.

Shri Lakshmipat Singhania: Even in elections you have got dummy candidates.

Shri Naushir Bharucha: I would like to know whether it is possible.

Shri Shriyans Prasad Jain: We are opposing this suggestion, So far as the amending Bill is concerned, it is said that Government want to assume power. But I think the amending clause is about whether in a particular industry or trade the selling agent can be discontinued. The question of appointment, I think, is not in the amending Bill.

Shri Naushir Bharucha: At present things are not definite. You have got the sole selling agent but you may say that he does not come under the mischief of that clause at all because there is no sole selling agent.

Shri Shriyans Prasad Jain: We are not here to suggest how the clauses are to be circumvented. I think we can leave it to the lawyers to say what is to be done at that time. We are here to explain our point of view.

Chairman: Those who frame laws have also to look to these contingencies.

Shri Naushir Bharucha: I want to know from your practical experience.

Shri Lakshmipat Singhania: There cannot be a precise and definite answer to that. It will depend on the question of each appointment. There might be good intentions; there might be bad intentions. So far as bad intentions are concerned, we do not approve of it.

Shri Naushir Bharucha: The problem of inter-company investment has been worrying us. You rightly say that, perhaps, industrial development might be retarded if inter-company investment is restricted. I also quite appreciate your difficulties in complying with the requirements of the clause as it is worded. Would it meet your objections or would it remove your difficulties if you recast the scheme of the clause in such a way that companies may be free to invest where they like—without any restriction? Secondly, if the investment exceeds 30 per cent of the investing company's share capital, in that case you only give intimation to the Government. And, thirdly, if the Government disapprove of it, then, that investment will have to be disposed of. If this *via media* is evolved, would that meet your objection?

Shri Lakshmipat Singhania: So far as intimation to Government is concerned, we will intimate to Government; there is no doubt about it. But if Government does not approve, it should be dislodged—I do not know how far it is practicable. There may be hundreds of examples.

Suppose a new company is formed. Several companies might have subscribed to its shares. How can such companies dispose of those shares if not approved? It is not practicable. Therefore, I cannot agree to a solution which I might feel completely impracticable.

Shri Ruia: It is not always possible in a new company. It is all right in the case of certain companies where the shares are over-subscribed. There, it may be a different thing. You may simply sell your shares. It is not possible in a new company that you can immediately sell the shares if

Government disapproves. This would dislocate the working of companies.

Shri Naushir Bharucha: How are you going to have a check on *mala fides*? Your answer can only mean....

Shri Kanungo: His answer is already there that the shareholders are the best judge of *mala fides*.

Shri Ruia: We have also said that we would be agreeable if it is thought that when you give this power to the shareholders, it should be not a bare majority but a bigger majority.

Shri Kanungo: Your basic point is that the judge is the shareholder notwithstanding the fact that in certain companies 60 per cent of the shares are held by a group or person.

Shri Naushir Bharucha: He may do something against the interests of the 40 per cent.

Shri Avinashilingam Chettiar: On pages 11 and 12 you have said:

> "The Committee wish to point out that in the case of the bigger companies, depending upon the volume and nature of work, different categories of managerial personnel will be required."

Shri Lakshmipat Singhania: It is already there; for the managing director or others, the approval has to be taken from the Government. But here you are restricting it to 'manager'.

Shri Avinashilingam Chettiar: Is there any company which you can say has appointed managing agents, managing directors and Secretaries etc.—all of them?

Shri Murugappa Chettiar: When we say managers, if it means managers who are entitled to commission etc. as the treasurers, secretaries etc. it is all right. But what we mean is this. If manager is supposed to be a manager of a firm, it might be a commercial manager, export manager, factory manager etc. There may be different managers. If your conception of manager is as secretary and treasurer or managing director or any such thing, we have nothing to say.

Shri Kanungo: As defined in the Act.

Shri S. P. Jain: We visualise four kinds of management; one, management by the managing agent; the next, secretary or treasurer; the third, managing director and the fourth is the manager. We do not visualise that there will be overlapping management. We are prepared to accept this so far as manager as defined in the Companies Act.

But, when we loosely use the word 'manager' we are not using it as defined in the Companies Act; we are using it as a departmental manager or works manager. If it is 'manager' as defined in the Companies Act, there should be no overlapping.

Shri Avinashilingam Chettiar: On page 13, you have pooh-poohed the idea of introducing this clause. Don't you think that in the case of some bigger companies the value of the perquisites is much more than the monthly salary which is paid?

Shri Lakshmipat Singhania: It is difficult to say which company is giving what perquisite. Last time this question came up in regard to income-tax. There are certain perquisites which have been defined in that Act and those perquisites are all taxable. We do not want to take advantage of those perquisites which are in bigger industries but we only want to avoid misunderstanding between the authorities and the company. The reason is, for many provisions, there is a big penalty, and it is said that for small amenities like telephone, motors or tea or other things, the expenses should not be included or that there must be a limit on perquisites amounting to Rs. 5,000 or Rs. 10,000 according to the size of the company. That is all. We have no object such as to take indirect advantage of those perquisites.

Shri Chettiar: May I know whether the income-tax, when charged, is on a notional value or the actual value?

Shri Lakshmipat Singhania: It depends upon case to case. I cannot give a general answer to that.

Shri Chettiar: About clause 62—payment of dividends,—in which appropriation of depreciation is also mentioned, you have mentioned, as many others have mentioned earlier, that in companies which are beginning to compel people to give depreciation according to the income-tax formula, the provision will prevent people giving dividend and that it acts as a deterrent in the formation of companies and you will also agree that provision even for depreciation is necessary. Have you any *via media* or suggestion to offer by which both can be safeguarded?

Shri Lakshmipat Singhania: I think an hon. Member has put a suggestion with which we have agreed. If it is six per cent, ceiling is made on that and in older companies where the dividend is paid from the old reserves it is not included in this Act. I think then that we have no objection.

Shri Chettiar: You will agree that more than six per cent will not be paid until the reserve is built up according to the income-tax rate.

Shri Lakshmipat Singhania: You know all the reserves are put in the management. If the dividend is paid from the reserve then it should be taken from the old profits.

Shri Chettiar: Coming to clause 75, page 17; with regard to the audit of branches you have also said that there are difficulties in auditing branches. Others have said that there are big branches and small branches. Would you like to distinguish by a regulation in the Act which are the big and which are the small branches?

Shri Lakshmipat Singhania: We again at this stage request you to kindly leave this matter to the shareholders of the company, because it is very difficult for me to say here for each company which is the small one and which is the big one—small branch or a big branch. I have personnal experience of some branches. Suppose I have one branch in Colombo or Nairobi, it is difficult to get auditors there. I have a branch in Indonesia where no auditor is available, and I am going to be penalized. Therefore I put before the shareholders that this is not practicable and I say, "exempt it". Therefore, this is not such a matter where the management tries to derive indirect benefit. It is a matter of facility. Therefore, I would request that this clause should not be put in.

Shri Chettiar: Will you agree that in Nairobi or Colombo you should get the permission of the Department not to audit?

Shri Lakshmipat Singhania: I will give you an example. There is a company whose accounts have to be closed within a certain period. The latitude which we used to get from the Registrar of the companies for delaying the accounts is also being eliminated. I am in the eighth month which is running. How long will it take? I cannot get the accounts ready by that time. Then the question is that one should ask for permission of the Administration, and say that the accounts are going to be delayed. That is a matter which has to be considered. If the shareholders say that the branch accounts cannot be audited in such circumstances then it is practicable.

Shri Chettiar: Let us refer to page 23, clause 101 dealing with quorum for meetings. You say:

> "The Committee are of the opinion that the proposal is not practicable....the matter cannot be decided by the third director and has to be decided by the general meeting. This will mean unnecessary expense and delay."

Do you not think this itself is the reason for which you go to the general body? Between three directors, if a contract is made up, and that is made between themselves, and then when it is left to the single director afterwards, this itself is *mala fide*.

Shri Murugappa Chettiar: We can have a regulation that it will be ratified at the next general body meeting when there is no quorum. When there is a quorum of only one, in such cases, it can be ratified by the next general body meeting.

Shri Chettiar: After a *fait accompli*. There is only one other matter. I come to page 28—clause 128. This clause extends to page 29 also. It deals with remuneration of managing agents. It says:

> "If for such technical work the services of other persons are obtained, separate remuneration will have in any event to be paid."

Will you refer to the amendment recently introduced in Great Britain in 1952 to clause 128 in which the word "managerial" has been introduced specifically to confine the remuneration to managerial work and not to technical work? It was specifically provided that the remuneration of 10 per cent or whatever it is would be confined to managerial work so that the technical work done by others is included. What is your complaint in saying that for technical work other than managerial services rendered by the managing agent the payment should not be included?

Shri Mazumdar: It is an inadequate understanding.

Chairman: Shri S. P. Jain said that so far as the definition of the word "managerial" is concerned, if that were to be confined to it, they have no objection.

Shri Shriyans Prasad Jain: There are two distinct functions. One is the function of the managing agent and the other is the function carried on by the others. It does not necessarily mean that all the functions are to be done by the managing agent. The function of the managing agent is to manage and govern the company. It may not be that the managing agent should be a technical person. Therefore, if a particular director of the managing agents happens to be a technical person, and he is, under section 314 employed by that company for a full or a part-time job, in that case, my submission is whatever remuneration is due to him by virtue of section 314 should not be a deductible item while calculating the managing agency commission. If section 128 as it stands is being adopted, then it is permissible under section 314 that he can draw the remuneration. But while the commission of the managing agent will be calculated, whatever remuneration is there will be deducted. I do not think it is the intention that what is permissible under one clause should be nullified by another clause.

Shri Chettiar: I refer to the amendment to section 198(1).

Shri Shriyans Prasad Jain: I do not want an amendment to section 198(1). There are several clauses under section 198. Sections 309 and 314 should be added.

Shri Kanungo: This will apply only when the director is a director of the managing agency company or also of the managed company.

Shri Shriyans Prasad Jain: Quite right. If the managing agency company is a firm or a partner or if the managing agency company is a corporate body, in that case, if that also happens to be the director of a managed company, only then it will be applicable. Otherwise it will not be applicable.

Shri Kanungo: So, you like the Director who is a director of both the companies to be excluded.

Shri Chettiar: To do the technical job.

Shri Shriyans Prasad Jain: Not only technical.

Shri Kanungo: Not technical. He is referring to the other section also—for specific work.

Shri Shriyans Prasad Jain: I would like to add a few words. The point is, I also want to draw the attention of the Committee to clause 309 in this respect. Clause 309 empowers the board of directors to give one per cent commission. Then if the company is being managed by the managing agents, the board of directors are empowered under clause 309 to give one per cent to any director for any special services rendered. If a special assignment is being done or is being made by any person who happens to be the director of a company or also a director of a managing agent's company—when it is a special assignment—and if it does not come within the powers or within the definition of services of the managing agents, in that case, whatever the remuneration to the extent of one per cent would be given to that director while calculating the managing agency commission here and it will be a deductible item.

I would go a little further. If the managing agent is also a director of the company and he renders service as a director, that fee should not be deducted. If that fee is also deducted, that is unfair.

Shri T. S. A. Chettiar: There is an advisory committee and a suggestion has been made that it should be on a statutory basis. What is your experience in regard to its working? Would you like it to continue as it is or should there be a statutory provision?

Chairman: That would be a different thing.

Shri Lal Bahadur Shastri: There is no clause for that in the Bill.

Shri Ruia: We have not thought it over.

Shri J. S. Bisht: In page 33, with regard to clause 138, you say:

> "The Committee are opposed to the limitation of the total investments of a company in all other companies. The history of the last few years has proved that new company formation and consequent industrial expansion has to a large extent been made possible by inter-corporate investments. Such inter-corporate investments have, therefore acquired a significance and have been recognised as useful. If the proposal is accepted, the Committee have no doubt, that it would arrest the further development of our economy. The Committee are, therefore, opposed to the restrictions on investments of one company in other companies to 30 per cent of its subscribed capital."

Could you tell us what would be your suggestion to prevent such malpractices as purchasing another company with the reserves of one company, from that purchasing another company and so on? What is your suggestion for safeguarding against such *mala fide* practices?

Shri Singhania: I have already given my suggestion. It should be left to the shareholders and not merely to the directors.

Shri J. S. Bisht: If a person happens to control a majority of shares, he can get through it.

Shri Singhania: If a person controls a majority of shares, he is the owner of the company.

Shri J. S. Bisht: In page 59 of the Bill, in clause 138, suppose the first proviso and sub-section (3) are dropped, as recommended by one of the witnesses here, what is your reaction?

Shri Singhania: This would mean further curtailment of the powers.

Shri J. S. Bisht: A very important industrialist yesterday recommended the dropping of the first proviso and sub-section (3) and he would be satisfied with the rest.

Chairman: He might have had his own views.

Shri J. S. Bisht: I want to know whether the witnesses here are agreeable to it.

Shri Singhania: We are not agreeable to it.

Shri Tangamani: In page 15 of your memorandum dealing with clause 63, you tell us that there is not a single instance which has been brought to your notice of the dividends having been declared, but not paid. If that is the reason why do you object to this amendment which lays down that persons who are knowingly a party to this defraud are punishable with 14 days simple imprisonment and also fine?

Chairman: For that an answer was given. The witness said that if some shareholders are dead and if some are not traceable, once the money is deposited, it cannot be drawn back and that will become the entire property of the bank for eternity.

Shri Tangamani: Will not a provision like this on the statute-book guarantee to the shareholders the payment of dividend? As an organisation representing not only the various companies but also the shareholders, what is your objection?

Chairman: Their point of view is that there has been no complaint absolutely, not even a single instance where a claimant might not have been paid his due share of the dividend. Why should there be a provision requiring the management to deposit the money in the bank which would cause further complications?

Shri Singhania: Yes, Sir; that is our point.

Shri Tangamani: What will be the other method which you will suggest for guaranteeing the payment of the dividends declared?

Chairman: There is no difficulty according to them; why should we find out a solution?

Shri Singhania: This Act provides a penalty if the dividend is not paid within three months. That solution is already there.

Shri Tangamani: Your objection, I take it, is only against the penalty of imprisonment and not fine?

Shri Singhania: This penalty clause is unique. The word used is "and" and not "or".

Chairman: He says, even if the penalty is there, the court should have the discretion to decide whether the penalty of imprisonment is necessary or the ends of justice would be met by fine.

Shri Tangamani: Please turn to page 27 of your memorandum, dealing with clause 124 which creates a new section 235A prohibiting subsidiary companies being managing agents. In the note you have given you tell us that the company law amending committee has not considered it, but you have been candid enough to say that this cuts across foreign collaboration. Is this the reason why you oppose the creation of section 235A?

Chairman: The reason given was that it would be discriminatory and would be rather prejudicial to the interests of Indian companies as against the foreign ones.

Shri Singhania: That is not the reason, Sir.

Chairman: I am sorry; you may give the reason now.

Shri Lakshmipat Singhania: We do not understand what could be the evil of it if a subsidiary company is

going to be managing agents and we have advanced a further reason that suppose a foreign collaboration is needed in one of the businesses of the managing company—where it is managing 5 or 6 businesses—and the foreign collaboration comes in, then it is not practicable for a subsidiary to act as managing agents.

Shri Tangamani: Page 10 of your Memorandum, clause 58, section 197. You are particular about the Chairman's speech being published at the expense of the company. But may I just point out that where the chairman's speech alone is published, given wide publicity, it has created difficulties in the recent past as in the case of the Madura Mills Co. Ltd. where there was a dispute between 22,000 workers and the management? The view of the chairman which alone was published has considerably embarrassed the State Governments and, more or less, postponed the settlement of the dispute. Is not Mr. Chettiar aware of such a thing which happened only six weeks back?

Shri A. M. M. Murugappa Chettiar: It was published in papers. I think, as far as shareholders are concerned, they are given all the details of the minutes of the meeting etc. Minutes of the meeting are sent to all the shareholders separately.

Shri Tangamani: The mere fear expressed was, more or less, proved in a particular case because it does not give the whole picture and emphasis is given on a particular issue. Probably, it may be a genuine desire on the part of the chairman to help but the net result has been prolongation of a particular dispute, as it has happened in this case.

Chairman: The answer is, it may mislead outsiders, but the shareholders have other sources of getting true information and they are getting that regularly.

Shri A. M. M. Murugappa Chettiar: That is the point.

Shri Tangamani: It affects the industry very badly.

Shri A. M. M. Murugappa Chettiar: We are concerned with the shareholders' interests and shareholders' interests are fully safeguarded.

Shri Tangamani: Page 16 of your Memorandum. Even some of the witnesses who came before you did not very much like the idea of the registrar's inspecting documents. Do you hold that the registrar should be deprived of the powers which are sought to be given under clause 76? Here, at the instance of a shareholder or a creditor, the registrar can inspect certain documents. Do you oppose giving the powers to the registrar under clause 76?

Shri S. M. Shah: The point at issue is whether the powers should be vested in the Registrar or not. Under the present Act, the powers are already vested in the Government. If a complaint has been brought to the notice of the Company Law Administration, they can appoint inspectors and investigate the matter. The only question to be considered is whether additional powers have got to be given to the registrars of companies for this purpose. This clause goes even beyond the scope of the recommendations of the Commission inasmuch as when a creditor complains, in that case also the registrar can call for certain information. All that was not envisaged. What will happen is that a number of frivolous complaints will be brought before the registrar and the registrar will have to call very often the company management to explain and produce the documents. For this purpose, extra staff may have to be engaged.

Shri Tangamani: Clause 104 You did answer to a question put by Mr. Naushir Bharucha. What I would like to know is, would you not like

some kind of control from the Government side when the company wants to appoint a sole selling agent?

Chairman: I can answer for them.

Shri Tangamani: They have given answer in a dubious way in the Memorandum.

Chairman: I can give you answer in a clear way. It is that, they would not like Government interference. Shall I proceed further?

Shri Tangamani: I thought Mr. Jain was going to say something.

Chairman: They agree with me.

Shri Easwara Iyer: You have said that you have prepared this Memorandum on the basis of shareholders' point of view and that lesser control is conducive to the shareholders. Do you agree with the principle that the majority shareholders should not oppress minority shareholders?

Chairman: There ought to be no oppression by the majority. Everybody would agree with the principles.

Shri Madanmohan R. Ruia: There is already a provision . . . .

Shri Easwara Iyer: That majority shareholder becomes practically the owner, I do not agree with him. That is why I am putting this question.

Shri Madanmohan R. Ruia: Already there is a provision.

Chairman: The answer is, already there are provisions in the Act.

Shri Easwara Iyer: I want to know whether they concede the position that minority shareholders should not be oppressed by a few majority shareholders.

Shri Madanmohan R. Ruia: Yes, of course.

Chairman: The answer given is, 'Yes, of course'.

Shri Easwara Iyer: Page 15, clause 63. You object to the deposit of the dividends in a scheduled bank or the State Bank. Now, can you tell me, what you consider the nature of the moneys which have become the declared dividend? I will put it in this way, whether it is the property of the company or the property of the shareholders once the dividend is declared.

Shri Lakshmipat Singhania: The company itself is a property of the shareholders, and therefore all the wealth of the company belongs to shareholders. Nobody else is the owner.

Shri Easwara Iyer: Do you agree with the view that the company has a legal entity quite apart from the shareholders?

Shri Lakshmipat Singhania: No, Sir.

Shri Easwara Iyer: Do you mean to say that the use of the declared dividend for purposes other than giving it to the shareholders will amount to temporary misappropriation?

Shri Lakshmipat Singhania: I do not say so.

Chairman: That would be an opinion to be given by the lawyers. We need not ask their opinions on legal matters.

Shri Easwara Iyer: They practically admit that the moneys are being adjusted towards other purposes.

Chairman: You need not enter into that controversy.

Shri Easwara Iyer: Page 3, clause 2—Definition of Associate. I have put that question to others also. You have taken the objection to the definition of 'Associate', the wider meaning given to the word 'Associate'. I just want to know your objection. Is it your objection that the holding company will be debarred from financing these subsidiary companies?

Shri Lakshmipat Singhania: The position is this, that this definition....

Shri Easwara Iyer: Let me first make myself clear. Supposing the managed company is the holding company and there is a subsidiary company of the managing company, is it your view that by this definition, managed company will be debarred from financing the subsidiary company?

Shri Lakshmipat Singhania: That is what we have said.

Shri Easwara Iyer: But if the definition is not accepted, is it not equally dangerous because bogus companies will be created and public funds will be diverted to them?

Shri Lakshmipat Singhania: For that there is already a provision in the Act. You cannot create a managing agency. The definition of associate is very wide. If the managing agent holds the majority shares of the managed company, what will happen is that the managed company cannot advance money to its subsidiary.

Shri Easwara Iyer: Clause 76, page 18. From what I have understood from your explanation the position seems to be that apart from producing books of account to the labour tribunal, this is one more hardship to the company. Is it your view?

Shri Lakshmipat Singhania: The company law administration has wide powers to investigate anything. If they are given this power of calling for books of account also, you can understand how it will affect the smooth working of companies.

Shri D. L. Mazumdar: It is not correct to say that the Department has power to investigate anything? Our powers are restricted by the provisions of the Act.

Shri Easwara Iyer: Do you realise that under this amendment the Registrar cannot call for books of account arbitrarily, but only if the information supplied by you is inadequate?

Shri Lakshmipat Singhania: There are two things. Let us be very clear about it in our minds. One is the returns which we have to submit to the Registrar. The second is about the books of account. It is the obligation of the company to submit certain returns. Now, this amendment provides that books of account also should be produced before him. The account books have nothing to do with the Registrar. If the account books are also to be submitted to the Registrar, then he will be having unlimited powers.

Shri Easwara Iyer: Page 4, definition of 'relative'. I have asked questions on this to other witnesses also. Is there any principle which you can apply in the matter of definition of this term?

Shri Lakshmipat Singhania: Relations cannot be regulated by any principle. The existing section and the amendment itself are so wide that they will cover anything.

Shri Easwara Iyer:. Then I take it that you have no objection to the amended list.

Shri Lakshmipat Singhania: What we have suggested is for removing some from the list.

Shri Nathwani: Page 14, clause 62. You say that if depreciation provided in section 350 is to be allowed, there will be no profit for a few years to come in case of new units. Even apart from this provision, a large-scale industrial undertaking takes a number of years before it goes into full production, say three or four years. Am I right?

Shri Lakshmipat Singhania: It is not fixed. Some industries may take even 15 years.

Shri Nathwani: It will take anyhow at least a minimum of three years. It may take between three and 15 years. During this period the shareholders will not be receiving any dividend. Till the unit goes into full production and starts producing goods and before it becomes profitable, there will be no dividend declared. Is that correct?

Shri Lakshmipat Singhania: Yes.

Shri Nathwani: Has this prospect of not getting any return for a period ranging from three to fifteen years acted as a deterrent so far to prospective investors?

Shri Shriyans Prasad Jain: At present there is no bar to distribute dividends out of accumulated reserves.

Shri Nathwani: I am referring to new industrial units.

Chairman: He says that the shareholder has nothing to fear because there is no provision in law which prohibits distribution of dividends.

Shri Shriyans Prasad Jain: If the present amendment is adopted, then it will be a deterrent factor for the investing public. In the case of new companies or in the case of some of the existing companies which are in the process of expansion, the burden of the depreciation and the development rebate will be felt to such an extent that they will find it extremely difficult to pay any dividend. If no dividend is received for a number of years by the investing public, then it will be a deterrent factor to invest money. Therefore, our submission is that till the company starts earning profit, dividend at the rate of 6 per cent should be paid in the interim period. It should not be more than 6 per cent.

Shri Nathwani: What I was saying is this: At present no company can declare dividend out of capital.

Shri Shriyans Prasad Jain: The present provision is that no dividend can be paid unless there is a profit in the company. But 'profit' is never defined or determined by the Companies Act.

Shri Nathwani: Unless there is profit, no dividend can be declared. In the case of a new unit, it may take at least three or four years before there is profit.

Shri Shriyans Prasad Jain: It will take more.

Shri Nathwani: Even today there is a possibility or probability of a new undertaking not being able to pay dividend for three or four years.

Shri Shriyans Prasad Jain: Yes.

Shri Nathwani: And it has not acted as a deterrent to the prospective investors.

Shri Nathwani: If the individuals have confidence in the future of industry and management there will be no difficulty.

Shri Shriyans Prasad Jain: The present Act has come into force only from 1st April, 1956. Here the provision has been that the dividend will be paid out of the profits of the company. We are now only in the year 1959.

Shri Nathwani: Even after the unit goes into production, it will take some time for the profits to be made. Will section 208 not give some relief in a case like this?

Chairman: The answer the witness has given is that there are apprehensions that for those companies also there may not be any profit and therefore no dividends. Now the apprehensions would be greater.

Shri Nathwani: I have understood that apprehension. At the most the period will be a little prolonged during which no dividends can be declared. We are taking the case of a genuine concern which will succeed ultimately. Will not section 208 meet a case like this?

Shri Shriyans Prasad Jain: Under that clause we have to come to Government for permission of declaration of dividend. Upto 6 per cent it should be left to the discretion of the directors and if we want to pay higher than 6 per cent in that case we will come to Government and ask for permission and if Government give

that permission then only more than 6 per cent will be paid.

Shri Nathwani: Those who invest in new undertakings will also look for appreciation in share value.

Shri Shriyans Prasad Jain: This may not be the main purpose. There are three factors which guide investments: one is dividend; the other is appreciation and the third is security of the capital.

(The witnesses then withdrew.)

The Committee then adjourned.

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959.

Friday, the 10th July, 1959 at 08.30 hours

PRESENT

Sardar Hukam Singh—*Chairman*

MEMBERS

Lok Sabha

2. Shri H. C. Heda
3. Shri Satyendra Narayan Sinha
4. Pandit Dwarka Nath Tiwary
5. Shri Shivram Rango Rane
6. Shri N. R. M. Swamy
7. Shri M. Shankaraiya
8. Shri Jaganatha Rao
9. Shri Ajit Singh Sarhadi
10. Shri Radheshyam Ramkumar Morarka
11. Shri G. D. Somani
12. Shri Feroze Gandhi
13. Shri Mulchand Dube
14. Shri Rohanlal Chaturvedi
15. Shri Arun Chandra Guha
16. Shrimati Sucheta Kripalani
17. Shri Narendrabhai Nathwani
18. Shri Nityanand Kanungo
19. Shri K. T. K. Tangamani
20. Shri S. Easwara Iyer
21. Shri Yadav Narayan Jadhav
22. Shri Surendra Mahanty
23. Shri G. K. Manay
24. Shri Naushir Bharucha
25. Shri Lal Bahadur Shastri

Rajya Sabha

26. Shri Khandubhai K. Desai
27. Shri T. S. Avinashilingam Chettiar
28. Shri P. D. Himatsingka
29. Shri J. S. Bisht
30. Shri Awadheshwar Prasad Sinha
31. Shri P. T. Leuva
32. Shri M. P. Bhargava
33. Shri R. S. Doogar
34. Shri J. V. K. Vallabharao
35. Shri Rohit M. Dave.

DRAFTSMAN

Shri S. P. Sen Verma, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar, *Secretary, Department of Company Law Administration.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

WITNESSES EXAMINED

I. *The Indian Cotton Mills' Federation, Bombay.*

Spokesmen:

1. Shri Shriyans Prasad Jain
2. Shri J. J. Ashar
3. Shri B. G. Kakatkar

II. *Indian Federation of Working Journalists, New Delhi.*

Spokesmen:

1. Shri J. P. Chaturvedi
2. Shri R. Narasimhan
3. Shri C. Raghavan

III. *Dalmia Cement (Bharat) Limited, New Delhi.*

Spokesmen:

1. Shri S. C. Aggarwal
2. Shri Bhim Sen.

I. The Indian Cotton Mills' Federation, Bombay.

Spokesmen:

1. Shri Shriyans Prasad Jain
2. Shri J. J. Ashar
3. Shri B. G. Kakatkar.

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

Shri Shriyans Prasad Jain: First of all, I am very thankful to you on behalf of the Federation and on behalf of my colleagues, to express my gratitude for the opportunity you have afforded to us to present our case. We have already put forward our point of view in the memorandum which we have submitted. I do not propose to take each and every clause referred to therein, but I would like to elaborate on ten or twelve clauses, so that we may be able to place our detailed viewpoint on those clauses.

Chairman: That is all right. The witness may begin now.

Shri Shriyans Prasad Jain: I will request Mr. Ashar to speak about clause 15 and then I will continue.

Shri J. J. Ashar: Under clause 15, any investment in a private company of public funds will be converting that private company into a public company. The question is what kind of investment would be or should be treated as such for this purpose. I will give an extreme example—and I think an extreme example will illustrate the point quite forcibly.

Take two private companies A and B in which there are only two members; and B invests in the shares of A. Then, what will happen is this. If this investment exceeds 25 per cent of the paid-up capital of A, then, A will become a public company.

This is an extreme example of how a purely private company investing to the extent of 25 per cent only in other companies which are also private and having only two members will result in the conversion of the first company into a public company. So, I suggest the whole position might be examined from that point of view. I have given an extreme example to show that this particular point requires to be very seriously considered by the Committee.

There are several technicalities also. For instance, under the Companies Act, you cannot make a company which has only less than 6 or 7 members into a public company. I suppose this is a kind of over-riding provision; although a company has less than 6 or 7 members, it will, nevertheless, by virtue of this clause, be converted into a public company.

In our memorandum we have made a suggestion which is worth consideration. For the purpose of the Income-tax Act, under section 23A there are two types of companies, those in which the public are substantially interested and those in which the public are not substantially interested. Section 23-A applies to those companies in which

the public are not substantially interested and it does not apply to those companies in which the public are substantially interested. In computing the number of persons who will be included for the purpose of 23-A, they do not take into consideration at all the private companies. They are treated as individuals. We suggest for the consideration of the Committee that a similar criterion be adopted for the purpose of clause 15.

If the funds of a company which is treated as a company in which the public are substantially interested for the purpose of the Income-tax Act are invested in a private company to the extent of 25 per cent or more, then, that private company should be treated as a public company and not otherwise. That is a well-known criterion —well-recognised and well-tried—not only in this country but in other countries also where they try to gauge the interests of the public by the adoption of this criterion. If that is done, I think, we will have a feasible, demonstrable and a well-tried criterion.

If a company is treated as a non-23-A company, that is, will not be subject to the provisions of section 23-A of the Income-tax Act, then, the investment of such a company should be taken into consideration for ascertaining whether the public is interested or not or whether public funds are invested in that company or not.

I was suggesting that this is a well-tried and a reasonable criterion about which there can be no doubt whatever. That should be the proper criterion to be adopted.

Shri Shriyans Prasad Jain: The next clause I would like to take is clause 58. It bars the publication of the Chairman's speech. If the Chairmen's speeches are published, it has now been made obligatory that the whole of the proceedings of the General Meetings should be advertised along with the Chairmen's speeches. The Chairmen's speeches as are being published today will be prohibited if the entire proceedings of the General Meetings are not advertised.

We are not able to appreciate this point of view—why this ban is being imposed. As a matter of fact, the Chairman's speech may be a part and parcel of the proceedings or sometimes it may not be. The Chairman's speech does not only deal with the working of the company and the various aspects of the company but also deals with the general nature of the industry. If one has studied Chairmen's speeches, he will note that there are a number of features. They give the economic review not only of the company but of the particular industry or the general economic situation of the country. The various expansion programmes and economic activities which are going on not only in this country but also abroad are dealt with. Therefore, the Chairman's speech is not only limited to the interests of the shareholders but it is also in the interests of the general public by and large.

So far, to my knowledge, the shareholders of no company have objected to these publications. When the shareholders are not opposed to the publication of these speeches, we do not see why there should be any ban on the publication of the Chairman's speech.

Next I will deal with clause 62 which prohibits the distribution of a dividend unless the depreciation and multiple allowances are provided for. We have represented in our memorandum that the new companies or those companies which are engaged in expansion programmes will be greatly hit.

It is the general public who supply the capital of these public limited companies. If the shareholders do not get a dividend for a number of years, then, it would be a sort of discouragement to invest in joint-stock companies. It is a well-known fact that new companies or existing companies which have large expansion

programmes take a number of years, 3 to 5 years, or even a little longer, to attain that capacity to pay dividends. If dividend is not being paid unless that capacity is achieved, it will retard the formation of new companies and, ultimately, the growth of economic development of the country.

Therefore, our suggestion is that we must strike a *via media* and find out a solution for this difficulty. In our memorandum we have suggested that a 6 per cent dividend be allowed till the whole depreciation is not provided for. That is for the interim period. We suggest that this will solve the problem and the shareholders also will not be put to any disadvantage.

Now, I come to clause 63. The new Companies Act came into force in the year 1956. We have hardly worked it for two to three years. In the existing Companies Act, it has been provided that dividend must be paid after the declaration within a period of three months. Now, a further restriction is being imposed or is contemplated to be imposed, that as and when dividend is declared, the amount to the extent of the dividend must be deposited in the bank within 14 days of the declaration. No statistics are available as to why this new provision is intended. Every company is paying a dividend after it is declared and within the stipulated time. If any company has not paid the dividend,—I do not know there can be many such companies and even if there be, their number will be very, very negligible—there are other provisions in the Act to deal with the situation. This is a provision for the compulsory deposit within fourteen days. Suppose a company has declared a dividend today and wants to distribute it, say, after a couple of months, why should it be made obligatory on the part of the company to deposit the money within 14 days? It will distribute the dividend as and when the dividend warrant is being issued. If the period is considered too long, it can be restricted. But why this deposit of the dividend within 14 days should be made? It will be a hardship particularly to the smaller companies who can otherwise synchronize their programme and look into the various necessities of the companies and their expansion needs. Therefore, I would suggest that the present provision which is contained in the Companies Act is quite all right and it could safeguard the interests of the shareholders. The proposed clause will entail a lot of difficulties to the companies, particularly to the smaller ones.

Shri J. J. Ashar: I would now like to deal with clause 84. Before I come to the recommendation which we are making in this connection I would like to deal with some of the aspects of that particular clause and some of the drafting aspects also. Two points are sought to be made by that clause. One is pre-transfer and the other is post-transfer; shares before the stage they are transferred, that is, the apprehended transfer of shares, and shares which have been actually transferred, and in fact there has been transfer which is now proposed to be dealt with through that clause.

It is quite obvious that there are a bundle of rights associated with shares, the most important of which, in our opinion, is the voting rights. It is sought to deny the voting rights if Government thinks that through that transfer the constitution of the board of directors may be affected or there may be a change in the managing agents or in the constitution of the managing agents. Later on, in that clause, they say that if it is likely to lead to any such change Government may prevent it by an order of transfer.

If the bundle of rights of which the most valuable aspect is the voting right, then I suggest that this requires to be very seriously considered whether the voting right should be curtailed. Not only that. The clause as it stands is susceptible of this interpretation: namely, if I am pre-

vented from exercising voting rights in respect of the shares transferred to me because one of the things mentioned in that clause would apply, then, even my transferee, the person whom I may sell the shares, will be affected because they will not be able to exercise the voting rights for three years. That is the meaning, obviously, which flows from the clause as it is worded. It could not be the intention of Parliament that a person to whom the shares are transferred, if he is the transferee, for value or for consideration, will also suffer this disability. In many cases they have no notice because everybody is not going to know that I have been prevented by Government from exercising the voting rights in respect of the shares which I hold.

Therefore, the clause, as it has been worded, is not only impinging upon the property rights, if I put it that way, of the shareholders who are prevented from exercising those rights, but will also impinge upon the very valuable rights in regard to voting of my transferee who may totally be unaware of the position as regards the notification issued by Government preventing me from exercising the voting rights. I think that is a very serious matter. It is not a matter so far as that particular shareholder is concerned but it is a matter which affects every transferee, whether with or without notice, and I do say and suggest that the clause requires to be redrafted carefully so as to preserve the voting rights of the other parties, that is, the transferees.

Then, as we have mentioned about this clause,—and that is the main recommendation of ours—this should be regarded in the first instance as a matter of indoor management. The Company Law provides for latitude as far as possible to the shareholders to manage their affairs as far as they can, provided public interests are not substantially affected. Here, the shareholders do not come at all. The appreciation of the situation is by the Government and the Government will issue a notification without consulting the shareholders at all. If you accept, as I do suggest we should, the position that indoor management should be respected as far as possible, then the matter should come up to the company in general meeting for consultation, and the Government should refer the question to the company in general meeting whether a particular transfer is acceptable to the company or not, and if the company by a special resolution affirms the transfer and blesses it, as it were, then we feel that Government should not intervene in this matter unless the case is so exceptionally bad that you can ignore the wishes of the shareholders although they express it through a special resolution. That is the crux of our recommendation so far as this particular clause is concerned.

Shri Shriyans Prasad Jain: I shall deal with clause 104. This clause empowers the Government to issue notification that in a particular trade or industry or business, sole selling agency cannot be appointed, and if they are to be appointed, they should be appointed with the approval of the Government. We are not in favour that the Government may be the authority to decide whether a particular trade or industry needs selling agents or not. It should be left to the discretion of the board of management or to the company itself to decide whether they need the services of a person to distribute their goods.

It may also be possible that occasion may arise when different decisions may be taken. It is not necessary that when you appoint the selling agents, they should be appointed for all time to come. Sometimes the situation is that you may discontinue and sometimes it is felt necessary that they may be appointed again. In the case of a notification that a particular trade or industry will not have the selling agents, it means no selling agents for that industry will be appointed unless for special causes it comes to the Government for its approval.

Therefore, our fundamental objection is that it should be left to the discretion of the shareholders and they may decide whether a particular industry needs a selling agent or not.

Secondly, in this connection I would like to point out, while the Government of India will have the jurisdiction over the Indian companies, they will have no jurisdiction over the foreign companies. So far as the foreign companies are concerned, they will be free to appoint selling agents. If this amendment is adopted, they will be barred to appoint selling agents unless they are approved by the Government of India. Today, the foreign companies will have free choice to appoint selling agents to operate in this country in any manner they like, while the Indian industries will be deprived of this fundamental right and, therefore, I only submit that we should reconsider this and this should be left to the discretion of the company itself.

Shri J. J. Ashar: I will now come to clause 124, which prohibits a subsidiary of a company from acting as managing agent. There is one drafting mistake which I would like to point out. There is a contradiction between clause 124 and clause 127. Clause 124 says that a subsidiary cannot act as managing agent. Clause 127 says, if a subsidiary of a company is acting as managing agent of another company, then any changes in the constitutions of the holding company will also be taken as changes for the purposes of the constitution of managing agents. I hope the Draftsman will agree that there is a contradiction between the two clauses and that these two clauses require to be reconciled.

Shri Sen Verma: There is no contradiction.

Shri J. J. Ashar: You do not envisage a subsidiary company acting as managing agent of another company.

Shri Sen Verma: It says, a subsidiary of another body corporate and that body corporate may be an Indian company. There is no inconsistency.

Shri J. J. Ashar: Then, you may say, a subsidiary of another company.

Chairman: If there would be no Indian company, it will not be affected. But if there are, then it would apply.

Shri J. J. Ashar: I thought, Sir, in the interests of meticulous drafting that could have been taken care of. The arguments why this particular clause should not be retained must have already been advanced and hence I would not repeat them.

Shri Shriyans Prasad Jain: Now I come to clause 128. Before I deal with clause 128, I would like to refer in this connection to sections 309 and 314. Section 309 allows that a director may be paid a remuneration to the extent of one per cent if they find any special cause for it, or if he is asked to do any special work. It also says that directors are entitled to get their fee for each sitting of the Board. If this amendment, which has now been suggested and is adopted by Parliament, then what is being provided in section 309 will be taken away by this clause. We must be very clear in our mind whether we want to give that one per cent or the fee for each sitting of the Board. If we are prepared to give fee for each sitting of the Board, or the remuneration to the extent of 1 per cent, then in that case the words 'save as otherwise expressly provided' should not be taken away. Otherwise, this difficulty will arise. Suppose there is a director, who happens to be a managing agent also, is given some special work which is not entirely connected with the management of the company.

Shri T. S. A. Chettiar: What is that special kind of work?

Shri Shriyans Prasad Jain: I shall deal with that point later. Therefore, all that remuneration and the fee which he is entitled otherwise will be deducted out of the commission of

managing agent. Coming to my Hon'ble friend's remark, I would say there can be many types of special assignment. Supposing a company wants to extend their activity, they may ask a director to do the spade work and find out the possibility of company's expansion programme. Secondly, if a director happens to be a technical person and the company wants to utilise his services for a special work, in that case he is entitled to a remuneration to the extent of work done by him. Now, if this clause remains as it is, it will be a cut in the commission of the managing agents.

In the same way, I would deal with section 314. Section 314 empowers that a director in the case of body corporate may be appointed to an office of profit by a special resolution. That director's remuneration will also be deducted out of the commission of the managing agents.

Sir, I would say, so far as the fee of a director is concerned, it is personal service to the company not in the capacity of the managing agent. He is discharging the duty as a director and to deduct that fee out of the commission of the managing agent will not be proper. Therefore, I would suggest that the clause as worded before should be retained.

Shri Sen Verma: Fee for a sitting of the Board is excluded.

Shri Shriyans Prasad Jain: I would like to know whether it is excluded. Section 348 of the principal Act says, "save as otherwise expressly provided". These words have been taken away now.

Shri Sen Verma: Please look at section 198(2) where it has been provided that:

> "The percentage aforesaid shall be exclusive of any fee payable to dirctors for meetings of the Board attended by them."

Shri Shriyans Prasad Jain: I would draw your attention to clause 128(1)(a) which says:

> 'In that sub-section as so renumbered, the words "save as otherwise expressly provided in this Act" shall be omitted.'

So, whatever is being provided in other clauses, clause 128 will be the overriding clause. Whatever is provided in this clause will be the guiding factor for the determination of the managing agency commission.

Shri Mazumdar: The legal opinion is that section 198 is overriding and not clause 128.

Shri Shriyans Prasad Jain: What is the import of deleting these words "save as otherwise expressly provided in this Act"?

Shri Mazumdar: Too many save's will mean confusion.

Chairman: So, regarding sitting fees there is no difficulty.

Shri Shriyans Prasad Jain: The other things may also be considered.

Shri J. J. Ashar: I come to clause 138 dealing with inter-company investment. In the note attached to the Bill, nothing has been mentioned except to say that it is proposed now to extend the principle enunciated in section 372 by embracing the entire field of inter-company investment. Since nothing has been mentioned, it is permissible to infer that on purely ideological grounds, it is sought to prevent concentration of power in the hands of a company by reason of investment in other companies except to a limited extent. The presumption is that perhaps that has actuated the insertion of this clause in the Bill. Maybe that we are not right, but we cannot find any other explanation.

It is the policy of Government to promote rapid industrialisation both in the private and public sectors. The notion of concentration of economic power and all that should be considered to a certain extent, but when you

limit altogether the power of one company to invest in another company only to the extent of 30 per cent of its paid-up capital, we apprehend that the industrial development of the country might be seriously affected by reason of the insertion of this section.

Again, suppose a company starts with a small paid-up capital of Rs. 5 lakhs. By dint of industry, it accumulates large reserves, which are to be ignored for the purpose of investment in other companies. This, we suggest, it not quite fair. To which capital this limit of 30 per cent should apply is a matter for serious consideration. We suggest that not only the paid-up capital, but the reserves of the company and its debenture capital should also be taken into consideration. Of course, our suggestion is that there should be no clause of this character, but if it is to be inserted, certain aspects of it might be liberalised. One aspect will be the inclusion of further items in the definition of the capital of the company.

In the notes on the clause, there is reference to voting rights. Voting rights in the company are not attached to preference shares ordinarily unless the dividend is in arrears as provided in the Companies Act. We, therefore, suggest further that the holding of preference shares in other companies should be excluded for this purpose because voting rights are not attached to preference shares and it is not going to affect the extent to which the company is going to control as it were the affairs of the other company.

Before I conclude on this clause, one company may be holding shares in another company and there is the right issue by the other company. That right issue may be offered to the company to take further capital in that other company. Under the law only 14 days are allowed for the purpose after you get the offer from the other company. You take up the right issue proportionate to your holding in that other company, but only 14 days are allowed. You cannot hold a general meeting, because it takes time. Under the present provisions, it may be 28 days. You have also to take the sanction of the Central Government, because maybe your 10 per cent limit is exceeded in that particular case. So, the result will be that so far as the right issue is concerned, it may be a serious disadvantage to the company. The company may not be able to go through the requisite formalities completely and may altogether lose the right of further investment. The other company cannot wait for you to complete all the formalities which take a long time. So, this is a matter for very serious consideration.

Shri Shriyans Prasad Jain: Regarding clause 179, in the case of a company going into liquidation, it is being proposed that the retrenchment compensation should be a prior charge. While we have every sympathy with this clause, we feel that many difficulties will crop up if it is being adopted. As you know, almost all the companies are having finances through the banks. When the banks give the advance, they take an assurance or a guarantee from the managing agent or the company it self that they will not pledge the assets of the company to anybody unless they get the prior approval of the bank. When they give advance, they see whether in case of difficulty, they can fall back on the assets of the company for recovering the outstanding dues. This retrenchment compensation will come to a very very large figure and it cannot be easily determined at each and every stage. So, to that extent, the availability of resources in the hands of the company will be lower and the other people will be very chary to advance to the full extent as they are doing at present. Therefore, there will be difficulty in making financial resources available to the company. This matter should be considered from this point of view.

Apart from the workmen, there are so many other people who are also

middle-class people, like stores suppliers, cotton suppliers, civil contractors and others. They are also in the same category and they will also be very chary if the company goes into liquidation and if there is a prior charge in respect of retrenchment compensation. If one particular class of people, namely, the workers, are given the full amount, the other class of people will have to be given less. Somebody will suffer and there will therefore be difficulty for the company to get the full resources.

Shri Feroze Gandhi: Suppose they are also included?

Shri Shriyans Prasad Jain: Then, I do not think, there will be any meaning to the term 'prior charge'. 'Prior charge' means that it is a charge over somebody else. If all the people come in the same category, then this clause becomes fruitless.

A company goes into liquidation when there is difficulty. Therefore, everybody should share that difficulty. Why should there be a prior charge in respect of workers over others? This is my suggestion. I feel like that. I am saying this from two points of view. First, there will be difficulty about the working of the company even in normal conditions because to that extent banks will not advance money. That means the process of liquidation will be accelerated; because the compensation amount will be substantial. So far as the question of wages is concerned, one can quite appreciate. This is something which has to be given because the workers had to be retrenched because the company has gone into liquidation. If retrenchment compensation is made a prior charge, it is too hard.

Shri J. J. Ashar: Clause 200 imposes quite a blanket penal provision in respect of offences which are not specified against any particular section of the Act. It is not a very desirable matter. I submit that it is against all canons of jurisprudence because each offence has to be weighed on its merits before providing appropriate punishments for the breach. A particular company will be punished with fine which may extend to five hundred rupees for breach of any section for which no punishment is provided. One example which I can recall is with regard to holding of a meeting once in every three calendar months. Now, no punishment is prescribed for the breach of this provision. That means this clause will apply so that in the first instance the person concerned will be fined Rs. 500|- and if he continuously fails to hold the meetings, then he will be fined Rs. 50|- a day. I suggest that this should not be the case and I submit it is not desirable from the point of view of niceties of jurisprudence....

Shri Sen Verma: What do you mean by niceties of jurisprudence?

Shri J. J. Ashar: You do not consider the gravity of the offence at all.

Shri Sen Verma: Similar provisions have been made in several Acts for the last four or five years.

Shri Kanungo: The Court is going to weight it.

Shri J. J. Ashar: I do not say that it has not been made. But I say it is against the niceties of jurisprudence and it is for the Committee to consider my suggestion. I submit that proper punishments should be prescribed for the breach of any particular section, instead of this blanket provision.

Shri Shriyans Prasad Jain: That is also what we wanted to emphasize.

Shri Naushir Bharucha: May I know whom does the Indian Cotton Mills' Federation represent?

Shri Shriyans Prasad Jain: The Federation represents the entire cotton mill industry of the country.

Shri Naushir Bharucha: Have you got branch associations elsewhere?

Shri Shriyans Prasad Jain: No. It is the associations which are members of the cotton mills' federation. For example, we have the Ahmedabad

Millowners' Association, Bombay Mill-owners' Association and Kanpur Mill-owners' Association. Associations are the members of the Federation and not the individuals.

Shri T. S. Avinashilingam Chettiar: Is the South Indian Mill-owners' Association a member of your Federation?

Shri B. G. Kakatkar: The South Indian Mill-owners' Association is not a member of this Federation. But the Bombay Mill-owners' Association has got several members in South and the Bombay Mill-owners' Association is a member of the Federation. Except the South Indian Association, all are the members of our Federation.

Shri T. S. Avinashilingam Chettiar: It is a big association which you do not represent.

Shri Shriyans Prasad Jain: I do not know whether this question arises....

Chairman: It does not arise.

Shri Naushir Bharucha: For clause 15 you have made some suggestion which requires further elucidation. You have said that instead of adopting the basis which we have adopted in clause 15, you would like the basis under section 23-A of the Indian Income-tax Act to be adopted, for the purpose of determining whether public money is involved or not. Assuming that is done, will it meet your objection?

Shri Shriyans Prasad Jain: Yes.

Shri Naushir Bharucha: On page 3, you have said: "In any case the holding of shares by public companies to the extent that may be laid down, should be for an aggregate period of three years before a private company gets converted into a public company". What do you mean by that?

Shri J. J. Ashar: There will be very considerable seesaw in the company. Sometimes there will be more investments and sometimes it will be less. This is actually in order to 'stabilise the position. It is only after such investments are held in one company for a period of three years, a company should be treated as a public company. This is for the purpose of stabilisation.

Shri Naushir Bharucha: Don't you see that if this suggestion of yours is adopted, it will be possible to manipulate investments...

Shri J. J. Ashar: I think that situation can be met by taking the entire period, that is the aggregate period.

Shri J. J. Ashar: During the aggregate period of three years, let us say, you watch the position and at he end of that period, if the holdings are there, then it should be treated as public company.

Shri Naushir Bharucha: About Clause 46—on page 3—this is the suggestion which has been made by almost all the witnesses that the Registrar's discretion for extending the time for holding the Annual General meeting should be retained. You have already got 9 months. Why do you want more than 9 months? It must be a highly inefficient organisation which cannot hold the meeting 9 months after the closing of the financial year.

Shri Shriyans Prasad Jain: I agree that within 9 months a Company should hold its Annual General Meeting. But this provision would help in the case of some difficulties of a particular company. Due to some practical difficulties, if the Annual General Meeting could not be held, then that Company could go to the Registrar and seek his permission to extend the period. If the Registrar is satisfied that the difficulties are genuine, then only the extension should be granted. It is not as a matter of course the extension should be granted; the Registrar must be satisfied of the genuineness of the difficulties.

Shri Naushir Bharucha: Clause 58—page 4—refers to the publication of Chairmen's speeches. I do not quite

share your views that all Chairmen's speeches are very illuminating. Apart from that, what objection can there be to give some space to the proceedings of the meeting; so that there might be a balanced view obtained by the readers without increasing the advertisement costs by cutting down the Chairmen's speeches to half the length and trying to give some space for other proceedings? What is the additional advertisement cost?

Shri Shriyans Prasad Jain: I am not talking from the point of view of advertisement costs. I have discussed this point from some other angle; I mean it should be left to the discretion of the Directors and the Company itself to do what they want or propose to do in this matter. If the Company and the shareholders want that the Chairman's speech along with the proceedings of the Company should be published, then it can be published. I have no objection for the publication of the proceedings; but here it has been made obligatory that the Chairman's speech can only be published when the entire proceedings are also published; after all the proceedings are not of a material nature; it is a matter of routine nature.

Shri Naushir Bharucha: I follow the point. We will take up Clause 62. You say that Clause 62 seeks to replace the existing section 205 by a new section and indirectly brings in the question of depreciation—no dividend can be declared or paid except out of the profits of the Company for the year arrived at after providing for depreciation to the extent specified in the proposed section 350 or out of the profits of the company for the previous year or years arrived at after providing for depreciation in the same manner and remaining undistributed. You say that you would be satisfied that the 6 per cent. formula *viz.* that you should be permitted to declare the dividend if necessary out of the capital or the previous reserves to the extent of 6 per cent, is accepted. You lay down the condition that this privilege should continue until the arrears are wiped out.....

Shri Shriyans Prasad Jain: ..... until the entire depreciation is provided for. Suppose a particular company has made larger profits in the succeeding years and the entire depreciation has not been provided for in that year in spite of the fact that the Company has earned much more profits. We should not say that it should pay more dividend.

Shri Naushir Bharucha: To that extent I might concede this if the period would be limited. If your suggestion were accepted, the position would be this. Supposing the service life of a Company's asset is 10 years and the company is not in a position to make profits more than 6 per cent. or 8 per cent. for the first 10 years and it keeps on providing inadequate depreciation for 10 years because it does not earn enough profits, the position would be that the assets would be wiped out and yet the depreciation would not be set aside. Then you will never be able to set aside.....

Shri Shriyans Prasad Jain: I am prepared to consider 5 or 6 years.

Shri Naushir Bharucha: It may be restricted to three years. The Company should be able to do this within three years.

Shri Shriyans Prasad Jain: I am not accepting three years because there are so many companies which get the paying capacity only after 5 years; generally it is not earlier than 5 years. If the period is extended to 5 years, I think that will be an acceptable suggestion.

Shri Naushir Bharucha: On page 5 you have said:

> "Clause 130 proposing rewording of Section 350 lays down that apart from normal depreciation, extra and multiple shift allowances should also be taken into consideration before arriving at the net profits of the company."

In the 6 per cent. formula do you include multiple shift depreciation or only normal depreciation? Within the 6 per cent. formula which was envisaged, do you suggest that the multiple shifts should be kept out?

Shri Shriyans Prasad Jain: First of all we have not said that and secondly we are not objecting to the formula which has been proposed. Within that formula we are suggesting 6 per cent.

Shri Naushir Bharucha: Clause 63 says that every company within 14 days of declaration of dividend must deposit in a scheduled bank in a separate account the total amount of dividend payable. You say you have got the privilege of paying within 3 months. I do not know why should the company after having declared the dividend take so long as three months to pay the dividend.

Shri Shriyans Prasad Jain: It does not necessarily mean that the dividend should be paid immediately.

Shri Naushir Bharucha: I want to know why should they not pay the dividend as promptly as possible as many companies do.

Shri Shriyans Prasad Jain: They do. But the Act itself permits that the dividend can be distributed within a period of three months from the date of declaration. Supposing a particular Company taking advantage of this clause wants to synchronise the programme of expansion with this and wants to utilise this money for a month or so, it can distribute the dividend a little later. This money will be useful to the expansion programme of that company.

Shri Naushir Bharucha: I follow you. Page 6—Clause 71 lays down that private companies should also file the profit and loss account with the Registrar. You say that this will result in taking away an important privilege of a private company *viz.* not being required to file the profit and loss account with the Registrar. Will you tell me why should there be objection to a private company which may be managing a huge public company disclosing the profit and loss account so that the public might know how much profit the private company has made out of the management of a public company?

Shri J. J. Ashar: Actually there is no provision to keep this open to public inspection. It is only open to members. The members get the balance sheet and profit and loss account along with the notice; they are entitled to get it. Let us take this provision as it is. What will happen is anyone can go to the Registrar and ask for the accounts saying that he is a member. The Registrar has no means of verifying the credentials of that person as to whether he is a member or not. So we submit with all respect that there is no meaning in that provision. In this case how is the Registrar to verify the credentials of a person? A person who is not a member of a private company should not and need not be in a position to inspect its profit and loss account and so far as members are concerned, they can have inspection in the company's Office, apart from getting copies thereof.

Shri Shriyans Prasad Jain: Supposing this provision remains as it is, in that case if a proviso is put there saying that the inspection facilities will be given to the members in the premises of Company itself and not by the Registrar, then I don't think there will be any difficulty.

Shri Naushir Bharucha: Apart from that one of the important objects is that the Registrar would be in a position to call for further information if he likes.

Shri Shriyans Prasad Jain: As I said earlier, we probably will have no objection to file our profit and loss accounts with the Registrar provided

that the inspection of it is not permitted there; the member should be directed to have the inspection in the company's office and not at the Registrar's.

Shri Naushir Bharucha: I follow your point.

Page 7; clause 84: Composition of the Board. You say that the company by two-thirds majority may decide that Government should not interfere or that Government should not have such powers.

Shri J. J. Ashar: What we mean is that they should have no power to withhold voting rights.

Shri Naushir Bharucha: Everytime you have been emphasising; if the shareholders do this, or do that. One of the objects is to prevent those shareholders who really cannot effectively do anything.

Shri J. J. Ashar: The idea of the company law should be to allow latitude as far as possible and we feel that Government interference or intervention should be as little as possible. That is the view of our association—Government may or may not agree.

Shri Naushir Bharucha: Page 7, clause 101, amendment of section 287 regarding quorum of the meeting. You make a comment that this provision will lead to many practical difficulties. If, for instance, a company has three directors of whom two are interested directors, one cannot constitute a quorum. What happens if all the three are interested?

Shri J. J. Ashar: Then you have to go to the general body.

Shri Naushir Bharucha: Then you must go.

Shri J. J. Ashar: Up to now the provision facilitated the work of the company, because you can have even one director who was disinterested who would apply his mind to the contract and sanction it. Now you are making it obligatory of having two members who are disinterested. There is no doubt that by amending section 299 you are providing that in order to constitute interest a director must have at least 2 per cent share capital; to that extent the conditions have been liberalised. To call a general meeting every time in order to pass a small contract will be too much of work for the company.

Shri Naushir Bharucha: Page 8, clause 104: section 294. I have been trying to get some information. Would it not be possible to appoint dummy selling agents and say that since he is not the sole selling agent, the mischief of this clause is not attracted? Supposing Tata Company—I do not say they will do so—appoint for Agrico tools two agents with the same, or identical terms of contract. One will do business to the extent of 99 per cent and his dummy will do business to the extent of 1 per cent. Then they will say he is not their sole selling agent and therefore the clause will not apply. I want to know would there be any difficulty if a businessman is so inclined, to appoint on identical terms of contract two selling agents, one of them being a dummy. That is possible.

Shri Shriyans Prasad Jain: I am sorry I cannot answer how frauds can take place. My submission is this. Here power is being given to Government that they can issue a notification to the effect that in a particular trade or industry the selling, distribution, should be dispensed with and if a particular company wants to appoint selling agents, that company should go to Government and get its approval to appoint selling agents. Whether there will be dummy selling agents or not is a different question. There can be so many other things also.

Shri Naushir Bharucha: Assuming for a moment that Government issues a notification that in a particular industry there should be no selling agents. Why can't that selling part of the affair not be managed departmentally?

Shri Shriyans Prasad Jain: It all depends on the circumstances. We cannot visualise the whole thing in advance. The situation may change from day to day. Sometimes there may be a glut in the market; sometimes there is off-take. If there is a standing distributor in a particular commodity we can press upon him to take delivery of the goods. For example in the case of textile crisis there were so many difficulties and firms with selling agents could do better business than they could have done departmentally. In some cases the selling agents also finance the company. Therefore, it is a very good system. I do not say it is good everywhere; it depends upon the circumstances and upon the conditions and various factors.

Shri Naushir Bharucha: Will you be satisfied if it is provided that Government before issuing a notification in a particular industry would consult the representatives of that industry?

Shri Shriyans Prasad Jain: I do not know what are the intentions of Government. In the case of the managing agency Government propose to appoint a committee to go into the question. Our suggestion is that a similar committee should be appointed in this case also.

Shri Naushir Bharucha: Government might invite representatives of that industry and hear them, so that they can put forward their difficulties.

Page 8: You have said that Indian companies will be put in an unfair position *vis-a-vis* foreign companies who will be free to appoint their selling agents. How is it proper for you to complain about discrimination by comparing Indian with foreign companies, because foreign companies may even be subsidised and you may say that puts you in a disadvantageous position.

Shri Shriyans Prasad Jain: My complaint is this. An Indian company may be debarred from appointing selling agents while a foreign company on which the Government of India has no control will be at liberty to appoint agents.

Shri Naushir Bharucha: How can there be comparison between two sets of companies working under different conditions? They may have their handicaps in the U.K.

Shri Shriyans Prasad Jain: This is comparable to this extent. The area of operation in this country. We are comparing the position in this country. There is a foreign company which has got a branch here. That being registered in the U.K. it will be free to appoint its selling agents.

Shri Naushir Bharucha: Page 9; clause 119. Promotion of relatives of directors. As I have been pointing out to some witnesses you might obtain the consent by engaging a relative on Rs. 100 per month and next year promote him to a pay of Rs. 500. That will defeat the purpose.

Shri Shriyans Prasad Jain: So far as Rs. 500 is concerned, it has been exempted now.

Shri Naushir Bharucha: It may be Rs. 1,000 or more.

Shri Shriyans Prasad Jain: This requirement will create practical difficulties.

Shri Naushir Bharucha: With regard to clause 119, would you be satisfied if we said that in case of normal promotions this should not be applied, subject to this that normal promotion may be defined as a promotion involving not more than 25 per cent of the emoluments?

Shri Shriyans Prasad Jain: We will be agreeable.

Shri Naushir Bharucha: Please refer to page 11 of your memorandum, clause 133. You say that it will not be possible to pass a special resolution within three months, except perhaps by calling an extraordinary meeting, which may create difficulties. And

therefore you suggest that it may be approved in the first general meeting. But there is a possibility of the first general meeting not being held for a long time by which time the purpose of the contract may be finished.

Shri Shriyans Prasad Jain: A general meeting is to be held, under the law, after four or five months, because that is the end of the period. There will be a duplication in the sense of notices going out. All that we suggest is that the company should not be put to the expenses of calling an extraordinary general meeting for that purpose. How to adjust that is for the consideration of the Committee.

Shri Naushir Bharucha: With regard to clause 138—page 12 of your memorandum—you would reconcile yourself to the position if the paid-up share capital *plus* reserves are taken into consideration for computing the percentage in the case of inter-company investment? Then you would have no objection?

Shri Shriyans Prasad Jain: No.

Shri Naushir Bharucha: Then you would feel that industrial development would not be retarded?

Shri Shriyans Prasad Jain: It would be less retarded by that procedure. In our opinion it would be a lesser evil.

Shri Naushir Bharucha: Suppose the scheme of this section were recast so as to provide for freedom in inter-company investment absolutely, with this proviso that in the case of the investment exceeding 30 per cent, intimation should be given to Government, and if the Government do not approve of it then the *status quo* should remain. Would that be a better position?

Shri Shriyans Prasad Jain: It would be a better position.

Shri D. L. Mazumdar: On the assumption that the *status quo* will be restored.

Shri Shriyans Prasad Jain: Then the shares would have to be sold.

Shri Naushir Bharucha: Would there be extraordinary difficulty in restoring the *status quo*?

Shri Shriyans Prasad Jain: Because the time-limit is specific. Formerly it was two years. Now if you confine it to six months, and if there is to be a large-scale dis-investment in respect of that excess, then large blocks would be coming on the market and values may be depressed.

Shri Naushir Bharucha: Mr. Mazumdar has raised an important point. If the *status quo* is not restored or if it is difficult, then the whole scheme goes. Suppose it is put this way, that voting rights should in that case be suspended in respect of the excess over 30 per cent.

Shri Shriyans Prasad Jain: I would be against any encroachment of the voting rights, except in very exceptional circumstances. When I discussed that particular clause, I said: you are actually depriving the *bona fide* shareholders of their voting rights because of somebody else exercising them in a way which Government did not approve.

Shri Naushir Bharucha: Coming to the question about the labourers' wages getting priority at the time of liquidation (page 13, clause 179), you rightly observe that in principle you approve of these social security measures in connection with labour legislation. If in principle you approve of them, why do you want to knock the bottom of it?

Shri Shriyans Prasad Jain: The question of principle does not arise at all. We have every sympathy for them, they may be workers or traders. We are just pointing out our difficulty. If this clause is adopted then there will be less availability of

resources to the company, and a particular section will get an advantage over the other section.

Shri Naushir Bharucha: Are you aware of the fact that in many cases where mills have gone into liquidation, not only have the wages been lost but the provident fund amounts have been criminally swallowed by the employers?

Shri Shriyans Prasad Jain: Government should take action in those cases.

Shri Naushir Bharucha: Even if criminal action is taken, how does it help the employees?

Shri Shriyans Prasad Jain: Here it is not a question of earned wages but of unearned wages.

Shri Naushir Bharucha: You have referred to retrenchment compensation as not being earned wages. Are you aware that the Industrial Disputes Act definitely lays down that unless a worker has put in 240 days' continuous service he is not entitled to retrenchment compensation? Why do you call it unearned wages?

Shri Shriyans Prasad Jain: Unearned means he may be entitled....

Chairman: It is only a question of interpretation.

Shri Shriyans Prasad Jain: But he has not worked for that period.

Shri Jadhav: Please refer to page 6 of your memorandum, to your comment on clause 63. Is your objection because you want to use the funds for some other purpose, or is it a fact that sometimes you declare bogus dividends?

Shri Shriyans Prasad Jain: The question of the dividend being bogus or otherwise does not arise. If dividend is declared it has to be paid within three months. The declaration cannot be a bogus thing. But the non-payment may be a bogus one.

Shri Jadhav: Are there any cases of these warrants not being honoured?

Shri Shriyans Prasad Jain: I have no such information. According to our information every dividend is being paid, what is prescribed in the Companies Act.

Shri T. S. A. Chettiar: I want one or two clarifications about clause 15 which has been very much discussed. The present Bill provides that if any private company has got on its shareholders a private or public company which has 25 per cent of the shares, then it is to be declared as a public company. Your plea is that when the shareholder is a private company it should not be declared as a public company. Now you said something in relation to the Income-tax Act. The funds of the company being public or private is determined by two or three things. One is equity shares, the other preference shares, the third government loans and the fourth deposits. These are the various sources which any company has for capital.

Would you like to consider only the equity shares as the standard for treating a company as a private company or a public company, or would you like to take into consideration the other items also which I have mentioned?

Shri J. J. Ashar: So far, our main argument is that non-section 23-A companies should be treated for this purpose as companies whose investment in private companies should make the private companies public companies, provided it exceeds 25 per cent of the paid-up capital. For the determination under section 23A of the Income-tax Act, they take only equity capital into consideration; preference capital is excluded. Our idea is on the same lines as in regard to section 23A. Preference capital does not come in there, loan does not come in there, but only equity capital comes in.

Shri Chettiar: You would not like to take them into consideration?

Shri J. J. Ashar: No.

Shri Chettiar: Coming to clause 84, do you know the reason for this clause?

Shri J. J. Ashar: I am not aware of the reason, because nothing is said in this clause.

Shri Chettiar: Are you aware of any such attempt for transference of shares, which has been made with a view to disturb the managing agency?

Shri J. J. Ashar: As I said, supposing that section is retained, why do you penalise the transferees of those shares and take away the rights from those persons whose voting rights are blocked?

Shri Chettiar: If I may say so, the purpose of investiment is two-fold; one is earning profit, and the other is getting voting rights. The earning of profits is not disturbed here; the person is entitled to get the profits in respect of those shares. But what is sought to be disturbed is the voting right; if anybody maliciously tries to transfer or corner shares, so that he may disturb the managing agency or the managing directors, so that he may get the company under his control, then that is sought to be prevented for a limited period of three years; the property rights in respect of those shares are not disturbed.

Shri Shriyans Prasad Jain: The point is this that transference of shares is just a minor thing; if a person has sold his shares, and another person has purchased those shares in the stock exchange, I do not think there is anything wrong. So far as the question of the management or the managing agency or the managing directors is concerned, today, as the Act stands, no managing agencies can be appointed without the approval of the Government of India; and no managing director can be appointed without the approval of the Government of India. If the Government of India feel that a particular person is an undesirable person, then, they will not give the permission, and that person will not be appointed. So, why deny the voting rights for the transferees of those shares?

Shri Chettiar: Do you think that any managing agency can continue if it does not command the confidence of the majority of the shareholders, even if the Government of India approve of it?

Shri Shriyans Prasad Jain: Therefore, let him have a natural death.

Shri Chettiar: It will be like a Ministry which does not command a majority, and, therefore, it cannot exist.

Shri Shriyans Prasad Jain: I cannot comment on the Ministry here.

Shri Chettiar: The point is that even Government interfere only in the interests of the company. They do not want a managing agency to be disturbed except in the normal course, but when the voting rights tend to disturb the managing agency, then they can certainly exereise this power in public interest.

Shri Shriyans Prasad Jain: If the shareholders have no confidence in a particular person, they will not vote for him whether he is to be appointed as a managing agent or a managing director.

Shri Chettiar: But this clause only seeks to limit it to a period of three years, so that they may think over the matter in the meanwhile.

Shri Shriyans Prasad Jain: We do not agree that the thinking time should be so much.

Shri Chettiar: You do not think any thinking time to be necessary?

Shri Shriyans Prasad Jain: There should be a quick and immediate decision.

Shri Chettiar: Regarding the sole selling agency referred to in clause 104, a suggestion was made yesterday or the day before yesterday by some other witness that the notification in regard to the industries may be placed on the Table of the House before it is issued. Do you think that will satisfy you? Are you against this provision, or would you just like to mellow it down?

Shri Shriyans Prasad Jain: We are opposed to the principle that there sholud be such a power with Government to issue such kinds of notifications. That should be solely within the jurisdiction of the company itself.

Shri Tangamani: Will you kindly refer to page 5 of your memorandum, on clause 62? I find that there is some confusion in what you have stated. Clause 62 contemplates only normal depreciation as has been specified in section 350. Am I to take it that you have no objection to normal depreciation being allowed before dividend is declared?

Shri Shriyans Prasad Jain: We have not even objection in regard to multiple shift allowances. What we are saying is that so long as depreciation is not fully provided for, the company should have power to declare a dividend of 6 per cent.

Shri Tangamani: My point is this. Do you have any objection to normal depreciation being allowed before dividend is declared? Leave alone the question of extra shifts, or special or initial depreciation.

Shri Shriyans Prasad Jain: May I put it this way? Is it the question of the hon. Member what our reaction will be if the multiple shift allowances are taken out and only the normal depreciation remains? The same argument is there. The depreciation depends on the size of the various plants. Suppose there is a plant whose capacity is Rs. 3 or 4 crores worth; even the normal depreciation will be a very high figure; and for a period of three or four years, when the company is not able to pay dividends, that difficulty will arise.

We are not against the normal depreciation or the multiple shift allowances being allowed, but what we are anxious is that during the interim period when all these things are not fully provided for, there should be freedom to the company to declare a dividend not exceeding 6 per cent.

Shri Tangamani: You have referred to 6 per cent of the paid-up capital being paid as dividend. Would you like this 6 per cent to be the ceiling for all times to come, for dividends to be declared?

Shri Shriyans Prasad Jain: I am sorry I have not been understood properly.

Chairman: The witness has made that point clear already. The difficulty is that hon. Members do not attend when others are putting questions. The same questions have been repeated. This very question has been put to the witness twice or thrice, and he has made his position clear.

Shri Tangamani: Let me make my position clear. I have been very careful to see that I do not repeat questions which have already been asked by other Members and which have been answered.

Chairman: My remarks may not be applicable to Shri Tangamani; but it applies to others. This question has been put twice, I think, and the witness has made his stand clear.

Shri Tangamani: With due respect to you, may I say that this is the first time that the questioin of a ceiling of 6 per cent on dividends has been put?

Chairman: That question has been answered by the witness already. He wants that for the first few years, say, five years, the dividend should not

exceed six per cent, so that the arrears of depreciation could be provided for; when that has been done and full depreciation has been provided for, then certainly the rate can be increased. That is his position.

Shri Shriyans Prasad Jain: Quite right; the question of any ceiling does not arise at all.

Shri Tangamani: The witness is not for any ceiling?

Shri Shriyans Prasad Jain: No.

Shri Khandubhai Desai: Some of us on this side are feeling like this. The same phraseological inexactitude is being used in the questions and also the answers, that we do not see any variations at all.

Chairman: That is why I say that one or two questions might be put now, and there should be no further examination on that point.

Shri Tangamani: On the question of sole selling agents—clause 104—you explained that you had objection to it for the simple reason that our Government will have no jurisdiction over foreign companies. Is that the reason why you are opposing this?

Shri Shriyans Prasad Jain: That is not the only reason; we have just given that reason in support of our other arguments.

Shri Tangamani: You said that in the case of winding up, if priority is given to arrears of wages, you will have no objection.

Shri Shriyans Prasad Jain: That is already provided in the Act itself.

Shri Tangamani: But do you not concede that what has been provided as retrenchment compensation under the Industrial Disputes Act is also the amount they have earned as a result of long years of service? When you do not object to arrears of wages being paid as under the original Act, why do you object to compensation, which has been statutorily recognised and accepted, being paid?

Shri Shriyans Prasad Jain: The hon. Member should also try to appreciate our point of view. The availability of resources for expansion and for other things will be very much minimised; and, therefore, it may accelerate the process of liquidation in case of difficulty.

So far as the question of wages is concerned, it is also provided in the Act. These things will arise only when there is difficulty. In that case the banks will not give enough money to have a smooth running of the business. Not only that; persons who are giving goods on credit will not give on credit. The functioning of the company will stop totally, because this compensation is not a few thousands of rupees; it runs into lakhs and lakhs. Therefore, in case of difficulty, at a time of crisis, everybody should suffer equally and we should not create a class who have a greater advantage than the others.

Shri Tangamani: Under clause 63, you will have to make a deposit in the bank within 14 days of the declaration of the dividend. You do not seem to have any objection to the payment of the dividend within 3 months. If that is not done, the defaulters will be subject to imprisonment for 7 days. If you do not object to that, what can be the special reason for objecting to this except that here the default can be clearly found out.

Shri Shriyans Prasad Jain: This payment of dividend within 3 months was introduced in the 1956 Act. This has been functioning very well. I do not know whether any case has been brought to the notice of Government where the dividends were not paid within 3 months. We are unable to appreciate why there should be a restriction of depositing within 14 days; if you want to restrict the period of 3 months, reduce it to two months. What is the use of this deposit? Supposing a company wants to make default; it will not make a deposit at all. How will this help the shareholders or anybody else? If

the company has no resources and has no intention of paying the dividend, it will not deposit at all.

Shri Easwara Iyer: With all respect to you, Sir, I would say that some amount of latitude may be shown to the members on this side when experienced witnesses have come here and we have to ask questions. We would ask you to give us some time and not hurry us through.

Chairman: Has the hon. Member any question to put?

Shri Easwara Iyer: Yes, Sir.

Chairman: He may put the questions.

Shri Easwara Iyer: With regard to the deposit of the dividends, you say it need not be insisted upon, on the ground of hardship. May I know the practical difficulties you feel there would be in making such deposits?

Shri Shriyans Prasad Jain: I have already explained it. I would put it the other way. The dividend which has been declared is being paid within a period of three months, and even early. It all depends upon the companies. The Companies Act has provided that it should be paid within a period of three months. When this has been working smoothly, why should there by any compulsion now to deposit it within 14 days? Every company has not got the liquid resources at all times. They may have to synchronise and adjust their payments within the course of three months. By depositing the money in the bank, how does it help the shareholders or others? This is a point which calls for consideration. I think it will be harsh and difficult in the case of those companies who want to postpone the payment of dividends for a month or so. Anyhow, they will have to pay it within 3 months.

Shri Easwara Iyer: When a dividend is declared and a shareholder dies before the payment of the dividend and there is some dispute between the heirs or legal representatives, what do you usually do? Do you deposit the amount in bank?

Shri Shriyans Prasad Jain: The amount remains in the Dividend account; when the dispute is settled, it is paid.

Shri Easwara Iyer: I want to know whether you keep the amount in a suspense account or separately till the rightful claimant comes and takes the payment.

Shri Shriyans Prasad Jain: It remains in the Unclaimed Dividend Account.

Shri Easwara Iyer: In your memorandum you have not made any comments on the contribution to political funds. May I know your views on the matter if you have any?

Shri Shriyans Prasad Jain: We have not made any comment; and, I would not like to say anything on this.

Shri Easwara Iyer: I am just asking you whether you have any comments.

Shri Shriyans Prasad Jain: We have restricted ourselves only to those things which are in the memorandum itself.

Shri Feroze Gandhi: I want to ask a very innocuous question. You are witnesses representing the Indian Cotton Mills' Federation. Are you aware of the Chairman of any one of the Millowners' Associations either at Ahmedabad or Bombay having made a statement before a Labour Tribunal that the balance sheets produced by them before the Tribunal were manipulated and false?

Shri Shriyans Prasad Jain: I am not aware of the statement which my hon. friend has just referred to.

Shri Feroze Gandhi: It has been made before the Committee by a very important witness.

Shri Shriyans Prasad Jain: According to me, it is totally difficult and impossible. Secondly, I do not know how such a kind of statement could have been made. If such a statement has been made, by somebody, it must have been made in a state of insanity.

Shri Leuva: Regarding clause 63, I want to ask one question about the depositing of dividends. What would be the effect of this clause on the finances of small companies?

Shri Shriyans Prasad Jain: Very difficult.

Shri Leuva: Regarding clause 84, I would like to know from the witnesses the exact reason why they object to this particular clause. The clause, as mentioned, states that in the case of the transfer or the future transfer or attempted transfer, if it is prejudicial to the public interest, in that event only, the Government will intervene. What is the objection of the witnesses to this clause being added?

Shri J. J. Ashar: I think we have elaborated on this quite long,—particularly on this point of transfer when it is for value with consideration. The transfer for value will be affected by it and the withdrawal of voting rights will apply also to the transferees. If I have got shares and if Government finds my voting right in respect of those shares is objectionable, and if I transfer them to you, and you go to the company, you would not be able to exercise the voting rights also. You are victimised and the shares are all supposed to be freely transferred, and there is an exchange for that. Why should they be tied down?

Shri Leuva: The only point is that the Government's intervention is necessary for the purpose of protecting public interests.

Shri J. J. Ashar: Yes; against the particular shareholder.

Shri Leuva: The wording is, that it should not be prejudicial to the public interests. Otherwise there is no necessity for the Government to intervene. When there is a cornering of shares and if Government will feel that if such transfers would lead to unhealthy effect on public interest or would not be for the benefit of the company, in that event only, the Government wants to intervene. If you say that transfer of a share should necessarily be followed by a voting right, in normal circumstances it would be quite all right, but if the voting right is not affected, what is the sense of having Government's intervention at all?

Shri J. J. Ashar: You might find a particular shareholder objectionable. But why should that stigma, if I may use that word, be attached to that transferee? If you confine yourself to a particular shareholder whose exercise of that right is against public interest, I can see the point. But then....

Shri Leuva: As the clause is worded, it is aimed against the transferee and not against the transferor. If it is meant that the transfer is made against public interest, that means the person who is going to acquire the rights would be detrimental to the public interest, and that is the reason why voting right is taken away. Where is the question of stigma?

Shri J. J. Ashar: There are two aspects: one is transfer and the other is that of apprehended transfer. The latter, I can understand. You want to prevent the transfer. But in the first case where the transfer is actually taking place, you are also blocking the voting right, and that will apply also to the transferee because the period is three years.

Shri Leuva: If after the transfer Government comes to know, you mean to say that Government should not intervene.

Shri J. J. Ashar: The Government should not intervene in the case of *bona fide* transferees.

Shri Leuva: If Government knows that the person who has taken control of the public corporate body has transferred the shares and if Government is satisfied that such a transfer was against public interests, should

not the Government intervene in that matter?

Shri J. J. Ashar: There is a remedy for that also. Supposing I acquire 75 per cent shares of a company and the Government thinks that public interests will be affected by my exercising all the voting rights, then I can be compelled to acquire the remaining shares on a fair value. Supposing the remaining shareholders have no confidence in me....

Shri Leuva: It is not a question of the shareholders having confidence. It is a question of the interests of the public would be prejudiced by the transfer of the shares, apart from the minor shareholders.

Shri J. J. Ashar: A further remedy should be followed. The shareholders should be consulted if possible and if necessary that right should be exercised but in no case it should apply to the transferees.

Shri Leuva: The question is that this very clause is only aimed at transferees and not the transferors.

Shri J. J. Ashar: There is nothing to prevent the transferee from selling the shares. He is not prevented from selling the shares. Supposing that fellow sells the shares to me and I cannot exercise also the voting right, although I am a *bona fide* purchaser, this three-year period applies in respect of those shares.

Shri Leuva: That will apply with respect to a particular transferee. Suppose the shares are again transferred to somebody else.

Shri J. J. Ashar: As I see the clause, it will apply. For three years there will be no voting right in respect of those shares.

Shri Nathwani: You are aware that under section 409 the Government has got the power to prevent a change in management or of the board. If you kindly refer to section 409 you will find that as a result of the transfer of shares there is a likelihood of a change in the board, then the Government can prevent it. Does it not affect the voting powers of the transferee?

Shri Shriyans Prasad Jain: When the Government has power to make changes or to modify the provisions in regard to the management,—I put an argument like that—then, in that case, the defranchisement of voting right is of no use. .

Shri Nathwani: Already, under section 409, the voting rights of the transferees are affected—that they cannot change the management. If what is sought to be done by the proposed amendment through clause 84 is a corollary to this....

Shri Shriyans Prasad Jain: They may not change the management, but besides that, there are certain other things for which the votes are being taken.

Shri Nathwani: They are merely consequential. After all, what are the other things which affect the management or the administration of the company which will not be covered by the provisions of section 409?

Shri Shriyans Prasad Jain: Passing of the annual accounts, declaration of dividends, etc.

Shri Nathwani: Does it not relate to the management? They have got umpteen affairs.

Shri Shriyans Prasad Jain: So far as the management is concerned—that is, the appointment of the directors, etc.

Shri Nathwani: I beg to differ. It is part of the administration.

Chairman: If there is a difference of opinion we should not pursue further.

Pandit D. N. Tiwary: At page 3 of your memorandum in relation to clause 24, you are taking objection to the word "satisfaction"—

> "the expression 'satisfaction' being subjective and hence governed by indeterminate criteria,...." etc.

You want to put "knowingly". How will you define "knowlingly"? A man can say, although he has done a thing knowingly, that he has not done knowingly.

Shri J. J. Ashar: That word is used in many sections of the Act. So far as the context is concerned, and so far as the degree of the actual guilt is concerned, it is mentioned.

Shri Shriyans Prasad Jain: It is a question of *mala fide* and *bona fide*. If the word "knowingly" is there, then the question of *mala fide* will not arise.

Pandit D. N. Tiwary: How to know that it is done knowingly or not? It is a question of evidence.

Chairman: "Knowingly" is used in so many Acts.

Pandit D. N. Tiwary: The word "satisfaction" also is used. Why should it be changed?

Chairman: The witness has given his reasons. I think we need not press it further.

Shri N. R. Munisamy: With regard to clause 124, you have given sufficient reasons for not accepting the amendment to section 235. I am not able to make out what effects it will have in our joint stock enterprises and in well-established enterprises. What are the difficulties? He can give us physical illustrations to show in what way the amendment would affect the position.

The new clause says that "no company shall appoint or employ as its managing agent any body corporate which is a subsidiary of another body corporate." I am not able to understand in what way the interest of joint-stock companies will be affected by the new provision. Will the witness give us an illustration by which we can understand it?

Shri J. J. Ashar: To give a particular illustration, Tatas will be vitally affected by it. We are not speaking for Tatas but to take a stock illustration, Tatas' subsidiaries managing Tisco and several other companies will be affected. In principle, we see no objection at all to a subsidiary of a company being the managing agent of another company. If any principle is involved and if that can be explained to us, we will be able to comment on that.

Shri N. R. Munisamy: Regarding clause 63, you are not supposed to be in possession of the money which has been declared as dividend. That is why Government feel that it should be deposited in accounts earmarked specifically for that purpose. Your objection is that the money is locked up, you will lose interest and the utility of the money will be wasted. Are you not the trustee of the money and the moment you become trustee your responsibility becomes greater to account for the money you earn out of the dividend amount? Excepting that it creates hardship in not utilising the amount for the prosperity of the company, you have no other valid ground for opposing this provision.

Chairman: They say they may be allowed to remain as trustees and a new trustee need not be created in the form of a bank. They say there has not been even a single instance where the dividend has not been paid.

Shri Himatsingka: Regarding clause 15, I want a clarification. Is it the suggestion of the witnesses that if a company comes within the mischief of section 23A of the Income-tax Act, although it is a public company within the meaning of that Act, purchases shares in a private company, that should not be treated as a public company?

Shri J. J. Ashar: It is the other way round. If a non-23A company, which is treated as a public company for the purpose of the Income-tax Act and which is not compelled to distribute a minimum of its profits as dividend—in fact they are exempted from the liability to distribute dividend—if such a company holds shares

in a private company, then it will be investment by a public company strictly. There are several other public companies which are treated as 23-A companies, but they are for all practical purposes private companies. They must distribute a certain percentage of profits as dividend. They will be subject to a penalty of six annas in the rupee for non-distribution of profits as dividend. Such companies are not really companies in which the public are substantially interested. So, their investment in other private companies should be ignored.

Chairman: Thank you.

(The witnesses then withdrew)

II. Indian Federation of Working Journalists, New Delhi.

Spokesmen:

1. Shri J. P. Chaturvedi
2. Shri R. Narasimhan
3. Shri C. Raghavan

(Witnesses were called in and they took their seats)

Shri C. Raghavan: In our memorandum we have raised many points which I would broadly classify as (a) matters relating to the functioning in general of companies publishing newspapers (b) matters in respect of benami companies formed with a view to evade the liabilities due to the staff as a result of statutory requirements passed by Parliament or State Legislatures and (c) certain matters about which the Companies Act has made provision, in regard to provident fund and other dues to employees which in actual working, we find, are grossly inadequate.

Mr. Chairman: The difficulty is that this committee can only go into the amendments that have been proposed. There are one or two points you have made about compensation to workers in case of liquidation, etc. But so far as some other points outside the scope of the amending Bill are concerned, perhaps the witnesses realise that they might be outside our competence.

Shri C. Raghavan: I do appreciate that in an amending Bill, you are not expected to touch portions of the Act not touched by the Bill. But certain points were raised in both Houses of Parliament and the hon. Commerce and Industry Minister gave an assurance in reply to a debate in the Rajya Sabha that there was no objection to the Joint Committee going into the matter and studying certain other relevant points also. Of course, I leave it to you to decide, as Chairman of the Committee. I would only like to present our points of view; you may decide it at a later stage.

Chairman: Even if the hon. Minister said it, can his statement enhance the powers of this Committee?

Shri Lal Bahadur Shastri: What the witness has said is almost correct because it is true that I had said something. I do not exactly remember it, but I said something on those lines. I said, if the Select Committee so desire, it might consider it in a general way the suggestions that they had made. Legally whether it is possible or not, I do not know. But I would request the Chairman that if he so considers it advisable, the Select Committee could make some general observations on the points they have raised. How will it be incorporated in the Bill or further amendments will have to be made, I do not know?

Shri Feroze Gandhi: May I interrupt you, Sir? I would like to read what you exactly said.

> "Shri Lal Bahadur: I follow it. It is not only a case of one paper. We have read about other papers in the South and about a paper in Delhi where this kind of formation of new companies is taking place which has undoubtedly created uneasiness in the minds of the workers and the question has to be examined as to whether it could legally be done. Under the pre-

sent law, I am given to understand that legal action is not possible because there might be some lacunae. There is no provision in this bill, but if the Joint Committee would like to give thought to this matter, I shall have no objection. The whole matter will have to be carefully examined."

Chairman: The Hon'ble Minister even now has no objection. He says, he sticks to what he has said. The Joint Committee also has good wishes for the witnesses that are here. Can the Hon'ble Member suggest any remedy?

Shri Naushir Bharucha: This is a very important matter.

Chairman: We will certainly hear them. What is the remedy?

Shri Naushir Bharucha: What I am suggesting is this: it may be possible or practicable to incorporate such provision in this Bill.

Chairman: I cannot incorporate any provision in the amending Bill. Perhaps the Hon'ble Member might be aware, it has happened in two or three cases, but then it was under the instructions that were given to the Joint Committee by the House that the Committee is authorised to go into the other sections of the parent Act and then suggest other amendments if they so choose. Unless that authority were given by the two Houses, this Joint Committee has no powers.

Shri Feroze Gandhi: I may give a humble suggestion that let the witnesses give their evidence. When they leave, we may discuss this question. The witnesses may be allowed to proceed with their evidence.

Shri C. Raghavan: I am very thankful to the Committee for the view that it has taken. If this Committee finds itself unable, under the Rules of Procedure, to do anything positive in this Bill, I would still suggest to this Committee that it should make a positive recommendation to Parliament and ask the Government to bring in an amending Bill. It is not merely that we are involved but I would firmly say a fundamental aspect of it is involved, the public respect for the rule of law.

You know that the Constitution has given under Article 19, certain fundamental rights, freedom of trade, profession and business to private entrepreneurs. That right under the Constitution has been restricted to the citizens of the country. Now when the fundamental rights of joint stock companies are involved—whether it was a case of Sholapur Mills, or the recent case of Express Newspapers—the point that both the defendants raised in the Courts was that the right for freedom of trade is restricted to the citizens of the country, that it cannot be available to a corporate artificial entity like a joint stock company. In fact, the Attorney General who was appearing also for the Union of India raised this point. The judges remarked, "Why do you seriously press this." One of the judges remarked: "Even though we are prepared to go into this aspect, whether a corporate entity has a fundamental right to freedom of trade or not, but even if it has not got that fundamental right, if you tear off the veil of corporate sector, there you find standing behind the citizen of the country. Can you throw him out of the Court".

But, when I as an employee try to proceed to claim my dues, the corporate sector avails itself of limited liability which Parliament by Statute has created. I have no fundamental right to work. If the employer dismisses me, I cannot go to the Supreme Court. The right of work has not been guaranteed. And what is the actual result of this? As far as the employer is concerned, he has a fundamental right, he can take advantage of the limited liability provided by Parliament by Statute. What I would like to emphasize is, it is an artificial entity which Statute creates, it is not a personal right given to the citizen of the country. The employer is able to use that right if it suits him against

the workers, but when it suits to his interests, he is allowed to tear off the veil created by the Act. When liquidation proceedings take place, I am not able to do so unless I can prove the enterprise has by fraudulent practices transferred the assets beforehand. That is a fundamental point. If such a state of affairs is allowed to be continued, if the Company Law provisions are allowed to be utilised by any person in this country to evade other statutory rights created by the Parliament of India, then we are not able to have any other remedy because of the facade of limited liability dangling before us. Is it not then proved that there is one rule of law for one person and there is another rule of law for another person? If such a state of affairs should permeate down to the people of this country, how can the rule of law remain in this country?

I would like to suggest, even if you are not able to make a provision in this Bill, in your report to Parliament you must make a special provision in this regard. We had appeared before the Company Law Amendment Committee time and again. We have appeared before the various Committees starting from the Company Law Enquiry Committee of which Mr. Mazumdar was the Secretary. It is our unfortunate experience that nothing has come out. The Hon'ble Shri Khandubhai Desai, who was then the Labour Minister agreed with our view point.

Chairman: That has been your misfortune.

Shri C. Raghavan: That has been our misfortune. Even when they agree, nothing takes place in actual practice. Probably, when they disagree, something might take place.

Now, I come to my points. In every other enterprise, public is involved at the consumption stage. But here at the raw material stage public is involved, the processing is done by the public and the ultimate consumer is the public.

The newspaper claims as the *raison d'etre* for its existence the right to publish any secret anywhere. Even the most important cabinet secrets we claim the right to publish. If we violate the law of publication we face the consequences thereof. We publish even the letters written by the President to the Prime Minister. The President or the Prime Minister may not have liked it. But we, at least in theory, claim the right to publish anything and because we have a right to publish everything, we made a trade out of it. The business of the newspaper is nothing else. People do not sell newsprint. It is the news that is being sold. In such a case is it not right that all its affairs should also be completely brought before the public eye? It is not merely a question of employees' interests. In a democratic country the Press should be subject to the least limitations of the Executive or the Legislature even. You must have all its affairs exposed to the public gaze. Just as the newspaper exposes even the darkest corner of the administration to the public gaze, you must also expose the affairs of the newspaper to the public gaze. This fact is realised in every country. In America every newspaper, as we pointed out in our memorandum, places its financial position before the public. It is published. Here also is a law saying that newspaper ownership should be published. What is the result? When I mention names, it is not in derogation. Mr. G. D. Birla owns *Hindustan Times*. But it is in the name of a large number of limited concerns. Those of us who know of this know that it is owned by Mr. Birla, though many limited companies are put as owners. The public do not know who is the owner. These things take place even when the law requires something to be done.

So far as the workers are concerned, you can understand our misfortune. The Supreme Court has said recently that even the Industrial Tribunal cannot ordinarily, go behind the balance sheet and profit and loss account. As far as shareholders are concerned, they can go into the books, but not into the

vouchers. I shall now leave a series of vouchers to this Committee. Let the Committee decide what they are.

There have been three public commissions which have gone into this aspect of the newspaper industry. The first was the Press Commission. In the year 1952 they went into the entire structure of the industry and they reported in 1954. Parliament has unanimously endorsed their recommendations. I do not want to weary the members of this Committee with that because most of the members here have had occasions to refer to those recommendations.

Then there was the Wage Board which was appointed by the Government. It was a statutory body of which I happened to be a member on behalf of the employees. I can say that after having examined the accounts of the newspaper industry, to put it mildly, that there is a great deal left to be desired. Newspapers which criticise Government and the public for not maintaining proper accounts do not maintain their own accounts properly. When we went into their books, what we saw was amazing. It was unimaginable except to those of us who have gone through them. That is why one of the members of the Press Commission, after the report, had said that the newspaper industry is based upon fraud. The Wage Committee went into it and the Income-tax authorities also went into their accounts. Both their reports are with the Government. They are not available to us because they are not published. Probably, this Committee can have access to it.

You know that in the year 1957, I think, from the first licensing period beginning from January to June, the system of licensing was changed from open general licence to actual users' licence in regard to the newsprint. Actual users alone were granted licences and established importers could get licences. Some kind of restrictions were imposed based upon the previous consumption. As most of the members of this Committee would know, under actual users' licenses, you cannot transfer newsprint to anybody else.

Now, I have got before me some papers. There is no voucher left because probably the transaction could not have been entered in the books. I have got before me here a sheet of paper signed by the Deputy General Manager of Express newspapers, the prince of the newspaper kingdom, dated 14th April, 1957. It says: "Delivered 12 reels 33" taken now to bearer". The details of the reels and their numbers are given here. And here in a cover in pencil marks are put "eight annas per pound and for a total of 8,273 lbs., it comes to Rs. 4,136|8 less Rs. 50."

We do not know whether the cash was collected or how much was paid. We do not venture to go into it. I do not want to tell the Committee something in respect of which I cannot produce documentary evidence, although those of us who know of these things know what has happened. As far as this paper is concerned there is no signature, but some of us who are familiar with handwriting of these people have a suspicion that it was by the Managing Director himself. If the Committee want, they can further examine it.

These reels were delivered to the *Deccan Herald*, Bangalore. You will find the following written in this page: "The following reels delivered to M|S *Deccan Herald*, Bangalore on 14th April 1957 as per the Deputy Manager's instructions, from Rotary Department" We have got the store keeper's signature. This was transported in lorry No. APC-956 and this is signed by M. P. K. Murthy.

Shri Feroze Gandhi: Was it in 1957?

Shri C. Raghavan: Yes. The point I am trying to make is that when you go into the books of account, you will not find these transactions entered therein at all.

I would now show to you something more. Unfortunately, people in this

country have a tendency to destroy papers. Some of the papers are thus destroyed. I believe, it is because they know that they contain valuable evidence. Here are pages which are presumably from the rough ledger books from the director's suspense account book relating to various dates. They all relate to transactions, not very small, and also cash paid to two directors or relations of directors or persons controlled by the directors.

Shri Feroze Gandhi: Which is the company concerned?

Shri C. Raghavan: These are papers all benoging to Express Newspapers. The Committee may probably be able to find out all the ledgers and may try to see if these transactions were entered into the books of accounts. I do not think they have entered them.

Chairman: I will advise the witness not to go into further details. We have noted this point and we will follow it. It will not be possible for us to take into account all the papers and then make our observations. If the Committee thinks it proper, it might make a recommendation about their demands.

Shri C. Raghavan: I am not going into details.

Chairman: But if the hon. members want to hear him in such details, I have no objection.

Shri C. Raghavan: I am aware of the pressure on your time. I shall try to keep myself as brief as possible.

Chairman: As the hon. members are willing to hear you, you can go on.

Shri C. Raghavan: I have divided these into three heads. But there is one common feature about all these papers. All these vouchers, on the face of it, are debited to the director's suspense account. None of . the vouchers bear anywhere any indication as to whether the Auditor or anybody has checked. No numbering of vouchers has been done as required in practice. There is no indication on the vouchers as to whether they have been entered in the books. Now, if money is paid to a Director, and it is debited to Director's Suspense Account, when the Director renders the accounts, by journal entries, the Director's Suspense account is reversed and the expenditure is to be brought back to the ledger. You cannot short-circuit this procedure. This is also to be passed by the Auditor. In this case, these vouchers indicate that they have not been shown to any Auditor. But they bear the signatures of principal Officers of the Company, *viz.*, the Managing Director or the Chief Accountant. The first list I have contains large amounts, 10,000 and 5,000—cash paid to Directors. No reasons are shown for them in Director's Suspense Account. The second list contains a series of vouchers for Director's house-hold expenses—'Pay for fodder Rs. 85; the bill is sent along with this'. Money is paid and the Bills are shown as debited to Director's Suspense Account—one in respect of fodder and the other is sent by the daughter-in-law of the Director 'send me the salary of Calcutta servant and maid-servant; please pay Miss so and so Rs. 50'. All kinds of personal expenses are shown. If they had been shown in the Director's Suspense Account, they ought to have been entered in the books. Nothing indicates that they have been entered in the books or numbered. They are purely house-hold expenses—cash paid for the purchase of fodder for bungalow cows; cash paid for purchasing betel-nuts; cash paid for air ticket on the 15th instant for one Mr. N. C. Jain; cash paid for furniture to somebody.

Shri Avinashilingam Chettiar: How did you get these things?

Chairman: From the man who was keeping them in his custody. He was just going to destroy; but he found that they were valuable documents and then they got possession of the documents. They must come from lawful custody.

Shri C. Raghavan: Firstly these are all signed documents. I think under

the Evidence Act, if the primary evidence is destroyed, secondary evidence is admissible. Secondly, I do not know whether this Parliamentary Committee is limited by the Evidence Act. These are all original documents; that is, the evidence under the Evidence Act which was sought to be destroyed and which has come to us. To the question who has given them to us, I would rather appeal to the Committee not to ask for the identity of the person.

Shri N. R. Muniswamy: I suggest that the documents and the vouchers referred to may be placed on the Table so that we can look into them.

Chairman: What shall we do with them?

Shri Kanungo: I may mention that such malpractices are not confined to newspaper companies alone. The law provides that these matters, if complained of, can be enquired into.

Chairman: He has made that point. There are malpractices; he has given us the examples. We will take note of that. Otherwise, there is no use of our taking these documents into our custody.

Shri Avinashilingam Chettiar: We are convinced that there are malpractices.

Shri C. Raghavan: If malpractices are prevalent in a public limited company, then they may come to the notice of the public. When they are in private limited company, who can know about it?

Shri Feroze Gandhi: Mr. Goenka, who is the proprietor, can be summoned by the Committee and we can examine him.

Chairman: That will be a different matter. We will see later.

Shri C. Raghavan: I shall leave these vouchers with the Committee now. They can be returned afterwards because they would be useful to us in other industrial disputes.

Chairman: We can go to the next point.

Shri C. Raghavan: If Mr. Khandubhai Desai's suggestion that auditing should be done by Government appointed auditors is accepted, then these malpractices cannot prevail. Otherwise, what is the use of saying that if a complaint is made, it will be enquired into. What is the process that the law has got for this purpose? In the case of Express Newspapers, 8 years' assessments were completed in one month because the case was pending in Supreme Court. The Company could not get one Director to sign the veracity of the accounts for the entire Company. Therefore, he persuaded the Income-tax Department to complete 8 years' assessment in one month. They could not find anything wrong in the Accounts and everything was accepted though depreciation was far in excess of the legal provision. The poor employees are prevented from going into the books; how could you find out the malpractices if this is the position? What is the remedy for this? Such things go on with impunity with nobody to question. What is the basic structure of the rule of law?

The next is Provident Fund, and transfer of Companies. In respect of Provident Fund, you would appreciate that before the 1956 Companies Law came into force, there was no provision in the law that the provident fund should be kept separate. If the Company was administering the Provident Fund, then the responsibility was placed on the Company and where the trusts were created, the responsibility was on the trustees by the provisions introduced in 1956 Act. Before that there was no such provision. The only provision before that was in the matter relating to the winding up of the Company. The Provident Fund was also a mere preferential charge. There was no obligation to keep the money separate. On winding up, there was no priority for provident fund and it ranked with all the rest of the charges due to the Government including trading losses, electricity dues, payment in respect of

wages etc. The money collected from the employee which is in the nature of a trust money could not be realised. The employee has contributed and to collect his money he has to stand along with others and realise that. In the 1956 Act came the provision that Provident Fund must be kept separate and must be treated as a trust. It ranked second in priority, *viz.* Government charges and the employees' wages and the Provident Fund dues. The Act also provided that the employer must keep it separate in National Savings Certificates or in Post Office Savings Bank or in trust securities as laid down in Indian Trusts Act. The employee is given the right to ask for and inspect these. The position is same even now. It is made into a trust by virtue of the Act. Before that the employee was to stand along with the Government for the money that has been collected by the employer and which he has misused. I do not know whether he can be punished under Indian Penal Code for misappropriation of the trust money. Until the 1956 Act, the misappropriation was covered by the Indian Penal Code. The 1956 Companies Act deals with provident fund moneys and as a layman my knowledge of law is where there is a specific provision, it overrules the general provision. As far as companies are concerned, unless I am able to show any fraud I can do nothing under the Indian Penal Code. As far as Companies Act is concerned, they may misappropriate lakhs of rupees, but they may go scot-free by paying a small fine of Rs. 500.

I will give you a few instances about provident fund. In 1957, the Employees Provident Fund Act was made applicable to the newspaper industry also. A measure under which recovery could be made through revenue process was not helpful in recovering the following amounts from some of the companies. The position as on yesterday is as follows:

Express Newspapers, Ltd.—Rs. 9·29 lakhs.

Kasturi Sons Ltd., which publishes the Hindu—Rs. 2:38 lakhs.

Ananda Bazar Patrika, which publishes the Calcutta *Hindustan Standard* and *Ananda Bazar*, a Bengali daily—Rs. 6·48 lakhs.

Basumati—Rs. 1·51 lakhs.

Indian National Press which publishes the *Free Press Journal* (They the clearing the arrears)—Rs. ·17 lakhs.

I do not wish to go into the cases of smaller companies. I shall give you evidence of the attitude taken by the employers in respect of these provident funds. In the case of Express Newspapers Ltd., since there is no time, I shall give the reference—it is pages 116 and 117 of the printed records before the Supreme Court—the position was this.

The Express Newspapers Ltd. had provident fund managed by trustees. The trustees were nominated by the Board of Directors and they were not elected by the employees. In the balance sheet and profit and loss accounts for the year 1952-53, Rs. 8 lakhs is shown as liability to the provident fund, including both the employers' contribution and the employees' contribution and the auditor has appended a note that these moneys have not been invested as required by them under the Companies Act, as well as under the provident fund scheme. In 1955 also, the same was the position. Then, it is shown that this amount is covered by a promissory note of the director, or the principal directors—there are only two or three of them—and that is the guarantee.

In 1956-57, when the Employees Provident Fund scheme came into force certain buildings which were shown till a particular date in April as first mortgage to banks, were shown after that date as first mortgage to provident fund. They are not trust securities covered under the Indian Trusts Act. The Chief Accountant who appeared, admitted that this was wrong. But even more than that; certain amounts lapse to the provident fund if an employee left service before a particular term and the other

employees get the benefit of it. But here these are written off as lapsed to the employer and the employer gets the benefit.

Thirdly, bonuses were declared in 1957. Bonuses are shown in the profit and loss accounts and full benefit is obtained under the income-tax law. But that bonus was not paid to the employees. It was shown as a liability. A bonus is paid as a deferred wage to enable an employee to have some more advantages. But it was never paid, but full advantage was taken for income-tax purposes. Only when the accounts were seen by us and we threatened to go to court, the bonus was paid. This is in respect of Express Newspapers Ltd.

Next, we come to the Kasturi and Sons. I would like to read the evidence without making any comments. Mr. Venkataraman who was a Member of the Board, now a Minister in Madras, asked the auditor who appeared, the following questions:

"*Q*: Do you lend the provident fund amount and, if so, to whom?

A: Yes, to all and sundry."

Shri Easwara Iyer: Who was the witness?

Shri Raghavan: One Mr. K. J. Nathan. He was the auditor of the company.

"*Q*: Do you know that under the rules, it should be invested in trust securities and not lent to all and sundry?

A: Yes, we only lend on such securities; we do not lend money without security.

Q: You are the secretary of the provident fund?

A: Yes.

Q: What was the rate of interest at which you invested the provident fund moneys during the period you were secretary?

A: 6 to 7½ per cent.

Q: At what rate, do you credit the employees?

A: It will be 4½ to 5 per cent. I cannot give you the exact percentage without reference to the records."

I do not want to go further into it, except to say that even where it was kept as a trust separately by the company this was the state of affairs.

I will read one more evidence and leave it at that.

"*Q*: Are you actually contributing towards your share of the provident fund?

A: So far we have not done that."

Shri Easwara Iyer: Which company is this.

Shri Raghavan: It is *Tainadu*, of Bangalore. The proprietorship has changed and a new company has come into being.

"*Q*: Since when has the scheme been in existence?

A: From 1941.

Q: From 1941 to 1946 which was the period of the war, many of the newspapers made a profit. Similarly, was not your paper making a profit?

A: We have been somehow carrying on.

Q: Have you shown in your profit and loss accounts, balance-sheets or other financial statements anything about the provident fund contribution?

A: It was not shown.

Q: From 1941 onwards, you have not set apart any sum towards your contribution?

A: No.

Q: What do you do with the employees' contribution?

A: It is kept with us.

Q: What is the total amount of their contribution?

A: As on June 30, it is Rs. 9,000.

Chairman: Have you invested this amount? Is that amount getting interest?

A: No, we have not invested it. It was in our running account (I do not know what it means —there was no interest).

Q: So, you kept it as part of your current account and you utilised it to finance your newspapers?

A: Yes."

Sir, in such a state of affairs, you will appreciate how much we are worried about the inadequate provision in respect of provident fund.

But look at our plight even when a company does not go into liquidation. Express Newspapers Limited have said that they have closed down their business in Madras. That was their plea. We have been claiming that it is an illegal lock-out. Both under the Provident Funds Act and their own schemes, when an entrepreneur closes his business and discharges the employees, he must pay off and discharge all debt owing to their provident fund. This amount has not been paid. We brought pressure on the Labour Ministry and said "get us this amount". The Labour Ministry which had earlier allowed Mr. Goenka to pay in easy instalments said "you better give back the amount". But he did not give. They sought to have recourse under the Revenue Recoveries Act and pay the employees. This gentleman has gone to the High Court on the plea that it cannot be recovered, because it is not dues but only a debt and "you will have to collect it at my convenience". Whether he is going to succeed in his writ petition or not, we do not know. He says it is only a debt and, therefore, you will have to quit. Though the business has closed, the company has not gone into liquidation. I cannot even claim preferential payment. I must wait—I do not know how long—to recover my contribution of the provident fund to tide over my unemployment situation, not even retirement benefit.

It may be the position in other companies also. It is possible. But we can only talk from our own knowledge. We can only say that because these people are also politically powerful they are able to defy the law with impunity.

I shall now take the question of transfers—*binami* transfers I will call them, though it is not possible merely to put them under *binamis*. We have already passed a resolution that after the Wage Board came into existence, after the Industrial Disputes Act entitled employees to get the benefits, the phenomenon we have now seen in the newspaper industry which, we think, if successful, other entrepreneurs in other industries may also take to is the formation of new companies to which the business is transferred but not the assets, to which the contingent liabilities of the employees are transferred. Ultimately, when we go in for collecting the liability, we will find that there is nothing to collect there. Before 1955 or 1956, the Industrial Disputes Act provided that when the ownership of a business changed hands, then the employees must be paid their retrenchment compensation immediately; the old employer must discharge his liability and pay off all his workmen. In 1956 the law said that it need not be paid if the new company accepts the guarantee and says "we are responsible for this liability". It was intended to avoid the problem of discharging and re-employing the persons and to protect their continuity of service and other obligations; it was to protect the employee—and not for giving a right to the employer—under certain conditions. The conditions were: continuity of service to be maintained; the same conditions of service as we were entitled to before the transfer must be guaranteed to the individual employee; and in case of retrenchment, not only the obligations under the new company's service but even the old company's service must be taken into account as if no interruption in service had taken place.

First, I will take the case of transfer of business which occurred in the Ananda Bazar Patrika Company which was managing the Ananda Bazar Patrika, Calcutta, the Hindusthan Standard, Calcutta and the Hindusthan Standard, Delhi. They have the advantages of common advertising, common newspaper income and expenditure, with respect to Income-tax law and every other advantage. I regretted later why we did not tighten the provision properly in the Wage Board and say that as regards the payment of wages, the provision should be the same as in respect of other industrial bodies. But some great, wise men who had greater knowledge of the Company Law than we had at that time, created a company in which there were only two shareholders. One was a Development Officer of the Ananda Bazar Patrika, an employee; another, a Personnel Officer, something like a labour officer, of the parent company, the Calcutta company. These two gentlemen constituted themselves into the Delhi Hindusthan Standard (Private) Limited.

Shri Khandubhai Desai: Without any assets transferred?

Shri C. Raghavan: No transfer of the shares of the company. That is why I said a new company was created. There were only two shareholders and the subscribed capital, the paid-up capital, of the company was Rs. 2,000. This matter figured before the Wage Committee appointed by the Government and evidence has been recorded in Calcutta. I would like, with the permission of the Committee, to read only a small portion from that evidence.

The Chairman was the Secretary of the Law Ministry of the Government of India. These were the questions put and answers given:

"Mr. Chairman: Tell us about the company which has taken over the Delhi Hindusthan Standard."

Mr. Basu, the witness, who had appeared on behalf of the Calcutta company replied: "It is a private limited company called the Delhi Hindusthan Standard (Private) Ltd."

"Mr. Chairman: The same shareholders?

Answer: The shareholders are entirely different. The Ananda Bazar Patrika Company has no interest in that company."

Question (by theh Labour Ministry's representative): "Who are the shareholders of the Delhi Hindusthan Standard?"

The witness who appears on behalf of the parent company said: "I am one of the shareholders, and the other shareholder is Mr. Kanya Lal Sarkar, Development Officer of the Ananda Bazar Patrika. Myself is the Personnel Officer of the Ananda Bazar Patrika, as I have told you. We have taken Rs. 1,000 worth of shares each; between ourselves we have taken shares of Rs. 2,000."

Question (by the Accountant Member, late Shri Vaidyanatha Ayyar): "You think you will be able to run the company only on Rs. 2,000? How do you find the capital for it?"

Answer: That is a long story. When run by the Ananda Bazar, the Hindusthan Standard was running at a very great loss and Ananda Bazar was thinking of closing it down. Then several officers consulted among ourselves. Then, with help from the Ananda Bazar Patrika Company, we have floated this company. We are trying to minimise expenditure and we are running it for the last four or five months.

Question. The capital was only Rs. 2,000 and Ananda Bazar has no interest in it. There is a note here, 'Majority of shares held by Ananda Bazar'."

I presume, Sir, that this must relate to the investigation by the Income-tax Officer which is not public record.

Answer: "Ananda Bazar has no interest in it. That is not correct. We came in with a capital of Rs. 2,000. We have taken the machinery and other things as a going concern. We

have taken it on lease basis. We have got the building for which we pay a rent of Rs. 1,500 per month, and for machinery, etc. we pay monthly Rs. 1,000. That is, we pay a total of Rs. 2,500 per month."

Stopping here for a moment, I must say, Sir, that the Rs. 2,500 will not cover even one per cent. for depreciation.

Question: "What is the value of the machinery installed in Delhi?"

Answer: "The machinery will be worth about Rs. 10 lakhs."

Question: "What is the value of the building which you have taken on a rent of Rs. 1,500?"

Answer: "It will be about Rs. 12 lakhs or so. For this, we are paying Rs. 2,500 per month"—that is rent. "We have come to that arrangement for a period of two years."

I will explain the terms of the contract after reading this.

Question: "You were both employed in Calcutta?"

Answer: "Yes. There is, however, a branch manager in Delhi, who is in charge of the thing. We also go there monthly once. The paper is here, the registered office is in Calcutta; the shareholders and directors are in Calcutta; they come monthly once here to supervise; and they are employees of the parent company."

Question: "I should say that they have given it to you on nominal terms.

Answer: "They were thinking of winding it up. Instead of winding it up, we asked them to keep it going. We said that we would bring in work to help this concern. It is due to our request that they have agreed to run it. Instead of closing it, we are trying to run it."

Question: "Is not the Calcutta company making a profit?"

Answer: "No."

Question: "Not even now?"

Answer: "No. It is only four months since we began the Delhi paper. We cannot say."

Question: "You have got a teleprinter line from Delhi to Calcutta?"

Answer: "That is right".

Question: "What do you get on that line?"

Answer: "That Calcutta paper has got representatives there to attend to council meetings and other things. He despatches news through the teleprinter lines. Delhi being the capital, we get news from that quarter."

I shall show you subsequently that the so-called special representatives are all shown as the employees of the Delhi concern.

Shri Khandubhai Desai: How many employees are there in Delhi?

Shri C. Raghavan: There are two representatives to whom they make a reference, and they are shown in the books of the Delhi company as their employees.

Shri Khandubhai Dasai: How many employees are there in Delhi itself?

Shri C. Raghavan: All told, there are about 500 employees, including the press workers and everybody.

Chairman: It is all really very interesting, and I myself and also the other Members would like to hear it. But there is the element that we would not be able to go on endlessly with this. Therefore, I would request Shri Raghavan to be brief now.

Shri Khandubhai Desai: We have understood the point.

Chairman: If Shri Khandubhai Desai is also satisfied, then I would ask the witness to proceed to his next point.

Shri Khandubhai Desai: The point is that a bogus company has been started.

Shri C. Raghavan: The point that I am making here is this. As I said, the employees and the shareholders of

the new company are the employees of the old company.

As you know, in a contract, there must be three main considerations; firstly, there must be a consideration. . . .

Chairman: All these details might be explained to some Members of this committee or other Members of Parliament to be raised in the House. As I have already stated, it would be difficult for us to take up all these things; though, as has been suggested, the committee might consider whether some observations can be made in the report in regard to these things, yet, in the Bill, itself, it will not be possible to add anything. But we shall consider whether it would be possible to add certain observations about these things in our report. So, the witness should also spend only that much of energy which might be useful for putting in a paragraph there in our report. Otherwise, we would not be able to add much here.

Shri C. Raghavan: The other company to which we have made a reference is the Amrita Bazar Patrika Company of Calcutta. Again, they split up. This is a slightly more interesting case. But I am not going to read the evidence and take up the time of the committee, but I shall only mention briefly the points. On the 14th . . .

Chairman: Is it not enough that the witness has stated certain points about one company? That would give us sufficient indication. I do not think that in our observations we would be naming the companies or describing all these details.

Shri C. Raghavan: My only anxiety was that it should not be open to any Government tomorrow or the Members of Parliament to say that this was only an isolated instance, and other companies were doing well, and tomorrow, the newspapers may put in a provision. . .

Chairman: We understand that very well that it is not an isolated case of one company, but others also have been doing like this.

Shri P. T. Leuva: If it could be done in one case, it could be done in several cases.

Shri C. Raghavan: I may mention again the case of the Express Newspapers Limited. The reason for my stressing this point is that before the companies came into existence, before the companies are registered even, they start doing business. The companies enter into agreements and tell the employees 'We have given you the guarantee under section 25FF', which is completely worthless, because there is no company which can give guarantee on behalf of a company which is yet to come into existence. But, as far as section 25FF is concerned, the new company is supposed to have given a guarantee even though it has not come into existence. The companies commence business even before they come into existence; the companies apply for registration, and registration is going on; on the 30th the company is registered, but the company is supposed to have started even on 14th January, as in the case of the Amrita Bazar Patrika. The employees and the shareholders of these new companies are either relations within the meaning of the Companies Act, or they are what I would call name-lenders whom you will never find in their assets; they have no assets, they only lend their names. The jamadar of the Amrita Bazar Patrika Ltd., Calcutta, is shown as the sole selling agent in Allahabad, and he is one of the shareholders and directors of the Allahabad company. If you are merely going to make a recommendation and ask us to wait. . .

Chairman: What does the term 'jamadar' mean? In the Army, it means a different person. What does it mean in a newspaper company?

Shri C. Raghavan: He is a peon, care-taker or call him whatever you like; he is just an ordinary servant whose emoluments cannot be more than Rs. 100. All that I am asking

the Commerce and Industry Minister here is this. If you are not able to make a positive recommendation, here, I suggest that on August 3rd, let him bring forward an amending Bill to deal with this particular problem and not ask us merely to wait.

Chairman: Would it not be better if we request the hon. Minister to appoint some officer to hear all these details, instead of our going into it?

Shri P. T. Leuva: What is the remedy suggested?

Shri Feroze Gandhi: Many aspects of this case have been brought to the notice of the Minister, but the Minister gets concerned with some other Ministry, and then difficulty arises, and nothing is done ultimately. Then, the Information and Broadcasting Ministry comes in, the Finance Ministry comes in, then there is the Commerce and Industry Ministry and so on. So, there are so many complications. That is why I suggest that we can listen to the witnesses. Then, it will be for us to consider what recommendation we should make. There would be no harm if we now listen to the witnesses.

Shri C. Raghavan: We have suggested a recommendation, which even if you are not able to incorporate in this Bill, you might still think over and do something about it later on. I might explain briefly the implications of it. I am not going to give any instances, but let me explain the main points.

As I was saying, a contract has to be definite; it must be for a consideration, and between two definite persons. A contract cannot be between myself and myself; if you tear the corporate veil of this company, you will find that the contract is between oneself and oneself. Shri Ramnath Goenka contracts with himself in the Madurai Co. where he is associated with Mr. T. S. Krishna and some name-lenders; Shri Ramnath Goenka of the Express Newspapers Ltd. in the Madras company contracts with Shri Bhagavandas Goenka and another name-lender in a Bezwada Co., Shri Ramnath Goenka of the Express Newspapers Ltd. contracts with his chief accountant who is supposed to be the shareholder and director of the Bombay company. As far as the employees are concerned, we are told that we are having the guarantee under section 25FF and we are covered by it. So, we cannot go to anybody. Only, we can go to God, but we do not know where to approach him.

Shri Feroze Gandhi: I think the Minister is also feeling a little helpless in this particular case. For the last two or three months, the matter has come up before the Minister.

Chairman: We can certainly consider those things that have a bearing on the clauses, but as for the other details, we can at the most only insert a recommendation in our report.

Shri Shankaraiya: After hearing them, we can consider what recommendation we could make, and what amendments we can suggest. While considering the clauses and the amendments that have been proposed, if any consequential amendments are found to be necessary, even though they are not touched in the Bill, still we can suggest such consequential amendments. We shall also think over the matter in the meanwhile. So, it is better that we hear the witness now.

Chairman: That is what we shall consider.

Shri Tangamani: In addition to what they have stated in the memorandum, do they have any concrete suggestions to make in the form of amendments?

Shri C. Raghavan: The first formal amendment which would be within the scope of this Committee to make would be this because the Bill touches upon public limited companies and private limited companies. It says that in certain cases a private company shall be treated as a public limited company. Therefore, I say, it is open to you to say that not merely those

types of private limited companies recommended in the Bill as entrusted to this Committee but this kind of newspaper companies also shall be deemed to be public limited companies. This is fully within your scope.

You have made some provision that as against the liquidator certain contracts are void. It is also open to the Committee to say that contracts of this kind shall also be deemed to be void as far as the employees are concerned. If you do that I can pursue Mr. Goenka wherever he goes even in the jute mills. But tear of this corporate veil of limited liability. This the Committee may do in respect of the newspaper companies.

Shri Kanungo: Do you think that if newspaper publishing companies were made public limited companies all the problems would be solved.

Shri C. Raghavan: I do not say that. Unfortunately, as one expert judicial authority put it in England, which is true even here whether in taxation laws or company laws, the ingenuity of the Legislature is always one step behind the ingenuity of the private entrepreneur; but we can try to plug the loopholes.

Shri Feroze Gandhi: You have not understood the question which Shri Kanungo put. Would it not be a step forward if these companies which undertake the publication of newspapers, periodicals etc. are legally bound to be made public limited companies?

Shri C. Raghavan: It will be for this reason that in the matter of maintenance of registers, in the matter of inspection, in the matter of loans and advances and all these things, it will come under the provision. As I showed earlier, huge sums of money are advanced to the directors. In respect of a public limited company no loan can be made to a director without the previous sanction of the Central Government. Apart from household expenditure etc. huge sums of money are advanced to the directors. For the purpose of the company's business advances have been taken from banks paying 6 to 8 per cent. interest. . If you have a commission of enquiry to investigate into these affairs it will be interesting. Even in the evidence before the Wage Committee it was shown how starting in 1932 as a clerk in Dubash's firm he has been able to expand; he has gone even to Calcutta and has got a jute mill. I do not want to go into all this. The Company Law Administration must already have information with them and if they would care to investigate they would know how the jute mills was acquired. If it is a public limited company and the Central Government's sanction has to be obtained, I will be able to enter caveat with Mr. Mazumdar before he gives the sanction. At least I will know that such an application is being made; at least I can go to somebody and try to prevent it. But now I am completely in the dark.

As for the controlled companies, the suggestion that we have made is substantially known and understood by the law of torts. We are not trying to prevent the existence of controlled companies. Let Mr. Goenka with his 3 brothers or Mr. Ghosh or his family have their separate business. We are not trying to prevent that. What we are trying to prevent is transactions *inter se* so that the right of the employee is affected. The employee is the only loser. If you change the constitution and transfer machinery etc. as a contingent liability I am transferred. I am transferred like cattle without any whatsoever to say 'No'.

There are some other points which we have not indicated in the memorandum. They are, for example, the maintenance of directors registers, the general body registers, the shareholders registers etc. It has been our painful experience that when we know something is not there in the registers and we have challenged it, suddenly the register will be produced showing the minutes etc. You can maintain any number of such registers

and defraud the people, whether it be a public limited company or a private limited, if they are in loose files. In the case of public limited companies because you have to send notices to shareholders etc. it is not so easy to do; but in the case of private limited companies you can manufacture all that—I mean the directors—and we may not be able to prove that it is wrong.

Shri Feroze Gandhi himself was one of the directors of Express Newspapers Ltd., sometime ago. I would like to know whether he ever received notices of general body and shareholders' meetings.

We came to know of it when the case came up before the Supreme Court. We challenged the entire accounts as completely wrong. Shri Feroze Gandhi was asked to certify them to be correct because they probably thought that by putting his name before the Court the Supreme Court will be persuaded to accept the accounts. But fortunately for us, Shri Feroze Gandhi only certified to the Delhi unit because he was not notified when the meeting of the Board of Directors was actually held. We were on good rounds. Shri Gandhi did not oblige them; but the Income-tax Department obliged them. Eight years' assessments were completed in 1½ months and everything was accepted.

I would submit that whatever policy the Committee may have in respect of managing agencies for other companies, for newspapers at least the system of managing agency should be abolished. There is no need for it. I will give you an instance.

There are several companies having agreements which, though they may not be called managing agency agreements, are in the nature of such agreements.

This is in respect of the Delhi Urdu paper, "Tej" which was associated with Swami Shraddanand. During his time it was almost a public trust paper. Afterwards it became a public limited company. Then it became a private limited company. When Lala Desh Bandhu Gupta took it over, we come to the fourth phase of it. This company, after Lala Desh Bandhu Gupta's death, was brought under the managing agency agreement. I wish to point out how it was brought about. It is also relevant to the private limited company and public limited company issues which we are now discussing.

This is the evidence that was recorded before the Wage Board:

> "Q. When were the managing agents appointed for this firm?
>
> A. On the death of the managing director, Lala Desh Bandhu Gupta. In July, 1952, they became the managing agents; from the date when Lala Desh Bandhu Gupta expired."

That is, with retrospective effect. So, it was from November, 1951. According to the witness, in July, 1952, they became managing agents with retrospective effect, the moment Lala Desh Bandhu Gupta died!

But something more interesting is, the witness was asked to produce the auditor's report.

> "Q. Have you got the auditor's report? Would you please read it for 1953 and 1954? You said that the managing agency agreement was confirmed in 1952. But the auditor's report talks of a certain sum being paid to the managing agent in anticipation of the managing agency agreement being confirmed."
>
> A. Yes.
>
> Q. Your facts, in the document are contrary to what you have told us.
>
> A. It was in the month of July or August. I do not remember, but it was definitely in the year 1952 that the managing agency agreement was confirmed.
>
> Q. But the audit report says that it was not confirmed even in

1954. I do not know whether they had said the same thing in 1955 also.

The witness did not reply."

The point that I would like to make here is, not only did the managing agency enter into an agreement with retrospective effect but monies are paid even after three accounting periods. You know in a private limited company there may be only two or three shareholders who sit formally and send the papers and nothing is done. If it is so, you will understand why in a newspaper industry at least there is nothing at all for a managing agency agreement. In fact, in respect of the managing agency agreement between the *Free Press*, Bombay, and the same managing agency sitting in another company—I can give you the extract from the evidence tendered by one director—the remark made was "it is an unconscionable agreement". I therefore suggest, whether you abolish the managing agency system in other industries or not, at least in this newspaper industry, please abolish it. That is all that I have got to say.

Chairman: I do not know if any cross-examination is needed by way of further elucidation. We have heard him and he has been very clear in his explanations. No questions are needed, I suppose. Thank you very much.

Shri C. Raghavan: I hope our efforts this time will have greater effect.

(*The witnesses then withdrew*)

III. Dalmia Cement (Bharat) Limited, New Delhi

Spokesmen:

1. Shri S. C. Aggarwal.
2. Shri Bhim Sen.

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

Chairman: We have got your memorandum. We have seen it. All hon. Members have read it and they know the contents very well. Our procedure is this. The hon. Members put questions but if the witnesses desire that they should say something to supplement the memorandum, then in a short time they might just say what they wish to say. But the contents of the memorandum are not expected to be repeated or read again. Something that you might like to emphasize upon or supplement may be done in a few minutes.

Shri Kanungo: I presume that this particular firm is a member of the Federation of Indian Chambers of Commerce and Industry or one of its constituent bodies, and as such they must be aware of the memorandum which has been submitted by the Federation and the various chambers. If so, the common portions should be deleted and only the special portions may be taken up.

Shri Himmatsingka: The memorandum is very elaborate. We have read it.

Shri Naushir Bharucha: Their point of view may be different.

Chairman: Shri Kanungo said that they must be aware of the contents of the memorandum that those associations have already submitted and those portions that are common to both might not be stressed again. We will consider them so far as this memorandum is concerned, but they need not be emphasized again and again because those have been already dealt with.

Shri S. C. Aggarwal: We are a member of the Federation of Indian Chambers of Commerce and Industry. Of course we went through the memorandum which they submitted to the Company Law Committee. We have not received any copy of the memorandum which they might have submitted to this Committee. But most of the points which we have made in our memorandum are mainly with a view to see that the Companies Act in practice becomes more workable. We have not suggested anywhere that any of the provisions should be relaxed or anything of the kind. We have only concentrated on some practical problems which arise from the implementation of the law and we have

drawn your attention to those problems.

As you will see, out of some 212 clauses of the Bill, we have commented only on about 35 clauses. There too we have divided our memorandum into two parts, the first dealing with some fundamental suggestions and the second dealing with largely procedural matters.

Since you say that the members of the committee have gone through the entire memorandum, there is not much that we want to add to it. But we can emphasise a few points personally. We shall do it now if you so direct or we will first answer the questions and do it later.

Chairman: I have no objection if the witnesses want to make any preliminary observations. But what is contained in the memorandum need not be repeated. If you desire, we can just start the examination by hon. Members and then if anything is left out, the witnesses may clarify it in the end.

Shri S. C. Aggarwal: We prefer that.

Shri Tangamani: In Part I, regarding clause 62 you have merely said:

> "It is provided in sub-section (2) of the revised Section 205 of the Companies Act that no dividend shall be payable except in cash."

Are we to take it that you do not object to clause 62, which provides for normal depreciation before the dividends are declared?

Shri S. C. Aggarwal: We have made certain observations on some of the clauses. I may not be in a position to give considered replies to any new points that may arise.

Chairman: The witness desires that examination may be confined to the observations made in this memorandum.

Shri Tangamani: Most of the representatives of the employers have been objecting to the normal depreciation being deducted before the net profit is arrived at. Am I to take it that your concern does not object to this procedure?

Shri S. C. Aggarwal: What we have said on clause 62 is that the payment of dividend in species should be allowed. At present it is allowed, but the effect of this amending Bill would be that payment of dividend in species would not be allowed. This is the entire scope of our observation. We have not dealt with the point whether normal depreciation should or should not be deducted.

Shri Tangamani: In page 4, regarding clause 63, shall I take it that you have no objection to the provision requiring that the amount should be deposited in a scheduled bank within 14 days after the declaration of the dividend?

Shri S. C. Aggarwal: We have put forward our objections to this amendment. Firstly, we have said that by making this deposit, we will be only rendering the money idle and no useful purpose will be served. So, it is not desirable. As a safeguard against dishonouring of dividend warrants for want of funds, we have suggested that the dishonour of a dividend warrant may be made a penal offence.

If you feel that the deposit should be made, then it should be required to be made only within 2 or 3 days after the dividend warrants are issued and not immediately after the declaration of the dividend.

Shri Tangamani: In page 6, regarding clause 104 which is a very important clause dealing with sole selling agent, is it your objection that even where an agency is appointed for a particular area, he could be a sole selling agent or do you have any other objection to the appointment of sole selling agents with the consent

of the Government of India as provided in clause 104?

Shri S. C. Aggarwal: We have made two suggestions on clause 104. The first is that under the proposed amendment, if now a managing agent resigns, he cannot be appointed as sole selling agent until three years after. Our suggestion is that even within these three years, he may be permitted to be appointed with the approval of the Government. We need not wait for 3 years to lapse.

Secondly, in our cement business, for instance, we have got stockists at all centres—in small towns, small cities, big cities and everywhere. As it is, this provision is capable of various interpretations. If we have appointed a dealer who is the only dealer in a particular small place, he can be considered as a sole selling agent under this provision. If that interpretation is to prevail, it means that appointments of stockists at all the centres will have to be placed before the general body meeting. We felt that probably that was not the intention. So, we have suggested that if a sole selling agent is appointed either for a State or for the entire country or for the entire foreign market, that kind of appointment should certainly be regulated. But the appointment in individual towns or cities should be excluded from the scope of this section.

Shri Tangamani: Please turn to page 18 regarding clause 105. Section 386(1) says that a person cannot be a manager of more than two companies simultaneously. But I understand you want him to be the manager of a public company in addition to being the manager of two private companies. You want him to be manager of three companies. Is there any special reason for that?

Shri S. C. Aggarwal: The reason is only this. We are permitting the manager of a public company to be a manager of another public company. If he could be additional manager of another public company, he can certainly be manager of 2 private companies in addition to his being manager of one public company, because the work in a private company is much less.

Shri Tangamani: Page 3 of your Memorandum, clause 58. That deals with publication of the chairman's speech at the Company's expense. Do you think that the publication of the chairman's speech alone is very important both from the point of view of the shareholders and the public interests? What can be your objection to this new amendment.

Shri S. C. Aggarwal: We feel that the publication of the chairman's speech is in the interests of the company. It makes the company better known and its activities better known and that is one occasion on which that is possible. The objection is that along with the chairman's speech, so far as the other proceedings of the company are concerned, they are private proceedings and it is not desirable that the private proceedings of general meetings should be published.

Shri Tangamani: Is it not likely if only the chairman's speech is published without the other proceedings, a wrong impression may be given about the position of the company at that particular moment?

Shri S. C. Aggarwal: So far as the other proceedings of a company's general meeting are concerned, they do not deal with the working of the company and even if it were published. I do not think they would in any way help the investor to analyse the working of the company. Whoever wants to invest in a company would have other means of understanding the functions of the company, say, stock exchange reports, balance sheets, etc. All these are various other methods by which one can determine whether the company is working properly or not

Shri Naushir Bharucha: Page 3, clause 62. You say, dividend in

specie or in kind should be allowed where an option is given to the shareholders in the resolution declaring the dividend to receive it in cash or otherwise.

Shri S. C. Aggarwal: We have said that where the shareholders have been given option to receive the dividend in cash or kind, there should be no objection to such distribution being made to them.

Shri Naushir Bharucha: You mean to say, there should be no compulsion.

Shri S. C. Aggarwal: Yes, there should be no compulsion.

Shri Naushir Bharucha: Page 4, clause 63. Do you know of instances where dividends are paid from overdraft accounts, to your knowledge of practical working?

Shri S. C. Aggarwal: It is not a question of paying dividend from overdraft account, but it is a question of finding the funds for payment of dividend. Many companies have overdraft accounts for their working capital requirements. They do not have any liquid funds. Therefore, when dividends have to be paid, further funds are drawn from overdraft facilities. This kind of thing does happen.

Shri Naushir Bharucha: Page 4, last paragraph. You say, at least the money equivalent to the amount of the dividend warrants despatched should only be required to be deposited in a separate account in Scheduled Bank. Now, don't you think that a provision like this would induce companies not to dispatch dividend warrants so that they can have use of the money for a longer time?

Shri S. C. Aggarwal: The present position is, whenever a company is sending its dividend warrants, it provides for funds at that time. So, I do not think that would in any way aggravate the situation any more than what it is today.

Shri Naushir Bharucha: Page 5, clause 100. You are referring to the difficulty of holding a meeting once in three calendar months. You say, the volume of work in a private company does not justify their Directors meeting so frequently and moreover in private companies the Directors and shareholders being limited in number are more closely connected with each other, etc. If they are so closely connected and all that, then where is the difficulty in having one meeting in three months?

Shri S. C. Aggarwal: They are closely connected, but they may not be necessarily at the same place. All that we have said is, it need not be made compulsory. In the case of public companies, it is all right; but in the case of private companies there need not be a legal compulsion. They might discuss and consult each other by correspondence. The private company's affairs are very much limited.

Shri Naushir Bharucha: Page 5, clause 102. I quite see your difficulty, that the word 'loan' should be defined, so that advances to employees, etc. are excluded. Would it meet your purpose if we put it like this: Loans shall not include advances to workmen, artisans, contractors or suppliers of goods or services to be rendered in ordinary course of business. Will that meet your purpose?

Shri S. C. Aggarwal: That, I think, will be quite adequate.

Shri Naushir Bharucha: Page 6, clause 104. This is with regard to the appointment of sole selling agents. Just now, in answer to a question put by one Hon'ble Member you said that whereas the Government may retain the right of appointing sole selling agents, with respect to cities and towns, the company should be allowed to freely appoint sole selling agents.

Shri S. C. Aggarwal: Yes, Sir.

Shri Naushir Bharucha: Don't you think that this clause will become useless by your appointing individual sole selling agents in 200 places? What you cannot do in law, that you might do by individual appointment.

Shri S. C. Aggarwal: I submit that is rather a remote possibility, but even if it were so, one could provide a safeguard by saying, where a person is appointed as a sole selling agent for a particular place, he is not a stockist in another place.

Shri Naushir Bharucha: But you are not making a distinction between a stockist and a sole selling agent. There is a world of difference.

Shri S. C. Aggarwal: There is a difference. But interpretations will vary. Now, we have one stockist in one place. He may be called a sole selling agent. We have not been able to understand clearly whether our stockist in that small town will be regarded as a sole selling agent or not. That difficulty is there.

Shri Naushir Bharucha: Page 7, clause 105, that loans made or guarantees given or securities provided by a holding company to its subsidiary are exempted from the application of the restriction of section 295. Now, you say that on the same principle loans made or guarantees given or securities provided by a subsidiary company to its holding company should also be exempted from the provisions of this section. How does it become the same principle? Two things are totally different. It is not the same principle. I would like to know that.

Shri S. C. Aggarwal: The holding company has a predominant interest in a subsidiary company. The holding company has a commanding majority of shares in the subsidary. Therefore, it is only a matter of procedure because the resolution can be passed and the loans can be arranged. But it appears to us to be quite unnecessary because if the holding company can give loan to the subsidiary, certainly the subsidiary should also be permitted to give loan to the holding company.

Shri Naushir Bharucha: If your suggestion were to be accepted, that every subsidiary should be permitted to give loans to holding company, would this not open avenues for fraud by securing control of a subsidiary and then getting return of the investment from the subsidiary into the form of a loan?

Shri S. C. Aggarwal: As I mentioned, the loan itself is not prohibited. All that is required is that a special resolution be passed. When a company is made subsidiary, the holding company has at least 51 per cent holding in the subsidiary company. It is just a question of getting the resolution passed. I do not think it will very much alter the position and probably it is not very difficult to get such resolution passed.

Shri Naushir Bharucha: On Page 8 you have rightly emphasized the difficulty. Your grievance is that the law imposes responsibility on the director to collect the information, and it imposes no responsibility on the relative. Are you in favour of such a provision being incorporated that the relative should be compelled to disclose the information?

Shri S. C. Aggarwal: If this provision is to remain as it is, certainly the relative should be put under an obligation and if they do not comply with the obligation, the director should not incur disqualification.

Shri Naushir Bharucha: On page 11, clause 119, you are referring to section 314 of the Act according to which an individual proposed to be appointed to any office or place of profit shall declare in writing before such appointment whether or not he is connected with a director, etc. Then you say that if the section is contravened, the director shall cease to be a director. If it is due to a technical difficulty, even if the Government launch prosecution, the court can give you relief.

Shri S. C. Aggarwal: It is something more than that. I would refer to the later paragraph under this clause. The position is that if we,

through a mistake or oversight or due to lack of knowledge, appoint a person as an employee and if he turns out to be a relative of the director, then the effect of this provision is that that particular director is deemed to have ceased to be a director from the date when that appointment was made. Particularly in the case of managing agency companies suppose we have made such appointments, then the director ceases to be a director. This, by itself, is all right. But the consequences go beyond that. Because this amounts, under section 346, to a change in the constitution of the managing agency company and if a change has taken place under section 346, it ceases to be a managing agent of the company. These consequences, we feel, are much too severe and therefore private companies should be exempted from the provision of section 314. This is what we feel. Our main request is that private companies should be taken out of the provision of section 314 because in private companies the interests of only a limited number of people are involved and even if the relations of directors are employed, there should be no objection.

We have made two suggestions. One is that private companies should be taken out of this provision. Or, alternatively, the retirement of a director in consequence of section 314 should not be regarded as a change in the constitution under section 346. This change should not have the effect of taking away the managing agency itself.

Shri Naushir Bharucha: On page 12 you say that in the alternative it may be provided in section 346 itself that a change occurring in the board of a company by the compulsory retirement of a director under the provisions of the Act will not be deemed to be a change in the constitution of the company. This is what you have said. Could you tell me why do you say that a change like this will not constitute a real change in the constitution?

Shri S. C. Aggarwal: The change will be there. We have referred to this thing in the context of section 314. We say that this is the legal consequence of our appointing somebody whom we do not know. We do not know whether he is related to the director. The consequence is that the director ceases to be a director. The consequence of this should not be so severe as to terminate the managing agency itself.

Shri D. L. Mazumdar: There is no automatic termination of the managing agency under these circumstances. You are given a period of six months' time. . . .

Shri S. C. Aggarwal: The period of six months is given from the date of the change. Suppose I appointed a person on the 1st January 1958. Today I come to know that he happens to be a relative of the director.

Shri D. L. Mazumdar: The period of six months starts from the date of your knowledge of this fact.

Shri Naushir Bharucha: Assuming this interpretation is correct, do you have any objection?

Shri D. L. Mazumdar: I do not think there is a difficulty. At least there is a way out of the difficulty.

Shri S. C. Aggarwal: When we have commented on section 346, we have submitted that the going out of a director should not be regarded as a change in the constitution, whether it is by death or retirement. We have said that the appointment of a new director may be regarded as a change. But the going out of an existing director should not constitute a change in the constitution.

Shri Naushir Bharucha: On page 12, in paragraph (ii), you say that in clause (a) of the proposed sub-section (1) of section 314, the words "shall hold any office or place of profit" should be changed into "shall be appointed to a place of profit". Don't you see that if your suggestion is ac-

cepted what will happen is that a person may be illegitimately appointed, but afterwards due to change of circumstances he becomes incapable of holding the post and according to you he will still hold on to it. If there is appointment on account of change of circumstances, his position becomes illegitimate and he cannot hold on.

Shri S. C. Aggarwal: That is a correct position.

Shri Naushir Bharucha: On page 13, clause 137, you say that section 346 of the Act provides that if a change takes place in the constitution of a body corporate or firm acting as managing agents it shall cease to act as such on the expiry of six months from the date on which change takes place, unless the Central Government accords its approval to the change. You say that sufficient opportunity should be given to the managing agent to restore the *status quo* if the Government disapproves the change. . . .

Shri S. C. Aggarwal: In most cases it will be extremely difficult to restore *status quo*. For instance, in the case of the death of a director, you cannot restore the *status quo*. In some cases, there may be this possibility and that possibility should not be closed.

Shri Naushir Bharucha: On page 14 it is said that as the business of the company would go on normally under the supervision of the directors appointed under this section, therefore, any change in the Board of Directors will not make material difference. Your intention is to secure exemption. But how could you make a distinction between a nominal change from the substantial change because often an ostensible nominal change may have a substantial effect; for instance, transfer of 10 shares may tilt the balance of working.

Shri S. C. Aggarwal: This is the general observation which we have made. We have gone further in our memorandum to explain these provisions. If they are done, that may be helpful. For instance, if a Director dies and another Director is taken in his place, that is an inevitable change; it should not be regarded that the constitution of the managing agency has been changed.

Shri Naushir Bharucha: It may also have a substantial effect. The death of a Director may have a substantial effect on the constitution of the company. The effect would be same whether it is intended or unintended. It may be a welcome change also.

Shri S. C. Aggarwal: It has already changed. I do not say that it is not a change. In changes like this which are not engineered changes, if I may use this phrase, our submission is that they should not be regarded as changes in the constitution of the company.

Shri Naushir Bharucha: Whether the changes are men-made or whether they are by force of nature or by whatever operation of law, how does it matter to the rationale of the section that the constitution is changed one way or the other.

Shri S. C. Aggarwal: Really speaking, a change of Director does not mean a change in the constitution of the company. Generally speaking you should have two directors. You can have two Directors. A mere change in the Director does not mean a change in the constitution. Here the change in the constitution has been given a particular connotation. In regard to that connotation these modifications might be made. If a Director dies that should not be regarded as a change in the constitution. If you appoint a new person in his place that cannot be regarded as a change in the constitution.

Shri Naushir Bharucha: If there are four directors and if one dies, then the voting strength is altered; that becomes a change in the constitution without your appointing anybody.

Shri S. C. Aggarwal: In practical working, I would submit that among managing agencies which are private

companies there is a considerable amount of unanimity and I think that situation should not arise.

Shri Naushir Bharucha: On page 16, you have said: 'According to clause (c) of sub-section 3 of section 349 and the amendments proposed therein, in computation of the net profits for determining the Managing Agents' Commission, the profits or capital nature including profits from the sale of an undertaking or any of the undertakings of the company or of any part thereof have been excluded. You want that it should not be excluded. How can capital appreciation be treated as profit? The capital appreciation has taken place as a result of general prosperity of the community. How could you count this as profit due to exertions of the directorate?

Shri S. C. Aggarwal: We have suggested that when there is a sale of capital asset and there is a profit, that should be regarded as profit of capital nature for purposes of managing agency commission. We have said in our memorandum also that the quantum of profit from the sale of immoveable property or fixed assets depends to a very great extent upon the efforts and business acumen of the Managing Agents. Then there is no reason why they should not participate in the profit. That is how we look upon this question. Thank you very much.

Shri S. C. Aggarwal: I am most thankful to you for giving us a hearing.

Chairman: If you want to say something else you might do so now.

Shri S. C. Aggarwal: Since the memorandum has been studied thoroughly by the Committee, I do not have to say very much more. I would only once again refer to the section relating to change in the constitution of the managing agency and there is one point which we have not discussed. Under Section 346 of the Act, if a change takes place in the constitution of a body corporate or firm acting as Managing Agents it shall cease to act as such on the expiry of six months from the date on which change takes place unless the Central Government accords its approval to the change. So until Government gives approval the change should not take effect. Such a change must be approved by Government within six months and Government may extend the time also. We have suggested the provision to be somewhat like this—if there is a change we must apply within six months or three months or within whatever time is prescribed. According to the present provision no opportunity is given to the Managing Agents to revert to the constitution existing immediately before the change where the change is disapproved by the Central Government. We suggest that the Managing Agent shall cease to act as such on the expiry of six months from the date on which the change takes place if no such application is submitted to the Central Government for approval of the change or on the expiry of three months from the date on which the change is disapproved by the Central Government unless before the expiry of the said three months the change is reversed and *status quo ante* restored.

Shri D. L. Mazumdar: Is this difficulty based on experience?

Shri S. C. Aggarwal: It is a lacuna which I find is there in the Section.

Shri D. L. Mazumdar: We have dealt with 3000 cases. There cannot be a single instance where we have exceeded the time-limit of six months. It is as much our interest to see that the orders are issued within six months.

Shri S. C. Aggarwal: That is quite true. I may give only one example. Shri Mazumdar has referred to this question. In a particular set of circumstances we referred our case to the Department. They said that this was not a change in the constitution of the Managing Agency. Later on we were told that on re-thinking this

seemed to be a change and the change had become one year old. We replied to Government, if you think this as a change, then kindly approve this. Accordingly to strict interpretation of the provisions of the Act, after the expiry of six months the managing agency has ceased to exist. Of course they extended the time; but this lacuna is there. I would only submit that our observations are as we have found them in practice. Of course you have wider view of the thing as to how it is working in other companies. We have placed before you our difficulties.

Shri Mazumdar: From the administration's point of view we are in the hands of companies for getting information. It may well be in the interests of the company not to supply this information in spite of repeated reminders. Therefore we are anxious that there should be a time-limit of six months.

Shri S. C. Aggarwal: Yes, Sir, you may reject the application if you do not get the information. If you give reasonable opportunity to a company to supply the information and they do not do, you can reject their application.

(*The witnesses then withdrew.*)

The Committee then adjourned.

JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON THE COMPANIES (AMENDMENT) BILL, 1959

Saturday, the 11th July, 1959, at 09·00 hours.

PRESENT

MEMBERS

Lok Sabha

1. Shri H. C. Heda
2. Pandit Dwarka Nath Tiwary
3. Shri Shivram Rango Rane
4. Shri N. R. M. Swamy
5. Shri M. Shankaraiya
6. Shri Jaganatha Rao
7. Shri Ajit Singh Sarhadi
8. Shri Radheshyam Ramkumar Morarka
9. Shri Feroze Gandhi
10. Shri Rohanlal Chaturvedi
11. Shri Arun Chandra Guha
12. Shri Narendrabhai Nathwani
13. Shri Nityanand Kanungo (*in the Chair from* 10-45 *hours to* 10-48 *hours*).
14. Shri K. T. K. Tangamani
15. Shri S. Easwara Iyer
16. Shri Yadav Narayan Jadhav
17. Shri Surendra Mahanty
18. Shri G. K. Manay
19. Shri Naushir Bharucha

Rajya Sabha

20. Shri Khandubhai K. Desai—*Chairman*
21. Shri T. S. Avinashilingam Chettiar
22. Shri P. D. Himatsingka
23. Shri J. S. Bisht
24. Shri Awadheshwar Prasad Sinha
25. Shri P. T. Leuva
26. Shri M. P. Bhargava
27. Shri J. V. K. Vallabharao
28. Shri Rohit M. Dave.

DRAFTSMAN

S. P. Sen Verma, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri D. L. Mazumdar, *Secretary, Department of Company Law Administration.*

SECRETARIAT

Shri A. L. Rai—*Under Secretary.*

WITNESSES EXAMINED.

I. *The Company Law Association of India, Bombay.*

Spokesmen:

1. Shri K. T. Chandy
2. Shri S. H. Gursahani
3. Shri K. V. Rao

II. *Bengal National Chamber of Commerce and Industry, Calcutta.*

Spokesmen:

1. Shri D. N. Bhattacherjee
2. Shri S. R. Biswas

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

Spokesmen:

1. Shri C. C. Chokshi
2. Shri J. S. Lodha
3. Shri E. V. Srinivasan.

I. *The Company Law Association of India, Bombay.*

Spokesmen:

1. Shri K. T. Chandy
2. Shri S. H. Gursahani
3. Shri K. V. Rao.

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

Chairman: Your memorandum has been read by the Members of the Committee, and if you desire to illustrate, elaborate, clarify or emphasise any point which you want the Joint Committee to consider you may do so.

Shri K. T. Chandy: Sir, we are indeed grateful to you and the hon. Members of the Joint Select Committee of Parliament for giving us this opportunity to place some of our views before you.

We do not wish to go into many of the matters dealt within our memorandum, as we are sure that the same views have already been covered over and over again by others who have given evidence before you. It is also a fact that one of our Members, Mr. Chokshi, has not come, as he is to follow us as the leader of the next delegation; and so we thought we would leave to him the particular problems relating to accounts as he carries with him our views also.

The first point to which I would like to draw your attention is clause 59, a much-debated clause, which enumerates the different types of managerial personnel permissible and also sets out that only one such category may be found in a company at a given time. On going through the list of permitted managerial personnel we observe that certain categories of directors whose names appear elsewhere in the Act, do not find a place here. I am referring particularly to companies such as mine, namely Hindusthan Lever, where we have whole-time directors or, shall we say, directors in whole-time employment. Is it suggested that they do not form part of the management? This is one of the difficult problems.

In the Act there are four or five different kinds of directors. There is a managing director, there is a 'whole-time director', there is a 'director in whole time employment', there is a 'director appointed by Government', and there is just an ordinary director. The term 'managing director' is defined. The person appointed by the Government as director is understood. But there is no definition of the term 'whole time director' or of the term 'director in whole time employment'. We do not know where we all stand.

There is a decision of the Bombay High Court in the famous Jyoti case in which there is an observation that in so far as the term 'whole time director' is always used in conjunction with the term managing or whole time director, it comes to the same thing as a managing director. If that were so, we bow to the judgment of the Bombay High Court. But the fact still remains that Parliament in its wisdom has used the term 'managing or whole time director'.

And still there is another category of directors, namely 'director in whole time employment' used in complete juxtaposition with the term "managing director" in section 309.

Therefore, my first submission would be, let us have a clear definition of the term 'whole time director'. Let us have also a clear definition of the term 'director in whole time employment'. And to my mind there is no need for these two terms.

That brings me on to another vexed question, what is the characteristic of a managing director. As the definition stands, if he exercises any powers of management conferred on him either by resolution of a company in general meeting, or a resolution of the Board, or in the articles of association, he is a managing director. It is proposed to amend this definition to make the criterion, not *any* powers of management but *substantial* powers of management.

I do not want to appear to be a fundamentalist, but at the same time I must say that we are still begging the question. What is management? We are all aware of the fact that in any company you find various levels of authority, collectively referred to as the management. What is the criterion of this management power? —the exercise of discretion in the disposal of the assets of the company, in the utilisation of the assets of the company and in engaging and displaying of the man-power that may be brought into the company. We are aware of so many managements. What then is that particular level of management which the Board has to perform and which characterises the management function of the Board as different from the management function exercised by any officer of the company below the Board? According to the Sastri Committee Report, no individual director has any power of management. All powers of management of the company are vested in the Board. Surely, then, every officer below the Board must be exercising some power of management by delegation. Otherwise the company cannot function. So, in this context, what we are really aiming at is the separation of all those elements of management, that is, higher management, which we believe, must necessarily be exercised by the board and by nobody else. I think that is what is really intended, and not every power of the management.

Take a company which has operations all over India, and which deals in products, subject to wide fluctuations in prices. It is necessary for such a company to vest in its junior most sales manager a certain power to decide at what price he would sell. Undoubtedly, he has to act within a range that is set for him by the board, but merely because he exercises that discretion, is it suggested that he is exercising a directorial power of management? Surely, that is not intended.

Take a buying operation. The board cannot say, 'You should buy thousand tons of this at this price'. The board will say 'During this week, you will buy about thousand tons, because those are the projected requirements for the planned production, and we believe that you should be able to get it between this and that price'. But, surely, the operation thereafter is entirely a matter in the hands of the head of the buying department. You cannot possibly direct every detail of an operation.

Now, according to the Sastri Committee's report, buying and selling are fundamental matters of policy. Therefore, anybody who exercises a substantial discretion is exercising a power of management. If that is so, then it must be remembered that he is not even a member of the board. Are we going to suggest that all those persons should be treated as members of the board?

So, what I am coming to is this. The board is collectively responsible for the totality, and that, I submit, it the only criterion by which you can say what is the management power vested in the board as different from the management power vested in any functional authority.

In section 293, there is a valuable concept which I would suggest may be made use of, and that concept is this. No board can undertake to sell the whole undertaking, and where it has several undertakings, substantially the whole of any given undertaking without the consent of the company in general meeting. Even in companies where you will find two or three managing directors, styled as such, if you look at the actual reality, you will find that the division between the various managing directors is precisely this, that each one of them is in complete charge of the totality of one undertaking of that group. It may be coal, it may be plastics, or it may be vanaspati. In other words, where a company has multiple operations, the totality of each such undertaking is vested in a managing director. Therefore, what I am coming to is this. Our first position is that what distinguishes the board is its responsibility for the totality of the undertaking as different from the function of a functional head who also exercises certain powers of management. Therefore, I would say, in all respect, let us define the term 'managing director' to mean the person who has the totality of an undertaking as his responsibility, which is different from saying 'the whole of the affairs of a company', because the affairs of a company may be multiple. The term 'undertaking' is already found in section 293. That is a concept which is clearly understood, and which has been there for many years in our Companies Act.

Now, there are certain advantages that would flow from my suggestion. That is my view.

Shri S. P. Sen Verma: What is the distinct point that you are trying to make?

Shri K. T. Chandy: The point I am trying to make out is this. First of all, you have used the words 'whole-time director' in the Act, but there is no definition of it. My submission is that there should be a definition, because in the absence of that, we are all wondering where we are. Are we managing directors?

Shri D. L. Mazumdar: You are wondering and flourishing.

Shri K. T. Chandy: We have this problem. We go to the counsel, and the counsel gives us his advice, and we are guided by him, but we are not sure. The last thing that we want is an ambiguity as to the characterisation of each function.

Shri S. P. Sen Verma: If we introduce a definition saying 'the totality of functions' as different from the 'whole affairs of the board', what should be the real distinction? That is what I would like to understand.

We fail to understand the distinction between 'totality of functions', and 'the whole of the affairs of a company'. What is the exact distinction? Is it not a very nice distinction, or I may say, to some extent, metaphysical?

Shri D. L. Mazumdar: That distinction will be valid only if a company has more than one undertaking. If it is a unitary company which has one undertaking, there is no distinction at all.

Shri K. T. Chandy: Quite right. My proposition would be this. First of all, in clause 59, let us include besides managing director, the category of whole-time director. It is necessary to include that category, because they exist.

Shri D. L. Mazumdar: This is not a new form of words. This has been there since 1956. I would like to know what practical difficulties it has caused in the light of experience and not in the light of logic; that is, what difficulties this term 'whole-time director' has caused.

Shri K. T. Chandy: Without going into the question as to who is a managing director, I would say that the concept of 'whole-time director' is a simple concept, namely that he is whole time in the employment of the company, and he is functioning as a director. That is a simple thing. However, his characteristic is at present in some way associated with the rather difficult definition of managing director; so, all the time, he is wondering whether he is a managing director or a whole-time director.

Shri D. L. Mazumdar: He need not wonder. If he is uncertain as to whether he is a managing director or a whole-time director, he must make up his mind. If he is uncertain, he has to apply to Government, and Government will approve of the appointment. So, there is no problem there.

Shri K. T. Chandy: What I would suggest is this. In so far as we have used the term 'whole-time director', that term should find a place in the category of management provided for in clause 59.

Shri Mazumdar: We have wrestled with the problem of definition. It has not been possible to do better. What is meant by a 'whole-time' man? Is it one who works all the 24 hours or who works for 3 hours or 5 hours or 12 hours a day or a man who may not work at all? But he may be a whole-time director who is responsible from his bedroom for the day to day functions. How do you define it?

Shri Leuva: A whole-time director may be held to be a managing director.

Shri Morarka: A whole-time director will be covered by the definition of 'managing director'.

Shri Mazumdar: Section 269 provides for the appointment of managing or whole-time director. Both require Government approval.

Shri Morarka: The definition of 'managing director' says that he is a person exercising certain powers, by whatever name called. If a whole-time director exercises those functions why should he not be called the managing director?

Shri Mazumdar: Mr. Chandy says that there is a distinction between a whole-time director and a managing director. He distinguishes between carrying on the business aspect of the company's work and the exercise of directorial functions. He concedes that there are directorial functions as apart from managerial functions and that the whole-time director may only have directorial functions.

Shri Kanungo: Instead of going into theoretical discussions, will the witness tell us whether, and if so what, difficulties have been found by any company due to the obscurity of the definition of whole-time director?

Shri Mazumdar: The problem of definition has never been satisfactorily solved for the last 40 years. Nobody has been able to define satisfactorily the terms, managing agent, managing director or manager. As it was said at the last Select Committee, you cannot define an elephant but you can identify it; similarly you cannot define this but you can have the concept.

Shri Leuva: When we are trying to put restrictions under clause on the appointment of more than one of these categories of persons, the managing director, the managing agent, the secretary or the manager, it becomes necessary that we should define them.

Official of the Ministry: The term whole-time director is not included in this clause because a whole-time director is deemed to be included in the term 'managing director'. The new section only says that there shall not be two categories of these persons at the same time. You cannot have a whole-time director where you have got managing agents. You can have managing directors and whole-time directors so long as Government approves; but they cannot be otherwise appointed along with one of the same category.

Shri K. T. Chandy: It is not my purpose to suggest that whole-time directors should be exempt from any of the provisions which Government consider necessary to control the appointment or the remuneration or the duration of appointment. My purpose is this. In so far as we have these categories, there is always a doubt as to which sections apply to whom. If you say that a whole-time director should also appear in clause 59, as far as I am concerned, it solves the problem.

Shri A. C. Guha: The term 'managing director' would not include a 'whole-time' director. Some companies have a director-in-charge or a whole-time director in addition to a managing director.

Shri K. T. Chandy: Elsewhere in the Act we have used the words managing director or whole-time director. I say that there should be no ambiguity in the definition.

Chairman: Let the witness finish what he has to say; then, we can put questions.

Shri K. T. Chandy: My suggestion is this. Either we say that 'managing director' shall include 'whole-time director' or include in clause 59 'whole-time director' also in the category of 'managing director'. Otherwise, it is left hanging in the air.

Shri A. C. Guha: Some companies may have, for instance, several managers.....

Chairman: That is not the question here. There may be managers like the Sales Manager, Production Manager etc.; but they are not included here.

Shri K. T. Chandy: The next point I wish to make is this. The Sastri Committee rightly observes that certain types of work should not be treated as substantial; for example, the signing of cheques, signing share certificates etc.

Shri Avinashilingam Chettiar: Please refer to your memorandum also so that we may be able to follow.

Chairman: Now, the witness is making a reference to something stated in the Sastri Report. So, he is referring to that page.

Shri Avinashilingam Chettiar: It would be easy for us to follow if he mentions the page number of his memorandum.

Shri K. T. Chandy: I refer to page 14. You will find that the Sastri Committee report rightly says that certain types of work should be excluded. What that report says, we accept; but, will the court accept? In

other words, would it not be right to say that substantial powers shall not include signing of cheques or signing of share certificates? If something can be clarified so much the better. Having said that the criterion should be substantial powers, the Sastri Committee has excluded the signing of cheques and so on. I realise that you cannot enumerate everything. But even to the extent that some of the routine operations are enumerated, to that extent there will be less reason for a matter being agitated in a court of law.

Shri S. P. Sen Verma: In that case there may be another difficulty. If only certain things are mentioned that the rule *expressis verbis* will apply.

Shri K. T. Chandy: From our point of view if *ejusdem generis* applies....

Shri S. P. Sen Verma: No, no. If express mention is made of some categories it will mean the exclusion of the remaining ones.

Shri Nathwani: Not necessarily, if they are by way of illustration only.

Shri Kanungo: That is why I asked whether the witness can mention any case or judgment where this ambiguity has cropped up. Can the Association give us instances of cases they have come across where they have experienced any difficulty.

Shri K. T. Chandy: I do not think anybody has gone to the court of law to test this. The problem is always there because they have to go to a counsel for everything and it is a costly business. We would rather suggest clarity as far as possible in the definitions than going to the counsel every other day.

The most ideal thing would be to say that a managing director is a director who is in charge of a whole undertaking or substantially a wholl undertaking. Or you can say that in terms of another criterion. Ordinarily a director has to retire by rotation or annually. If anybody does not retire in that manner, he is a managing director. You can have both these aspects: duration and power. You can also use both of them as independent criteria.

Shri Kanungo: Am I to take it that the witnesss feels that the present term of 'substantial powers' is not clear enough?

Shri K. T. Chandy: Yes, Sir. It still begs the question and it leaves us in doubt.

Shri Morarka: Certain directors appointed by the Government in certain companies do not retire.

Shri K. T. Chandy: You can exclude them and say: "this shall not include Government directors."

The next point I want to take up is the much debated question of private and public companies and the conversion in certain circumstances of a private company into a public company—pages 3 and 5 of our memorandum. If a company is a private company, whether it is a subsidiary of a public company or not, it is exempted from certain limited number of provisions of the Act. Those exemptions are common to all types of private companies. There are certain other exemptions which are available only to private companies which are not subsidiaries of public companies. In other words, those which are subsidiaries of public companies do not have those benefits. My suggestion is that if you make a large number of companies, private companies, come within the second category, namely, if they are treated for all purposes as subsidiaries of public companies, then the problem at issue can be solved, because filing of documents, etc. follow. It is not necessary to convert them into public companies with all the consequences of changing the memorandum and articles of association and so on.

What is it that we are trying to achieve? It seems to me that we are trying to achieve greater publicity of the nature of operations of a large number of companies which figure substantially as important elements in the economy. Cannot that purpose be achieved in a slightly different way? You say that as soon as a shareholding in a private company reaches a certain stage, it becomes a public company and there is an alteration in its character. What we are really trying to do is this. Certain provisions and certain exemptions which are now available to private companies which are not subsidiaries of public companies shall not be available to them. I suggest that instead of enlarging the category of public companies by the operation of law, and thus enlarging the category of public companies which may be subsidiaries of private companies, the purpose can be achieved in the manner I suggested. We need not have the costly operation of conversion of memorandum and articles of association and so on. This is a concrete suggestion I make because the other is an indeterminate position. As per the Bill, overnight you become a public company, and then later on you may not be a public company. That is a rather difficult position. Whether it remains a private company or is deemed to become a public company, certain privileges shall not be allowed to it. This can be done without making such companies into public companies and compelling them to alter their memorandum, etc.

Shri Morarka: Your suggestion is that the definition of subsidiary company should be changed.

Shri K. T. Chandy: My suggestion following that would be this. If 25 per cent or more of the shares of any private company are held by another body corporate, whatever be the nature of the other body corporate, this company shall not have any other privileges which are enjoyed by companies which are not subsidiaries of public companies. In other words, they shall be treated as on a par with subsdiaries of public companies.

Shri Morarka: Does that in fact not mean that the definition of 'subsidiary company' will have to be changed?

Chairman: Let him go to the next point. We shall put questions later on.

Shri K. T. Chandy: Let me answer that point. Subsidiary company necessarily means dominating control by some other company. What are we trying to achieve? Not to classify them as subsidiaries of some other companies but to see that they come within a category which disentitles them to some privileges. The draftsman can easily say that as far as shareholding in any private company by another body corporate comes to 25 per cent or exceeds 25 per cent, the exemptions given under such and such sections shall no longer be available to them, instead of having this complicated system of deeming to have been converted into a public company, with consequent changes in the memorandum and articles of association and so on. That is what I suggest in the place of the present proposal.

Now I come to the question of head office and branch office. This also is a much-debated problem. I do not think I am adding anything new. But I must voice the concern of the members of my association. Let me say at the outset that we stand for exhaustive, honest and complete auditing. We do not want to take away any powers which the auditors feel they must have in order to make the audit honest, complete and accurate.

What is the present law and what is it that we are trying to achieve by this re-definition of the term "branch office"? At the moment, if a particular establishment is not to be audited in detail by the auditors appointed at the annual general meeting, the shareholders have the right to pass a

resolution that they shall not carry out that audit. But, at the same time, even the shareholders' rights are curtailed or subject to serious limitations, namely, the limitations that flow from the all-embracing responsibility of those statutory auditors to certify that the accounts are true and faithful. In other words, whatever arrangements the shareholders may make cannot but be the arrangements which finally receive the approval of the statutory auditors. Otherwise, it is impossible to resolve the conflict.

There are many companies in which, apart from all provisions for external auditing, it is necessary as a control operation to have internal auditing. If you study the structure of such companies which have an internal auditing machinery, you will find that the internal audit machinery is usually directly responsible to the board and does not come within the purview of any particular financial director. In other words, theirs is an independent arm of the board.

I do not want to mention any companies' names. There are companies which retail consumer articles all over the country; they are key-companies. I do not want this to be quoted. May I claim the privilege? They have depots all over the place, almost in every town. The accounts of those depots have to be kept accurately not merely because the auditors want them to be kept but the company directors must see that they are kept accurately. Otherwise the companies will go to the wall. The control operation may be such that in a branch office, which they consider the branch office, the daily depot returns will be coming in. Therefore, the central auditors today may consider it necessary to visit some of those depots as a sample test or as a random sample check. They will not go all over the 400 or 500 depots that exist throughout this country. But they will rely on the central accounts kept in a branch which is styled as a branch. In other words how the auditors operate is on the analysis of the control system in a given company. We do not want to take away that, but what we are now saying is that certain things shall be deemed to be branches. Almost everything will be a branch. Then the auditors are beginning to feel—"must they travel all over the place?" So, personally I would submit that as long as we can rely on the central statutory auditors to carry out their functions efficiently, what assistance they will seek from an agency inside or outside may be left to them rather than to create within the Act a definition of the term "branch office" with the necessity to have competent auditors qualified under the Act to audit, which means that the statutory auditors will have necessarily to travel instead of relying on the control system of the company. I am not saying that he is not free to travel but what really happens is that he travels to some depots and sees how the accounts are maintained and sees how the control system operates. On that basis he audits. A complete audit is done only in terms of a central control system. That is a difficulty which I would like to place before you. I do not want to offer any concrete suggestion because my friend Mr. Choksey who is to follow will probably be able to explain in greater detail what concrete suggestions are possible. But I want to place before you the existence of a problem. We do not want to take away from the auditors any powers that they feel they must have to make a complete audit but there are certain difficulties involved.

Many people would have drawn your attention to the fact that today there is no possibility for the Government to exempt the banks and insurance companies from the operation of this branch. That again is a problem. Either say specifically that even with regard to branches of banking and insurance companies the Government will have the power to exempt certain branches or alternatively take them out of this provision. I do not suggest that they

should be taken out of the audit provisions because to create a discrimination in favour of one group of people is to invite requests for other discriminations. So perhaps the best thing is to leave it to Government to say that even in the case of banking and insurance companies—I am assuming that the provisions are kept as they are—the Government should have the power to exempt branches of such institutions from the provisions of this type of audit.

May I refer to another question which must have been debated over and over again—the publication of chairman's speech. This has been referred to at page 13 of our memorandum. We are not against the publication of the entire proceedings but the problem really is whether the hon. gentlemen who attend the shareholders' meeting will always be satisfied about the report being correct and as giving adequate emphasis to their respective points of view. We have difficulties like that in many companies, when the minutes of the annual general meeting are written up and are signed by the chairman. The shareholders would have made a point urging certain matters and they would turn up at the registered office and look at the minutes and say, "why have you not quoted my speech *in extenso*?" So, those who write up the minutes say,—in other words, the directors say, "We have not quoted the chairman's speech either". In other words, there is always a certain amount of argument raised by the gentlemen who appear at the shareholders' meeting. Some of them have very many valid points and some of them are there merely to say something. The problem is really this. In the scheme of things as they are in this country, if the Chairman's speeches are not available to the general public, to that extent, ordinary students of economics in this country will be the poorer. We all look at the daily papers to see what somebody has said and I think it is a good thing to know what somebody has said. If you are thinking of protecting the shareholder, you may say that every shareholder shall be given a copy of the minutes of the annual general meeting. But as far as the general public is concerned, some companies at least will wonder whether they will go into the question of presentation of controversial portions of the proceedings of the meeting, because it is a question of what emphasis is to be given to the various points.

Shri Kanungo: Where would be the controversy once the minutes are adopted?

Shri K. T. Chandy: The thing that will get published in the papers would not be the minutes. The minutes will be drafted 7 or 10 days later. In the meantime, the Press reports it and we do not want to restrain the Press.

Shri Kanungo: I do not believe any newspaper publishes the Chairman's speech by itself.

Shri Naushir Bharucha: They publish the speeches of Ministers only.

Shri Kanungo: Politics is rather interesting.

Shri K. T. Chandy: If the contention is that the Chairman's speech may not be published at the expense of the company. . .

Chairman: That is not the intention.

Shri K. T. Chandy: Then, may I know what is the intention?

Shri D. L. Mazumdar: A summary or substance of the proceedings may be published.

Shri Kanungo: The witness says when you give a substance, there will be controversy as far as the participants are concerned.

Shri K. T. Chandy: Yes; it opens the way to a lot of difficulties. If you want, we are quite ready to send the copy of the minutes to the shareholders.

Then, I come to filing of resolutions with the registrar. Personally, I do not say what particular benefit can arise from this filing of the resolution of a Board on a contract in which one of the directors is interested. As far as I know, resolutions of the Board do not contain the terms of the contract as a part of the resolution. That would make the resolution bulky and make the minutes nothing but a ledger. In actual fact, the resolution will say, contract purporting to be entered into between the company and so and so was presented by the secretary of the company or placed on the Table. Director so and so stated that he was interested for this reason or that and he abstained from voting. The directors considered the contract and resolved and that it is approved and may be executed. How does it throw any more light? The purpose of filing with the registrar is to enable the members of the public to know the existence of something. The members of the company have every right to go to the registered office of the company and ask for inspection of the register of contracts of this kind. They have adequate notice of the coming into existence of such contracts by going to the office of the company.

No resolution of the Board will go into the terms of the contract and so, I do not see what is going to be achieved by filing it with the registrar. It will only create a certain amount of irritation that somebody wants to remove the privacy of the Board.

Then, I come to the registrar's powers to inspect accounts—clauses 64, 76 and 77—dealt with in page 16 and onwards in our memorandum. Here again, my brief submission is that the registrar has got adequate powers under section 234. This particular suggestion now embodied in these clauses was considered by the Sastri Committee and they did not consider it necessary to accept it. In fact, they categorically rejected it. When you want to give this power, there must be a need to use it. Government have got adequate powers to appoint inspectors and so on. Anyway, my brief submission is that the Sastri Committee considered this suggestion and did not accept it; Section 234 will be adequate. In fact, this power cannot be used unless there is an espionage system and even with the espionage, the man who is bent on defrauding will do it. I think the remedy should be sought through other methods than this.

Shri P. T. Leuva: You say that the Sastri Committee rejected this. But on page 91 of the report, they have suggested an amendment.

Chairman: You may reply to Mr. Leuva's question afterwards.

Shri K. T. Chandy: I would like to point out only one other point. It is suggested that a company must hold all its investments in its own name. It is also suggested that unless certain companies are wholly owned, certain provisions will follow. Sir, in considering whether a thing is wholly owned, would you consider the beneficial ownership or the formal legal title? In other words, it is usual in many companies to have some shares at least held by individuals merely for the purpose of enabling them to function as directors, and so on. You say, ".....if all the shares are held entirely by...". How do you say that all the shares are held entirely by one corporation, if there are a few nominal shareholders? What it really means is the beneficial ownership as different from the legal ownership. Sir, you may consider that problem. I have no particular solution other than suggesting that you may add the words 'beneficial ownership'.

Shri D. L. Mazumdar: How can you say, it is beneficial ownership?

Shri K. T. Chandy: Then, Sir, what will happen is this, that exemption will not have any practical value.

Shri D. L. Mazumdar: That does not create any problem, no practical difficulty.

Shri K. T. Chandy: If you say, that in a private company in India, the whole of its shares are held abroad by one or two corporations, it may be that all the shares are held abroad, but not by two corporations only, there may be a couple of individuals involved holding one share each, merely for the purpose of enabling them to function as directors of those companies.

Shri D. L. Mazumdar: If you mean to lay down qualification shares, that is a different matter.

Shri K. T. Chandy: The problem is there.

Shri K. R. P. Aiyangar (Official of the Ministry): Could we not say, jointly held by the company and the nominee director?

Shri K. T. Chandy: Your suggestion is that they may be jointly held.

Shri S. P. Sen Verma: In sub-section 2 of section 49 also, the word 'jointly' has been mentioned.

Shri K. T. Chandy: We are told by some of our members that they have a problem there.

Now, in reply to Mr. Leuva's question, I would like to draw his attention to page 76 of Sastri Committee's report. We feel that the registrar's powers should be adequate but adequate for the function you expect him to perform, and not loading him with functions which he cannot carry out.

Shri D. L. Mazumdar: That depends on his capacity to carry on.

Shri K. T. Chandy: He has got adequate powers under section 234. There is no need to confer on him more powers, but if more powers are to be conferred on him, he must have the channels of information on which he can act. I do not know what channel of information can he have other than what emerges from the records that come before him?

Shri Naushir Bharucha: Page 5, clause 15 which inserts a new section 43A. Your object is that notwithstanding the conversion of private company into a public company, Articles should not be changed. Don't you think there might be conflict between the Articles of the company and the factual status of the company?

Shri K. T. Chandy: No.

Shri Naushir Bharucha: May I take it that you do not want any other formalities to be gone through?

Shri K. T. Chandy: If a particular private company is treated on par with a private company that is a subsidiary of a public company, no changes in its Articles are called for because of that equation. What I am trying to say is this, that it remains a private company. There is no need for changing its Memorandum and Articles. All that it means is that it shall not have those privileges which it hitherto enjoyed as a private company not being a subsidiary of the public company.

Shri K. R. P. Aiyangar (Official of the Ministry): How is the public to know that it is no longer a private company? Would you like it to continue in the name of a private company, in which case public will be misled that no information can be had?

Shri K. T. Chandy: There are today many private companies which are subsidiaries of public companies. People do not know about them. But the fact that they are treated as subsidiaries of public companies means that their accounts are attached to those of the public companies.

Shri Naushir Bharucha: Page 7 of your Memorandum, where you refer to see-saw between private and public companies, you say it will give rise to practical difficulties. Would it not do if it were like this: if on any particular date in a year the company becomes a deemed public company, for that financial year it remains so. Will that eliminate see-sawing?

Shri K. T. Chandy: Where is the need for it? What are we trying to achieve? If the attempt is to see that they shall not have the privileges which they otherwise have in terms of exemption, let us make it clear then there is no need for all these things. The fact is that they are no longer entitled to these privileges. Let us insist that the company should advertise in the press at its own expense. It is much cheaper than to redraft the memorandum and articles.

Shri Naushir Bharucha: Page 7. Are you satisfied with this 25 per cent limit? Or, would you like a different basis to be adopted? Would you like to increase this percentage? Or, would you like the basis adopted in section 23-A of the Income-tax Act?

Shri K. T. Chandy: That is a new idea. I have not thought of that suggestion. I think there is considerable merit in what the hon. Member said. I do not know how we arrived at this 25 per cent at all. All that it means is that substantial corporate shareholding in any company has taken away from this company some of its privileges.

Shri Naushir Bharucha: That means 25 per cent is substantial. Now, I quite appreciate what you have said on page 8 regarding the responsibility thrown on companies with regard to giving duplicate share certificates. We have heard quite a lot from the *bona fide* shareholders. Would it do, instead of putting the responsibility on the company to collect the satisfactory proof, if you say that an affidavit coupled with an advertisement and a bond will suffice?

Shri K. T. Chandy: That will be quite adequate. There are many shareholders whose holdings are relatively small. To call upon them to incur huge expenditure with regard to shares worth Rs. 500/- or Rs. 250/- is not desirable...

Shri Naushir Bharucha: Could we also prescribe that the advertisement expenditure should be limited to 10 per cent after face value of shares or Rs. 300/- whichever is less?

Shri K. T. Chandy: We are not prepared to do that for the simple reason that the Times of India will demand from us Rs. 250/-.

Shri Naushir Bharucha: You see what happens. In one case, the company insists advertisements being given in seven different papers....

Shri K. T. Chandy: Quite right. I think one paper would be enough.

Shri Naushir Bharucha: Therefore, some sort of limit to the expenditure should be prescribed. Shall we say 10 per cent or Rs. 300/- whichever is less?

Shri K. T. Chandy: I think that will not do. The arithmetical calculation is something for the company law administration to work out. If the onus is upon us to prove that the certificate is lost, it is difficult for us to discharge.

Then page 12, clause 53. Here you say that it is not clear what objective is sought to be achieved by requiring the resolutions of the board sanctioning such contracts to be filed with the Registrar of Companies. Just now you have said that there is not much in the resolution. The point is this: Whenever a resolution is filed with the Registrar, he can call for more explanation if he feels that there is something wrong with a particular contract. According to you the shareholders have a right to inspect the Register of Contracts. Does it mean that the shareholder has to make a pilgrimage every time to the Registrar's office?

Shri K. T. Chandy: First of all I do not know how many companies there are. Probably Mr. Mazumdar will be able to give the statistics. There are so many in Bombay, Calcutta and Madras. Every week there

would be some contract in which somebody may be interested. Only in certain companies you get professional managers coming up the line and taking position as full-time directors. In all other companies you get non-professional directors. You will find that their relationship covers a large economic area or activity and therefore they have so many contracts in which so many of them are interested.

Shri Naushir Bharucha: You are complaining about the quantity of work.

Shri K. T. Chandy: You can say that by giving it to the Registrar he is in a position to start an inquiry. What will he inquire into? Is he entitled to see every contract?

Shri Easwara Iyer: Where he cannot do that, the Registrar can report to the Central Government to set aside a particular contract under section 402 of the Companies Act. That section says:

> "Without prejudice to the generality of the powers of the Court under section 397 or 398, any order under either section may provide for—
>
> * * * *
>
> (d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:—
>
> (i) the managing director,
>
> (ii) any other director,
>
> (iii) the managing agent,
>
> (iv) the secretaries and treasurers, and
>
> (v) the manager...."

Chairman: They are the powers of the court.

Shri Easwara Iyer: The Central Government can apply to the Court and the Registrar can report to the Central Government.

Chairman: The question is whether the Registrar can move the court.

Shri Naushir Bharucha: Coming to page 13, one of the reasons you advance why you do not like it to be filed with the Registrar is that the resolutions will contain details regarding terms and conditions and other essential and confidential particulars which will be taken advantage of by the company's competitors. On the one hand you say that they will not give much information. On the other hand you say that they will give away too much of information.

Shri K. T. Chandy: It all depends how a particular Board will approach the problem.

Shri Naushir Bharucha: If some advantage is gained by your competitors, you can also gain the same advantage.

Shri K. T. Chandy: If the proposition is embodied in the Act, naturally directors will be so cautious to world the resolution in such a manner that any information which is capable of giving an advantage to the rival will be withheld from the resolution. All I am saying is that the filing of the resolution does not by itself start an enquiry and even if the enquiry is to be at all satisfactory, the enquiry has to be protracted.

Shri Easwara Iyer: That is exactly what I was saying. The filing of the resolution enables the Registrar to report to the Government under section 402 so that the contract can be cancelled.

Shri Naushir Bharucha: Now I come to clause 58 regarding the publication of the Chairman's speech. The only obligation on you is to give a fair summary of the proceedings to the shareholders.

Shri K. T. Chandy: We are quite happy to send summaries for shareholders; but, Sir, our shareholders will rightly ask 'can you send us the speech made by Chairman at the last

annual general meeting, since I was not able to attend! That is publication if I do. Publication can take place in many ways.

Shri Naushir Bharucha: I can understand the meaning attached 'publication' in the Penal Code. On this point, your duty to this particular clause is only limited to publishing a fair summary of the proceedings.

Shri K. T. Chandy: If you say in the Press, I can understand; then half the problem will be solved.

Shri D. L. Mazumdar: What other forms of publication do you contemplate?

Shri K. T. Chandy: It is usual for Chairman's speech to be printed in advance as a pamphlet, for presentation as Chairman does not actually make an *extempore* speech. He weighs every word of what he has to say to the shareholders, so that somebody may not say that the profits are going to be high or low. If you say we cannot publish it in the Press, that I can understand.

Shri Naushir Bharucha: Please come to page 14, Clause 59.

With reference to this you have suggested that the criterian for distinguishing is the exercise of discretion in the disposal of assets, of manpower of the Company and at what level can you draw a line between Board's function and the executive function. You say that the Board is responsible for the totality of functions collectively and you want the Managing Director to be in terms of one in charge of whole establishment. I want you to be brief on this point. Could you suggest how is it possible for anybody to draw a line between the two—discretion in disposal of assets and executive functions. It is humanly impossible to define that because both are....

Shri K. T. Chandy: The purpose of locating a particular class of Director is to attach certain special provisions to that class of Director. Is it not so? Why do you want to locate a particular class of Director—because we want to have special provisions attached to that class of Director. What are the special provisions?—the manner in which he may be appointed, the type of confirmation that may be required, the duration for which he may be appointed, the terms and conditions of appointment, the number of companies of which he may be the Director. If I understand the law, these are the things we want. These are the special points on which we want to have special provisions attached to special categories of Directors. Now Sir, if you say that on all these, for every Director, we have to come to Government, we shall not solve the problem. Why should two Managing Directors get 5%? I would say that 5% should be limited to one man. In fact it is better to narrow down the special categories and see that for every category we come to Government. We are not against coming to Government, if the Government want it.

Shri Naushir Bharucha: Having regard to the complexities of industrial operations, it is humanly impossible to do it. Your own criterion will not stand in actual practice.

Shri K. T. Chandy: We come to Government because we have to go to Government under the other provisions now, under the provisions of the Bill, as amended now.

Shri Naushir Bharucha: As Chairman observed, in practice by and large there will be border cases; everywhere you cannot help it.

Shri K. T. Chandy: Where a person is Managing Director or wholetime Director or no matter what type of Director he is, we have to come to Government after the present amendment of the Act. If there is a change in the remuneration, even if the change is according to established pattern, we have to come to Government.

Shri D. L. Mazumdar: If you reduce the remuneration, you don't have to come to Government.

Shri K. T. Chandy: Thank you very much for the suggestion.

Shri Naushir Bharucha: Page 15—Clause 62; I want your views on the depreciation point. Are you satisfied with the criterion employed in the Act—that the basis for calculating depreciation should be the income-tax basis *plus* the multiple shift or do you think if that is done then in the case of new companies or companies with expansion programmes it may be difficult to declare the dividend for some years to come?

Shri K. T. Chandy: I would rather leave this problem to my colleague who is to follow as the head of Chartered Accountants Association. But personally, Sir, I would say this. If we have to work out another category of depreciation we are only complicating matters. There is one type of depreciation recognised under the Income-tax Act. Well, it is not the ideal. But you don't try to reach the ideal in the Companies Act. If something is good enough for taxation, it should be good enough for other purposes also. If it is not ideal, then the first place where it should be changed is the taxation law rather than here.

Shri Naushir Bharucha: Clause 64—You are objecting to the proposal to empower the Registrar to inspect the Company's Books of Account. You would not wish the Registrar to have the powers to look into the Books of Account. As you reject outright the provision for the cursory inspection of the Books of Accounts by the Registrar.

Shri K. T. Chandy: As the amending Bill stands, is there anything to indicate the lines on which the Registrar could exercise his discretion? He does not have to give any reason as to why he wants the books of accounts. He does not have to hear the Company's views on this matter. If you want to arm him with certain powers of investigation—quasi-judicial power, he must faunction in all respects in that way. He must give the reason to the Company as to why he wants to investigate the books of Account. I am not suggesting that he will abuse the power; but in terms of our constitution we must certainly see that no particular person will try to abuse his power. What is the reason for the inspection of Books of Account—he must give this to the Company.

Shri Naushir Bharucha: Page 19—Clause 75 refers to the audit of the accounts of the branches by qualified Branch Auditors other than the Company's Auditor. It may be that the Company's Accounts may not be properly maintained and the internal audit system may not be also satisfactory. Why should there not be proper audit of branches? Would you be satisfied if auditors are required to say that they are satisfied with audit of branches.

Shri K. T. Chandy: Yes, if the Central Government will say that. In other words, it is really for the Auditors themselves to satisfy..... that the assistance they received whether from internal auditors or outside auditors is satisfactory from their point of view. If they are satisfied surely that is good enough, because they are guided and controlled by accountants of their own.

Shri Naushir Bharucha: So you do not want Government to be vested with these powers?

Shri K. T. Chandy: Leave the profession to conduct their own affairs. If the Government is dissatisfied they can intervene.

Shri Naushir Bharucha: Page 20, Clause 76: The Registrar can issue a written order calling for books of accounts if the company fails to furnish an explanation. Why should the

Registrar not have these powers instead of his going to the court every time?

Shri K. T. Chandy: The general feeling on which we have made our submission is this. It is better that in all matters concerning an enquiry into the affairs of a citizen either the decision is taken through the intervention of a court or at the very highest level. That is really the point. We would say that under section 234 it is possible for the Registrar to go to court and say that all these should be called for. If the Government are satisfied at the highest level that there is a case for a detailed enquiry into the operations of a particular company, you have something like the Vivian Bose Commission. Nothing prevents these steps being taken. But let not officialdom at a certain level be conferred with powers which create difficulties. Let us have faith in our courts. Surely, nothing prevents the Registrar from going to the courts.

Shri Naushir Bharucha: The Registrar will have time for nothing except for going to courts.

Shri K. T. Chandy: If I am dissatisfied with the Registrar I will go to the court. The law will take its course if the executive and the citizens do not get on well. The fact that we go to court is either because I have misbehaved or you are arbitrary. These are inherent in a certain situation. By all means improve the relations between the executive and the citizen.

Shri Naushir Bharucha: Page 23, clause 103, dealing with political contributions: You say that it might embarrass companies if they disclose in their profit and loss account the name of each political party to which donations are made. Your object is to permit companies to pay simultaneously to all rival political parties so that whichever party loses the company always wins. Why make any political contributions at all?

Shri K. T. Chandy: As far as I am concerned, my company does not—most companies do not. Take the case of a big company in the U.K. whose name I would not disclose. The Labour Party placed on their formal election manifesto the nationalisation of that particular industry. Now that particular company which has adominating role in that particular industry naturally had a right to take every step to protect their continued existence. Its very existence became an open political issue at the instance of one political party. They incurred expenditure on advertisement and the matter went to the court as to whether that expenditure was a legitimate one. The Highest court of England conceded that it was a legitimate one. The point I am making is that in what circumstances a company feels that its future is at stake is for that company to decide. What the future is going to bring nobody seems to be very clear. But some people are worried. Surely, if are worried, why should we prevent them from making their contribution. It is possible that the directors may want to contribute to the ruling party, but it is equally possible that the employees represented by another trade union would say they are going to have a struggle with you, because you have contributed that way, unless you contribute in equal proportion to their side.

Shri Naushir Bharucha: Page 24, clause 128. You rightly say that in case of technical directors and others their remuneration should not be lumped together for the purpose of calculating the 10 per cent. Would you be satisfied if power is vested in the Government to give exemption in the case of *bona fide* technical personnel?

Shri K. T. Chandy: We trust the Government all right. I have no personal explanation to offer.

Shri Nityanand Kanungo: Is not section 314 adequate?

Shri Naushir Bharucha: Even assuming it is not adequate, surely you can approach Government and ask for special sanction.

Shri K. T. Chandy: We have no objection.

Shri Naushir Bharucha: Pages 26-27: Inter-company investment.

Shri K. T. Chandy: I am sorry to plead my complete ignorance of the managing agency system. The member of the Council who was to have accompanied me, I understand, has already given evidence. Please leave me out of this question.

Shri Naushir Bharucha: Page 29: At present the mode of valuation is not required to be shown. You say that the requirement that it will have to be shown will raise considerable difficulties. Unless you mention the basis of your valuation what meaning can one attach to the valuation?

Shri K. T. Chandy: I would request the hon. Member to exclude me from the responsibility of answering this.

Shri Avinashilingam Chettiar: What is the constitution of your Association?

Shri Gursahani: This Association was formed about eighteen months ago with the object of promoting the study of company law amongst company lawyers, chartered accountants and all those who were interested in the growth of companies and their administration in this country. We do not claim a very large membership so far. We have about 50, some of which are corporations, others are chartered accountants and still others are company lawyers. We have had some activity in promotmg the study of company law in the shape of arranging seminars, lectures and study groups and we also publish a Quarterly called *Company Law Review* which discusses company law not only in India but in Commonwealth countries. Perhaps, I should have brought our latest issue because it may be of some interest. In that issue we have studied the broad aspects of company law in the Middle-Eastern countries and countries of the Far East and so on. Our object is to study Company Law objectively and to assist in promoting a study of company Law.

Shri K. T. Chandy: And that with the help of all the three elements, namely auditors, professional lawyers and those in companies—in other words, to bring them all together into one body so that they can study these problems.

Shri T. S. A. Chettiar: Have you gone through the question as to whether there have been further evasions after the coming into force of the 1956 Act? Has a study been made of this problem?

Shri K. T. Chandy: No. As my colleague has said just now, this Association was the result of the enthusiasm of three different sets of people to come together. And it is only eighteen months old. During this short period what they have done is to start with the study of the principles. They have not been able to get down to issuing a questionnaire and studying to what extent there have been evasions, etc., and we do not know as to what will be the response; I do not think there will be much response.

Chairman: Provided you make one.

Shri T. S. A. Chettiar: You have not given any suggestions as to how shareholders' interests can be furthered.

Shri K. T. Chandy: Shareholders' interests are furthered by good management. And good management means not merely good internally but coupled with the ability to explain to the shareholders how it

functions so that they can carry the shareholders with them in what they do. Now, the Company Law—I do not want to lecture—provides for adequate opportunities to place all the relevant information. At the disposal of the shareholders, I would suggest that some companies should attempt, as early as possible, not only annual accounts but half-yearly accounts. That is where they can take care of the interests of shareholders.

Shri T. S. A. Chettiar: You have not given any amendment with a view to achieving that.

Shri K. T. Chandy: May I say that from that you must not conclude that we do not have the shareholders' interests at heart.

Shri T. S. A. Chettiar: We do not conclude anything; I am just making an observation.

Let me come to clause 15. You have stated, rightly, that with the change of ownership of shares the status of the companies may change. Do you know that in the Income-tax Act there is section 20A in which some companies have been styled as public companies on the same basis of the holding of shares? How does it work in that Act?

Shri K. T. Chandy: I beg to differ in that conclusion. The purpose of the taxation law is to determine what tax we shall pay, and not to determine whether there should be change in our internal constitution. It is merely a method of ascertaining how much tax we should pay; it cannot lead to any internal change.

Coming to the distinction between private and public companies as used in the tax law and the distinction between private and public companies as used in the Company Law, may I suggest that they are not on a par. In one case it is a question of how many shareholders control a company economically, for the purpose of deciding whether it should be given special tax exemptions or not. The two are not on a par. The objectives are different.

Shri T. S. A. Chettiar: We entirely agree. But on this matter about holding of shares, how does it affect there, that was what I was asking.

Please refer to page 8 of your memorandum, clause 24. You have said that a company which accepts a certain evidence as satisfactory proof of loss should be protected from punishment. What would you suggest as a 'satisfactory proof'?

Shri K. T. Chandy: May I suggest this? If the onus is upon us to be satisfied in our own interests, in order to be secure we would ask for what amounts to be an impossibility. My submission is that the law itself may say what 'satisfactory proof' is.

Shri T. S. A. Chettiar: What would you like the law to make?

Shri K. T. Chandy: We ask, naturally, for an affidavit, a declaration by the man—in other words, a sort of statement by the man that he has in fact lost or misplaced it, or it has been destroyed, whatever it may be. He has to make a positive statement by which he should stand for all time. He has to state it in writing. Then we say: advertise in a paper. We do not say seven or eight papers. We merely say one paper. Then, in order to help the shareholders we even do this, that is, we club together four or five and say "the following shareholders have notified that their shares have been lost or misplaced or they have been destroyed", so that the expenses are shared. Because, any single newspaper in any big city charges rather an exorbitant amount for publications of this kind. Apart from a declaration which is indispensable, in my view it is equally indispensable that there should be public notice, whatever be the expenses involved. It cannot be helped. And the third point is this. Public notice, we know, cannot be a complete

notce. So, as far as the company is concerned, there must be some indemnity. The question is, indemnity by whom? It is customary to ask for an indemnity guaranteed by two brokers recognised by the stock exchange. Now, there are many upcountry shareholders who do not know any brokers: It is also customary to ask for a bond or indemnity guaranteed by a bank. In many places banks hesitate to do that unless there is a standing account with them, and a substantial one. What I say is, when it comes to the question of bond we find that many shareholders have difficulties. But we have invariably insisted on some sort of a bond, some responsibility guaranteed by third parties.

To my mind, therefore, these are the three elements, namely, a positive declaration by the man;—should it be on oath? Perhaps it may be necessary;—secondly, there should be public notice; and thirdly, some indemnity given to the company guaranteed by third parties—whether they are substanital financially or not, depends on the circumstances of the case.

Chairman: When you say "we" do you mean your Association or Lever Brothers? We are not able to follow.

Shri K. T. Chandy: Our members feel like this. There are three elements in this.

Shri T. S. A. Chettiar: They cannot speak for Lever Brothers as "we". I would refer you now to page 11, clause 60, where you have stated:

> "The Association feels that if perquisites received by Managerial personnel are to be included within the meaning of the word 'remuneration' they should be confined only to such perquisites as are required to be included in the total income for income-tax purposes.".

Have you any idea as to what is included for income-tax purposes?

Shri K. T. Chandy: I am not much of a student of that either. All I know is that if that is in the tax, that is in the tax. Personally, I am quite happy, and I think my colleagues are also happy to see that whatever is included for purposes of income-tax must obviously be considered as remuneration. As to what are not included, I do not quite know.

Shri T. S. A. Chettiar: You have stated that:

> "The Association in particular feels that the pension, annuity, gratuity or contribution to the provident fund are all paid in connection with past services and ought not to be equated with the current year's profits. Such items should, in any case, be excluded from the meaning of the word 'remuneration'.

Are you sure that these are not included for income-tax purposes?

Shri K. T. Chandy: No, but, for income-tax purposes, we certainly have to disclose what the employers are contributing towards these things. If there is any pension for which they make provisions, that has got to be disclosed, but it is not taxed in the year. There are certain exemptions.

Shri T. S. A. Chettiar: You are referring to things included for income-tax purposes, without knowing what those things are. And you say that perquisites up to a maximum of Rs. 5000 per annum per individual should be excluded from the meaning of the word 'remuneration' for purposes of section 198. What is it that you want to say here?

Shri K. T. Chandy: I would say this. Take a pension which is worked out with the Life Insurance Corporation. That is a scheme that I know of. What happens is that every month, a certain amount is contributed by the employee and an equal amount by the employer as a premium paid to the LIC, which eventually matures at the age of 55 or 60 or

whatever age is nominated, and according to the amount then accumulated, it comes off as an annuity which you call a pension. I do not know how the Company Law Administration want to value this particular benefit. That is all. All that we are saying is that as we go along, we are paying.

Shri T. S. A. Chettiar: If you do not know the details, please find them out. Now, clause 68 lays down that auditors' report including any separate, special or supplementary report is required to be attached to the balance-sheet and profit and loss account. You are against that?

Shri K. T. Chandy: No. We have mentioned that in the context of the likely conflicts—this is what we were told by our chartered accountant friends—between an auditor for a branch and the central auditor. They feel embarrassed about that. If there is a dispute between them as to how the thing should be done, each will make his own report. That is the context that we are thinking of. Again, it is a matter on which it is a question of streamlining the relationship between the central auditor and whoever does the audit of any independent or separate establishment under it.

Shri T. S. A. Chettiar: We are not referring to streamlining. We want to have your views on this clause which says that any special or separate or supplementary reports should also be attached to the balance-sheet and profit and loss accounts.

Shri K. T. Chandy: Lest I should be misunderstood, may I say this that I was relying on my colleague Mr Choksi to answer these questions? Anyway, since the point has been raised, all that I would say is this. If there is any dispute between two auditors, let them settle the matter before they make the final auditors' report. Otherwise, there will be multiplicity of reports coming before the general body; and instead of adding to the clarity, they will add to the confusion. That is one point.

The second point is this. In the course of audit, auditors refer to various matters and bring various matters to the notice of the directors. But they do not necessarily find their place in the final report. They write various letters to the directors. For example, they may say, 'Have you passed a resolution confirming such and such expenditure, because in our view that is necessary?'. It may be that we have not passed; then, naturally, as soon as we get the letter from the auditors saying that we have not passed the resolution but that we ought to pass the resolution, we pass the resolution. In other words, there are many communications between the auditors and the company directors, not all of which should be understood to be supplementary reports.

It was only by way of abundant caution that this was put in. It is not that we are against anything in the nature of a fundamental report. Naturally, if the auditors feel that the matter is worth bringing to the notice of the shareholders, we should not stand in the way; we quite agree to that.

Shri T. S. A. Chettiar: Now, clause 103 is more interesting. Are you aware that there are some companies which give to all parties?

Shri K. T. Chandy: I am afraid I do not know; I cannot speak for the different companies. We have not issued any questionnaire on this Whether somebody will have no conscience at all will give to all parties, and whether that will be in the interests of his security is more than I can say.

Shri T. S. A. Chettiar: Whoever gives will give.

Shri Kanungo: Anyway, we had it from other witnesses that in other countries, some companies to contribute to all parties.

Shri Naushir Bharucha: That is because there is the possibility of the Opposition coming to power there, but here there is no such possibility.

Shri Bisht: With regard to clause 59 of the amending Bill, you have made certain observations at page 14 of your memorandum. I do not want to go into any academic discussion of the matter, but I would like to know whether the clause, as it is worded, prohibits any company from engaging or employing more than one category of managing director, managing agent etc. Suppose, a company is a multi-purpose company, and it has a textile mill as one branch, an engineering unit as another branch, a cement mill as a third branch and so on, would that not work any hardship to that company?

Shri K. T. Chandy: That is certainly the view of some of our members. That is to say, where the activity of a company covers different fields, the kind of structure that is required for the control of each will be determined by the circumstances. To say that there shall be only one category may not be the correct way of dealing with it. But I am a firm believer in professional management coming and functioning as directors, because I believe that is the way the future of the country will lie. From that point of view, I would say that if you want only one type of director or managing director, you may say so. But my submission is that include the category of whole-time directors.

Shri Bisht: Do you agree that it would be necessary to make some slight changes here, so as to cover the cases of those multipurpose companies? For instance, take the case of the British India Corporation in Kanpur; it has textile mills, leather factories and also enginering branches. How is it possible for such a company to have only a managing director everywhere?

Shri K. T. Chandy: I entirely agree with the hon. Member. To say that there should be only one class of management would be to suggest that the same type of management would suit different types of activities, all of which may be embarrassed within one company's operation. All that you may say then is that if more than one category is required, the case should be made out to the Company Law Administration, and they should be satisfied.

Shri Ajit Singh Sarhadi: In regard to clause 63, at page 16 of your memorandum, you have opposed the locking-up of the dividend amounts in the scheduled bank. This amendment is really to safeguard the dividends. What check or remedy do you suggest in the alternative, to the possibility of a dividend warrant being dishonoured?

Shri K. T. Chandy: If we have declared a dividend, obviously, we have undertaken the liability to pay, and we have made an appropriation in the profit and loss appropriation account. So, obviously, the money has been found. The problem is to have it in liquid form, so that the debt can be met.

The suggestion in the Bill is that we immediately deposit in terms of liquid cash in a separate account, so that there will be no delay in the payment, and there will be no default in the payment of the dividend warrant. I have no doubt that all companies with sufficient liquidity will have no problem in complying with this. But there are companies whose liquidity at any given moment may not be as high, and they may be thinking that by the time they are ready with the dividend warrants and so on, they will find the liquid cash. I am not denying the fact that within a certain time the dividend must be paid out. By all means, let us say that within period of 3 months all dividends shall be paid—all the dividend warrants issued. The difficulty does not apply to big companies with sufficient liquidity; it does apply to smaller companies who have so contrived that the time they will take to issue the dividend warrant and so

on will be the time during which they will find liquid cash. If you say they must immediately deposit it in a separate account and ear-mark it in a Scheduled Bank they may not be able to do it.

Shri Ajit Singh Sarhadi: You do not accept the possibility of the dividend warrant being dishonoured. Have you got some suggestion or some check or remedy for that? Do you agree that there should be a certain penalty in case they dishonour the dividend warrants?

Shri K. T. Chandy: Certainly; by all means.

Shri Ajit Singh Sarhadi: Have you got any check or remedy?

Shri K. T. Chandy: The only suggestion I have is this. It shall be an obligation to pay out completely within a certain period of time. The paying out should be in cash. Then, in the subsequent section it is said that cash may mean a dividend warrant. In other words, a dividend warrant must be cashable. That is what it means. Therefore, what we have to see is that if the dividend warrant is dishonoured, what is to be done. If the dividend warrant is dishonoured it is because the company is in a bad way. There is no doubt about it. Otherwise, why should they do not pay? When in their profit and loss account and appropriation account they have appropriated a certain amount for the payment of dividend, they put it in the reserve as you now require to be put in an account. It appears in the reserve column of the balance sheet. That comes before the Annual General Meeting. The resolution is passed confirming this. They must be obviously making certain calculations about the liquidity of the company at that given moment. That is the crux of the matter. If they are contemplating the liquidity to arise after the declaration of the dividend, during the time that they are getting ready to issue the dividend warrant, they may be making a miscalculation. But if dividend warrant is dishonoured although it is issued within the prescribed time, it means that the company's liquidity is in a bad way. What is the solution?

Is it to impose greater penalty on a company which is already in a bad way? No. Even if you insist that the money should be found earlier, what will happen? Perhaps, then, there will be no declaration of a dividend. There will be no declaration of dividend unless the company is a dead certain about its liquidity.

Shri D. L. Mazumdar: The question is, can they be induced to plan for adequate liquidity through this measure?

Shri K. T. Chandy: I will wholeheartedly agree with Mr. Mazumdar. But we have to reckon with the reality in this country's state of affairs. There are so many small companies.....

Shri D. L. Mazumdar: It will be only for the transition period. But where you know it from the start there will be planning in advance.

Shri K. T. Chandy: We are certainly for a planned declaration of dividend. We are certainly for an enlightened management that ensure the liquidity before it makes a declaration. Be that as it may, we must also not forget that today the management of all the companies may not be so placed.

Shri D. L. Mazumdar: It is only a question of the period of transition.

Shri Tangamani: Under section 8, the Central Government has the power to declare an establishment not to be a branch office. When it is so declared, then, the branch office of the company will not be treated as a branch office for all or any of the purposes of the Act. When that is so, why do you still object to the amendment that is sought to be brought in by clause 2?

Shri K. T. Chandy: In my initial submission I have explained this. First of all, if the clause were to remain as such, there should be exemptions. The exemption given by government

should also be extended to banks and insurance companies because they have a large number of branches. That is the first proposition.

Shri Tangamani: If the banks and insurance companies are excluded, have you no objection?

Shri K. T. Chandy: It is much better to leave it to the professional auditors, who are appointed as All India Auditors, to decide what amount of assistance they want for auditing all the outlying offices. It depends upon the control system in a given company. Instead of insisting upon competent auditors going everywhere, it would be much better to leave it to them to decide whether they are satisfied.

Shri Tangamani: With reference to clause 15, you say that what is sought to be achieved by making a private company into a public company is greater publicity. Is it the view of your organisation that the difference between a private company and a public company in the conditions existing today in our country should be narrowed down or even abolished?

Shri K. T. Chandy: There are certain distinctions between a private company and a public company which are inherent in the character of the two. It is not proposed to do away with these. What is proposed is that because of these differences there shall not be a differentiation in treatment between these companies in regard to most of the provisions. That is what it means, because, a private company, by the very nature of its definition, cannot go to the public for funds. It is not proposed that the distinction should be taken away. All that it means is that because of the classification they are not to be treated as dissimilar for all purposes. Today they are treated as dissimilar for certain purposes. You narrow down those purposes so that in more respects they are alike. That is the whole purpose.

Shri Tangamani: Regarding the publication of the Chairman's speech some of the witnesses who came before you stated that it is of interest to the shareholders. But you now say that it is of interest to the public at large and to Government and so you want them to be published.

Shri K. T. Chandy: I think all our universities will benefit; all students of economics will benefit if there is a much more exhaustive, factual and accurate publication of these speeches. I think it is source material. These are matters of interest not only to the present shareholder but to the potential shareholder also.

Shri Tangamani: Clause 53 relates to the filing with the Registrar of the contracts entered into between the company and the managing director or any of his relations. You say that if such a filing is insisted upon, it will affect the company prejudicially. How will it affect it prejudicially unless the contract entered into is of a questionable nature.

Shri K. T. Chandy: I do not know what is the questionable nature. It all depends upon each case. If it is intended to help the shareholder—I may have overlooked Shri Bharucha's point—he can go to the Registrar's office. If the provision is intended to help the Government as represented by the Registrar or if he wants to know the existence of something, he can follow a line of action. I thought he would not be in a position to follow up these things. But if the Government feels that it must know every contract in which every director is interested what will happen?

Shri Tangamani: You had already given your views about the contribution to political parties—clause 103. Some of the previous witnesses have stated that they would like this contribution to be made from out of the capital as capital and not as revenue expenditure. Your objection is that

you do not want the names of the political parties to be revealed.

Shri K. T. Chandy: I think that instead of dragging companies too much into politics, it would be much better to leave them out and if they chose to make contributions to political parties, let them do so.

Shri Feroze Gandhi: Why do they pay?

Shri K. T. Chandy: I do not know why. But as far as I can see from papers they pay political parties for various reasons. The political party may have a group of people working or engaged in some constructive work and a company may earmark its funds for that purpose. A new political party is born which says that it stands against nationalisation. It may be that a number of people who feel the threat of nationalisation, may say that they have every right to protect themselves against nationalisation and they may contribute. Any number of reasons may be given.

Shri Feroze Gandhi: Do companies pay on their own or are they approached by people?

Shri K. T. Chandy: I do not speak on matters which are not in my personal knowledge.

Shri Feroze Gandhi: You refer to the election manifesto. But even before the manifesto is published, how do they pay?

Shri K. T. Chandy: Since it is not in my personal knowledge, I cannot depend upon heresay.

Shri Feroze Gandhi: If it is not in your personal knowledge, it may be in the knowledge of your association.

Shri K. T. Chandy: We do meet people and discuss and people understand each other's point of view. If it is felt that the other man engaged in politics is likely to present a point of view with which you agree and if he comes and stands for election and he is personally known to you, you may contribute something. That is what I would personally say.

Shri Feroze Gandhi: Do you benefit by this contribution?

Shri K. T. Chandy: There cannot be any direct benefit. It may be a benefit that they believe will accrue from the creation of a congenial economic and political atmosphere.

Shri Tangamani: You stated earlier that section 293 laid down a very good principle. That also refers to Rs. 25,000 or five per cent. of the average net profit to be the contribution to political parties and other charitable purposes. Would you like this to remain as it is or would you like it to be altered, increased or decreased?

Shri K. T. Chandy: We have not applied our minds to that. I would personally say that these things are there. Nobody has asked for more and to my knowledge nobody has asked for anything less.

Shri Easwara Iyer: As an association engaged in academic study of the company law, I would like your enlightenment on clause 11, page 5 of your memorandum. You say that there is some ambiguity in the drafting. You fear that when the approval of the Government is to be given for any alteration, it may not relate back to the date of the alteration.

Shri K. T. Chandy: When we draft these things, we try to find a common measure of agreement among the different elements. As a lawyer one may say something that inherent in the situation is relating back to the date upon which something took place. There are others, chartered accountants and ordinary company directors. They say that they are not lawyers and they do not want this ambiguity. Why cannot this Government say these things in simple words say that it shall relate back. That is what they ask.

Shri Easwara Iyer: Can you suggest any amendment to take out the ambiguity? If the section says that

it shall have effect from the date of such alteration, will that be acceptable?

Shri K. T. Chandy: Yes, Sir.

Shri Easwara Iyer: On page 6 of your memorandum you have pointed out the anomalies in the definitions. I do not quite follow what you have said in paragraph (a) on page 6.

Shri K. T. Chandy: There is an exception provided under section 43(a). "Nothing in this section shall apply to a private company of which the entire paid-up capital is held by ....." The phraseology 'incorporated outside India' does not qualify the private company; it only qualifies the other part of it.

Shri Easwara Iyer: Turning to page 12 of your memorandum, regarding clause 53, I want to know one point. I am again and again coming to that question. You say that the filing of a contract entered into with the relative or a director with the Registrar will not serve any useful purpose because the Registrar cannot question the wisdom of the contract. May I ask whether the Registrar, if he finds a contract to be unduly oppressive or unconscionable, cannot report the matter to the Central Government to take action under section 402?

Shri K. T. Chandy: If the view of the Company Law Administration is that the Registrar should have notice for his own purpose and not for the purpose of giving notice to the members of the public, the Registrar should have notice of agreements that are being created between companies and others, in which the directors are interested. so that he can compile them and follow them afterwards. If that is the idea, I have no objection. All I am saying is this: it would be extremely difficult and an onerous task to go through all those things. If the Company Law Administration wants that, we cannot object to it.

Shri Easwara Iyer: Turning to page 16 about clause 63 in regard to the deposit of dividends in a scheduled bank, as persons who have got experience in company law, may I know what would be the nature of the dividend that has been declared? May I know whether the dividend, as soon as it is declared, belongs to the shareholders or the company as the legal personality?

Shri K. T. Chandy: As soon as a dividend is declared, the company acknowledges a debt.

Shri Easwara Iyer: I just want to know as a matter of illustration. Supposing the dividend is declared and some of the shareholders have claimed the dividend and have got it. and some unfortunately have not got the dividend, and the company goes into liquidation, may I know whether the shareholders have to prove their claim in the liquidation proceedings?

Shri K. T. Chandy: It is a question of law. I want notice. We have not come here with complete knowledge about some 650 sections.

Shri Iyer: I am not putting it in that sense. I am asking whether it is not better in the interests of the shareholders that the money is earmarked and kept separate so that some of those unfortunate shareholders who have not claimed it before the company goes phut may not be deprived of their dividend. That is what I am aiming at.

Shri K. T. Chandy: In every company you will find that there are some shareholders who are somewhat lazy in collecting the money. They misplace their dividend warrants. If you look into the accounts of many companies you will find that there is a carry-over of unpaid dividends. More so is the situation in connection with the blank transfers. Because of the system of blank transfers of shares on the stock exchange, the dividend is not claimed till one is ready to come on the register. Why the shareholder

chooses to wait for two or three years is more than I know. They do wait.

Shri Easwara Iyer: Why should he be put to the risk? If that money is kept separate he can claim it at any time because it is his money.

Shri K. T. Chandy: Is it suggested that merely because that a company opens an account called the dividend account, that money becomes immediately part of the money of the shareholdres?

Shri Easwara Iyer: I should think so.

Shri K. T. Chandy: I do not think so.

Shri Easwara Iyer: Let us not argue. At page 13, against clause 54, you have said that the use of the word 'Promptly' is not very happy. That word 'Promptly' may relate to the time-limit. Do you suggest a time-limit of 14 or 21 days?

Shri K. T. Chandy: Let us not quarrel about that. As soon as certain things are got . . . .

Shri Easwara Iyer: Do you suggest any time-limit?

Shri K. T. Chandy: I am quite prepared to say "two days", for myself. But I do not know what others would say. In many cases it is ten to 14 days because it depends upon whether all the directors can quickly reassemble to see whether the minutes are correctly drafted. It is not the fault of the draftsman.

Shri Easwara Iyer: I quite follow. Another thing is, clause 103 which has been a controversy regarding the contribution to political parties. You said that there have been precedents in England also—I am not aware of that but I am accepting that—where some company might feel that contribution to a political party necessary for their future existence or otherwise. I could follow that, but can these board of directors contribute monies to any political party in which some of the shareholders at least have a different political conviction, and will it not be embarrassing, and therefore, do you suggest that such contribution to poltical parties should be done away with?

Shri K. T. Chandy: In this country we have different political points or view, and I dare say that shareholders will represent as many political points of view as there are in the country.

Shri Easwara Iyer: Under section 293, except with the consent of the shareholders, the board of directors can go to the limit of Rs. 25,000. The board of directors may side one political party, but some of the shareholders may have a different political convictor or indifferent to politics. So do you not think that we should do away with contribution to political parties?

Shri K. T. Chandy: We cannot do away with poltical parties nor can we do away with their affiliation!

Shri Easwara Iyer: I mean contribution by companies.

Chairman: Shri Leuva.

Shri P. T. Leuva: Let us turn to page 4 of your memorandum. It relates to the question of registering the alteration of the memorandum or articles of association. I would like to have an explanation from you regarding the practical difficulties that might be experienced. You see that under this clause, if the memorandum is to be altered it requires the sanction of the court. Then comes the next question with regard to the registration of the document. If the document is not registered, within the stipulated time, the effect is that the alteration becomes null and void. I would like to have your views on this point.

Shri K. T. Chandy: May I say that we are in the wrong in our appreciation of the law as set out in that paragraph? First of all we are in the wrong. These things are done in great hurry, and we can only

apologise on that ground. It it quite clear, as the law stands today and as it is proposed, that the Registrar does not set himself up as a quasi-judicial authority in any way, for considering or reconsidering the decision of the court. That is quite clear. It is said that he "shall" register. In other words, it is imperative that he shall register. Therefore, our appreciation of the law as set out in this memorandum is wrong.

What is said is this. While he shall register within a period of one month of lodging and while three months are given to the party to lodge the certified copy of the court's order and while power is given to the court to extend the period during which that should be lodged, if a party fails to do this, then all the proceedings shall be treated as null and void. It is also provided that the party can then go back to the court and make its case like a case in an *ex parte* matter and get the matter revived. I agree with all these proposals. May I therefore withdraw that para?

Shri P. T. Leuva: If the alteration is not registered by the registrar within the stipulated time, is there any penalty provided? The negligence is on the part of the registrar, but somebody else is being punished. Nobody has raised it so far.

Shri K. T. Chandy: Having cast upon the registrar an imperative obligation to register what the court has decided within a certain period, if he fails to do so, what happens? Under the present law, it would appear that all the proceedings would be null and void and the company would have to incur the expenditure of going to the court and getting it revived. My suggestion is that on the very day it is lodged, it shall be treated as having been registered.

Shri P. T. Leuva: Please turn to page 16 of your memorandum relating to clause 64 dealing with sections 203 and 204. A member of a company is not entitled to inspect the books of accounts. So, a member is not in a position to know whether the working of the company is in the interest of the shareholders or not. He has not got the material to form any judgment about it. So, what is the objection if the registrar is empowered to inspect the books of accounts in order to protect the interests of the shareholders? Yesterday we had a plethora of vouchers produced before us which showed how the affairs of companies are being mismanaged and the shareholders have no source of information.

Shri K. T. Chandy: I am afraid I have no means of satisfying you as to what can be done to prevent mismanagement. We have to find a balance between preventing mismanagement and allowing good management to continue without unnecessary difficulties. You can have legislation based on the good, but may I suggest that you cannot have legislation based entirely on the bad? It is a question of finding a balance between the two.

Of course it is true that the shareholders have not got much power to intervene in the affairs of the company between two annual general meetings unless they requisition a special meeting. But the real custodians of their interests are the auditors. The study of accounts is not just anybody's business. There are many directors who have to have their hand held by their accountants and auditors even to go through annual accounts with which they ought to be familiar. To say that merely because we confer authority on somebody, he can immediately go and break apart a conspiracy which may be going on there is to my mind a rather romantic idea. It can only be done by qualified competent accountants.

Shri D. L. Mazumdar: Would you object if the registrar is a qualified chartered accountant?

Shri K. T. Chandy: If you feel that the accounts of a company should be studied, let it be studied by professional men who are guided by their own charter and who have their own nomenclature and concepts.

Shri Shankaraiya: Instead of himself doing it, he can authorise a competent auditor to do it.

Shri K. T. Chandy: That is my point.

Shri P. T. Leuva: The power is already there for inspection. But at the moment the members of the company have no right to inspect books of accounts. Only a director has that right. If this power is given to the registrar to inspect books of accounts during office hours, is he not being placed on a higher footing than a director.

Shri K. T. Chandy: How does the registrar satisfy himself that there is a cast for it? How does he start thinking about it?

Chairman: He does not audit; he only asks for information.

Shri K. T. Chandy: Otherwise you say that on an average the registrar should check 5 per cent of companies. You make it a standard random sample checking.

Shri D. L. Mazumdar: It is not a standard function. In a particular case the registrar may have good reasons to think that he must have some further information. It may be a college, a co-director who has informed the registrar about something. The registrar need not disclose the source of the information. In such a case, can he not ask for permission to look into the books?

Shri K. T. Chandy: I think it is a very unsatisfactory statement. Surely the registrar can say why he wants to study the accounts. He need not disclose the source of his information, but he can say why he wants the information.

Shri P. T. Leuva: Please turn to page 20 of your memorandum dealing with clause 76. Under section 234 as it is going to be amended now, the registrar will have power to ask for the production of books of accounts, documents and other things, in case the explanation is insufficient. If the company refuses to produce the books of accounts, etc., why should we prevent the registrar from taking action by going to a court of law? Why should you prevent him from asking the company to produce books of accounts, etc?

Shri K. T. Chandy: If the court directs, after having heard the registrar and the company that there is a case of bringing XYZ documents to the notice of the registrar, there should be no objection.

Shri P. T. Leuva: That means the court has to give decision whether the explanation was sufficient or not.

Shri K. T. Chandy: A *prima facie* case is to be made out that there is a case for scrutiny.

Shri P. T. Leuva: That means the registrar has to prove that the information or the explanation given was inadequate. How could that be, unless he has seen the books of accounts?

Shri K. T. Chandy: First of all, where is the case for asking for the books of accounts unless a *prima facie* case is made for conferring a special right on him?

Shri P. T. Leuva: So you will prefer that the registrar should make an affidavit in the court that the documents are going to be destroyed or tampered with, even though he may not have that feeling. He must make a false and dishonest affidavit and you will be satisfied with that

affidavit. In one breath you say that you would not like to increase the farce, on the other hand you will prefer that instead of satisfying the registrar only, you also want the court to be satisfied. You want to have two proceedings.

Shri K. T. Chandy: We must recognise the reality and in this context we suggest that the best method of creating confidence between the parties is to have the intervention of the court, so that a *prima facie* case is made out.

Shri P. T. Leuva: Your argument is based on apprehension.

Page 26, clause 138, It appears to me that there is either a mistake or it is an oversight. On page 27, you are referring to paid up capital while the clause refers to subscribed capital. I think, you do distinguish between the subscribed capital and the paid up capital.

Shri K. T. Chandy: We do know the distinction. It is a mistake, Sir.

Shri N. R. Munisamy: As regards clause 15, I take it that, excepting nomenclature, you have no objection in calling the public or private company provided facilities are afforded to them. To that extent, you seem to agree with regard to the contents of the present amended section. Am I right?

Shri K. T. Chandy: Yes. Our suggestion is this, that instead of reclassifying them as a new type of company, you leave them in the present classification, but withdraw whatever privileges you think should no longer be given to them. As regards nomenclature, I would suggest that the matter may be left in the hands of the Draftsman who is quite competent, provided in principle this is agreed as a suggestion.

Shri N. R. Munisamy: Clause 64. You seem to create some distinction between sections 209 and 234. Sections 209 and 234 are two distinct clauses, one deals with the books of accounts and the other deals with the documents required by the registrar to be submitted to him. You say, the safeguard provided in section 234 is taken away or nullified by section 209. We are not able to understand this, unless you throw some more light on this.

Shri K. T. Chandy: May I ask Mr. Mazumdar himself, whether the documents do not include books of accounts.

Shri D. L. Mazumdar: Of course, they do.

Shri N. R. Munisamy: If you say, documents and books of accounts are synonymous, then absolutely there is no objection to your statement. Even a scrap of paper can be called a document.

Chairman: 'Document' is a much wider term.

Shri N. R. Munisamy: These two sections cannot be clubbed together. Books of accounts is a separate thing. Supposing you have entered into a particular transaction with a selling agent or a managing agent. Could that find a place in the books of accounts? These are two different and distinct sections and they cannot be clubbed together. Kindly throw some more light on this.

Shri K. T. Chandy: Mr. Chairman, I am afraid I will be confused too. I want a little more time to consider this point.

Shri Morarka: I want one clarification about those private companies. Even if we were to accept the suggestion given by the witness, I would like to know, in actual practice by taking an example, how that would obviate the working difficulties? Take for example, there is a private company 'A' and today 25 per cent of

those shares in the private company are held by other body corporates. The witness has suggested that instead of calling it a public company, treat it as a private compnay but withdraw all the facilities and amenities which were given to the private compnay. Now, the difficulty is that today in that company 25 per cent shares are held by body corporates but after about three months suppose one of the body corporates transfer some shares to the other company and the holding falls below 25 per. cent. Then, at the end of the year, would this company still be subject to the provisions of the public company or would it revert to the original position of a private company? I want to know what would be the actual *modus operandi.*

Shri K. T. Chandy: You can only transfer the problem from one end to the other because the very criterion that you have built up, namely, 25 per cent shareholding of another body corporation, is inherent in the situation. All that I am saying is that if there is a certain amount of fluctuation, why bring it in the field of classification of public company and private company?

Shri Morarka: The suggestion made is not still free from difficulties as long as you follow the definition of 25 per cent or 30 per cent, whatever it may be. Difficulties are bound to arise.

Shri K. T. Chandy: Quite right, difficulties are bound to arise. But difficulties are involved in what you say also because it involves changing the memorandum and articles of association etc.

Shri Morarka: The recommendation of the Sastri Committee was that if public funds are involved in any private company to a considerable extent, then that compnay becomes a public company.

Shri K. T. Chandy: That is already there in the case of those companies which are subsidiaries of public companies. If the shares of one company are held by a body corporate, even then that body corporate may be only a private company; nevertheless this company shall no longer have certain privileges.

Shri Morarka: Sastri Committee's criteria was that there should be public funds and those public funds should be employed to a considerable extent. If you apply that criterion and if you want to legislate on that basis, then the present amendment which you are suggesting would not meet with the requirements of Sastri Committee's recommendation.

Shri K. T. Chandy: By being a private company which is at the same exemptions that are allowed today? I shall read them out.

1. Prohibition of allotment in certain cases before registration of the statement in lieu of prospectus with the Registrar.

2. Provision for further issue of subscribed capital of the company by the issue of new shares.

3. Restrictions on commencement of business.

4. Provisions relating to statutory meeting and statutory report of the company.

5. Provisions under section 219 regarding the right of a member to copies of balance-sheet and profit and loss account and auditor's report.

This is being taken away.

6. In the case of a private company three copies of the balance sheet together with the auditor's report in so far as it relates to the balance-sheet only need be filed with the Registrar.

These are extremely insignificant provisions. These are the only benefits that accrue to a private company which is a subsidiary of a public Company. By taking away these....

Chairman: You want the restrictions to be removed.

Shri K. T. Chandy: Yes. I am only submitting this as my personal view.

Shri Morarka: In all these Government corporations there are huge public funds involved and employed. Do you still agree that even after the amendment suggested in clause 15 to section 43-A, these Government companies should continue to be private companies?

Shri K. T. Chandy: I thought that this matter is receiving special attention.

Shri Morarka: That is on our part. I am talking only of the present amendment.

Shri K. T. Chandy: They will be private companies because they are not subsidiaries of any companies.

Shri Morarka: So, they are private companies?

Shri K. T. Chandy: Yes.

Shri Morarka: They will still continue to be private companies even though huge public funds are employed by them?

Shri K. T. Chandy: Are you suggesting to me that I should endorse the view that they should be treated as public companies? That is a matter for the Government.

Shri Morarka: I am asking for your views.

Shri K. T. Chandy: I agree with you that the accounts of all the Government companies should be made available to all persons.

Chairman: Thank you.

Shri K. T. Chandy: Thank you. On some points we might not have been very clear.

(*The witnesses then withdrew.*)

II. Bengal National Chamber of Commerce and Industry, Calcutta.

Spokesmen:

1. Shri D. N. Bhattacharjee.
2. Shri S. R. Biswas.

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

Chairman: Your memorandum has been read by the members of the Committee. If you want to add to what is stated in the memorandum or if you want to clarify any point contained in the memorandum, you can do so.

Shri D. N. Bhattacharjee: All that we have to say is contained in our memorandum.

Chairman: If you have nothing to clarify or elucidate further, I will now ask the members to put questions to you.

Shri D. N. Bhattacharjee: We have already explained everything in our memorandum. We have nothing further to add.

Chairman: If you want to emphasise on any point for the Committee to consider you can do so.

Shri D. N. Bhattacharjee: We want to emphasise only one point regarding body corporates under now section 43-A—page 4 of our memorandum.

Shri Biswas: Page 4 of our original memorandum and page 1 of our supplementary memorandum.

Shri D. N. Bhattacharjee: Here if more than 25 per cent. of shares is owned by a public company or a body corporate, that will be treated as a company by itself. My Chamber feels that a body corporate should be treated as a company itself instead of being a body corporate. If one private company holds the entire shares of another private company holds the entire shares of another private company, then the latter should be exempted

from being a public company. The point is this that there should be at least seven share-holders in a public company and when a private company becomes a public company under section 43A, it may not have so many shareholders.

Shri S. R. Biswas: In this Clause 15, sub-section 6 says:

> Nothing in this section shall apply to a private company of which the entire paid-up share capital is held by another private company or by one or more bodies corporate incorporated outside India.

Our point is that suppose, if one private company with paid-up capital of one crore of rupees holds the entire share capital of another private company, that second private company is not being considered as a public company, under this section; but if, on the other hand there are two or three small private companies having paid up capital of one lakh or 5 lakhs of rupees and if they together form one private company, and if together they hold more than 25 per cent of shares of another private company, that latter company is being treated as a public company. To us it seems to be incongruous. We feel that this will deter the formation of capital for particularly in the smaller sector of business, we want two or three small private companies should help in the formation of another company. Under this Bill you are preventing that. On the other hand you are not preventing a big, private company with capital of one crore of rupees or 50 lakhs of rupees to form another private company. We feel that there is some inconsistency between the two.

Shri D. L. Mazumdar: There is no prohibition to form companies.

Shri S. R. Biswas: Subject to all the limitations and all restrictions of public company we can do. But every private company is not subject to all these limitations. The idea is that no substantial portion of public money should be invested in private company. If that is the idea, then this exception seems to be inconsistent to us.

Shri Easwara Iyer: Suppose the words "by another private company or" are omitted, will you be satisfied?

Shri S. R. Biswas: That objection is met. But there is the fundamental objection i.e. it prevents formation of small companies; The policy of Government is to encourage small units. It is not always possible for small units to acquire adequate capital. If there are two or three small private companies, they might try to form another private company by pooling their resources. Now they are prevented from doing this. There is another point. There appears to be some inconsistency between the new section 43A and the existing section 45 of the Companies Act. Under the section 45, if any private company has at any one time less than two shareholders, and if any public company has at any one time less than 7 shareholders and if that continues for more than six months, in that case individual shareholders of the new company, individually become liable for all the debts of the company. On the other hand, if a private company, becomes a public company by virtue of section 43A it may attract the provisions of Section 45 when the total number of shareholders is less than 7. This is another point which we would like to emphasise.

Shri Easwara Iyer: What about exemption being given to foreign companies?

Shri S. R. Biswas: We have already mentioned that this is also an inconsistency. Why should we exempt these foreign companies from the provisions of this Act, while we do not exempt the indigenous companies?

Chairman: You have mentioned that in your memorandum.

Shri S. R. Biswas: There is another point.

Shri D. L. Mazumdar: About Dividend?

Shri S. R. Biswas: Is it open to us to make any suggestions?

Chairman: Unless it is germane to the amending Bill, you cannot make any suggestion.

Shri S. R. Biswas: There is one small point about the definition of Branch Office.

Chairman: Auditing of Branch Office?

Shri S. R. Biswas: No, about definition itself. In the new definition you say that processing is also one of the functions but we have mentioned in our memorandum that under the Drugs Control Act processing means simply bottling and packing. This is what we want to impress on you. That is not ordinarily processing.

Shri J. S. Bisht: On page 7—Clause 60—you have suggested something about maximum managerial remuneration. What is the difficulty there?

Shri S. R. Biswas: We feel that in the remuneration which may otherwise be paid to a Director for technical services or legal services, there will be some difficulty in giving any such remuneration to that Director if these words "save as" etc. are committed. Till now this saving clause was there. That protected the payment of remuneration to the technical Directors; but if you omit those words, then there may be some difficulty about it.

Shri Nityanand Kanungo: That point has been made by other Chambers also.

Shri J. S. Bisht: Now the Directors can be paid monthly salaries. That is being deleted. Have you got anything to say about that? Only sitting fees can be given.

Shri S. R. Biswas: We are not saying anything on that.

Chairman: Thank you.

(The Witnesses then withdrew.)

III. The Institute of Charatered Accounts of India, New Delhi.

Spokesmen

1. Shri C. C. Chokshi.
2. Shri J. S. Lodha.
3. Shri E. V. Srinivasan.

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

Chairman: The Members of the Committee have gone through your memorandum. Before we put you questions would you like to emphasise certain points in your memorandum or clarify further any points?

Shri C. C. Chokshi: At the outset I would like to express the gratefulness of my Council and myself for the opportunity that you have been good enough to give us to appear before you and to explain our views on this important piece of legislation. We have in our memorandum confined ourselves mainly to the provisions affecting accounts and such provisions as are likely to affect our profession. However, if you want our views on any question of interest we shall be pleased to answer such questions to the best of our capacity in the light of the experience we have gained in the working of the Act.

There is one point on which I would like to make a submission. In our memorandum (pages 13 to 25) we have dealt with the form of the balance sheet and the profit and loss accounts, that is Schedule VI of the Act. These observations of ours may be considered to be of a technical nature and my respectful suggestion is that if you permit we may discuss this and explain our point of view to the Company Law Administration.

Chairman: All the points made here will be before the Joint Committee, before Parliament and the Company Law Administration will look into it. If you want to clarify some of the points from your experience you may do so.

Shri C. C. Chokshi: The impression that one gets from the provisions of the Companies Act, or the amendment bill, is that the intention of Parliament is to see that there is a complete disclosure of the transactions carried on by a company. On that point I want to make a small suggestion. From the little knowledge I have got of other countries, I found that Germany has got a very good system, namely, they have got a Companies Act in which instead of making the balance sheet and the profit and loss accounts cumbersome full of all these details, they call upon the management to give complete information in the form of a report. Under their form of management there is a Supervisory Board and an Executive Board. The Supervisory Board only meets four times in a year, but the Executive Board meets almost every week. This Executive Board has to make out a very detailed report of the company's business activities financial transactions, etc.

Chairman: At the annual meeting?

Shri C. C. Chokshi: Yes. I had some balance sheets with me, but I left them behind in Bombay. This Executive Board gives the report on important items as production—what was the production this year, how it differed from the previous year's production, what was the turn-over this year, how it differed from the turn-over of the previous year, the different aspects of production, how the company's sales are distributed, either in the country or outside it in the export market, if the company has acquired new assets, how the company's new assets were acquired, whether from internal resources or external resources, if it was acquired from external resources whether from borrowed money or from fresh issues, what was the method of obtaining borrowed money and a number of other items relating to finance, relating to production, what are the schemes of development and what they wish to do in the subsequent two or three years, etc., etc.

Chairman: This is a statutory obligation?

Shri C. C. Chokshi: I was told so by their auditors.

Shri Easwara Iyer: Is he referring to any particular enactment in any particular country?

Shri C. C. Chokshi: Yes, in West Germany. I would make a submission that we might take advantage of this provision and introduce it in our Companies Act, so that the report before the shareholders is more colourful and gives sufficient information in a narrative form. What I am trying to point out to the Committee is that instead of giving complete details in the form of a balance sheet.

Chairman: Dry figures.

Shri C. C. Chokshi:.....instead of that, if it is in a narrative form it would be easily understandable to a layman.

Shri Easwara Iyer: Sir, can the witness make available to us any such sample balance sheet?

Shri C. C. Chokshi: Yes, I have got two copies of such balance sheets in English.

Chairman: He may send it.

Shri C. C. Chokshi: Yes, Sir, I will send it to Mr. Mazumdar. As I said, this would be more easily understandable, and only the information in the form of statements which has to be given is to be checked by the auditor. The narrative part he is not concerned with, what is the development policy and production policy, etc. This makes the balance sheet a very simple affairs; if I may put it this way, it is only a one-page document, and at a glance you can see the assets and liabilities. The details are given in the form of a narration. I submit that such a procedure, if it is adopted, would be helpful to the layman and the general body of shareholders. This is the only point I wanted to place before the Committee.

Shri Kanungo: With regard to this report which you said is prevalent in Germany, am I correct in understanding you to say that the obligation and the responsibility for the report is on the Executive Committee and not on the auditors?

Shri C. C. Chokshi: It is on the Executive Committee, but the full report is available to the general body of the shareholders.

Shri Kanungo: But the obligation of reporting is on the management, is it not?

Shri C. C. Chokshi: Yes, on the executive.

Chairman: And he says the auditors also can look into and certify the statement.

Shri C. C. Chokshi: They have to look into the statement. If any figures are given from the accounts of the company, then they will have to see that these figures have been given correctly and that wrong figures have not been given.

Shri J. S. Bisht: You say with regard to clause 15 that if a private company invests money in another private company, that other private company should not automatically become a public company. You say that the funds employed must be public money. So, would you like to enlarge the scope of this, because the proposed section lays down that it must be not less than 25 per cent? What is the percentage that you would put down so as to bring it within the purview of this section?

Shri C. C. Chokshi: If funds of a public company to the extent of 25 per cent and over are invested in a private company, then that private company may be turned into a public company. If the scope is to be enlarged, say, to the extent of 50 per cent, already a provision does exist in the present Companies Act which makes that private company as good as a public company; so no useful purpose would be served by this new suggestion or new provision. The idea of the new provision appears to be that even if the investment of the public company is less than 50 per cent but if it exceeds 25 per cent, then that private company in which such funds are invested should become a public company.

Shri J. S. Bisht: The reason is that many companies have tried to convert themselves as private companies. To prevent that this new check is designed. But it has been suggested to this Committee that instead of 25 per cent it should be 33 1|3 per cent. What is your reaction to that proposal?

Shri C. C. Chokshi: I personally do not see much difference between 25 per cent and 33 1|3 per cent. I would rather keep the 25 per cent that has been suggested in the Bill itself.

Shri J. S. Bisht: Sir, they have not covered clause 138 in their memorandum, but may I ask him something on that clause?

Chairman: Yes, if you want to know the opinion of the auditors on that matter, you can certainly ask.

Shri J. S. Bisht: Will you please see clause 138 of the Bill which substitutes a new section for section 372. It limits the power of the board of directors of the investing company to 10 per cent of the subscribed capital of the other body corporate and, secondly, to 30 per cent of the subscribed capital of the investing company. Do you think it is a reasonable check?

Shri C. C. Chokshi: In the present context of things it appears to be too strict a provision, because the intention here appears to be to restrict investments of public companies into other companies, irrespective of whether they are under the same management or not. The old section 372 was designed to restrict the investments of one company into another company under the same management. And that was understandable. But when the restriction is placed on the investments in another company whether

under the same management or not, that appears to be too strict a provision, for this reason that at present, when we are about to industrialise our country, we want industries to develop. The only persons who can develop these industries are the companies. Capital formation in recent years has only taken place in the case of companies. Therefore, companies should be allowed to invest their funds in other companies without such very strict restrictions.

Shri J. S. Bisht: Would you like to have no restrictions at all, or would you raise these limits, 10 per cent and 30 per cent?

Shri C. C. Chokshi: With regard to the 10 per cent limit, if the general rule is not accepted that restriction should only be placed in respect of investments in the same managed group or under the same management, and if the intention is to place a restriction on companies which are trying to acquire controlling interests in other companies, then the percentage should be raised to 50 per cent, so that there may not be an attempt to invest in other companies with a view to have a controlling interest. If the intention is to have a controlling interest, such an investment should pass through the scrutiny of the Government.

Shri J. S. Bisht: It has been suggested to this Committee that if this 10 per cent is to be maintained as 10 per cent, it should be of the share capital, subscribed capital plus the reserves. What do you say to that? It is said that there are many old companies formed seventy or eighty years ago with very small share capital, fifty or thirty lakhs, but whose reserves are crores. And if this limitation is put down, then ten per cent of those thirty lakhs would be only three lakhs: whereas, if the reserves are added, it would be a substantial sum.

Shri C. C. Chokshi: In other words, the suggestion before you is that some relaxation should be made, and that is also the point that I was trying to make out. I was trying to correlate it to the paid-up capital, because if the investment in the other company exceeds 50 per cent, then it would be controlled by the investing company, which should require or necessitate a scrutiny by the Government.

Shri D. L. Mazumdar: If it is fifty per cent or more, it becomes a subsidiary. That is exempted today. What we are referring to here is only investments within 30 and 50 per cent. If it is less than 30 per cent, it is free; it is left to the board of directors. If it is 50 or more, it is exempted. So, the only range which requires prior approval is between 30 and 50 per cent.

Shri C. C. Chokshi: It is 10 per cent in the other company.

Shri D. L. Mazumdar: That is another aspect. That is the case of an individual company. There are two aspects of it. I am now talking about one aspect.

Shri C. C. Chokshi: The question which was put to me was about the 10 per cent, whether it should exceed 10 per cent or not.

Shri D. L. Mazumdar: I thought you were talking of the investing companies.

Shri C. C. Chokshi: I was only on the first part. The holding in the company in which the investment is made should not be restricted to 10 per cent but may be permitted to go higher.

Shri D. L. Mazumdar: That is a different point.

Shri C. C. Chokshi: But if it goes beyond 50 per cent, then you may control it, although it is exempted. I feel that it should be controlled, because in that case.....

Shri D. L. Mazumdar: Then it becomes a subsidiary.

Shri C. C. Chokshi: It becomes a subsidiary, but that is what Government should see, namely, whether the subsidiary which is taken over is taken over with good intentions or with bad intentions.

Chairman: You want that it should be controlled.

Shri C. C. Chokshi: If it exceeds 50 per cent.

Shri D. L. Mazumdar: After the mischief has been done?

Shri C. C. Chokshi: It cannot be done.

Chairman: It is really a *post mortem* remedy.

Shri Naushir Bharucha: Better late than never.

Shri Ajit Singh Sarhadi: A page 5 of your memorandum, under clause 62, you have stated:

> "It should be remembered that the depreciation charge in the case of these companies would also be very heavy. It is, therefore, suggested that some concession should be extended to new enterprises."

What concessions should the new enterprises have?

Chairman: You are suggesting concessions with regard to payment of dividends only and nothing else?

Shri C. C. Chokshi: Only with regard to that, and nothing else. This suggestion has been made with reference to the payment of dividends. This is with respect to section 205. It says that dividends should not be declared or paid by a company unless full provision for depreciation of the current year as well as full provision for arrears of depreciation has been made. A relaxation in this regard may be called for in cases where a company or an industry has been newly started or where an industry has undertaken a considerable amount of expansion or development programme, as, for example, the Tata Iron and Steel Co. Ltd., which is going to have a large expansion programme and spend about a few crores of rupees. The depreciation to which they will be entitled will come to such a large sum that if this provision remains on record, the company will not be able to declare dividends for quite a number of years, with the result that the small shareholders who hold the shares and who look forward to get a small dividend from the company will not be able to get any dividends.

Therefore, the practical suggestion which I would make, and which I understand has been made by others is that such companies may be permitted to declare a dividend to the extent of 6 per cent of its paid-up capital for a particular number of years, say, a period of five years from the date on which they have started development, and within five years if they are not able to make sufficient profits to cover up the depreciation, then this restriction should apply.

Shri Ajit Singh Sarhadi: You suggest that for the first five years, 6 per cent must be dividend, whether there are profits or not?

Shri C. C. Chokshi: Yes, that is the suggestion.

Shri Bisht: What about the provision in section 208 regarding the payment of four per cent interest?

Shri C. C. Chokshi: That is only restricted to the period of construction. I am not on the period of construction. During the period of construction, interest at the rate of 4 per cent is permitted, but after the factory has been constructed, and it goes into production, the factory takes about five years to go into full production; so, for that period of five years, after construction, and after starting the full production, the company should be permitted to declare dividends to the extent of 6 per cent

out of the profits, but without providing depreciation, not if the company has made a trading loss.

Shri D. L. Mazumdar: That is in regard to new companies.

Shri C. C. Chokshi: New companies or companies which have launched a development scheme on a large scale, or on a sufficiently large scale.

Shri D. L. Mazumdar: Supposing that before the expansion programme was started, the company was declaring dividends up to 8 or 10 per cent, do you think that the dividends should be brought down to 6 per cent after the development starts?

Shri C. C. Chokshi: It has to be so; to be consistent with the development, it has to be restricted.

Shri Morarka: Or issue new shares without premium.

Shri D. L. Mazumdar: That position will apply to everybody, those who took the new shares and also to those who did not take new shares.

Shri Tangamani: After the development starts, would you like any ceiling on the dividends? You said that in the first five years, profit or no profit, the dividend should be 6 per cent. on the paid-up capital. Would you like that ceiling to continue for more than five years?

Shri C. C. Chokshi: So long as the company is not able to provide for depreciation, that ceiling should continue, but not thereafter, because thereafter it is a question of policy whether larger dividends should be permitted in the private sector or not; and I do not think I am competent to reply on that matter of policy.

Shri Tangamani: You have no objection to section 2(9) being amended by clause 2 (d) redrafting the definition of branch offices? And you want that in the same way the head office must be also defined. So, you have no objection to the present definition of branch office.

Shri C. C. Chokshi: No.

Shri Tangamani: In regard to clause 15, you have stated rightly that where a company, that is, a private company, employs public money to an appreciable extent, it should be subject to the same restrictions and limitations as apply to public companies. That is the view of the Company Law Amendment Commitee, and you fully agree with that. Is it your view that if a private company is dealing with public money to any appreciable extent, then the same control which is exercised on a public company should be exercised over that private company?

Shri C. C. Chokshi: Yes, but as I have pointed out in my memorandum, if one private company holds shares in another private company, even to the extent of 25 per cent, it cannot be said that that 25 per cent. holding is public funds. Therefore, the holding of 25 per cent. by the private company should not make the held company the company whose shares are held, a public company.

Shri Tangamani: It is not a question of 25 per cent. to 30 per cent. When we are able to show that a private company is using public money, then, the same control should be exercised. Do you agree with that?

Shri C. C. Chokshi: I do not understand how a private company can use public money except by borrowing or by taking loans. Therefore, the persons who give loans or from whom the moneys are borrowed would ordinarily be competent persons, persons who are competent enough to understand the business activities of the private company. The intention in making this provision is to safeguard public funds, funds of people who are not competent to understand these financial complications. Therefore, my suggestion has been to restrict it to the investments by public companies, where the funds are of private persons who are not so very well-versed with financial transactions or business.

Shri Tangamani: Supposing the private company is getting alone from the Government of India, for example. Would you consider that as public fund?

Shri C. C. Chokshi: It is a borrowing which stands on a different footing.

Shri Mazumdar: Supposing Government invests as share capital? There is no question of Government's incompetency to understand.

Shri C. C. Chokshi: If the Government intentionally invests in a private company and takes risks, then, it will be careful enough to see that the management of the private company does not fritter away its finances.

Shri Morarka: Are they not public funds?

Shri C. C. Chokshi: I do not say they are not public funds; they will look after public funds.

Shri Kanungo: By implication it means that Government should invest only in public companies.

Shri Tangamani: Please refer to page 5 of your memorandum. You think that the powers of inspection of documents which is now conferred on the Registrar by clause 76 is justified. When that is justified, why do you oppose this clause 64(b)? You made it clear that the intention of Parliament is complete disclosure of accounts. How can you have objection to the disclosure of accounts to the Registrar?

Shri C. C. Chokshi: I have not opposed the provision. I have only suggested some sort of restriction or control over those powers. If you kindly permit me to read what I have said, it is this:

> "It should, therefore, be provided that the Registrar must have some very good reason before he can demand inspection. Sufficient powers have been provided for by the amended section 234(3A)."

What I have suggested is that the Registrar should exercise his power subject to the sanction of a senior officer just as it is being done in the case of the income-tax authorities. The Income-tax Officer can call for or impound books subject to the sanction of the Commissioner of Income-tax who is a very senior officer. In the same way, I am in favour of giving that power to the Registrar; but such power should be subject to the approval of a higher authority like the Company Law Administration or the Regional Director of some such authority.

Shri Tangamani: Please refer to page 11 of your memorandum relating to clause 135. You say that it is not clear as to what is meant by 'indirectly' and that it should be deleted. You agree that loans are possible by indirect means also. What will be the concrete way in which you will put the amendment?

Shri C. C. Chokshi: On principle, I am in agreement with the proposal. But the word 'indirectly' has not been defined in the Act and it is capable of various interpretations which may put a person, like the chartered accountant who audits the accounts of the company, in a very peculiar position. For example, if a managing agent has been able to arrange with a bank or somebody to deposit the company's funds in the bank on an oral understanding that the bank should give a loan to him or to anybody connected with him, his associate or a company under his management, it would be indirect means of obtaining a loan. It would be beyond the possibility of check by a chartered accountant. That is why our suggestion has been that the word 'indirectly' may be defined if it is capable of any definition. Otherwise, it is likely to create practical difficulties.

Chairman: Is it capable of any definition? Such phrases always occur in every statute.

Shri Naushir Bharucha: That is a phrase which businessmen understand thoroughly and which lawyers cannot define.

Shri Tangamani: My last question is about branch audit. You say that you have no objection to the branch audit as contemplated by the new amendment.

Shri C. C. Chokshi: We have no objection whatsoever to the branch accounts being audited by a chartered accountant appointed either by the company or by the management in consultation with the statutory auditor of the company—if it is by the management—and by the company in a general meeting, when it is not necessary to consult the statutory auditor.

Shri Leuva: Regarding depreciation, Mr. Chokshi made a suggestion that so far as new undertaking are concerned or where there is substantial expansion, the dividend should be limited to 6 per cent; and, after 5 years, if the company does not provide for complete depreciation, the company should not be allowed to declare any dividend. Is the arrears of depreciation he refers to to be calculated on the basis of the Income-tax Act or on the basis of the opinion of the chartered accountant—that the depreciation is adequate?

Shri C. C. Chokshi: There are two aspects of the matter. Depreciation in order to show the true and fair view of the company's state of affairs is an entirely different thing. It is not provided for in the Act at all. That is left to the discretion of the chartered accountant in consultation with the management. The chartered accountant can if he so chooses, insist on providing a larger depreciation than what is allowed under the Income-tax law. There is no prohibition. What the amending Bill says is that they have prescribed a formula in order to find out whether adequate or proper depreciation has been made. It is that, in any case, provision for depreciation at the income-tax rate should be made before dividends are declared.

Both these things are entirely different. But I very much welcome the suggestion in the Bill that this much of depreciation should be provided for out of the funds of the company before the dividends are declared.

Chairman: What is your experience: are the views of the chartered accountant paid heed to by the companies in the matter of depreciation?

Shri C. C. Chokshi: My personal experience has been that good managements always accept the advice of the chartered accountant.

Chairman: If they do not accept, do you make any mention in your report?

Shri C. C. Chokshi: That is always done in the report—that no provision for depreciation has been made. After 1956, the new Act makes it obligatory on the part of the chartered accountant to see that depreciation is provided before dividend is declared.

Shri Leuva: A point was raised by several associations that if the formula which has now been laid down in the amending Bill is accepted, it would be very difficult for the new concerns and other concerns with substantial expansion programmes. They say that it is difficult if depreciation is to be provided for on the scale prescribed under the Indian Income-Tax Act. That is the reason why I was asking you whether the six per cent. dividend limit would be acceptable to you. Do you think that, the depreciation has to be calculated on the basis of the report of the chartered accountant whether the depreciation provided is adequate or not, or you will permit the declaration of the dividend if the depreciation is provided for under the Indian Income-tax Act.

Shri C. C. Chokshi: In view of the statutory obligation in this regard,

the duties of the auditor will become very simple. He will go by the statutory provision rather than his own opinion. In so far as the declaration of dividend is concerned, if he is of the opinion that a large depreciation was necessary, it would be his duty to point that out to the shareholders.

Shri Kanungo: If the accountant feels that a lower depreciation would be enough, he will be debarred by the present provision from saying so?

Shri C. C. Chokshi: Yes, Sir.

Shri Leuva: May I take it that the depreciation prescribed under the Income-tax Act is insufficient in your opinion?

Shri C. C. Chokshi: It is quite adequate in most of the cases. If I may say so, the taxing authorities also take into account the various aspects for providing depreciation which normally a chartered accountant would take. Only up to the year, 1957, larger depreciations were permited in order to encourage the development of industries etc. but from the beginning of 1958, this additional depreciation provision has been scrapped and only depreciation which would be considered fair and reasonable is allowed in income-tax. If that is to be permitted, I do not think that there will be much difference of opinion between the auditor and the provisions made here.

Shri Leuva: In your opinion, if the depreciation is provided according to the income-tax Act, there should not be any difficulty for these companies?

Shri C. C. Chokshi: Normally speaking, it should not be difficult. But unfortunately, the income tax Act does not make a provision for depreciation of certain assets. For instance, in the case of mines' and leaseholds, there is no provision for depreciation in the Income-tax Act and therefore the auditor will step in and say that depreciation must be provided. Except in cases where the income-tax Act does not provide for depreciation, there should be no difference of opinion normally.

Shri Leuva: Here a point was made that the scale prescribed under the Income-Tax Act would be of such a nature that the companies would not be able to declare dividends. You have stated that according to that scale it is insufficient to cover the depreciation charges.

Shri C. C. Chokshi: I never made that suggestion. With due respect, I may say I was entirely on a different ground. The point I was making before you was that the depreciation according to the income-tax act and according to the concept of the auditor would not be different very much normally speaking because the income-tax authorities have fixed the rates of depreciation also on the same concept as the auditor would provide for or would consider reasonable. It is only in some cases that the income-tax Act does not provide for depreciation at all. It may be that in some cases the income-tax Act has not made a special provision because the industry is a new industry and no representation has been made but in most of the cases the income-tax Act itself takes into account what is a fair depreciation and that is the rate at which they have made the provision in that Act.

Shri Leuva: That means that in some cases depreciation recommended by the chartered accountant or auditor would be of a higher volume than depreciation allowed by the income-tax department.

Shri C. C. Chokshi: Normally speaking, yes.

Shri Leuva: I would like to put another question not referred to in your memorandum. There is provision that the retrenchment compensation should be treated as a prior charge. A question has been raised here that it is a risk which is not calculable by any

person. What is your opinion regarding that? Is it not possible for any company to calculate what might be the liability of a company in case of winding up for the purpose of giving retrenchment benefit or lay off compensation?

Shri C. C. Chokshi: It may be possible to calculate it. I cannot say it is not possible. But there may be some minor difficulties. But it would generally be possible to calculate such risk.

Shri Heda: About depreciation, may I know whether the auditors or the accountants have recommended any other method of depreciation than the one provided in the income-tax or do they generally, as a rule recommend, depreciation just on the income-tax rates?

Shri C. C. Chokshi: Normally speakin the income-tax rate provided for proper depreciation but there are other methods. Depreciation can be provided on an instalment method. That is to say, if the life of an asset is 20 years, they provide five per cent. every year a straight line method. If that method has been followed in the past, it would not be advisable for the auditor to insist on changing it but in most of the cases it is our experience that clients follow the income-tax method, reducing balance method.

Shri Heda: You had been giving us instances where the accountants have been recommending depreciation rather more than the income-tax rate. Can you give us instances where a lower depreciation rate had been recommended?

Shri C. C. Chokshi: It may be that in the case of some particular asset a higher depreciation or lower depreciation might have been provided. But in most of the cases the normal rate is what is provided.

Chairman: Things have improved since 1956?

Shri C. C. Chokshi: I do not know about the earlier years. But since 1956, we have been following the income-tax method which appears to be quite fair and reasonable.

Shri Heda: Representations have been made to us that in respect of new companies and even in respect of old companies which have a programme of substantial expansion, the income-tax rate of depreciation would be very heavy. So, they are asking for straight line depreciation. Do you think that this income-tax rate of depreciation would be heavy in the case of new companies?

Shri C. C. Chokshi: The income-tax provides depreciation on what is known as a reducing balance system. I will give you an illustration. An asset is, suppose, worth Rs. 100. In the first year you provide Rs. 10 and in the second year, Rs. 9; in the third year, Rs. 8 and so on. You provide a higher depreciation in the first few years of the life of the asset and a lower depreciation in the subsequent years. That is how it may have been contended that in the first few years the rate of depreciation is higher than in subsequent years. This point may be taken into account when you consider section 205 which says that you cannot declare dividends without providing depreciation.

Shri Heda: The income-tax rate of depreciation is based more or less on the resale value. If the machine is used for a year, the resale value goes very much down. They are feeling the hardship in the first few years, particularly in the case of new companies. I was asking whether a straight line method meet the exigencies or we should stick to the income-tax rate of depreciation.

Shri C. C. Chokshi: I personally feel that the income-tax rates of depreciation are quite fair and reasonable subject to the concession which may be called for in the case of new industries and in the case of

industries which are starting new development and expansion programmes.

Shri Nathwani: I will ask first one or two elementary questions before I come to the main question. Absolute independence on the part of the auditor is of the essence of a true and complete audit of the companies' affairs. Is it not?

Shri C. C. Chokshi: Yes.

Shri Nathwani: Therefore, every measure or provision which is calculated to promote or foster independence on the part of the auditors is welcome to you.

Shri C. C. Chokshi: There is one point. There is no question of the independence but the important question is whether the auditor is competent to do his duty or not rather than independence.

Shri Nathwani: I am assuming that even when competence is absolutely necessary, he should be absolutely independent in examining the accounts of a company. These are elementary things.

Shri Mazumdar: They do not doubt your competence.

Shri Nathwani: Equally with competence, independence on the part of the auditor is essential.

Shri C. C. Chokshi: I personally have never felt that the auditor has never been independent either under the old Companies Act or under the Act of 1956. So I do not understand any need for thinking or discussing the point of independence of the auditor. The auditor has always been independent of the management. He has got to be. His own code of conduct requires him to be so. Therefore, I do not see exactly the point.

Shri Nathwani: As an abstract proposition you do not disagree that independence is absolutely necessary on the part of auditors.

Shri C. C. Chokshi: What I feel is the independent nature of the auditor. He may be independent but if his nature is servile, he may be otherwise!

Shri Nathwani: Human nature being what it is, the prospect of losing a big client does consciously or even unconsciously operate on the mind of an auditor. I say, "even unconsciously". Human nature being what it is, will it not operate on his mind?

Shri C. C. Chokshi: No, Sir. When it is a question of doing his duty it is not likely to operate, because, if it does, he will be in still greater trouble: instead of losing one client he will lose his bread and butter.

Shri Nathwani: So you do not see the necessity of any further measure for improving or ensuring your independence as an auditor?

Shri C. C. Chokshi: I have never found any difficulty—nor have my colleagues found any difficulty—during the last so many years of our professional career in doing our work in an independent manner. We have not found any difficulty about it and we do not see how we can get more independence.

Shri Nathwani: Does your organisation lay down any rule or standard for charging fees to the companies?

Shri C. C. Chokshi: Yes, Sir. Our institute has from time to time considered this point, and only yesterday we had a discussion and we have laid down the scale of fees normally to be recommended by our institute.

Shri Nathwani: If you have formulated any rules, they may be made available.

Shri C. C. Chokshi: We are sending them to the Government, because Government have asked for them. If you want them I am prepared to send them.

Shri Nathwani: Do I take it that those rules are provided for prescrib-

ing the minimum fees and that they do sot limit on the maximum fees. Have you prescribed a ceiling for your fees?

Shri C. C. Chokshi: We do not fix either a minimum or a maximum ceiling. We have prescribed a recommendation to our members. That is, a standard has been prescribed.

Shri Nathwani: Standard or the normal fees. Very well. They are in any even no ceiling or maximum fees.

Now, is there any restriction on the number of audits which an auditor can carry out or other firms can carry out?

Shri C. C. Chokshi: The restrictions are there. The nature of work is there. They are there. A person has human limitations, and he cannot go beyond those human limitations. But if there are larger firms with a large number of partners, they can certainly take more work. As a matter of fact, this particular point is actively engaging the attention of our Council and we have appointed a sub-committee to go into this in order to see two things: (1) that the quality of service that we render is improved; and (2) that there is opportunity for work for all the members of the profession.

Shri Nathwani: Suppose the Government has been conferred powers to appoint in suitable and proper cases auditors of companies, your association will welcome such a measure. Is it not?

Shri C. C. Chokshi: Our institute cannot understand why the Government should take powers to appoint auditors in substitution of the powers which are given to the body of shareholders.

Shri Nathwani: Are you aware that there are provisions for carrying on investigation by Government under which the Government appoints some independent auditors in certain circumstances to look into the accounts? Are you aware of such cases or not? Though there were auditors of the companies, Government had to investigate into the affairs of the companies through independent auditors.

Shri C. C. Chokshi: There can be no objection to such a provision.

Shri Nathwani: Therefore, if in proper cases power has been given to the Government to appoint auditors you have no objection. Why are you afraid of accepting the proposition? I cannot understand.

Shri C. C. Chokshi: I am not afraid. Only, I want to make a distinction between these two things: where the Government consider it necessary to appoint an investigator, it would be necessary that Government does it. It is most welcome to do that. But, to take away the right of the body of shareholders is something which I cannot understand.

Shri Nathwani: You are trying to give us a picture as if there is nothing more or further left to be desired by way of audits of a company, but that is not so. There has come to the notice of Government several instances where Government had to intervene.

Shri C. C. Chokshi: I am not trying to give any more rosy picture than it exists in this country. I am only discussing a question of principle that before taking away the rights of the body of shareholders we must consider whether it would be advisable to do so. Therefore, I would not be a party to deprive the shareholders of their right to appoint auditors for the purpose of knowing the financial position of the company. In addition to that, if the Government comes to the conclusion that it is necessary to investigate into the affairs of a company, the powers are already there, or the Government can take more powers if it so desires.

Shri Nathwani: One more question and that is about cost accountancy. If provision were to be made in the Companies Act for cost accountancy, will the auditors be able to carry it out along with their other work?

Shri C. C. Chokshi: Yes. In our profession there are a large number of members who are actually doing cost accounting work, and they would be certainly in a position to do cost accounting work. What is important is, there should be a statutory provision which would compel the companies to keep cost accounting.

Shri Nathwani: That is what we are assuming. Suppose a provision were to be made that it will be possible for the auditors to carry on this kind of work, *viz.*, cost accountancy?

Shri C. C. Chokshi: They would be quite competent to do that.

Shri D. L. Mazumdar: Would you favour that?

Shri C. C. Chokshi: Yes, Sir. Of course, I am not worried about work, but it is always better to have more accurate accounts.

Shri Nathwani: Proper auditing is an integral part of cost accountancy.

Shri C. C. Chokshi: With due respect, I would say cost accoutancy is one thing and auditing accounts is an entirely different thing. What the auditor certifies is the company's financial position on a particular date as shown in the balance sheet. He does not go beyond that.

Shri Nathwani: But it would be a useful thing if cost accountancy were also to be included in the work to be carried on by the auditors.

Shri C. C. Chokshi: Yes; it would help the disclosure of the company's affairs and it would enable you to come to a better understanding of the affairs of the company.

Shri Morarka: In the beginning, you said something about the system prevailing in Germany about detailed report by the board of management to be given to the board of superior directors.

Shri C. C. Chokshi: Yes; that report is submitted to the supervisory board. It is available to the shareholders; it forms part of the annual report of the company.

Shri Morarka: Are you aware of the provisions of section 217 of our Companies Act?

Shri C. C. Chokshi: I am very much aware of it, but that does not lay down the same obligation on the board of directors as is laid down in Germany.

Shri Morarka: Over and above what is suggested in the amending Bill, can you give any positive suggestion to carry out the intention of the scheme which you have seen in Germany and which you approve of?

Shri C. C. Chokshi: I would like to see the provisions of the German Companies Act. Without seeing that, it would be difficult. But I can produce the copies of two balance sheets from which you will get a fair idea of what the management of those companies are required to disclose to their shareholders. I had occasion to go through both those balance sheets and the annual reports and I was very much impressed by the amount of information that was given in those balance sheets to the shareholders. I asked a chartered accountant of Germany whether this was obligatory and he said it was obligatory on the part of the management to give this much information.

Shri Morarka: According to your experience, do you think the provisions of section 217 are properly complied with by the companies or do you think they are just technically complied with?

Shri C. C. Chokshi: In most of the cases, they are just technically complied with; they are not fully complied with in the sense that a complete detailed report is not given to the shareholders.

Shri Naushir Bharucha: In page 3 you deal with minimum remuneration.

You say it should be linked to turnover. How would you like it to be done? Could you give a concrete illustration?

Shri C. C. Chokshi: I have an impression that the company law commission which advises Government has some such formula in mind before sanctioning the minimum remuneration to companies. My impression is that they give about Rs. 30,000 where the turnover is less than Rs. 50 lakhs or so. They seem to have worked out a fair formula.

Shri Naushir Bharucha: I come to page 3 regarding definition of 'remuneration' and whether perquisities in the form of rent-free quarters and other things should be included or not. Do you think from your experience that it would do if we specify that amenities, etc. up to 30 per cent. of one's salary may not be included and beyond that they may be included? If we specify like that, practically that would solve the difficulty.

Shri C. C. Chokshi: I think so.

Shri Naushir Bharucha: In page 5, regarding depreciation, you say:

> "It is, therefore, suggested that there should be some date from which such calculations are to commence, preferably the date of the Amendment Act. Otherwise, it may be extremely difficult if calculations going back to the beginning of the company have to be made."

If you have the date of the amending Act as the limit, what about the back-log of accrued depreciation?

Shri C. C. Chokshi: You may go back a few years if possible. The Companies Act, 1956 came into force from 1st April, 1956. You may start from that date. But we should fix some reasonable date from which it is possible to find out the arrears of depreciation.

Shri Naushir Bharucha: In the same page, in the second para, you say:

> "Clause 130 also amends section 350, whereby it is provided that normal depreciation including extra and multiple shift allowances has to be taken into consideration for the purposes of arriving at the net profits of the company. This would increase the depreciation charge considerably and it is considered that the same will considerably handicap new enterprises and basic heavy industries which are coming up in the country"

If you run a concern in three shifts, it is subjected to three times wear and tear. Why should provision not be made for additional shift depreciation?

Shri C. C. Chokshi: My suggestion is not that it should not be made. The suggestion is that some sort of relaxation should be made in the case of new industries or industries which have undertaken expansion programmes and there too, as already explained, a period of five years may be laid down during which the company may be permitted to declare dividends to the extent of 6 per cent out of their profits. After that period, full arrears of depreciation should be provided.

Shri Bharucha: I come to page 9 regarding clause 75 dealing with audit of branches. Several witnesses have expressed apprehension that there would not be sufficient auditing personnel of the requisite calibre. One witness said he had a branch office where there was not a single auditor in existence.

Shri C. C. Chokshi: It is not possible to understand how this difficulty can arise, because chartered accountants are spread over the whole of India.

Shri Naushir Bharucha: So, non-availability of personnel would not be an obstacle?

Shri C. C. Chokshi: It should not at all be an obstacle.

Shri Naushir Bharucha: In page 10, clause 119, regarding offices of profit, your say that in your opinion, the word 'legal' should be substituted by the word 'professional' in order to include various other categories of professional persons who render advice of a technical nature. If you do that, the companies may even employ astrologers.

Shri C. C. Chokshi: It is not meant for that purpose.

Shri Naushir Bharucha: In page 21, you refer to distribution of expenditure under proper heads on the purpose or function of that particular expenditure. You rightly say that,

> "Wages incurred on repairs to machinery and wages of the welfare department should be included respectively under "Repairs to machinery" and "Workmen and Staff Welfare Exprenses" and not under the the item "Salaries and Wages and Bonus".

I do agree that it should be so, but that would involve arbitrary allocation so far as overhead cost and other items are concerned.

Shri C. C. Chokshi: To a certain extent, it would, but that would give a correct picture to the shareholders.

Shri Naushir Bharucha: So, some element of arbitrary allocation will have to be made.

Shri C. C. Chokshi: Yes.

Shri Naushir Bharucha: Will you tell me whether it will not involve the establishment of a full-fledged costing department?

Shri C. C. Chokshi: No, Sir; it will not at all involve the establishment of costing department, because in actual practice, we have to work out the allocation on a reasonable proportionate basis and chartered accountants are quite aware of the proper method of allocating the various expenses under different heads.

Shri Naushir Bharucha: Particularly in engineering industries, don't you think that this problem will present very great difficulties, because the cost of every item would have to be worked out?

Shri C. C. Chokshi: In this case what we have in mind is only repairs to machinery. Actually the amount of time involved in regard to a person who is employed is recorded in his time-schedule or in his employment register. On the basis of such records, it should not be difficult to work out the proportionate expense under different heads.

Shri Naushir Bharucha: The costing can be undertaken with adequate number. So far as I understood, when we passed that Bill, it was mentioned that there were 400 cost accountants in India.

Shri C. C. Chokshi: There is no difficulty about that.

Shri D. L. Mazumdar: I want your clarification on two points. There is a provision today that the auditor has to look into the profit and loss account and he has to see that the amount is provided for depreciation, renewals, etc. If such a provision is made by means of depreciation charge the method adopted for such depreciation and if no such provision is made for depreciation, the fact that no provision has been made shall be stated. As regards the first part, that if any provision has been made by means of depreciation charge, the method adopted for such depreciation will indicate the formula adopted in the accounts of the company for calculation. As regards the second part, if the auditor finds that adequate depreciation which could have been provided has not been provided, this fact should be stated. Today, you are required just to state that no depreciation has been provided. The fact that it has not been provided, has to be mentioned. That is the duty of the auditor. I am just wondering, whether in addition to that the fact that adequate depreciation which

could have been provided has not been provided, should also be stated by the auditor.

Shri C. C. Chokshi: As a matter of fact, even under the present provision, the auditor has to state whether depreciation has been provided or not, as you rightly pointed out. The question whether depreciation could have been provided, but has not been provided is apparent on the fact of it, if the company has shown profits.

Shri D. L. Mazumdar: It is not apparent to the shareholders. Anyhow, you may look into the matter.

Shri C. C. Chokshi: I would consider that matter.

Shri D. L. Mazumdar: Then I come to another point. Section 227 of the principal Act. There are certain specific requirements on the part of the auditor besides the fact that he has to supply a true and fair view. There are three sub-sections (a), (b) and (c).

> I read (b): Whether, in his opinion proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
>
> Then, I read (c): Whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns.

These are the specific certificates which have to be attached besides a general certificate about a true and fair view. I am asking you, supposing we add:

(d) whether in the opinion of the auditor the company has a competent internal audit system in-charge of persons to function as auditors; how do you react to that?

Shri C. C. Chokshi: You may include that.

Shri D. L. Mazumdar: Will it be practicable?

Shri C. C. Chokshi: The auditor has undertaken a very heavy responsibility in the sense that he has to certify and say that the company has maintained the books of accounts which exhibit a true and fair view. If he is undertaking such a heavy responsibility as that, I do not think it difficult for him to also say whether the company has got an adequate system of internal check.

Shri D. L. Mazumdar: I am asking you this, because that is linked up with the question of branch auditing.

Shri P. T. Leuva: I suggest that he may give us a short note regarding the actual practice which is prevalent in Germany, along with the balance-sheet, so that we can understand what is the actual practice in Germany. If it is possible for him, he can send us a short note.

Chairman: You may give a small memorandum on that.

Shri Naushir Bharucha: It may be circulated to the Members also.

Chairman: Of course.

Shri M. Shankaraiya: Clause 73, section 226. There is a distinction between chartered accountants and restricted auditors. There are chartered accountants and restricted auditors permitted to audit the accounts of the companies in a particular State in which they are registered. I want to know why this distinction should be retained.

Shri C. C. Chokshi: It is not clear.

Shri Kanungo: There are quite a number of accountants who are allowed to practise in different States, who are not chartered accountants and now the Chartered Accountants body wants to level them up.

Shri C. C. Chokshi: Actually, we are levelling them up to give them a higher status.

Chairman: So, thank you.

(The Witnesses then withdrew.)

The Committee then adjourned.

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