

28th January, 1922

THE  
**LEGISLATIVE ASSEMBLY DEBATES**  
(Official Report)

SECOND SESSION

---

OF THE  
**LEGISLATIVE ASSEMBLY, 1922**



SIMLA  
SUPERINTENDENT, GOVERNMENT CENTRAL PRESS  
1922

# CONTENTS.

---

	Page
TUESDAY, 10TH JANUARY, 1922	1333-1487
New Year's Greetings.	
Oath.	
Statements laid on the Table.	
Questions and Answers.	
Unstarred Questions and Answers.	
Address of Welcome to H. B. H. the Prince of Wales.	
Statement of Government Business.	
Resolution <i>re</i> : the Abandonment of the Policy of Repression.	
Congratulation of Honours.	
Panel of Chairman.	
Committee on the Functions of the Deputy President.	
Ruling on Standing Order No. 38.	
Notice of Motion under Rule 11.	
Motion for Adjournment.	
The Indian Electricity (Amendment) Bill.	
The Indian Factories (Amendment) Bill.	
WEDNESDAY, 11TH JANUARY, 1922 . . . . .	1489-1512
Statements laid on the Table.	
Amendment of Standing Orders.	
Resolution <i>re</i> : Policy of Repression.	
THURSDAY, 12TH JANUARY, 1922 . . . . .	1513-1560
Oath.	
Resolution <i>re</i> : Indigenous Systems of Medicine.	
Resolution <i>re</i> : Indian Mercantile Marine.	
Resolution <i>re</i> : Prevention of Overcrowding in Railways.	
MONDAY, 16TH JANUARY, 1922	1561-1612
Oaths.	
Questions and Answers.	
Unstarred Questions and Answers.	
Statement laid on the Table.	
Address of Welcome to H. R. H. the Prince of Wales.	
Select Committee on Standing Orders.	
The Code of Criminal Procedure (Amendment) Bill.	
The Delhi University Bill.	
• Vol. II—Pt. II.	

TUESDAY, 17TH JANUARY, 1922 . . . . . 1613-1656

Unstarred Questions and Answers.  
 Select Committee on Standing Orders.  
 The Civil Marriage (Amendment) Bill.  
 Message from the Council of State.  
 The Civil Marriage (Amendment) Bill.  
 The Mussalman Waqfs Registration Bill.  
 The Code of Criminal Procedure (Amendment) Bill.  
 The Code of Civil Procedure (Amendment) Bill.  
 The Interest Act 1839 Amendment Bill.

WEDNESDAY, 18TH JANUARY, 1922 . . . . . 1657-1736

Oaths.  
 The Civil Marriage (Amendment) Bill.  
 The Indian Emigration Bill.  
 The Indian Income-tax Bill.  
 Resolution *re* : abandonment of the Policy of Repression.

THURSDAY, 19TH JANUARY, 1922 . . . . . 1737-1789

Unstarred Questions and Answers.  
 Ballot for Bills.  
 Statement of Government Business.  
 Resolution *re* : Committee on certain sections of the I. P. C. and C. P. C.  
 Resolution *re* : Elected Standing Committees with the Government of India.

FRIDAY, 20TH JANUARY, 1922 . . . . . 1791-1813

Governor General's Assent to Bills passed by the Legislature.  
 The Civil Marriage (Amendment) Bill.

TUESDAY, 24TH JANUARY, 1922 . . . . . 1815-1889

Questions and Answers.  
 Unstarred Questions and Answers.  
 Messages from the Council of State.  
 Resolution *re* : Committees on Currency and Exchange.  
 Resolution *re* : the abolition of Impressed Labour, Conveyance and Provision.

WEDNESDAY, 25TH JANUARY, 1922 . . . . . 1891-1941

Statement laid on the Table.  
 The Code of Civil Procedure (Amendment) Bill.  
 The Delhi University Bill.  
 The Indian Income-tax Bill.

THURSDAY, 23TH JANUARY, 1922

Situation in Guntur.  
Statement laid on the Table.  
Questions and Answers.  
Situation in Guntur.  
Statement of Government Business.  
Governor General's Assent to Bills passed by the Legislature.  
Resolution *re* : Votable and Non-votable items in the Budget.  
Resolution *re* : Export of Manures and Oil Seeds.  
Message from the Council of State.

SATURDAY, 28TH JANUARY, 1922 . . . . . 1991-2050

The Delhi University Bill.  
The Indian Income-tax Bill.  
Amendment of Standing Orders.  
The Police (Incitement to Disaffection) Bill.  
The Civil Procedure (Amendment) Bill.  
The Indian Emigration Bill.

TUESDAY, 31ST JANUARY, 1922 . . . . . 2051-2073

Questions and Answers.  
Unstarred Questions and Answers.  
Arrangement of Government Business.  
The Code of Criminal Procedure (Amendment) Bill.  
The Land Acquisition (Amendment) Bill.  
The Code of Criminal Procedure (Amendment) Bill.

WEDNESDAY, 1ST FEBRUARY, 1922 . . . . . 2075-2102

Bills passed by the Council of State.  
The Indian Lunacy (Amendment) Bill.  
Resolution *re* : Women's Franchise.

FRIDAY, 3RD FEBRUARY, 1922 . . . . . 2193-2151

Questions and Answers.  
Statement of Business.  
Resolution *re* : Examination of the Indian Penal Code.  
Resolution *re* : Reduction of Madras Contribution to Central Government.  
Resolutions withdrawn.  
Resolution *re* : Separation of the Andhra Districts from the Madras Presidency.  
Resolution *re* : Committee of Inquiry on Expulsion from Cantonments.  
Presentation of Report of Select Committee on Standing Orders.  
Resolution *re* : Committee on Retrenchment.



	PAGE
MONDAY, 6TH FEBRUARY, 1922 . . . . .	2153-2220
Questions and Answers.	
Unstarred Questions and Answers.	
Motion for Adjournment.	
The Civil Procedure (Amendment) Bill.	
The Benares Hindu University (Amendment) Bill.	
The Indian Emigration Bill.	
TUESDAY, 7TH FEBRUARY, 1922 . . . . .	2221-2243
The Indian Limitation (Amendment) Bill.	
The Code of Civil Procedure (Amendment) Bill.	
Resolution <i>re</i> : Suppression of Traffic in Women and Children.	
The Code of Civil Procedure (Amendment) Bill.	
Discussions in Select Committee.	
WEDNESDAY, 8TH FEBRUARY, 1922 . . . . .	2245-2282
Presentation Ceremony and Royal Durbar.	
The Indian Lunacy (Amendment) Bill.	
Resolution <i>re</i> : Committee on New Arms Rules, 1920.	
Disturbances in the United Provinces.	
Resolution <i>re</i> : Withdrawal of Martial Law in Malabar.	
Disturbances in the United Provinces.	
THURSDAY, 9TH FEBRUARY, 1922 . . . . .	2283-2312
Oath.	
Question and Answer.	
Unstarred Question and Answer.	
Statement of Business.	
Resolution <i>re</i> : Improvement of Medical Education in India.	
Resolution <i>re</i> : Equality of Status for Indians in Africa.	
SATURDAY, 11TH FEBRUARY, 1922 . . . . .	2343-2355
Questions and Answers.	
Unstarred Questions and Answers.	
Governor General's Assent to the Benares Hindu University (Amendment) Bill.	
Resolution <i>re</i> : Indianisation of the Services.	
MONDAY, 13TH FEBRUARY, 1922 . . . . .	2393-2428
Oath.	
Questions and Answers.	
Unstarred Questions and Answers.	
Motions for Adjournment.	
The Civil Procedure (Amendment) Bill.	
The Delhi University Bill.	
The Special Laws Repeal Bill.	
The Indian Criminal Law Amendment Repealing Bill.	
Amendment of Standing Orders.	
Time for Balloting.	

WEDNESDAY, 22ND FEBRUARY, 1922 . . . . . 2499-2498

Questions and Answers.  
 Unstarred Questions and Answers.  
 Message from the Secretary of State.  
 The Indian Limitation (Amendment) Bill.  
 The Civil Procedure (Amendment) Bill.  
 The Delhi University Bill.

THURSDAY, 23RD FEBRUARY, 1922 . . . . . 2499-2558

Questions and Answers.  
 Government Policy in regard to Non-co-operation Movement.  
 Governor General's Assent to Bills.  
 Statement of Legislative Business.  
 Resolution *re*: Technical Training of Indian and Anglo-Indian  
 Youths.  
 Resolution *re*: E. and P. Service and Military Officers in Judicial or  
 Administrative Posts.  
 Messages from the Council of State.

MONDAY, 27TH FEBRUARY, 1922 . . . . . 2559-2615

Statements laid on the Table.  
 Questions and Answers.  
 Unstarred Questions and Answers.  
 Amendment of Standing Order.  
 The Indian Income-tax Bill.  
 The Indian Ports (Amendment) Bill.  
 Resolution *re*: India's participation in the British Empire Exhibi-  
 tion.  
 Resolution *re*: Prohibition of Traffic in Minor Girls.

# LEGISLATIVE ASSEMBLY,

*Saturday, 28th January, 1922.*

The Assembly met in the Assembly Chamber at Eleven of the Clock.  
Mr. President was in the Chair.

## THE DELHI UNIVERSITY BILL.

**Mr. H. Sharp** (Education Secretary): Sir, I beg to move:

'That the following seven Members of the Legislative Assembly be nominated to serve on the Joint Committee to consider and report on the Bill to establish and incorporate a unitary teaching and residential University at Delhi, namely:

Mr. Khagendra Nath Mitra,  
Mr. J. P. Cotelingam,  
Dr. Sir Deva Prasad Sarvadhikary,  
Maulvi Abul Kasem,  
Dr. H. S. Gour,  
Mr. S. C. Shahani, and myself.'

The motion was adopted.

## THE INDIAN INCOME-TAX BILL.\*

**Lala Girdharilal Agarwala** (Agra Division: Non-Muhammadan; Rural): Sir, I beg to move the amendment which stands in my name. The object of my amendment is that, whenever there is a loss in business or bad debts which have been put down in the accounts of the last year, they should be taken into consideration in calculating the profits of the next year. Sir, I have consulted the English law on the subject and I find therein that a tax is imposed upon the average income of the last three years. If the same principle were followed here, the results would be exactly what I beg to submit before you. My amendment runs as follows:

'To sub-clause (1) of clause 10, add the following: 'which have been actually received, after deducting losses and bad debts carried forward from the previous year's account.'

The amendment which I am bringing before this Honourable House needs no words for commending itself to your consideration. I submit that it is only just and fair that only the actual income should be taxed and not the supposed income. I know that I have already said that everybody has to be taxed, and it is not right and proper that somebody should escape at the expense of others. At the same time, I must say that, when money is required, it is not right and proper to put your hands into the pockets of the nearest man who seems to have money in his pocket. The real object of the law is to get money proportionately and relatively according to the income of each individual. In these circumstances, I submit that the amendment which I move is a just and proper one, and I commend it to the acceptance of this Honourable House.

**Mr. G. G. Sim** (Joint Secretary: Finance): Sir, one of the principal changes introduced in this Bill—and it is a change that has been demanded by all the committees that have sat in connection with the amendment of the Act and is elaborately provided for in numerous clauses of the Bill—is

---

\* Continued from the discussions of the 25th January, 1922.

[Mr. G. G. Sim.]

that, where a man has got a business, his profits shall be assessed to income-tax so far as possible, according to the system of accounts which he employs for the purpose of his business. There are two main systems of keeping accounts. There is first the case of the man who works on a cash basis, who merely keeps a cash account, and asks to be assessed according to the amounts that he has actually collected and according to the expenditure that he has actually paid out. Then we have the case of people who work upon the mercantile accounting system and who are assessed upon book profits. Their accounts pay no regard to the period during which money is collected. As soon as a transaction is concluded, when, *e.g.*, goods are sold, the amount due to them is entered on the credit side of their account irrespective of the date when the money is actually collected. Now, Sir, it has been demanded by the commercial community that they should be assessed according to the particular manner in which they keep their accounts. The first portion of Lala Girdharilal Agarwala's amendment proposes to abolish this reform. He proposes that everybody shall be assessed according to the profits which have been actually received. That is to say, he proposes that, where people keep their accounts according to the mercantile accounting system, they shall be compelled for income-tax purposes to recast the whole of their accounts on a cash basis. This is a proposal that the mercantile community would not tolerate for one moment.

Then, Sir, there is another part of the amendment in which Lala Girdharilal Agarwala refers to bad debts. Bad debts can only occur in the second case, *i.e.*, where assessment is made upon book profits. As I have said, the man who keeps accounts on the book profit system enters the amount at which he has sold his goods on the credit side of his account as soon as a sale takes place whether he receives payment then or not. It may happen that he cannot collect that money, and in the year in which he finds that the money is irrecoverable it is written off as a 'bad debt.' It is therefore only in cases where this book profits system is the method adopted for maintaining the accounts of a business that bad debts can occur. They cannot obviously occur where you work upon the cash basis system,—based on the money actually collected. Therefore the second part of the amendment is inconsistent with the first.

The Honourable Member has also introduced a proposal for deducting losses carried forward from the previous year's accounts. This would introduce a very radical change in our whole system of taxation. At present we assess the profits of a particular period of 12 months. When this Assembly passes the Finance Bill requiring that income-tax shall be levied at a fixed rate or rates, it means that that rate or those rates shall be levied on the profits of a definite period. The profits of that period are considered by themselves. They are entirely isolated without any consideration of what went before or what comes after. This proposal means that you are to carry on from year to year any losses that may have occurred. This is a proposal, Sir, that was considered both by the Simla Committee and by the Joint Select Committee, and both rejected it. I see no reason for differing from the conclusion at which they have arrived. I oppose the amendment.

**Mr. President:** The question is that the following amendment be made:

'To sub-clause (1) of clause 10 add the following: 'which have been actually received, after deducting losses and bad debts carried forward from the previous year's account'.

The motion was negatived.

**Bhai Man Singh** (East Punjab: Sikh): Sir, the amendment which I have to move is as follows:

'In clause 10, sub-clause (2) (iii) omit the words 'where the payment of interest thereon is not in anyway dependent on the earning of profits.'

Sub-clause (2) runs:

'Such profits or gains shall be computed after making the following allowances':

and sub-clause (iii) within that says:

'in respect of capital borrowed for the purposes of the business, where the payment of interest thereon is not in any way dependent on the earning of profits, the amount of the interest paid'.

The principle underlying this clause is that, when a businessman borrows money and has to pay interest on it, then out of the profits that accrue to him he has got to pay that interest, and therefore the real profit that he gets is only that amount which remains after his having paid this interest. I cannot understand why, if there is a condition in the following way, 'I will pay you (the money-lender) interest at such and such a rate if any profits accrue to me, or at a lower rate if no profits accrue, why in such a case that interest should not be deducted out of the profit. The point is that he has paid so much out of the profits to the creditor. In either case, he does pay it. The only defence that can be brought forward in favour of keeping these words, which I now wish to omit, is that some contracts between the money-lender and the businessman may amount to a partnership and it could be said that a man who makes the payment of interest dependent on accrual of profits is, really speaking, a partner, and, therefore, as a partner, we are to assess the whole amount just as we do in the case of any firm. But, the mere fact that interest is made dependent on the accrual of profits does not make the business a partnership. A man who has got nothing to do with the profit or the loss of the thing, a man whose receipt of interest is not necessarily rateable and dependent on the increase or decrease of profits cannot be called a partner. A man who does not take any responsibility for the loss and who simply lends his money as a mere creditor which he can legally take back from his debtor, can in no sense be called a partner. If he cannot be called a partner, I cannot understand why and on what principle we can say that the amount that has got to be paid to that creditor is not to be deducted out of the profits which the businessman gets. Take an example. Supposing there is a sort of condition between the debtor and the creditor that 'if profits go above 20 per cent. I will charge you 10 per cent. interest. If the profits fall below 20 per cent., well, I will charge you 5 per cent. interest.' The actual amount of interest to be paid by the debtor does not depend in this case on the actual amount of profits. There is only one condition which makes the interest dependent on profits in one respect only. Supposing the profits go up to 30 per cent. the debtor is not to pay any extra amount of interest for that. So, in no sense can we say there exists any real partnership between the debtor and the creditor and we are not in any way justified in not making an allowance for the amount of interest he has paid. If there is anything to show that the contract between the debtor and the creditor amounts really to a partnership, that is quite separately provided for. Our income-tax officer can say if a certain contract does or does not amount to a partnership. If it does amount to a partnership, he is free to assess it like that, but if it does not amount to a partnership, I cannot understand on what principle we can say that we shall not allow this interest. Supposing a

[Bhai Man Singh.]

man has got a friend or a relation who advances money to him on this very condition, 'All right, I am drawing 5 or 6 per cent. from my Bank. I would be perfectly satisfied with getting 5 per cent. from you if you do not get any profits. But, my dear Sir, if you get any bigger profit I should take the same amount which I would have taken from any other debtor of mine. Then I will charge you 12 per cent.' But there is no condition about a share in the profit or loss of the whole business. I cannot understand how we are entitled to say, 'No, in this case we shall not allow this interest to be deducted out of those profits.' Excuse me, Sir, when I say bluntly that, in spite of thinking over and over again on this point, I have not been able to understand the rationale of this provision. With these remarks I recommend this amendment to the acceptance of the House.

**Mr. G. G. Sim:** Sir, the reason why these particular words were inserted in the present Act and have been retained in the present Bill is simply in order to distinguish clearly between money that belongs to the owners of a business and money that is borrowed by them from outside. If these words were removed it would not be possible to tax a company at all. At present under the provisions of this clause a company is allowed to deduct from its profits the interest on any money that it borrows from outside at fixed rates of interest, such as money obtained on mortgage or by means of debentures; so far as the money employed in the business belongs to the shareholders or owners of the company, the company is taxed upon the profits accruing on that money. If these words were removed, it would be quite possible for a company to claim that the whole of its share capital was borrowed and that it is not liable to any tax. The same remarks apply to a firm. If a firm borrows money from outside, the interest on the money borrowed is allowed, but it would be quite easy, if these words were removed, for the partners in a firm to come forward and say that they have no capital and that they were working entirely on borrowed money borrowed from the individual partners. I am not aware that the working of this clause has given rise to any inconvenience or to any injustice in any case whatsoever, and the necessity for retaining these words is obvious. I oppose the amendment.

**Mr. President:** The question is that the following amendment be made:

'In clause 10, sub-clause (2) (iii)\*, omit the words 'where the payment of interest thereon is not in any way dependent on the earning of profits'.

The motion was negatived.

**Rao Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): The amendment that I have to move is:

'To sub-clause (2) (iii) of clause 10, add the following: '*Explanation* :—Recurring subscriptions paid periodically by shareholders or subscribers in a Mutual Benefit Society, shall be deemed to be 'capital borrowed' within the meaning of this clause.'

The object of this clause, as Honourable Members will see, is to provide, in computing gains or profits, for the exclusion of *bona fide* interest paid on borrowed capital. It is a well-known rule of law that, in the case of share capital in companies, any interest paid or dividend paid on that share capital is not excluded for the purpose of income-tax. We have got in Madras a number of societies called Mutual Benefit Societies or Provident Funds in which poor people combine in order to put their savings.

The way in which they do it is this. Each man pays one rupee a month and at that rate pays for 76 or 84 months as the rules of the society may provide, and, at the end of that period, they get paid in a lump sum of Rs. 100 or 101 or 102, as the case may be.

It is a more or less co-operative concern and the money so subscribed is pooled together and lent to the members of the society, those who are in need of money. People are encouraged to save from their small earnings, and people in needy circumstances are able to borrow at a cheap rate of interest instead of going to the money lender in the market and paying large rates of interest. Now, under the rules as they are now worked, this is treated as if it was a share capital in a registered company and therefore the income-tax officers in Madras do not allow any deduction for the interest which is payable on these subscriptions by individual members. The rules provide for the calculation of interest on this one rupee subscription which he pays monthly at the rate of  $6\frac{1}{2}$  per cent. or 7 per cent. Each year it accumulates in that way. The Rs. 76 or 84 paid by a man is repaid to him at the end of 76 months or 84 months in a lump sum of Rs. 100 or 101 or 102. This is set apart, year after year, as what is called guaranteed interest, in the accounts of the company, and each month some subscriber's term will expire. Suppose there are a thousand subscribers. Some of them will begin subscribing in the month of January, some in February, some in March, and so on. So every month some subscriptions will mature and therefore each month they have to provide some money in order to pay these subscribers—the interest paid on these subscribed amounts or what is called the guaranteed interest is provided for and the income-tax officers refuse to make any allowance for this interest which is paid, because they want to treat the one rupee, paid month after month, as share capital in a company and therefore they do not allow it. I think, having regard to the beneficent object which these societies have, you must not calculate as profits what is paid in the shape of interest on borrowed capital. They should also be treated really as money lent to the concern. It is money lent to each other and they merely put up their savings in that way as money lent for the purpose of transacting that most important business. I know that, in Madras, the rate of interest in the money market is kept down considerably by the operations of these various societies, which are scattered all over the Presidency, not only in the Presidency town but all over the Presidency, and to treat this as share capital does not sound at all reasonable. On the other hand, if you want to raise the income-tax on this amount also, you will drive these benefit societies to raise their rates of interest. They lend the money amongst the subscribers themselves and if they have to pay this income-tax, they will have perforce to raise their rate of interest which they levy from the subscribers and I do not think it can be the object of a good Government to prevent these societies doing useful work, and I, therefore commend this amendment to the acceptance of this House. It will enable these societies to carry on their transactions in a beneficent way. I know this has worked as a hardship in my own province. I do not know the case in other provinces, but I have described the nature of the transactions and I hope the Assembly will accept my amendment.

**The Honourable Sir Malcolm Hailey** (Finance Member): Would you allow me, with your permission, to ask purely for our information whether the term 'Mutual Benefit Society' is defined in any Act. Perhaps the Honourable Mover will kindly let us know that.

**Rao Bahadur T. Rangachariar:** If it is not defined we will define it now. I do not think I can call to memory any provision in any Act which has defined it, but I think the words are self-explanatory.

**Mr. G. G. Sim:** I have seen the rules of some of the associations, benefit societies and companies that have been referred to by the Honourable Member. Representatives of some of these appeared before a committee which sat in Madras last year and the members of that committee got so confused regarding the phraseology used in the rules that they gave up any attempt to discover exactly what the constitution of these societies was. Similarly, a set of rules was brought before the Joint Committee when it discussed the Bill. I think a great many of the difficulties experienced by these societies is due to the peculiar phraseology that they use. They are of different types and have different rules. In some cases, subscribers are called shareholders, debenture-holders and various other names, and some of the difficulties that they have experienced are largely due to their wrong phraseology. At the same time, as the Honourable Member has pointed out, there is a certain amount of hardship in connection with some of these societies, owing to the fact that the members of these societies in some cases are not personally liable to income-tax. But I do not think that he can ask provision to be specifically made for these peculiar societies, which have different sets of rules and which are under different constitutions, by a general provision in the Bill. In any case it would be impossible to insert this 'explanation.' As the Honourable the Finance Member has pointed out, there is no definition of what a Mutual Benefit Society is. It would be impossible in any case, I think, to insert in the Bill a provision that the money paid by share-holders shall be deemed to be capital borrowed. These two terms are mutually contradictory. Perhaps it will meet the views of the Honourable Member if I suggest that, when this Bill is passed, he should ask the Government of India to take into consideration the peculiar circumstances of these societies and to see whether any special provision is necessary for them under clause 60 of the Bill. Clause 60 of the Bill gives the Government of India power to reduce taxation or to make any concession they please in favour of any particular class of income. It is impossible to arrange for these societies in the way which he suggests. The wording of the explanation is too loose and would be capable of different interpretations. The full facts regarding these particular societies are not before the House and I do not think the House can be asked to legislate for them specially, but the Government of India are quite prepared to consider the case of these societies when the full facts are placed before them, to consider whether any special concession is required or whether any special arrangements are necessary in order to secure an equitable assessment of income-tax. I hope the Honourable Member will, therefore, see his way to withdraw this particular amendment.

**Rao Bahadur C. S. Subrahmanayam** (Madras ceded districts and Chittoor: Non-Muhammadan Rural): The concerns or the institutions on behalf of which my Honourable friend, Mr. Rangachariar, has moved his amendment are institutions well known in my province. Other provinces do not seem to have such concerns.

Now the history of these concerns is one well worth the attention of Government. When the Indian Companies Act, 1882, was passed, a large number of institutions, which were unregistered and which were known by the name of 'chit funds' and so on, institutions peculiar to the Madras Presidency, in order to regularize their position under the law and in order also to make their officers liable, registered themselves under the



Companies Act; and, when registering themselves under the Companies Act,—some of them so long as 40 years ago—they no doubt used words and phrases which were not really applicable to the business they were doing. They called their subscribers, 'shareholders'; they called the periodical payments 'calls.' But we know that a shareholder in a Joint Stock Company never gets back his money from the Company, unless it goes into liquidation and then only from the hands of the liquidator. In these concerns the shareholders, so called, are not really shareholders; they are subscribers paying a subscription month by month: one rupee is ordinarily the amount which each shareholder pays. He continues those payments for 45 months, or 27 or 80 or 90 months, and then, at the end of that period, whatever it may be, he receives his money back, *plus* an interest calculated at a certain rate—six per cent. generally. That is, he gets his money *plus* the interest back, and if there is any surplus in the fund after the expenses have been met, then he gets something more later on. But he is assured, in a way in which no company can assure its shareholders, of a payment of six per cent. It, therefore, happens that people of small means are almost always the members of such institutions. Two things attract them; the first is the facility with which they can get back their money at the end of these short periods. We all know, so far as Indians are concerned at least, that people are loath to put money into Joint Stock concerns, because they cannot get back their capital. Even Government securities are faced with the same difficulty. A great many people say that they will not put their money into it because they cannot get it back. But these institutions give facilities for getting back one's capital and therefore men of small means, labourers, artisans and clerks, and people in a small way generally, subscribe a rupee or two a month, or as much as they can afford, and at the end of a certain short period they get back their money. Secondly, in the meanwhile they have facilities for borrowing. They can borrow an amount to the extent of their outlay, whenever they require it. These concerns are therefore practically co-operative concerns without the intervention of Government.

In the Madras Presidency every district, every tehsil station, has got a concern like this. Their names vary in different places; in one place it may be called a Hindu Mutual Benefit Fund; in another place it will be known as a Hindu Permanent Fund. Of course they are all names which have no particular meaning. Some of them are high-sounding; but there is no good in taking up their nomenclature, criticising them and then saying that they come under the Companies Act: even though the subscribers are called 'shareholders' and the monthly instalments which they pay in are called 'calls.' Though they utilize the phraseology of Joint Stock Companies, they are in fact not Joint Stock Companies in the sense in which we understand them. The men who put their money into these concerns get back their money in a short time; no shareholder in a Joint Stock Company gets back his money directly from the Company. These institutions are very well known to everyone in Madras, officials and non-officials, and there will be absolutely no difficulty in differentiating them, though registered under the Companies Act, from Joint Stock Companies. Therefore the Honourable Mr. Sim's objection that they call themselves by certain names and those words and phrases bring them under the Companies Act, and that it will be a very difficult matter to discriminate between them and other concerns registered under the Companies Act, has no force. Any Madras official would be able to tell you that one of these institutions is not a Joint Stock Company in the sense in which we understand the term. These are concerns in which there is really no capital.

[Rao Bahadur C. S. Subrahmanayam.]

Money is put in by the subscribers and it is taken back after a short period. There is a further point; they are all small concerns; their working expenses are small and their earnings are small. If you tax them just like Joint Stock Companies of the highest grade, practically all their earnings will be taken away by the Income-tax officer. The result will be that these institutions will either have to close down or be driven to alter their articles of association and form themselves on an entirely different basis. It would be a great hardship. The amendment proposed explains itself, and I think there will be no hardship in accepting it, and it will give much needed relief. Almost all these concerns have addressed letters to the Secretary of the Legislative Council pointing out their difficulties, and printed copies of that letter, which have been sent to me, have been circulated, as far as possible, among the Members of this House. I must congratulate the gentleman who spoke for Government on his appreciation of the difficulties of these institutions. As he understands them, it cannot be very hard for him to find a solution for this difficult matter.

**The Honourable Sir Malcolm Hailey:** After Mr. Subrahmanayam's explanation, I do understand the case a little more clearly than, I confess, I did before; but I do not think he has correctly or fully represented the objection, which my friend, Mr. Sim, brought forward, to the inclusion of the proposed explanation in the Bill. Now, in the first place, it is quite clear that there is no statutory definition of a 'Mutual Benefit Society.' In the second place, it is clear that, in point of fact, these Societies are in numerous cases not even called 'Mutual Benefit Societies' at all. In a large number of cases they are called, to use the Honourable Member's expression, by various high-sounding names. That, in itself, would naturally cause difficulty in the interpretation of the 'Explanation.' Further, the term 'Mutual Benefit Society' is probably of very much wider application than the operations of these particular Societies; in fact, a member of a Club might be inclined to claim that a Club also was a Mutual Benefit Society and that the 'Explanation' should apply to it.

Now, Sir, the case we put forward was this, that, admitting that these Societies have some claim to protection, we yet desire to examine their case more fully. We desire also that these Societies should have a chance of putting themselves on a basis so clear, and arrange their terms with such precision, as to allow of their receiving the benefits of any exemption that we might grant. When that is done, we would consider their case under section 60 of the Act. I put it to the House that it is not advisable to include in the Act any term so indefinite as this and so difficult of interpretation. I have been twitted with not being a lawyer. I am not ashamed of not being a lawyer. I have other functions, but I know sufficiently of legal operations to say, and to say with confidence, that it is very inadvisable to put in an Act a term of general and undefined application. To do so very often leads to very much more trouble than the framers of an amendment calculate. I would further, say, Sir, that it is inadvisable for this Assembly to put on its Statute Book an explanation so worded that it would seem to have the curious effect of making money paid by a subscriber or shareholder actually 'capital borrowed;' obviously it cannot be 'capital borrowed.' Indeed, it reminds me of a good deal of the laudable efforts of certain officers, made in the interest of sport, to bring such animals as elephants and leopards within the operation of the Wild Birds Protection Act.

**Sir P. S. Sivaswamy Aiyer** (Tanjore *cum* Trichinopoly: Non-Muhamadan Rural): May I suggest a solution, Sir, out of the difficulty pointed out by the Honourable the Finance Member, which I fully appreciate. Supposing you add the words 'as defined by rules made under this Act' after the words 'Mutual Benefit Society,' that will leave it open to the Finance Member to frame his definition in such a manner as to meet precisely those cases which he wants to meet and shut out cases which he does not want to meet.

**The Honourable Sir Malcolm Halley**: Sir, if I may say so, this addition is quite unnecessary, for we have a very wide power under section 60 and, if necessary, we are prepared to utilise that power. It is not at all necessary to lay down that we should frame rules to this particular effect under the Act.

**Rao Bahadur T. Rangachariar**: I am sorry the Honourable the Finance Member would not accept the proposal, even as amended by Sir Sivaswamy Aiyer. We know the Government of India have ample power. We know also how, in income-tax cases, they exercise their power. Unless we have some such explanation, it is at least likely that this power would be exercised. We know how income-tax officers are heartless. To bring up cases from remote districts, say Malabar, to the Government of India is really asking too much. I think the clause as amended by Sir Sivaswamy Aiyer meets all the objections raised. It is open to Government to define a Mutual Benefit Society, and I do not see why there should be any objection. I therefore press my amendment (as amended by Sir Sivaswamy Aiyer).

**Mr. President**: Am I to understand that the Honourable Member moved these words as an addition to Mr. Rangachariar's amendment?

**Sir P. S. Sivaswamy Aiyer**: The amendment is to add the words 'as defined by rules made under this Act' after the words 'Mutual Benefit Society.'

**Mr. President**: Amendment moved:

'To sub-clause (2) (iii) of clause 10, add the following: '*Explanation*:—Recurring subscriptions paid periodically by shareholders or subscribers in a Mutual Benefit Society, as defined by rules made under this Act, shall be deemed to be 'capital borrowed' within the meaning of this clause.'

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—36.

Abdul Majid, Shaikh.  
Agarwala, Lala G. L.  
Ahmed, Mr. K.  
Aiyer, Sir P. S. Sivaswamy.  
Asjad-ul-lah, Maulvi Miyan.  
Bagde, Mr. K. G.  
Bajpai, Mr. S. P.  
Barua, Mr. D. C.  
Bhargava, Pandit J. L.  
Char dhuri, Mr. J.  
Faiyaz Khan, Mr. M.  
Gour, Dr. H. S.  
Habibullah, Mr. Muhammad.  
Jatkar, Mr. B. H. R.  
Jejeebhoy, Sir Jamsetjee.  
Mahadeo Prasad, Munshi.  
Man Singh, Bhai.  
Misra, Mr. P. L.

Mudaliar, Mr. S.  
Muhammad Hussain, Mr. T.  
Mukherjee, Mr. J. N.  
Nag, Mr. G. G.  
Nand Lal, Dr.  
Neogy, Mr. K. C.  
Pyari Lal, Mr.  
Rangachariar, Mr. T.  
Rao, Mr. C. Krishnaswami  
Reddi, Mr. M. K.  
Samarth, Mr. N. M.  
Sarvadhikary, Sir Deva Prasad.  
Sinha, Babu L. P.  
Sinha, Beohar Raghurir.  
Subrahmanayam, Mr. C. S.  
Thackersey, Sir Vithaldas D.  
Ujagar Singh, Baba Bedi.  
Wajihuddin, Haji.

## NOES—29.

Bradley-Birt, Mr. F. B.  
 Bray, Mr. Denys.  
 Bryant, Mr. J. F.  
 Carter, Sir Frank.  
 Chatterjee, Mr. A. C.  
 Crookshank, Sir Sydney.  
 Dentith, Mr. A. W.  
 Fell, Sir Godfrey.  
 Gidney, Lieutenant-Colonel H. A. J.  
 Ginwala, Mr. P. P.  
 Hailey, the Honourable Sir Malcolm.  
 Hullah, Mr. J.  
 Innes, the Honourable Mr. C. A.  
 Iswar Saran, Munshi.  
 Keith, Mr. W. J.

Manmohandas Ramji, Mr.  
 Maung Maung Sin.  
 McCarthy, Mr. F.  
 Mitter, Mr. K. N.  
 Nabi Hadi, Mr. S. M.  
 Percival, Mr. P. E.  
 Renouf, Mr. W. C.  
 Sarfaraz Hussain Khan, Mr.  
 Sharp, Mr. H.  
 Sim, Mr. G. G.  
 Spence, Mr. R. A.  
 Vincent, the Honourable Sir William.  
 Waghorn, Colonel W. D.  
 Way, Mr. T. A. H.

The motion was adopted.

**Sir• Vithaldas D. Thackersey** (Bombay Millowners' Association: Indian Commerce): Sir, I beg to move:

'In sub-clause (2) (iv) of clause 10, after the words 'for the purposes of the business,' insert the following words:

'And in respect of insurance against loss of profits and fixed charges by such damage or destruction'.

Sir, clause 10 (2) (iv) provides for an allowance:

'In respect of insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purpose of the business'.

I wish to propose that allowance should also be given in respect of insurance against loss of profits and fixed charges by such damage or destruction. I note that, at the top of page 5 of the Report of the Joint Committee, they say:

'We do not consider it advisable to insert any provision in the Bill allowing, as a business deduction, insurance against the loss of profit. Departmental instructions should, however, be issued that, where the owner of a business asks for any such allowance, it should be given on the assessee agreeing to pay income-tax on the amount recovered from the insurance company. Similar instructions should be issued regarding insurance against loss of rent under clause 9.'

I do not know whether this recommendation of the Joint Committee is accepted by Government and whether Government will give an undertaking that such instructions will be issued. The most satisfactory way, however, of dealing with such a question, where we all agree, is to include a provision in the Act, providing at the same time what the Joint Committee mentions, namely, the words

'on the assessee agreeing to pay income-tax on the amount recovered from the insurance company'.

I do not think that there can be any objection to drafting a clause to give effect to the idea of the Joint Committee, but, if I am assured that Government will issue the necessary instructions, I will not press this amendment.

**Mr. G. G. Sim:** Sir, I can assure the Honourable Member that departmental instructions will be issued in the exact words used by the Joint Select Committee.

I might explain that the reason why the Joint Committee decided not to put in a special provision in the Bill was that the commercial representatives explained that it would not always be convenient to take advantage of the concession and that certain businesses might prefer not to have the allowance and not to be taxed on any amount received from the insurance company. It was, therefore, decided to leave it entirely to the option of the owners of each particular business.

I hope, therefore, that the Honourable Member will withdraw the amendment.

**Sir Vithaldas D. Thackersey:** I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

**Sir Vithaldas D. Thackersey:** Sir, I beg to move:

'After sub-clause (2) (iv) of clause 10, insert the following:

'(v) In respect of contributions made by a company, firm or corporation to a regularly constituted provident fund for the benefit of its employes and the interest allowed thereon'.

I think the House will agree with me that, when a company or corporation sets aside a special fund for the benefit of its employees by way of a provident fund, and that fund is properly constituted for the benefit of the employees, an allowance for such amount as may be set aside for this purpose should be made before income-tax is payable. I do not think there can be any difference of opinion about that, and I hope Government will accept this amendment.

**Mr. G. G. Sim:** Sir, the difficulty about accepting this particular amendment is that it is difficult to say what particular interpretation would be put upon the words 'regularly constituted provident fund.' It is entirely owing to the difficulties regarding private provident funds that the Government recently circulated a letter to commercial associations and to Local Governments asking for their suggestions regarding legislation for the purpose of putting these provident funds upon a legal basis. I have seen the rules of many of these funds and they differ in many respects. The whole of this question was thrashed out at considerable length before the Joint Committee and the Joint Committee have made the following recommendation:

'We do not consider it advisable to make any specific provision regarding the deductions to be allowed on account of the contributions of employers to private provident funds of companies and firms. We consider, however, that the practice should be that such contributions should be allowed in cases where the funds are irrevocable trusts and where the employers' contributions cannot under any circumstances be recovered by the employers'.

I can assure the Honourable Member that instructions will be issued to give effect to this recommendation. It is intended to follow this practice, that is to say, to allow such contributions where it is clear that the employer cannot himself recover the money from the provident fund, until legislation is introduced to give effect to the proposals made by the Honourable Member.

I hope, therefore, the Honourable Member will see his way to withdraw this amendment.

**Sir Vithaldas D. Thackersey:** I am satisfied that the necessary instructions will be issued, and I beg to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

**Lala Girdharilal Agarwala:** Sir, the amendment which stands in my 12 Noon. name runs as follows :

' In sub-clause (2) of clause 10, insert the following : ' (vii) In respect of amounts transferred to a reserve for the purpose of internal insurance and sums paid towards insurance against loss of profit or loss of rent under clause 9 and contributions by employers towards provident funds for the benefit of the employees.'

Now, Sir, my amendment is to a great extent covered by the amendment already moved by my Honourable friend, Sir Vithaldas Thackersey, and, on the assurance which has been given by the Government, I think it would not be of any use to me to move this amendment. The special reason which I see is this, that a big deficit is coming on and perhaps we are not in a mood to cut down very much, so I think I will not press my amendment.

**Haji Wajih-ud-Din** (Cities of the United Provinces : Muhammadan Urban): Sir, I beg to move :

' After clause 10 (2) (vi), insert the following :

' (vii) In respect of Zakat or Dharmada not exceeding  $2\frac{1}{2}$  per cent. of business property (house property of all kinds excluded) actually paid or transferred to such funds during the year.'

And re-number (vii), (viii) and (ix) as (viii), (ix), and (x), respectively.'

I want that an allowance should be made in respect of Zakat and Dharmada which every Muhammadan and Hindu is bound to spend according to his religion in respect of his working capital. The rate specified by the Divine Law for Zakat is  $2\frac{1}{2}$  per cent. and for Dharmada on Hindus, according to my knowledge, one-ninth per cent. There may be some defaults in this respect, but the majority have to spend this proportion, and therefore I ask that provision be made for the allowance asked for.

**The Honourable Sir Malcolm Hailey:** Before we proceed to discuss this amendment, may I, with your permission, ask the Honourable Member what meaning he attaches to the words ' business property?'

**Haji Wajih-ud-Din:** Working capital of the business.

**The Honourable Sir Malcolm Hailey:** Might I ask him to define it in some term used in the Act itself?

**Haji Wajih-ud-Din:** Working capital of the business will do, I suppose. These are the terms I suggest.

**The Honourable Sir Malcolm Hailey:** Sir, I am afraid that neither of the terms which the Honourable Member has quoted to us is used in the Act, and it is therefore still very doubtful, in my mind, exactly what deduction the Honourable Member actually proposes to make—whether he proposes to make it from the profits, or the gains, or whether he actually proposes to make it from what he described as the working capital, is still very doubtful.

**Haji Wajih-ud-Din:** I want it taken from the capital, Sir.

**The Honourable Sir Malcolm Hailey:** In that case, Sir, I submit that the amendment falls to the ground, as we do not tax capital at all. We tax, of course, profits and gains.

**Haji Wajih-ud-Din:** Yes, I want it deducted from the profits at the rate of  $2\frac{1}{2}$  per cent.

**The Honourable Sir Malcolm Hailey:** I now understand that he wishes to deduct up to  $2\frac{1}{2}$  per cent. from the profits.

**Haji Wajih-ud-Din:** Not from the profits but from the capital.

**The Honourable Sir Malcolm Hailey:** I now understand that the Honourable Member wishes to deduct  $2\frac{1}{2}$  per cent. from the capital. May I point out again, that we do not tax capital. We tax profits. However, Sir, leaving alone the very mysterious nature of the proposition which the Honourable Member wishes to put forward, and which still leaves me in the utmost doubt as to its interpretation—a doubt which I am sure is shared by the House,—I would point out that what we set out to tax is the profits or income of a person, and we deduct from it such sums as are necessary to earn those profits or that income. If expenditure is incurred by him of a purely optional nature, it is clear that we cannot allow a deduction on that account so long as we adhere to the principle of deducting only those expenses which are necessary to earn his income. Now, Sir, it is no doubt highly laudable to agree to pay  $2\frac{1}{2}$  per cent. as Zakat or Dharmada; I know that in Delhi and no doubt elsewhere, many traders make regular payments of this nature for purely charitable purposes. That I admit, but I would point out that it is purely optional expenditure which is not essential for the earning of their incomes. The Honourable Member would no doubt urge in reply that these payments are of a religious nature. That I again admit; but there are a large number of religious obligations which have to be undertaken by people which it would be quite impossible for us to except from taxation under a general provision of the Act. I therefore, Sir, oppose this amendment.

**Dr. Nand Lal (West Punjab: Non-Muhammadan):** Sir, if money spent on insurance is deductible, then the money spent on this charitable affair is also necessary to be deducted. The money which is spent on insurance is also optional, just as it is optional in regard to this item. The Honourable the Finance Member's argument that, since it is optional, it is not essential, and, therefore, this amendment should be rejected, is met, I think, by the answer I have given. On that ground this amendment may be accepted, though I differ, in one respect, from the author of the amendment. The amendment as he has worded it, seems to be very vague. If he accepts the amendment in the form I am going to suggest, then I am quite prepared to support the main principle underlying his original amendment, and I shall give answers to any other arguments that may be advanced by the Honourable the Finance Member. The amendment, as I propose it, will stand as follows:

'In respect of Zakat or Dharmada not exceeding  $2\frac{1}{2}$  per cent. of the total taxable income.'

Sir, in this country, called India, charity is considered to be one of the most essential duties of a man, and a man really feels very much delighted when he finds that a little portion of his income has been spent on charity. This very idea is morally very beneficial and makes him apply his mind and his efforts to his business. As a matter of fact, business, which really brings forth profit, is very much encouraged. Consequently, this charity or Zakat or Dharmada may be considered one of the essential expenses which will be incurred in producing profits. On these grounds, I very respectfully submit, that the amendment, which I have proposed, will be acceptable to the whole House, and I hope that there will be no dissentient voice.

**Mr. President:** Amendment moved:

'To delete the words from 'business property.....' down to the end of the brackets and to insert the words 'total taxable income' instead.'

The question is that that amendment be made.

The motion was negatived.

**Haji Wajih-ud-Din:** I claim a division, Sir.

**Mr. President:** Does the Honourable Member want a division on the amendment to his own amendment? The amendment I have just put to the House was the amendment as moved by the Honourable Member from the Punjab (Dr. Nand Lal).

The question is that the following amendment be made:

'After clause 10 (2) (vi), insert the following:

'(vii) In respect of Zakat or Dharmada not exceeding  $2\frac{1}{2}$  per cent. of business property (house property of all kinds excluded) actually paid or transferred to such funds during the year'.

And re-number (vii), (viii) and (ix) as (viii), (ix), and (x), respectively.'

The motion was negatived.

**Rao Bahadur T. Rangachariar:** Sir, on the principle accepted by the Joint Committee it is rather difficult to reconcile their retention of this proviso (b) in this section. The principle was this, that this is an annual tax payable on the income for the year, and that you shall not allow any deduction for loss in regard to any one year being carried over to another year. It appears to me to be a sound principle, having regard to the object of income-tax, which is tax on the annual income. It is, therefore, difficult to reconcile that principle with the retention of this proviso (b), which, Honourable Members will see, provides for this depreciation of machinery—I think it is—to be carried over from year to year for succeeding years, so that, if in one year there is not enough profit, then they are allowed to carry this over from year to year, it may be, for 10 or 20 years in that way. It appears to me to be contrary to the principle accepted, and that is why I propose the abolition of this proviso. I move, therefore,

'To omit proviso (b) to sub-clause (2) (vi) of clause 10 and re-number proviso (c) as (b).'

**Mr. Manmohandas Ramji** (Indian Merchants Chamber and Bureau: Indian Commerce): Sir, the object of this proviso is, in any year when there is not sufficient profit, to write off the depreciation that goes on on machinery from year to year, and, if the profits are not sufficient or there is a loss, then that amount is to be carried to the next year and so on, the object being that machinery is always going on depreciating from year to year, which depreciation means loss in the subsequent years; because when your machinery is new in the first year, it can produce more, and when it has depreciated from time to time—there is waste going on and it reduces the earning capacity of the thing; and therefore this depreciation is allowed so that, after a number of years, it can be replaced and the profits kept regularly going on. That being the object, it is in the interests of the Government also that the depreciation should be allowed for, so that the profits may not vary after the depreciation. The analogy that the Honourable Mover has drawn is that, when you do not allow losses to be carried forward, this thing also should not be allowed; but losses are a different



thing; and depreciation being a different thing altogether. I think it is right that it should be allowed.

**Mr. President:** The question is that the following amendment be made:

'Omit proviso (b) to sub-clause (2) (vi) of clause 10 and re-number proviso (c) as (b).'

The motion was negatived.

Clause 10, as amended, and clause 11 were added to the Bill.

**Mr. President:** The question is that clause 12 do stand part of the Bill.

**Rao Bahadur T. Rangachariar:** In regard to clause 12, Sir, I am sorry I did not give notice of an amendment to this clause. But I wish to mention a point for the consideration of Government, so that they might consider it in the rules to be framed. Under this Act, undivided Hindu families become liable as a unit of assessee, and, from the proviso at the end of this clause, Honourable Members will know that no allowance is made for the personal expenses of the assessee, so that this will work as a great hardship on the undivided families where the aggregate income of the members will become liable to income-tax. In such a case it might be necessary to provide by rules for some allowances to be deducted for the personal expenses of the various members who constitute the family; and, if it is not so done, then I am afraid many a Hindu family who have got limited means of income will be put to hardship. You may limit the amount by rules for each member; you need not leave it to them to say 'we have spent so much'; but some such provision is needed. I do not know whether the Government will consider this point and provide for the needs of this class.

**The Honourable Sir Malcolm Hailey:** I am astonished, Sir, after what the Honourable Mr. Rangachariar said with regard to a previous amendment of his own, that he should ask Government to take into consideration any suggestion for mitigating the provisions of the Act. He was of opinion that the income-tax authorities were so hard that it was quite useless putting before them any case . . . . .

**Rao Bahadur T. Rangachariar:** I did not mean the Honourable Member though.

**The Honourable Sir Malcolm Hailey:** It was I, however, who would have had to consider the case of the Mutual Benefit Funds, not a local income-tax officer. But in this case, I may say that he is fully justified in his previous apprehensions, for I can give him no assurance whatever that Government will be prepared to make, in regard to members of joint Hindu families, a concession in regard to personal expenditure, which they are not prepared to make in the case of any Member of this House who does not happen to belong to a joint Hindu family.

Clauses 12, 13, and 14 were added to the Bill.

**Mr. President:** The question is that clause 15, as amended by the Joint Committee, do stand part of the Bill.

**Rao Bahadur T. Rangachariar:** Sir, it is only to carry out the intention, as I think, of the framers of the Bill that I move this amendment. They are allowing for insurances for members of a joint family, but they make it 'adult male member,' thereby they make no provision for insuring the lives of infant members of a joint family, and I do not see

[Rao Bahadur T. Rangachariar.]

why, if you are going to allow for insurances of adult male members of a family, you should not allow for insuring the life of an infant member of the family. We marry early in this country, even before we attain majority, and I think it is necessary to make a provision like that, and I therefore propose the omission of the word 'adult' towards the end of clause (2) of this section. The section would then read ' . . . . an insurance on the life of any male member of the family . . . . ' I am not very exorbitant in my demand. I might as well have proposed the omission of the words 'male adult,' so as to allow for insurances even on female members of the family, but I am modest in my request, because infant male members of the family have got an interest in the family property as much as the adult male members. They are as much members of the family and entitled to all the rights and privileges of the family. I, therefore, do not see any sense in excluding infant members from the benefit of this clause. I, therefore, propose the omission of the word 'adult' in clause 15 (2).

**Mr. G. G. Sim :** Sir, I can assure the Honourable Member that it was owing to no mistake in drafting that this word was inserted. It represents the deliberate intention of the Joint Committee. An Honourable Member referred, in the course of discussion on another amendment, to the provision made for the exemption of sums spent on insurance premia. This particular exemption has always been strictly limited. The exemption, in its present form, is intended to encourage thrift and to induce an assessee to make provision for his dependants. Under the Act and under the Bill, it has always been restricted to an insurance on the life of the assessee himself and to an insurance on the life of his wife. There are obvious reasons why allowances should not be made for insurances effected on the life of a child. It is quite a common practice in some countries. I do not know if that is a common practice here—to make insurances, for example, for the education of children; and a proposal was put forward, when the Act of 1918 was under discussion for the exemption of such insurance premia. It was opposed on the ground that it would enable assessees to put away considerable sums of money and to escape taxation in this manner.

Now, Sir, when the Joint Committee inserted sub-clause (2), they were under the impression that they were conferring upon the Hindu undivided family a concession more liberal than is given to the ordinary assessee. The ordinary assessee is, as I have said, allowed, under 15 (1), a deduction only in respect of a premium on an insurance on his own life or on the life of his wife, and, in the case of a Hindu joint family, it is proposed to allow an insurance on the life of every adult member of the family or the wife of any such member. That is a greater concession than is allowed to the ordinary assessee. I have stated the reasons why it is not proposed to extend the concession to insurance on the life of children. These are general objections, but there is certainly a further objection to the proposal put forward by the Honourable Member, that this concession, in favour of insurance on the life of children, should be given only in the case of children who are born in a Hindu undivided family. I oppose the amendment.

**Dr. Nand Lal :** Sir, it stands to reason that this amendment should be accepted unanimously. If a minor has got a business and the profit of that business is assessable to income-tax, there is no reason why the money which he spent on insurance should not be deducted. It means that, if a minor is

running some business and is deriving some profit from it, that profit is assessable to taxation, but the money, which is spent on insurance which will, to a certain extent, help the maintenance of his wife or will be of some benefit to other members of the family, should not be deducted from that amount which is assessable to income-tax. I may very respectfully submit that there does not seem to be any reason in this opposition. If the joint Hindu family is considered to be a unit, and the earnings of all members of the family go to the common hotch-pot and if that income is assessable, I think it is very necessary that the money which is spent for the benefit of the family should be deducted. For these reasons, I very respectfully submit that the amendment which commends itself, should receive the acceptance of the whole House.

**Rao Bahadur T. Rangachariar**: Sir, the objection taken on behalf of Government by Mr. Sim seems to me to merely draw the attention of the House away from the real issue. I did not ask for any deduction for the education of children, I did not ask for any deduction for insurance for marriages, I did not ask for any deduction for insurance as in other countries. Other countries do not possess Hindu undivided joint families and it is in this country that we have Hindu undivided joint families which are now sought to be made liable for the purpose of assessment, and you have to take facts as they are. It is a well-known fact that even infant members take part in a family business. Take a trading family, and you see boys of 14 and 15 go to the shop and do business. In the case of Nattukottai Chetties even boys of 9 and 10 are taken in business and they contribute to the joint earnings of the family and, therefore, it is but right that we should allow deduction for insurance on the lives of these infant members of the family.

**Mr. R. A. Spence** (Bombay: European): Sir, may I ask the Honourable Mover of this amendment whether he desires that the insurance paid by parents of infant children of Muhammadans and Anglo-Indians who work in their father's firms in this country should be exempted or whether he claims a special privilege for the Hindu undivided family which he will not allow to other races and other creeds?

**Dr. H. S. Gour** (Nagpur Division: Non-Muhammadan): Sir, before that question is answered, may I ask another question, whether Anglo-Indians and Muhammadans are also subject to the co-parcenary law?

**Rao Bahadur T. Rangachariar**: Sir, I am perfectly willing to support my Honourable friend if he brings forward such an amendment. But that is not the question now before the House. We are now concerned with a particular clause which deals with the Hindu joint undivided family. If my Honourable friend had been wise and had really interested himself in those people for whom he pleads and if he had brought forward an amendment, I would have heartily supported him.

**The Honourable Sir Macolm Hailey**: Sir, you will allow me to point out to the House that the Hindu joint family already occupies a very exceptional position under our taxation laws. When you come to super-tax they receive an exceptional deduction. We propose under this Bill to give them a further benefit, namely, that the profits derived from a Hindu joint family should not be taken into consideration in assessing a man's individual income. Now, Sir, the Honourable Mover, Mr. Rangachariar, is solicitous, as I know Members from Madras frequently are of the Hindu joint family, and desires to obtain yet another privilege which is denied

[Sir Malcolm Hailey.]

to other classes of people. That in itself is, I think, undesirable. It is, indeed, undesirable that we should extend privileges to any particular class in regard to taxation. But further from that, Sir, he has not made it at all clear for what purpose the life of a child is insured. It is not to be insured apparently for education; it is to be insured solely apparently for the benefit of the Hindu joint family in the event of that child expiring. Now, Sir, since the insurance will come to the family in that event, on what grounds is it proposed to make this exceptional exemption on behalf of the children of a Hindu joint family? On no reasonable grounds can such an exemption be argued.

**Mr. President:** Amendment moved:

'In clause 15 (2), omit the word 'adult'.'

The question is that that amendment be made.

The Assembly then divided as follows:

#### AYES—32.

Abdul Majid, Shaikh.  
Agarwala, Lala G. L.  
Ahmed, Mr. K.  
Asjad-ul-lah, Maulvi Miyan.  
Bagde, Mr. K. G.  
Bajpai, Mr. S. P.  
Barua, Mr. D. C.  
Bhargava, Pandit J. L.  
Chaudhuri, Mr. J.  
Faiyaz Khan, Mr. M.  
Gour, Dr. H. S.  
Jatkar, Mr. B. H. R.  
Mahadeo Prasad, Munshi.  
Manmohandas Ramji, Mr.  
Man Singh, Bhai.  
Misra, Mr. P. L.

Mudaliar, Mr. S.  
Muhammad Hussain, Mr. T.  
Mukherjee, Mr. J. N.  
Nag, Mr. G. C.  
Nand Lal, Dr.  
Rangachariar, Mr. T.  
Rao, Mr. C. Krishnaswami.  
Reddi, Mr. M. K.  
Samarth, Mr. N. M.  
Singh, Babu B. P.  
Sinha, Babu L. P.  
Sinha, Beohar Raghur.  
Srinivasa Rao, Mr. P. V.  
Subrahmanayam, Mr. C. S.  
Thackersey, Sir Vithaldas D.  
Ujagar Singh, Baba Bedi.

#### NOES—30.

Aiyer, Sir P. S. Sivaswamy.  
Bradley-Birt, Mr. F. B.  
Bryant, Mr. J. F.  
Carter, Sir Frank.  
Chatterjee, Mr. A. C.  
Crookshank, Sir Sydney.  
Dentith, Mr. A. W.  
Fell, Sir Godfrey.  
Ghulam Sarwar Khan, Chaudhuri.  
Gidney, Lieutenant-Colonel H. A. J.  
Ginwala, Mr. P. P.  
Habibullah, Mr. Muhammad.  
Hailey, the Honourable Sir Malcolm.  
Hullah, Mr. J.  
Innes, the Honourable Mr. C. A.

Keith, Mr. W. J.  
Maung Maung Sin.  
McCarthy, Mr. F.  
Mitter, Mr. K. N.  
Nabi Hadi, Mr. S. M.  
Percival, Mr. P. E.  
Renouf, Mr. W. C.  
Sharp, Mr. H.  
Sim, Mr. G. G.  
Spence, Mr. R. A.  
Vincent, the Honourable Sir William.  
Waghorn, Colonel W. D.  
Wajihuddin, Haji.  
Way, Mr. T. A. H.  
Zahiruddin Ahmed, Mr.

The motion was adopted.

**Mr. President:** I should like to ask the Honourable Khan Bahadur Sarfaraz Hussain Khan whether he voted in this division.

**Khan Bahadur Sarfaraz Hussain Khan** (Tirhut Division: Muhammadan): No, Sir, I did not.

Clause 15, as amended, was added to the Bill.

**Sir P. S. Sivaswamy Aiyer:** Sir, the amendment which runs in my name is as follows:

'In clause 16, insert the following as sub-clause (3):

'In determining the total income of an assessee liable to taxation, the amount of interest on any debt paid by him during the year shall, notwithstanding anything contained in sections 7 to 14, be deducted from the total income arrived at under clauses 1 and 2 of this section.'

Sir, my amendment raises an important question of principle and is intended to remove an injustice which exists under the present Act and which is attempted to be perpetuated in the new Bill. The question raised is this. If an assessee owes a debt and has to pay interest on it, is he or is he not entitled to deduct the interest paid by him on the debt from the income which he earns? My amendment does not offend against any of the fundamental principles of the income-tax law. One principle is that you are not entitled to deduct any capital destroyed but I am only asking that interest on debt paid shall be allowed. As a matter of fact, where a man owes a mortgage debt, there is a provision in clause 9 whereby the interest paid by him on the mortgage debt is allowed to be deducted. If a man carries on business and he borrows money for the purpose of that business, then the interest paid by him on the debt contracted by him for the purpose of his business is allowed to be deducted under clause 10. But take the case of a man who does not carry on business and who does not own house property or building property, but who has got some means, either in the shape of a salary or in the shape of income on Government promissory notes or something of the kind, and who is unfortunately obliged to borrow for some necessary purpose. It may be on account of the illness of some member of his family or it may be on account of the marriage of his daughter or for some such purpose as that. I am not suggesting that the amount of the debt which he borrows should be deducted from the income which he earns. All that I ask is that the interest which he pays on the debt shall be deducted out of the income which he earns. I will put a few cases to the House which will illustrate the injustice of the operation of the existing Act.

First of all, take the case of a man who has got Government promissory notes to the extent of Rs. 60,000. His income upon these promissory notes at  $3\frac{1}{2}$  per cent is Rs. 2,150. Suppose he has been obliged to borrow a debt of Rs. 5,000 on account of illness of some members of his family or on account of the marriage of his daughter and he has to pay interest on this debt of Rs. 5,000 at 7 per cent, by no means an extravagant rate, it would come to Rs. 350. If you deduct this Rs. 350 from the Rs. 2,150, the net income really at his disposal is Rs. 1,800 which would exempt him from all liability to income-tax. But as a matter of fact, he is taxed upon the whole of Rs. 2,150 and no allowance is made for the interest which he pays upon the debt. In this very case, because a man is prudent enough not to sell the Government promissory notes, and keeps the corpus of the property alive for the benefit of Government so that it may continue to yield income that is liable to tax, he is penalised. Supposing, instead of borrowing Rs. 5,000 he sells Rs. 10,000 worth of Government promissory notes in order to get this Rs. 5,000, the amount of Government promissory notes in his hands would be only Rs. 50,000 which will yield him a sum of Rs. 1,750 which is not liable to tax at all. Thus if he sold his Government promissory notes and destroyed his capital, he would not be liable to tax, but if instead of selling his Government promissory notes, he raises a loan and pays interest upon that loan, the Act makes no provision

[Sir P. S. Sivaswamy Aiyer.]

for deducting the interest that he pays upon that loan. That clearly is a case of injustice, of hardship. There is no reason why a man who is liable to a mortgage debt should be entitled to deduct the amount of interest; there is no reason why a person who carries on business and borrows for that purpose should be allowed to deduct the interest on the sum borrowed, but not this unfortunate man who is not lucky enough to possess house property or carry on business. Take another case. Take the case of a clerk who gets a monthly income of Rs. 200. His annual income will be Rs. 2,400. Supposing he is obliged to borrow a debt of Rs. 5,000 and at a rate of 9 per cent, the interest that he will have to pay would be Rs. 450. The net income of the clerk would be Rs. 1,950 which will not be liable to tax at all. But what the Act does is that he is liable to pay tax on the whole income of Rs. 2,400 and it makes no allowance for the deduction of the interest which he has to pay on this debt. Then, again, take another case which will illustrate the hardship in a perhaps clearer form. Suppose a man inherits property from his father in the shape of buildings. Suppose his annual income from the property is Rs. 25,000. Suppose also his father has left debts upon which the annual interest is Rs. 24,000. The result of that will be that his net income is Rs. 1,000. But what the Government will do will be that they will charge him income-tax upon the whole of the Rs. 25,000 and make no allowance for the interest of Rs. 24,000 which he has to pay. The income-tax upon Rs. 25,000 will be Rs. 1,562. The result, then, is that, though the man gets only a net income of Rs. 1,000, he will be obliged to pay Rs. 1,562 to the Government, and he will be obliged to get money somehow for the purpose of paying the tax. He will be taxed more than his net income, and he will be obliged to pay Government more than he receives at all in the shape of net income. These are cases which will bring home to your minds the hardship and the injustice of the existing provision. It is neither just, nor consistent nor defensible. There is no logic about it, and there is no principle which can be invoked to justify this provision. The only argument that can be advanced is that it has existed in the existing Act. But that, I say, is not an argument for perpetuating an injustice. Now, let us look at the provisions of the English Act upon this point. The provisions of the English Act are very much better than the provisions of the present Act. Take section 36 of the English Income-tax Act of 1918. -It runs as follows:

(1) Where interest payable in the United Kingdom on an advance from a bank carrying on a *bona fide* banking business in the United Kingdom is paid to the bank without deduction of tax out of profits or gains brought into charge to tax, the person by whom the interest is paid shall be entitled, on proof of the facts to the satisfaction of the special commissioners, to repayment of tax on the amount of the interest.

(2) A like repayment shall on the like proof be made in the case of interest (not being yearly interest) payable in the United Kingdom on an advance from a person who in the opinion of the Commissioners of Inland Revenue is *bona fide* carrying on business as a member of a stock exchange in the United Kingdom, or from any person who in the opinion of the said Commissioners is *bona fide* carrying on the business of a discount house in the United Kingdom:

Provided that no repayment shall be made unless the Commissioners of Inland Revenue are satisfied that the interest has been or will be brought into account in the statement delivered or to be delivered for the purposes of income tax by the person making the advance.

According to the English Act, then, if a person borrows from a bank, carrying on a *bona fide* banking business, he is not liable to income-tax upon the amount borrowed and he is entitled to a refund or repayment

of the income-tax. Our Act goes one better and charges person in respect of interest which they actually pay on debts borrowed by them. It is difficult to see on what principle this distinction can be made between a person who owes a mortgage debt and a person who borrows a debt on his personal security, and there is no reason why a person who borrows money for the purpose of carrying on a business should be allowed deduction of interest, but the person who is obliged to borrow money for a far more necessary purpose is not allowed to deduct interest. It may be said that, if you allow deduction of interest paid on debts borrowed on personal security and otherwise, there may be a danger of some evasion and it may be that bogus claims for deduction will be put forward. But I see no danger of that. If one man claims deduction of interest paid, you can easily run in the other man to whom interest has been paid and make him liable for the interest that he has received. I do not think that there is any difficulty whatever in finding out whether interest has, as a matter of fact, been really paid or not. It seems to me that there is really no justification for this clause. I admit that one principle of the administration of income-tax is that you ought not to make any allowance for personal expenditure. But I am not claiming any allowance for personal expenditure at all. If my proposal was to deduct a sum of Rs. 5,000 spent upon medical bills or upon marriage expenses or things of that sort, it would be obvious to that criticism. My amendment does not propose to deduct sums spent by way of personal expenditure. It only proposes that an allowance should be made for interest paid on debts. It does not offend, as I say, against any of the canons of income-tax administration. It does not ask for an allowance for capital destroyed. It asks only for the application of a principle, which has been recognised in other cases, to cases which are probably of a far more frequent occurrence and which stand far more in need of relief than these other cases. I hope the House will accept it.

**Rao Bahadur T. Rangachariar:** I cannot understand the amendment proposed by the Honourable Mover and how his amendment provides against reduction being claimed by an extravagant person like myself who borrows and spends upon my own comfort. We know many a person without much money who goes to Sowcarpet in Madras and borrows at a heavy rate of interest, such as 30 per cent. or 50 per cent. or 100 per cent., and also at a discount, and spends it on himself. If in determining the total income, interest payable by a man on any debt borrowed by him during the year and paid by him during the year is to be deducted, I do not see how my Honourable friend can claim that his amendment did not provide for such cases. Firstly, he borrows for his own personal expenditure. We know many a man in every part of the country who professes to be a trader, who has got a company and who keeps 5 or 6 motor cars which he cannot afford. He borrows money, for such a purpose, on what is called credit payment or the hire purchase system. I know many a man who cannot afford to do this and yet does these things. How are we to find on what object he has spent the money? In fact, the English Act provides this safeguard that the money should be borrowed from a bank or from a discount house, whereas here my Honourable friend would allow borrowing anywhere, any rate of interest and no limit and no rules. I think the income-tax will cease to be a source of income of the Government of India, if this is going to be adopted.

**Rao Bahadur C. S. Subrahmanayam:** I am sorry I cannot see eye to eye with my Honourable friend, Sir P. S. Sivaswamy Aiyer. Of course,

[Rao Bahadur C. S. Subrahmanayam.]

income-tax, like other fiscal laws, is illogical. There is no morality about them. They are only intended to grab as much money as we can from those who can afford to pay or those from whom it is not inequitable to take money. These are the two main considerations. I put a concrete case. Here is a man with a capital of Rs. 10,000, which is his own cash. He borrows, say, two lakhs and carries on business on a large scale. He runs a big office and keeps motor cars and other things also. If it comes to a question of settling his income, are we to take the words 'total income,' which is now the subject of discussion, or are we to deduct from the profits of his business the interest he pays to the bankers and others and then come down to a figure which will practically exempt it from taxation? Is such a man deserving of any consideration in a taxation proposal? That is the first point. The next point is, what would be the loss of income if such a concession were given? That is an important point which the Assembly has to take into consideration.

**Mr. J. Chaudhuri** (Chittagong and Rajshahi Divisions: Non-Muhamadan Rural): Sir, I also believe that the amendment, if passed, will create a great deal of confusion. For instance, with regard to what my Honourable friend suggested with regard to income derived from Government promissory notes, I consider it to be utterly impracticable. It is the practice for the Public Debt Office to deduct the income-tax when the interest is due and drawn. If people who own Government promissory notes can put forward claims for deductions for interests on monies borrowed from other sources and claim a set-off, that would be creating immense confusion. Over and above that, other cases of complications are also likely to arise. Take the case of the professions, the Government servants or persons in private employ. If they draw a particular income or salary and if they go on borrowing from different people and if they want to set off interests paid or payable to their creditors in respect of private debts against their income or salary, I think, the assessment of income-tax on salaries or income so derived will give rise to serious complications and loss of revenue. Therefore I am very sorry I cannot support the view or the amendment proposed by Sir Sivaswamy Aiyer.

**Mr. G. G. Sim**: Most of the arguments that were put forward by the Honourable Mover have been answered by the speakers who have preceded me, and I, therefore, do not propose to take up much time. I will refer only to one or two points. The proposal put forward by the Honourable Member would introduce a radical alteration in the whole system of taxation of incomes. The word 'income', as used for income-tax purposes, is always understood to mean the surplus of receipts over the current expenditure required for the purpose of earning those receipts, and no account is ever taken how that income is utilised. It may be utilised to meet current personal expenses; or some of it may be set aside to meet future expenses, or some of it may be used to pay back private debts or to pay interest on private debts. These are matters with which the income-tax officials have never had anything whatever to do. So far as I am aware, there is no Act anywhere in the world where income-tax is worked in the peculiar manner proposed in the amendment. It would, I think, introduce a state of affairs that would create the greatest inequalities. It would mean that, where a person incurs private debts, i.e., where a person anticipates his future year's income and spends it before he has earned it, he would have a considerable advantage over the more economical person who spends his income as he gets it or who sets aside a portion of his income



for future expenditure. There is one other point. The Honourable Member has referred to a particular provision of the English Act. The English Act makes no provision whatsoever for payment of interest on private debts being set against profits. The particular section that the Honourable Member refers to is a provision for the repayment of tax in respect of interest paid to banks out of taxed profits. It corresponds exactly to the recommendation made by the Joint Select Committee under clause 8 of the Bill. The Committee recommend that executive instructions should be issued that, where an assessee with an income from securities has obtained a loan from a bank for purchasing those securities, he may, on obtaining a banker's certificate as to the amount of interest on his loans, set off the interest that he pays against the interest that he earns from the securities. That is a perfectly reasonable proposal. A man borrows money for the purpose of purchasing and selling securities or for the purpose of investing in securities. If he invests in securities, obviously he ought to be allowed to deduct from the interest that he gets on those securities the interest that he has paid for the money that he borrowed for this particular purpose, but that is a totally different matter from allowing a person to deduct the interest on a private debt from his income. It would produce the gravest inequalities. It would be perfectly unworkable. I do not think that Honourable Members could contemplate orders being issued to income-tax authorities to find out, for example, before the introduction of the next Budget, what the private debts of tax-payers all over India will be on the 31st March. The proposal, Sir, is economically unsound and unworkable in practice.

**Mr. President:** Amendment moved:

'In clause 16, insert the following as sub-clause (3):

'In determining the total income of an assessee liable to taxation, the amount of interest on any debt paid by him during the year shall, notwithstanding anything contained in sections 7 to 14, be deducted from the total income arrived at under clauses 1 and 2 of this section.'

The question is that that amendment be made.

The motion was negatived.

Clause 16 was added to the Bill.

Clauses 17, 18, 19, 20 and 21 were added to the Bill.

**Sir P. S. Sivaswamy Aiyer:** Sir, I move the following amendment:

'In clause 22, omit sub-clause (4).'

The object of my amendment is this. Under the existing Act, the notice to produce documentary evidence is given after the return  
 1 P.M. has been made and the matter has received the consideration of the income-tax officer. I want the existing procedure to be preserved. I, therefore, suggest that sub-clause (4) of clause 22 be omitted, and my next amendment proposes that it should be re-inserted in clause 23, so that if an income-tax officer has reason to believe that a return made is incorrect or incomplete, he should then call upon the assessee to produce documentary evidence. It seems to me unnecessary for him to call for documents before this.

**Mr. G. G. Sim:** I think the Honourable Member has overlooked the portion of the report of the Simla Committee which gives an explanation

[Mr. G. G. Sim.]

of why this change was made in the procedure. As the Honourable Member has stated, the present Act specifies that no accounts may be called for in cases where an assessee has not made a return. The Simla Committee insisted that an Income-tax officer, in cases where a man cannot or may not make a return, should call for his accounts. The only alternative left is that the Income-tax officer should make a wild guess at what the assessee's income is and it was after full consideration that they decided that, in cases where an assessee cannot make a return, an Income-tax officer should have power to send for his accounts and make his estimate for him, so that the assessment may be as near as possible to the actual facts.

**Mr. President:** Amendment moved:

'In clause 22, omit sub-clause (4).'

The question is that that amendment be made.

The motion was negatived.

Clause 22 was added to the Bill.

**Rao Bahadur T. Rangachariar:** Sir, I move:

'That in clause 23 (3), after the word 'require' the words 'on specified points' be inserted.'

Clause 23 (3) runs:

'On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, the Income-tax officer after hearing such evidence as such person may produce and such other evidence as the Income-tax officer may require.'

Now, I want to include that, if he calls upon a party to produce evidence, he must specify the points on which he wants evidence, and that is the object of this amendment. I hope it will be acceptable to the Government and to this Honourable House.

**Mr. G. G. Sim:** Sir, I think the Honourable Member misapprehends the particular object of these words. The reference in this clause is to the evidence which the Income-tax officer may require from any other person than the assessee. The notice that he gives to the assessee himself is laid down in sub-clause (2). Under sub-clause (2), after the Income-tax officer has examined the accounts, he can call upon the assessee to produce any evidence he pleases on which he relies in support of his return. Under sub-clause (3), the Income-tax officer has to hear any evidence which the assessee may produce; but he also has power to, himself, require independent evidence to be produced. I hope, therefore, that the Honourable Member will see his way to withdrawing his amendment.

**Rao Bahadur T. Rangachariar:** Even so, although the Income tax officer may require not only the assessee but any other person to produce evidence, he should specify the points on which he is required to produce evidence, so that the person who is called upon should know what evidence he is required to give. That is the object of this amendment. I do not see any objection to this amendment being made.

**Mr. G. G. Sim:** That, I believe, is the usual course. I do not think it is necessary to insert those words. The Honourable Member brought forward his amendment under a misapprehension and I hope I have removed that misapprehension. If an Income-tax officer does call upon an

outsider to give evidence, he must give him information as to what the evidence is about.

**Mr. President:** Amendment moved:

'That in clause 23 (3), after the word 'require' the words 'on specified points' be inserted.'

The question is that that amendment be made.

**The Honourable Sir Malcolm Hailey:** Sir, rather than that the time of the House should be occupied in going to a division on this unimportant point, Government had perhaps better accept this amendment.

**Mrs. President:** The question is that the amendment be made.

The motion was adopted.

**Haji Wajih-ud-Din:** Sir, I move:

'That in clause 23, sub-clause (4), after the word 'judgment' the following words be added:

'Provided that the mere non-production of accounts especially in the cases of petty shop-keepers, village-traders and those carrying on ordinary cottage industries who used to keep no regular accounts shall not be a sufficient reason for making new or an enhanced assessment.'

Sir, I may be allowed to explain that it is a well-known fact that persons of small means and carrying out ordinary callings and professions, such as tailors, carpenters, blacksmiths, etc., and other petty shop-keepers in small lanes, and village traders who earn on a small scale and never keep accounts of their daily earnings, have their incomes very frequently miscalculated by the Income-tax officers and their non-production of accounts is generally considered sufficient ground for taxing them or enhancing their taxes if they are already assessed. By this miscalculation of justice, I have seen many poor people unable to carry on their ordinary means of livelihood and becoming victims of such unjustifiable deeds. I, therefore, move the addition of these words.

**Mr. G. G. Sim:** Sir, I am afraid I do not quite understand what the particular legal effect of this proviso is supposed to be. Under the Bill, when a man produces no accounts, the Income-tax Officer must make the assessment to the best of his judgment. I do not see what else he can do, and if there are any irregularities in regard to assessment of small traders, if they are unequally assessed, if the matter is brought to the notice of the higher authorities, they would set right the inequality. But I am unable to understand how the object, the Honourable Member has in view, can be given effect to by this proviso. I must oppose the amendment which I do not understand.

**Mr. President:** Amendment moved:

'That in clause 23, sub-clause (4), after the word 'judgment' the following words be added:

'Provided that the mere non-production of accounts especially in the cases of petty shop-keepers, village-traders and those carrying on ordinary cottage industries who used to keep no regular accounts shall not be a sufficient reason for making new or an enhanced assessment.'

The question is that that amendment be made.

The motion was negatived.

Clause 23, as amended, was added to the Bill.

**Mr. G. G. Sim:** I beg to move:

'That in clause 24 (1), after the word 'loss', where it occurs for the first time, the words 'of profits or gains' be inserted.'

I may explain that all the amendments standing in my name are merely formal drafting amendments and introduce no change of substance. This particular amendment is for the purpose of making it clear that the word 'loss' means only a loss of profits and does not include a loss of capital.

The motion was adopted.

**Bhai Man Singh:** Sir, I was just going to oppose this amendment. If I am in order, I would like to speak on the amendment. I, of course, got up before the question was put. I have got my own misunderstanding about the amendment.

**Mr. President:** If the Honourable Member wishes to speak, he is entitled to do so. But it appeared from Mr. Sim's observations that there could not be any possibility of argument about it.

**Bhai Man Singh:** I see the effect of the amendment would be that only loss of profits or gains can be deducted. Supposing a businessman orders certain goods from somewhere and they are either lost or spoiled in transit, would that be taken as loss in profits or gains? At many places, Income-tax Officers have included such losses in loss of capital and they have allowed no deductions for that. Of course, there is no reason why this change should be made when we have already got the word 'loss' in the clause. If a businessman has lost Rs. 50,000 worth of goods at a certain place and he gains Rs. 10,000 as profits, there is no reason why we should tax him.

**Mr. G. G. Sim:** I do not understand the Honourable Member's difficulty. In such cases, as referred to by the Honourable Member, losses of that kind would be treated as business losses and allowed, unless covered by insurance. There is no difficulty about it. All that the clause means is that a loss of profits under one head may be set against profits under another.

**Mr. President:** The question is that that amendment be made.

The motion was adopted.

**Mr. G. G. Sim:** I beg to move:

'That in clause 24 (2)

- (a) for the words 'his own personal' the word 'any' be substituted, and
- (b) for the words 'if any' the words 'in respect of which the tax is payable by him' be substituted.'

**Mr. President:** The question is that the amendment be made.

The motion was adopted.

Clauses 24, as amended, 25, 26 and 27 were added to the Bill.

**Haji Wajih-ud-Din:** I move:

'That in clause 28 (1), the following be added:

'Provided that no such penalty shall be levied on assessments made under sub-section (4) of section 23.'

The amendment is suggested as a public safeguard. There are a number of assesseses in each and every district of India who do not keep any

regular accounts and, as a matter of fact, they are neither so advanced nor even educated, and so they cannot keep such accounts. Under clause 23, sub-clause (4), an Income-tax Officer can assess tax on the income of such persons to the best of his judgment if they do not submit their returns, but I see, in certain cases, undue pressure is brought over these poor and tongueless people under threat of penalty and fine before they are assessed or even after they are assessed on account of some unfounded rumours brought to the notice of the Income-tax Officer by their rivals or competitors. I therefore request the Assembly to add these words.

**Mr. G. G. Sim:** I do not understand how this particular section will be useful in the circumstances referred to by the Honourable Member. This section can only be employed where it is found definitely that a person has a certain income and that he concealed the particulars of his income or deliberately failed to furnish particulars of that income. It is only when the definite facts are actually ascertained that this section can ever be used at all. The only result of the amendment proposed by the Honourable Member would be that persons who have concealed their income would escape the penalty. I oppose the amendment.

**Mr. President:** Amendment moved:

'To clause 28 (1), add the following:

'Provided that no such penalty shall be levied on assessments made under sub-section (4) of section 23.'

The question is that that amendment be made.

The motion was negatived.

Clause 28 was added to the Bill.

**Mr. G. G. Sim:** I beg to move:

"That in clause 29, between the word 'under' and the word and figures 'section 28' the words and figures 'sub-section (2) of section 25 or' be inserted."

This is to cover an obvious omission.

**Mr. President:** The question is that that amendment be made.

The motion was adopted.

Clause 29, as amended, was added to the Bill.

**Sir P. S. Sivaswamy Aiyer:** I beg to move:

'In clause 30 (1), before the words 'may appeal' insert the words 'or to any order enhancing the assessment under section 35.'

Section 35 provides for enhancement of assessment in certain cases. There is no provision for an appeal against an order enhancing the assessment and it is for the purpose of supplying that omission that I propose the insertion of the words 'or to any order enhancing the assessment under section 35.'

**Mr. P. P. Ginwala** (Burma:Non-European): I am unable to follow the argument of my Honourable friend from Madras who has moved the amendment. If he will look at clause 35, he will find that that clause is confined to the rectification of mistakes apparent on the face of the record. The Collector may, for instance, have fixed, by mistake, Rs. 5, though the assessee was assessable to Rs. 50. Such mistakes could be rectified by looking at the report. The clause does not refer to any appeals at all on the merits. If it is a question of appeal on the merits, I can understand a man having the right of appeal. When the mistake can be seen by a

[Mr. P. P. Ginwala.]

giance at the records, and the assessment corrected, I do not see why the assessee should have a right of appeal.

**Mr. G. G. Sim:** I agree with the last speaker and with the Joint Committee. To insert any provision about an appeal in such cases would be carrying the provisions regarding appeals to an absurdity. The Joint Committee made numerous additions to the number of cases in which an appeal may lie. They considered this particular clause, and as Mr. Ginwala has pointed out, since all that this section refers to is the correction of mistakes considered, it would be absurd to provide for a formal appeal. There is no point in providing for an appeal. It is a perfectly simple matter. If any Income-tax Officer does not correct a mistake, if it is pointed out to him, the party concerned has only to report him to the head of the department who will bring him to reason. I oppose the amendment.

**Mr. President:** Amendment moved:

'In clause 30 (1), before the words 'may appeal' insert the words:

'or to any order enhancing the assessment under section 35.'

The question is that that amendment be made.

The motion was negatived.

Clause 30 was added to the Bill.

**Haji Wajih-ud-Din:** Sir, I move the following amendment:

'In clause 31 (1), after the word 'place' insert the words 'within the district where the assessee resides or carries on trade.'

This amendment is moved for the sake of public convenience. There have been numerous instances in which the appellate authorities fixed the place of hearing in a district other than the district in which the appellant resides, and the inconvenience thus caused to him is apparent. It is very troublesome and at the same time highly expensive to take evidence and other matters relating to appeals to distant places, and then to shift from place to place if the hearings are adjourned and the appellate authority moves further. Therefore, it is necessary that the appeals should be heard within the district where the appellant resides or carries on trade.

**Mr. G. G. Sim:** Sir, while I have considerable sympathy with the object which the Honourable Member has in view in bringing forward this amendment, I should like to place before the House a few difficulties which would result from accepting the amendment in its present form. The amendment would make it obligatory that an appeal should, in every case, be heard in the district in which the assessee resides. This, in many cases, might not suit the convenience of the assessee himself. We have had numerous cases in which an assessee has asked that an appeal should be taken at a place other than the district in which he resides, in order that he might get the advantage of some particular aid, either from accountants or from members of the Bar. Also, while the Government is at present trying, so far as possible, to increase the staff in order that assessee's may have their appeals heard at the places best suited to their convenience, which are not necessarily the places where they reside, the staff at present is not sufficient to enable this amendment to be given effect to, even if it were desirable to insert it. But, I can assure the Honourable Member that every effort will be made, by increasing the staff of officials, to have the appeals heard where most convenient to the assessee. I would only point out that that place need not necessarily be the place where the assessee resides at all; he may prefer some other place.

**Mr. President:** Amendment moved:

'In clause 31 (1), after the word 'place' insert the words 'within the district where the assessee resides or carries on trade'.

The question is that that amendment be made.

The motion was negatived.

**Rao Bahadur T. Rangachariar:** Sir, I beg to move that:

'In the proviso at the end of clause 31, omit all the words after the word 'assessment' and make consequential amendments in clause 32.'

In dealing with the appeal of a man who comes forward complaining that he has been over-assessed, the appellate authority has the right to enhance the assessment. I want to deprive the appellate authority of that power to enhance the assessment. Here, a man comes forward with a grievance, but not only does he not get rid of that grievance, but he also gets an additional grievance by appealing to the appellate authority. In criminal cases, Honourable Members belonging to the profession of the law may remember that, when a man appeals against a conviction and sentence, the appellate court has no power to enhance the sentence. It is only the High Court, and the High Court alone, which can enhance the sentences on convicted persons. (*Lala Girdharilal Agarwala*: 'On revision only.') And they very seldom do it. Here, this is a sort of threat to the appellant who comes forward as much as to say: 'Take care, I also have the right to enhance the assessment imposed on you.' I do not think that the appellate authority should have that power. The Commissioner has got revisional powers under section 33, but, whatever it is, when a man comes up with an appeal, the appellate authority should not have this power. I think it is objectionable in principle, and I, therefore, move the amendment.

**Mr. G. G. Sim:** Sir, I do not agree in the least with the view the Honourable Member takes of the functions of an appellate authority in income-tax matters. Surely the only object of the original assessment proceedings and of these appeals that we are now providing for is to secure that a man is assessed at the proper rate and on the proper income and, if in the course of an appeal it is discovered that a man has not been assessed at the proper rate or on the proper income, why should he escape simply because he has not furnished a proper return beforehand? The only alteration in this clause which has been made by the Joint Select Committee is that, while under the present Act an enhancement may be made by an appellate authority without giving the appellant, if the appellant chooses to run away, an opportunity to be heard, they have now provided that in every case an appellant must be heard and have further provided for an appeal to the Commissioner against any order passed by the appellate authority.

I oppose the amendment

**Mr. P. P. Ginwala:** Sir, I oppose this amendment moved by my Honourable friend, Mr. Rangachariar, because it is based on a misapprehension. There is no difference at all between the provisions of the Income-tax Act and the provisions of the Criminal Procedure Code. It is true, of course, as has been pointed out that, if a person appeals under the Criminal Procedure Code, the sentence is not liable to be enhanced on appeal, but there is a provision by which the Court, in its revisional jurisdiction, can

[Mr. P. P. Ginwala.]

take separate proceedings and ask the appellant to show cause why the sentence should not be enhanced, and the sentence may be enhanced. Under this Bill also, if you refer to clause 33, you will find that the Commissioner has got revisional powers which he can exercise on his motion or upon reference by the Assistant Commissioner who has heard the appeal. Thus it is clear that, by the machinery set in motion under section 33 of the Income-tax Act, exactly the same results will follow as under the Code of Criminal Procedure. Under these circumstances, when an appeal is being heard, there is no objection at all to the Assistant Commissioner having the power to enhance the assessment if he is so satisfied, after giving the necessary notice to the assessee or to the appellant, especially as an order of enhancement is appealable under clause 32. On these grounds, I ask that the amendment be not passed by the House.

**Rao Bahadur C. S. Subrahmanayam:** Sir, the only argument that has been used in support of the opposition to this measure is, why should not the power of enhancing assessments rest with the Assistant Commissioner? That is all that is said, that is the only argument that we have heard. The point is that a man is assessed. He feels he has been over-assessed and has a grievance. He goes on appeal and we have this power in the appellate authority that it can, on examination, enhance the tax about which he is complaining. Well, that will prevent many persons from having this matter properly discussed by higher authority. Well, is it too much to say that the appellate authority, when he gets a large number of appeals, will want to teach a lesson to these importunate people who trouble the authorities with such appeals. At any rate, that is the common idea among officials, that people come to them with unnecessary and frivolous appeals and petitions. That is what is the common belief among a certain class of people. No doubt, some of these appellate authorities will take it into their heads now and then to give a bit of their minds to these people by enhancing the tax. If you allow this power to be vested in a number of officers, the working will not be uniform, the exercise of the power will not be equitable, and, therefore, there are these troubles, especially in rural areas and with regard to people who are not quite up to the mark in dealing with these income-tax officers. And, therefore, that power might be well omitted. If a man has really escaped taxation, it would be easy for a reference to be made to the Commissioner. That would act as a check against frequent or more or less irresponsible enhancements. After all, in cases, where a man has escaped taxation and the appellate authority believes that he ought to have paid on a higher scale, it is always open to rectify the mistake next year. But the arming of these officers with this power of enhancement, I think, would work great mischief and make the Act still more unpopular. I cannot agree with my friend, Mr. Ginwala, who simply says: 'Well, there is still power vested in the Commissioner for enhancement on a reference being made to him.' I say, there is a great deal of difference between an officer referring for orders to a higher authority and himself enforcing those powers. Therefore I think that this amendment ought to receive the approbation of the House.

**Mr. J. K. N. Kabraji** (Bombay: Nominated Official): Sir, I think this amendment should not be passed, but if it is passed, I would point out that it would be quite inconsistent with sub-clause (3) (a) and should, therefore, be ruled out.



**Dr. H. S. Gour:** Sir, all the arguments used by Mr. Sim, in connection with the retention of this clause, are arguments equally applicable to the enhancement of a sentence. In the interests of justice, and to afford a salutary lesson to the accused, it was formerly the rule that the Appellate Court had the power of enhancement of sentences; but the opinion of all the High Courts was unanimously in favour of such enhancements and the provision, arming the Appellate authority with the power of enhancing sentences, was deleted from the Code of Criminal Procedure. The same argument applies equally to the enhancement of an assessment by the appellate authority. As has been pointed out by Mr. Subrahmanayam, it will act as a deterrent against appeals and the result will be that it will also in some cases be used as a threat against appellants. If a man has been under-assessed, it is open to the Taxing officers or to the Revenue authorities who are in charge of this Department to appeal against that taxation, but, I submit, that it would be anomalous to arm the appellate authority with the power of enhancing assessments when the record comes before him on the motion of the payee. I, therefore, submit that this amendment moved by my Honourable friend, Mr. Rangachariar, should receive the acceptance of this House.

**The Honourable Sir Malcolm Hailey:** Sir, it is a queer analogy, to my mind, to draw between the assessment of income-tax and the passing of a criminal sentence. I imagine that we are all good citizens here, that we do not really desire to escape paying our income-tax; though indeed I must admit that there are occasions, when, if we can form a select band of our friends in the Assembly, we are even capable of asking the House to protect the particular interests of our particular class. But I take it that, in theory, we are all good citizens, and, much as we dislike paying income-tax, we know it is our duty to do so. All we ask is that our income-tax should be fairly assessed, that the law should be applied with equity, and that we should be asked to pay neither too much nor too little within the terms of that law. Dr. Gour speaks of the honest tax-payer as a man who comes before the Court to hear his sentence, and he objects to there being any subsequent process by which that sentence should be enhanced during the course of appeal. Now I protest against that view altogether. We are trying to do our very best to do away with any idea that an income-tax assessment is an arbitrary charge of a tyrannical power. We are doing our best to secure an establishment which will give us a fair and correct assessment, and it seems to me clear that the object we have in view should also be shared by the assessee, namely, that his assessment should be correct, and that, so long as it is correct, he should, however, it is arrived at, agree as a good citizen to pay it.

But, Sir, of course I know it is a standing joke in this House that I am no lawyer. It affords amusement to the House and amusement to me—almost as much as when some of my lawyer friends talk about finance. Sir, perhaps there are occasions on which I am rather glad that I am not a lawyer, for, indeed, it seems to me that if I, as a simple layman, were proposing an amendment, I should not put forward an amendment, the effect of which would be that the Assistant Commissioner shall not enhance an assessment, while according to another provision which has been left untouched, he shall have power to enhance an assessment.

**Rao Bahadur T. Rangachariar:** Sir, I plead guilty to the charge of negligence in having overlooked this provision in clause (a), and I am thankful to my friend, Mr. Kabraji, for pointing it out. But knowing as we do how this Bill was being hurriedly brought up—I had to send in my

[Rao Bahadur T. Rangachariar.]

amendments a day or two after I got a copy of the Bill—I must be forgiven for this oversight. I quite agree that, as a lawyer, I am not competent to deal with finance, but may I also point out that the Honourable the Finance Member is quite a layman like myself, although he belongs to the Indian Civil Service; and I know there is a tradition in this country that the Civil Servant is competent to do any and every sort of work, from Engineering, Medicine and Education to Forests, Irrigation and even Railways. But if a Civilian can claim a knowledge of all these things, I suppose a lawyer also might claim at least some degree of acquaintance with them, because he has to deal, in the course of his practice, with all these various things. He may even claim some knowledge in dealing with finance. But leaving that on one side, I still think, Sir, that this power of enhancement, vested in an Appellate authority, is vicious in principle. I quite agree that all people should submit to just assessment. And this assessment is made, as we all know, from the previous sections, after an elaborate inquiry calling upon all sorts of people to produce accounts, and to produce various documents; and the assessment is made to the best of the judgment of the person who assesses the assessee. And what does it matter if in a few cases the assessment is under-assessed? In how many cases is it not over-assessed? Is an appeal always a remedy for over-assessment? Do you and I not know how hard it is to induce an Appellate authority in income-tax cases to reduce assessment? If there are a few cases of unjust under-assessment, there are at least 100 cases of over-assessment to one of under-assessment. Human judgment is always imperfect. Do we always come to right conclusions? Therefore, I object to this power resting in an Appellate authority; it is vicious in principle; it will act as a deterrent to people to go on appeal, and the Appellate authority should not be clothed with this power. I am surprised that my friend, Mr. Ginwala, should think that there is nothing in this amendment. I therefore, Sir, propose this amendment. With your permission, Sir, I shall also omit the word 'enhance' in clause (a).

**The Honourable Sir Malcolm Halley:** Sir, I must certainly object to a further amendment of a substantive clause being brought forward at this stage. If the Honourable Member has been so unfortunate as to omit notice of this fact, I do not think that he should be allowed now to bring the matter forward.

**Mr. President:** Amendment moved:

'In the proviso at the end of clause 31, omit all the words after the word 'assessment' and make consequential amendments in clause 32.'

The question is that that amendment be made.

The Assembly then divided as follows:

AYES—27.

Abdul Majid, Shaikh.  
Ahmed, Mr. K.  
Asjad-ul-lah, Maulvi Miyan.  
Bagde, Mr. K. G.  
Bajpai, Mr. S. P.  
Barua, Mr. D. C.  
Bhargava, Pandit J. L.  
Gour, Dr. H. S.  
Jatkar, Mr. B. H. R.  
Jejeebhoy, Sir Jamsetjee.  
Mahadeo Prasad, Munshi.  
Man Singh, Bhai.  
Misra, Mr. P. L.  
Mudaliar, Mr. S.

Mukherjee, Mr. J. N.  
Nabi Hadi, Mr. S. M.  
Nag, Mr. G. C.  
Nand Lal, Dr.  
Neogy, Mr. K. C.  
Rangachariar, Mr. T.  
Reddi, Mr. M. K.  
Singh, Babu B. P.  
Sinha, Babu L. P.  
Sinha, Beohar Raghurir.  
Srinivasa Rao, Mr. P. V.  
Subrahmanayam, Mr. C. S.  
Ujagar Singh, Baba Bedi.

## NOES—36.

Aiyer, Sir P. S. Sivaswamy.  
 Akram Hussain, Prince A. M. M.  
 Bradley-Birt, Mr. F. B.  
 Bray, Mr. Denys.  
 Bryant, Mr. J. F.  
 Carter, Sir Frank.  
 Chatterjee, Mr. A. C.  
 Chaudhuri, Mr. J.  
 Cotelingam, Mr. J. P.  
 Crookshank, Sir Sydney.  
 Dentith, Mr. A. W.  
 Fell, Sir Godfrey.  
 Ghulam Sarwar Khan, Chaudhari.  
 Ginwala, Mr. P. P.  
 Hailey, the Honourable Sir Malcolm.  
 Hullah, Mr. J.  
 Innes, the Honourable Mr. C. A.  
 Joshi, Mr. N. M.

Kabraji, Mr. J. K. N.  
 Keith, Mr. W. J.  
 Manmohandas Ramji, Mr.  
 Maung Maung Sin.  
 McCarthy, Mr. F.  
 Mitter, Mr. K. N.  
 Muhammad Hussain, Mr. T.  
 Percival, Mr. P. E.  
 Rao, Mr. C. Krishnaswami.  
 Renouf, Mr. W. C.  
 Sarfaraz Hussain Khan, Mr.  
 Sharp, Mr. H.  
 Sim, Mr. G. G.  
 Spence, Mr. R. A.  
 Thackersey, Sir Vithaldas D.  
 Waghorn, Colonel W. D.  
 Way, Mr. T. A. H.  
 Zahiruddin Ahmed, Mr.

The motion was negatived.

The Assembly then adjourned till Twenty-five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty-five Minutes to Three of the Clock. Mr. President was in the Chair.

**Rao Bahadur T. Rangachariar:** Sir, I am afraid that there is a mistake. Members understood that the Assembly was to re-assemble at 5 minutes to 3 and not at 25 minutes to 3.

**Mr. President:** It does not matter. We shall go on.

**Khan Bahadur Zahiruddin Ahmed** (Dacca Division: Muhammadan Rural): There is no quorum, Sir.

**Rao Bahadur T. Rangachariar:** Sir, I beg to move the amendment which stands in my name:

'To clause 31, add at the end the following:

'In all cases where the appellant so desires in his appeal memorandum, the Assistant Commissioner shall have two or more non-official Commissioners as may be prescribed to hear the appeal with him and advise him as assessors, but their opinion shall not be binding on him.'

This is a very modest proposal which I am making. In dealing with appeals, the Assistant Commissioner has got to deal with involved questions, and I think he will find it of very great use to him to have the assistance of a non-official Board. It has been tried, as Honourable Members are aware, in cases which arose out of the Excess Profits tax, and, I believe, the assistance of two or three non-officials in such cases has been of use both to the appellant and to the assessors. I know that was so in Madras, and, I believe, it was also the case in other provinces. I see this matter was considered in the Joint Committee, and I only desire that there should be two or more non-official Commissioners to hear and dispose of the appeals. I have also provided that their opinion shall not be binding on the appellant. Therefore, there is really no risk taken in providing this machinery. Of course, the non-official Commissioner will have to be chosen under rules to be framed by the Government. I dare say, a panel will have to be formed and rules will have to be framed, and from that panel the non-official Commissioners will have to be selected to assist

[Rao Bahadur T. Rangachariar.]

the Assistant Commissioner in the disposal of appeals. I do not say that it should be so in every case. I have provided that it is only in cases where the appellant so desires that the Assistant Commissioner should be given the assistance of two or more non-official Commissioners, so that it is not likely that, in every case, there will be a non-official Board, and it is only where the appellant thinks that his case would require hearing by a non-official Board, that this would come in. I think, on the whole, this will be a satisfactory improvement in the Act.

**Mr. Manmohandas Ramji:** Sir, if I may express the wish of the commercial community of Bombay, there is a consensus of opinion that these committees are not desirable. Of course, in many cases they are desirable, but, in this particular case, they are not, because nobody is expected to bring out all their secrets and books before a private committee sitting along with an official of the Government and disclose their working. There was serious objection to the appointment of non-official Commissioners. Of course, I know that some of my friends from Bengal insist on it, but Bombay has taken up a particular stand and they do not desire that such committees should be appointed.

**Mr. R. A. Spence:** Sir, I beg to support what has fallen from my Honourable friend from Bombay.

**Rao Bahadur T. Rangachariar:** Sir, may I answer the objection taken? The objection taken is that no man is willing to show his books. Now I have provided against it by saying that it is only where the appellant desires . . . .

**The Honourable Sir Malcolm Hailey:** May I rise to a point of order, Sir? I merely wish to take a ruling from you on the question as to whether the proposer of an amendment has or has not a right of reply?

**Mr. President:** Normally the proposer of an amendment under the rules has no right of reply. I have allowed Honourable Members to offer something more than a personal explanation while rising to their feet for the second time, but I may inform the House that I shall observe the spirit of the rules by restricting that right to the shortest possible limit.

**Sir Vithaldas D. Thackersey:** Sir, I should like to speak on Mr. Rangachariar's amendment. I was under the impression that the Government Member was to speak.

It is quite true, Mr. President, that the proposal in this case is restricted to the appointment of assessors in cases where the appellant wants it. But is there any guarantee that, as the hearing proceeds, the appeal Court may not ask for the books of others in order to prove certain facts or to have other evidence in the case and that the books of those who are not strictly interested in the appeal may not have to be brought and shown? I am not quite sure of the effect of this, but I quite agree with what has fallen from my two Honourable friends, Mr. Manmohandas Ramji and Mr. Spence, that, so far as Bombay is concerned, we are absolutely opposed to the appointment of any kind of assessors for looking into our books. We do not think they will help us. Many difficulties will arise. It is not perhaps politic or wise to mention them publicly in this House, but Members of this House may take it from me that the commercial community, in whose interests these assessors are suggested, are absolutely against the proposal and will never have them if they could possibly help it.

**Mr. President:** The question is that the following amendment be made:

'To clause 31, add at the end the following:

'In all cases where the appellant so desires in his appeal memorandum, the Assistant Commissioner shall have two or more non-official Commissioners as may be prescribed to hear the appeal with him and advise him as assessors, but their opinion shall not be binding on him.'

The motion was negatived.

Clause 31 was added to the Bill.

**Rao Bahadur T. Rangachariar:** Sir, I only want to make it clear by the following amendment that in disposing of the matters referred to in these cases, the Commissioner should do so after hearing the appellant. I dare say he will do it, but, as they are executive officers, they generally dispose of appeals not always after hearing. And it is better to provide in the section itself that he should do so after hearing the appellant.

'In clause 32 (3), after the word 'may' insert the words 'after hearing the appellant.'

**Mr. G. G. Sim:** Sir, I have no objection to the proposal of the Honourable Member if he will agree to a slight amendment of his amendment. I propose, Sir, that:

'After the word 'may' the words 'after giving the appellant an opportunity of being heard' should be inserted.'

**Rao Bahadur T. Rangachariar:** I have no objection, Sir.

**Mr. President:** The question is:

'That the following amendment be substituted for the original amendment:

'In clause 32 (3), after the word 'may' insert the words 'after giving the appellant an opportunity of being heard.'

The motion was adopted.

**Mr. President:** The question is that the substituted amendment be made.

The motion was adopted.

Clause 32, as amended, and clauses 33 and 34 were added to the Bill.

**Rao Bahadur T. Rangachariar:** Sir, my next amendment is:

'In clause 35 (3), after the word 'Act' in the last line, insert the words 'including the right to appeal'.

Sir, the last part of clause 35 (3) says:

'The Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 29, and the provisions of this Act shall apply accordingly.'

The provisions of this Act may be merely for recovery and such other things, and I want to make it clear that they include the right to appeal. I want, therefore, those words to be inserted.

**Mr. G. G. Sim:** I should like your ruling on a point of order, Sir. This particular amendment which the Honourable Member is putting forward is, in substance, exactly the same as that put forward by Sir Sivaswamy Aiyer in his proposal to amend clause 30. He suggested that

[Mr. G. G. Sim.]

in clause 30 (1), before the words 'may appeal' the words 'or to any order enhancing the assessment under section 35' should be inserted. That proposal was rejected by the House. The Honourable Member's amendment simply repeats the same thing in another form.

**Rao Bahadur T. Rangachariar:** May I mention, Sir, that on Sir Sivaswamy Aiyer's amendment Mr. Sim took the technical objection that it was not the proper place to make the amendment and that he could not understand why the amendment was made in that place. Therefore, I do not think that that objection will apply now.

**Mr. G. G. Sim:** No such objection was raised by me. To the best of my recollection, I argued that an appeal was unnecessary as this clause provides only for the rectification of clerical mistakes by the Income-tax Officer. I took no technical objection.

**Mr. President:** Is the Honourable Member satisfied that the two points are substantially the same?

**Rao Bahadur T. Rangachariar:** I leave it to the Chair.

**Mr. President:** It is a matter of interpretation of law, and the Chair is not entitled to express any opinion on it. On the Honourable Member's (Mr. Sim's) assurance that objection was taken, not as a point of law but as a point of fact, I must hold that the two points are substantially covered.

Clauses 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44 were added to the Bill.

**Mr. G. G. Sim:** Sir, I beg to move:

'That in clause 45, for the words 'The amount of income-tax' the words 'Any amount' be substituted.'

This is merely a drafting amendment. In some of the sections mentioned, the amounts refer not to income-tax but to penalties.

The motion was adopted.

**Mr. G. G. Sim:** I beg to move:

'That in clause 45, after the word and figures 'section 31' the words and figures 'or section 32' be inserted.'

Clause 32 is a new clause inserted by the Joint Committee and the necessity of inserting the words and figures 'or section 32' in this clause was overlooked.

The motion was adopted.

**Rao Bahadur T. Rangachariar:** Sir, I move:

'In clause 45, substitute the word 'shall' for the words 'may in his discretion'.

The end of the clause is:

'and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under section 30, the Income-tax officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of.'

I do not think it will be right to leave a discretion. When the appeal is pending, why should the man be treated as a defaulter when his appeal is not disposed of. Being treated as a defaulter entails a number of consequences. When you think it is necessary, in certain cases, to allow a

discretion to the Income-tax officer not to treat him as a defaulter, it will lead to personal favouritism in many cases; at any rate, people will consider that certain persons are favoured by the Income-tax Officer, and rightly or wrongly it will lead to such impression gaining ground. What is the object in treating some persons as defaulters and some persons not as defaulters? Therefore, I propose that the word 'shall' be inserted in place of the words 'may in his discretion.'

**Mr. G. G. Sim:** I hope that the House will not accept this amendment. These words are contained in the present Act and this general provision has always been in every Income-tax Act. I have heard no complaints about the discretion exercised by the Income-tax Officers in this matter. What does happen in an income-tax appeal? A man may be assessed to Rs. 50,000 income-tax and he may object to a small item amounting to Rs. 50. The Income-tax Officer, in the exercise of his discretion, usually asks him to pay up the amount that is not disputed and pay up the balance afterwards. In any case, Sir, I would strongly object to any proposal whatsoever to relax the provisions of this Bill in respect of the collection of the tax. We have provided for an enormous number of new appeals under the Bill in addition to what we have under the present Act, and this has been done on the understanding that these new provisions would in no way interfere with the collection of the tax. The collection of this tax is not at present in a happy condition. Take, for example, the case of Madras. There was a debate in the month of November last in the Madras Legislative Council upon a Resolution put forward to relax some of the provisions regarding the collection of this tax. The Honourable the Finance Member of the Madras Government, Sir Charles Todhunter, in his reply to that Resolution, gave the following figures. He said:

'In the current year, out of a demand of 35 lakhs, the total collection up to August last was little over 6 lakhs. Out of the arrears demand (that is the arrears of the previous year), of 42 lakhs, the total collections were only 18 lakhs.'

During the last three years the percentage of collections in Madras were 72, 69 and 56, while other provinces were able to show figures of 96 and 98 per cent. It is therefore obvious that something has got to be done in Madras to make income-tax assesses comply with the provisions of the law. I am sure, Sir, that, if the House imposes an income-tax, it intends it to be collected. Delay in the collection of this tax in one particular province simply means that a heavier burden is placed upon the more virtuous tax-payers in other provinces and I hope, therefore, that the House will not give any encouragement to the delay in paying this tax, which is so prevalent in Madras.

**Mr. President:** Amendment moved:

'In clause 45, substitute the word 'shall' for the words 'may in his discretion'.

The question is that that amendment be made.

The motion was negatived.

Clauses 45, as amended, 46, 47 and 48 were added to the Bill.

**Rao Bahadur T. Rangachariar:** I beg to move the following amendment:

'Re-number sub-clause (1) of clause 49 as sub-clause (1) (a) and after that sub-clause, as re-numbered, insert the following:

'(b) If any such person proves to the satisfaction of the Income-tax Officer that he has paid income-tax for that year in respect of the same part of his income in any Indian State or elsewhere in the British Empire, he shall be entitled to a refund of the sum so paid, which, however, shall not exceed one-half of the Indian rate of tax'.

[Rao Bahadur T. Rangachariar.]

My point in bringing this amendment is to provide for some relief in the case of persons who have to pay as it were double income-tax. Indian States have now taken to levying income-tax. For instance, in Madras, the Mysore State has recently begun levying income-tax and there is a proposal both in Travancore and Cochin to levy income-tax. I do not know whether the petty State of Pudukottah will also try to levy it. Most of us who are in business or in the professions have to pay tax in States and over again in British India. Some sort of relief is needed. Having regard to the provision made in the English Act, the previous portion of this section has provided a machinery for giving relief to persons who have to pay here and also in the United Kingdom, but, of course, I note, from the Joint Committee's Report, that Government propose to undertake some negotiations with these States in order to provide for some sort of relief being given. I do not know how long that will take. We have also people who carry on trade in the Straits Settlements.

3 P.M. Some of the income earned there is received here, and they will be liable to pay income-tax here, having also paid there. In such cases also this amendment provides for relief to the extent of one-half, that is to say, he will not be liable to more than one-half the Indian rate. If he proves to the satisfaction of the Income-tax Officer that this is the case, he will be entitled to a refund of the tax to the extent of one-half. He will still continue liable to the British Indian tax, but the object of this amendment is that in such cases the British Indian authorities should not levy more than one-half of the ordinary rate for the reason that he will have already paid in another place upon the same income. I submit, Sir, that this is an equitable and just arrangement. Income should not be taxed over and over again. The principle underlying this proposition is recognized in the section itself, but it is recognized to a limited extent only for persons resident in the United Kingdom and not in other places. Take Bombay, for instance. Bombay is surrounded by Native States and the same difficulty is bound to arise, because I am sure that every Native State will shortly go in for taxing income as a source of revenue. It is true that they are not doing so now, but, in the onward march of events, the necessity for taxing will be felt everywhere, and the States will not be able to carry on without taxing incomes. Therefore, Sir, I suggest that this amendment is very necessary.

**Sir Vithaldas D. Thackersey:** Sir, I beg to support the amendment moved by my Honourable friend, Mr. Rangachariar. It is quite true that the Joint Committee indicates that some arrangement may be made with the Native States to have a reciprocal arrangement; but, apart from that, it will be to the convenience and monetary advantage of all concerned that this amendment should be accepted by Government. In most cases what happens is this. Native States are on the borders of British territory, and many industries are started in Native States for the sake of the convenience of raw materials, and other considerations, and the Companies are registered in British India. Now, if this amendment is not accepted, the effect will be that when the industries are in Native States, British residents will not register the Companies in British India, but they will register these companies in the States in which they have been started, and the result will be that we shall lose the half income-tax which we would otherwise get by the arrangement proposed. Now, suppose a mill or a factory or other industry is started in a Native State. There is not the slightest objection on the part of the Company to register in that State and save all the income-tax.



But at present the practice is that most of these big Companies, or practically all the big Companies, are registered in British India. I am talking of the Bombay Presidency. The factories are in the Native States. If they have to pay double income-tax, there is no inducement for the Companies to register themselves in British India. If this amendment is accepted, you will be able to collect larger revenue as income-tax than if you insist upon your whole income-tax. The tax in Native States is very low, and, apart from any reciprocal arrangement with Native States, this proposal will be to the advantage of the British Government.

**Mr. G. G. Sim:** Sir, I think that Mr. Rangachariar is under a misapprehension as to what is the exact effect of this particular section. I gather from his speech that he is under the impression that his amendment provides for exactly the same arrangement with Native States and Dominions as the arrangements with the United Kingdom provided for in this clause. As a matter of fact, the proposal which he has made is one which is exactly the opposite of the arrangement made with the United Kingdom. The question of double income-tax was the subject of negotiation with the authorities in the United Kingdom for about 4 or 5 years and the whole discussion turned upon the question of which country had the first right to tax an income which was taxed in more than one country. We have succeeded, after lengthy negotiations, in getting into the advantageous position that any person who is taxed twice upon the same income, once in the United Kingdom and once in India, has to apply to the authorities of the United Kingdom in the first instance for relief. Both parties, the Government of India and the Government of the United Kingdom, have agreed that the relief to be given by any one country shall not exceed half the rate in that country. The advantage that we have got is that the person who is assessed twice over has to go in the first instance to England. When he goes to England, he can claim up to half the English rate and can claim from India only the balance of the relief. It so happens that our rates at present are less than half the English rates and consequently no burden falls at the outset upon Indian revenues by this arrangement. The Honourable Member proposes that we should immediately insert a provision in this Bill that where income is taxed twice, once in an Indian State or in any part of the Empire and once in India, India should invariably give relief up to half our rates. That means that the Government of India is being asked, by inserting a provision of this nature in the Bill, to admit that wherever income is taxed twice, once by the Government of India and once by some other power, that other power has the first claim to any income-tax upon that income. I do not think that that can be the Honourable Member's intention. This matter can only suitably be arranged for by negotiation with the foreign power. There must be mutual concessions and unless we get the other party to agree to a mutually advantageous arrangement, no particular advantage will be gained. Why should the other country give any concession whatsoever if we insert a provision that, in a case where a man is assessed in two countries on the same income, we shall immediately give a rebate up to half our rate. There is a further point, Sir, that, as it stands, the amendment provides that if income-tax has been paid anywhere in the British Empire on the same income, the person who has paid the double tax shall be entitled to a refund up to half the Indian rate. But such a person may have been taxed three times over. He may have been taxed in the Dominions, in England and in India. If he has paid once in the dominions, it is proposed that, even if he has got part of the money back from the United Kingdom, we should

[Mr. G. G. Sim.]

refund half the Indian rate. This would lead to extraordinary complications. The Government are quite prepared to accept the recommendation of the Joint Committee that immediate steps should be taken to enter into negotiations with the Straits Settlements and with the Indian States in order to come to some satisfactory arrangement for the alleviation of double income-tax and I hope that that will suffice to meet the object of the Honourable Member.

**Sir Vithaldas D. Thackersey:** May I know whether it will be possible to carry out the reciprocal arrangement proposed by the Honourable Member?

**Mr. G. G. Sim:** Certainly. We have already come to an arrangement with the Mysore State. Government has full power, under clause 60, to make any alteration in the incidence of the tax regarding any particular class of income.

**Rao Bahadur T. Rangachariar:** With that assurance, I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Clause 49 was added to the Bill.

Clauses 50, 51, 52, 53 and 54 were added to the Bill.

**Mr. G. G. Sim:** Sir, I beg to move:

'That at the end of clause 55, the following words be added:

'Provided that where the profits and gains of an unregistered firm have been assessed to super-tax, super-tax shall not be payable by an individual having a share in the firm in respect of the amount of such profits and gains which is proportionate to his share'.

This is merely a drafting amendment, Sir. The Joint Committee had proposed to place registered and unregistered firms on exactly the same footing as they are under the present Act; but, as the Bill is drafted, the income of an unregistered firm would be taxable twice over, once in the hands of the firm and once in the hands of individual members. This was not intended and it is to cure this mistake that this amendment is put forward.

The motion was adopted.

**Sir Vithaldas D. Thackersey:** Sir, I wish to ask for permission to add the word 'further' to my amendment, which will then read as follows:

'That at the end of clause 55, the following words be added, namely:

'Provided further that where the profits and gains of a company have been assessed to super-tax, the super-tax shall not be payable by another company holding shares in the first company in respect of the amount of dividends received by the holding company'.

I ask for permission to add the word 'further.' My reason for moving this amendment is to give justice in hard cases. I may point out to the House that, owing to businesses extending, private companies are registered for doing large businesses and it often happens that a private limited company is the managing agent of a factory company or any other company, and also that this private company holds shares in another limited company. What now happens is this. The first company pays the super-tax. When the dividends and profits are distributed to another holding company, that company also pays super-tax. Then, when the dividends are distributed by the holding company to the individual shareholders, then a third super-tax is paid on the same income. Of course, in the third case it varies

according to the income, large or small, from one anna to four annas, according to the amount of profit. I do not propose that the individuals should escape any of the taxation. Mr. Sim has already proposed an amendment that, when a firm pays super-tax, the individual partners have not to pay super-tax again on the same income. Or, in the case of ordinary shareholders, when the company pays one anna, the ordinary shareholders pay up to 4 annas according to their income. In this particular case, the first company pays one anna, the second company pays one anna and the ordinary shareholder pays up to 4 annas. I admit that, if my proposal is accepted, there will be a small loss of revenue, but I put this on the basis of justice—whether it is right that the same income should be taxed thrice. There is the analogy in section 14 (2) (a). The section runs thus:

‘The tax shall not be payable by an assessee in respect of :

(a) any sum which he receives by way of dividend as a *shareholder* in a company where the profits or gains of the company have been assessed to income-tax;’

On the same basis, where one company has paid super-tax, another company holding its shares ought not to pay it. A sum is ultimately distributed to individuals, the individual must pay—I do not propose any reduction in their case.

**Mr. G. G. Sim :** Sir, the object, the Honourable Member has in view, I understand, is to secure that the flat rate of super-tax paid by a company should not be paid twice in respect of any profits. Now I would ask the House, in considering this proposal, to bear in mind the past history of this tax. Up to 2 years ago, we had a super-tax on the undistributed profits of companies. The profits of companies differ from the profits of individuals or the profits of firms in that a certain proportion of them is not liable to super-tax in the hands of the individual, *viz.*, the portion not distributed to shareholders. Our original tax was a tax on that portion of the profits which was left in the hands of a company and it was assessed at graded rates. It went up to four annas in the rupee. It was at the request of the commercial community itself, which objected to this particular form of taxation, that this tax, which was a graduated tax, rising to four annas in the rupee on the undistributed profits, was replaced by a flat rate of one anna on the whole of the profits. Their contention was that the particular form in which we took the tax from them induced companies to distribute more of their profits than they could with safety do. Now I should like to ask the Honourable Member whether, in the case of any of those holding companies, which he has quoted, they are at present paying more in the way of super-tax than they would have done under the old system. Under the old system, there was no double taxation. It was a tax on the undistributed profits and there was no question of taxing the same profits twice over. Then the commercial community asked us to replace this by a tax of a totally different nature, and as soon as that tax was introduced, we are told that it is unjust in so far as it involves double taxation. But are any of those companies at the present time paying any more than they would have done under the old system? The old system was perfectly equitable. It was an attempt to get at these undistributed profits.

In the second place, Sir, I should like to point out that this tax is now practically a tax on companies' profits as such, and that it is perfectly immaterial where those profits come from. The tax has been defended on the

[Mr. G. G. Sim.]

ground that like the English Corporation Tax, it is a tax on companies' profits levied in view of the advantages which are secured to them by law in the form of their corporate finance and their limited liability; and that the amount of benefit that they get can be most suitably measured by the amount of their profits assessed to income-tax. From this point of view, it is immaterial whether these profits are got by working a factory or by investing in another company. There is one danger, Sir, about this particular amendment of Sir Vithaldas Thackersey which the House should bear in mind. If a company distributes its capital amongst a lot of other companies and constitutes itself a holding company, it thereby becomes entitled to a reduction of Rs. 50,000 from the profits of each company. I do not think that the Honourable Member can mean that this proviso should be carried in such a manner that, while the profits which the present company gets from the other companies are not to be taxed, still the holding company has to get a reduction of Rs. 50,000 in respect of each of the companies amongst which it has distributed its capital. The whole question, Sir, was very fully debated in the Joint Committee and the Joint Committee considered that there was no case for any change in the law at present, but that, if there was any increase in the present rate, the whole question of the method of assessing corporation profits would have to be reconsidered. At present, as a matter of fact, we do not charge a company on the whole of its profits. We do not tax it on the portion of the profits that is distributed on account of fixed interest charges. The English Corporation Tax, as Honourable Members are aware, is charged on the whole of the profits of a company, irrespective of whether those profits are distributed to debenture-holders or to shareholders, or as mortgage interest or in any other way. The tax charged here is on a portion only of the profits, and the Joint Committee considered that, as the rate of one anna in the rupee is a low one, it was quite unnecessary to reconsider the basis of assessment. If, however, the rate is changed, the whole question of the method of assessing corporation profits will have to be reconsidered. I see no reason at present, therefore, for accepting the Honourable Member's proposal as it would certainly involve this risk of a considerable amount of tax being lost owing to the distribution of capital of one company amongst a considerable number of companies, a holding company amongst a number of subordinate companies, with each of them getting reduction of Rs. 50,000. I therefore, Sir, oppose the amendment.

**Sir Vithaldas D. Thackersey:** Sir, I do not wish to press this amendment at the present stage to-day, as we have been promised that the point will be considered if any change in the rate takes place. I do admit that there will be a certain amount of revenue lost; at the same time I must correct the Honourable Member when he said that this flat rate of one anna was some concession from the 1918 rate when the full super-tax was charged on the companies. I need only point out that that charge was a preposterous one and, had it not been for that tax, the companies' position would have been much stronger. Owing to the wrong policy of that year's taxation, most of the profit was distributed and Government realised a much smaller amount in super-tax, than it would otherwise have done.

The amendment was, by leave of the Assembly, withdrawn.

Clause 55, as amended, and clauses 56, 57, 58, 59, 60, 61 and 62 were added to the Bill.

**Rao Bahadur T. Rangachariar:** Sir, this is a small amendment which I wish to make, namely:

'In clause 63 (1), insert the word 'registered' before the word 'post'.'

That clause reads that:

'A notice of requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.'

In order to safeguard the receipt of a notice when it is sent by post, I suggest the insertion of the word 'registered.' It is not going to cost the Government anything, because what you pay on the one hand you will get back in the shape of postal revenue, and, therefore, it is not an expense. On the other hand, it will be a great advantage to the party concerned. It will ensure the receipt of a notice, for oftentimes penalties are incurred if the party does not comply with the notice so served, and it is but right that it should be sent by registered post.

**The Honourable Sir Malcolm Halley:** May I ask the Honourable gentleman before he sits down if he has brought the General Clauses Act with him?

**Rao Bahadur T. Rangachariar:** May I ask the Honourable Member to remind me of the clause?

**The Honourable Sir Malcolm Halley:** Well, if one so unlettered in these matters may recall the point to the attention of an expert, section 27 of the General Clauses Act does provide as follows:

'Where any Act of the Governor General in Council or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression 'serve' or either the expression 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting by registered post.....'

**Rao Bahadur T. Rangachariar:** Thank you, Sir. I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Clause 63, 64 and 65 were added to the Bill.

**Rao Bahadur T. Rangachariar:** I beg to move, Sir:

'To substitute the word 'receipt' in clause 66 (2), for the word 'passing'.'

An order may be passed in the absence of a party and he may not get sufficient time. I would provide that the period should count from the date of the receipt of the order, and not after the passing of the order. That is the object of this amendment.

**Mr. G. G. Sim:** Sir, the order that is passed under section 31 is an order on an appeal, and I see no reason why the period should not count from the date of that order. But the particular point is this. The Honourable Member proposes that the period prescribed should be one month from the receipt of a copy of the order. There is no provision anywhere in the Act that the appellant should be given a copy of the order. He can get a copy of the order if he asks for it. If this amendment is carried, after an appeal order has been passed, a man may go away for five years and then come and apply for a copy of the order and demand a reference a month after he gets his copy. I think that is an impossible proposal.

**Rao Bahadur T. Rangachariar:** I don't see any impossibility about it. It will make it obligatory upon the officer who passes the order to send the

[Rao Bahadur T. Rangachariar.]

order to the party. That is all. If the officer who passes the order sleeps over it, then, of course, he will have time. I expect the officers to do their duty when they pass an order. I also expect them to send a copy of the order to him. Therefore, it is really not an impossible thing at all, unless the officer neglects his duty. If the order is passed in the presence of the party, then I can understand it. But there is nothing binding upon the Appellate officer to pass the order in the presence of the party. Therefore, I think it necessary that this amendment should be made.

**The Honourable Sir Malcolm Hailey:** Sir, we are only applying the same principle here as is applied in other cases. There are a great many cases where the date of appeal and the like runs from the date of the passing of the order and we see no reason why that same procedure should not apply in the case of the Income-tax Act. If the Honourable Member feels so strongly on the subject, he will no doubt sooner or later put forward a Resolution calling for a radical amendment of a very considerable number of sections in the Schedule of the Indian Limitation Act as applied to the orders of Civil Courts. Sir, we may be trusted, as any other authority, to give due notice to people when orders will be passed, and it is only reasonable that the period should run from the date of the passing of such order.

**Mr. President:** Amendment moved:

'In clause 66 (2), substitute the word 'receipt' for the word 'passing'.'

The question is that that amendment be made.

The motion was negatived.

**Rao Bahadur T. Rangachariar:** The next amendment that stands in my name is:

'In clause 66 (2), after the figures '31' in line 2, insert the word and figures 'and 32'.'

Honourable Members will notice that clause 32 says:

*'Any assessee objecting to an order passed by an Assistant Commissioner under section 28 or to an order enhancing his assessment under sub-section (3) of section 31 may appeal to the Commissioner within thirty days of the making of such order.'*

I want to provide that, within one month of the passing of the order, under section 31 or under section 32 (i.e., in both cases), the party should have a right to ask for a reference on a point of law. That is the object of my amendment.

**Mr. G. G. Sim:** Sir, I have no objection to the amendment provided the Honourable Member will substitute the word 'or' for the word 'and' in his amendment.

**Rao Bahadur T. Rangachariar:** I have no objection.

**Mr. President:** The question is that the following amendment be made:

'In clause 66 (2), after the figures '31' in line 2, insert the word and figures 'or 32'.'

The motion was adopted.

**Rao Bahadur T. Rangachariar:** I move:

'In clause 66 (2), insert the words 'or such lesser sum as may be prescribed' after the words 'hundred rupees'.'

This is as regards the amount of deposit to be made by a person after the passing of an order under section 31. The Act

provides that in every case the application should be accomplished by a fee of hundred rupees. In some cases the assessment may be very small and it may involve a point of law, and it would be somewhat prohibitory indeed to insist upon a man to pay Rs. 100 for stating a case. I, therefore, propose that as much lesser sum as possible may be prescribed by Government. I am not suggesting that any particular sum should be levied in any particular case. I quite accept the principle that you have to pay, and Rs. 100 may remain. But there are cases and cases in which this figure would work hardship, and I, therefore, propose to leave it to the Government to prescribe by rules the sum according to the circumstances of each case. I notice that in the Joint Committee a proposal was made that only Rs. 20 shall be levied, but that perhaps is not a sufficient sum. Therefore, what I say is, let it not be a rigid rule that a man should pay Rs. 100 in every case but let us leave it to Government to prescribe any such smaller sum as they consider desirable according to the circumstances of each case.

**Mr. G. G. Sim:** Sir, I do not think there is any harm in accepting this amendment. I am not quite certain what the use of it is, but I do not propose to object to it.

**Mr. President:** The question is that the following amendment be made:

'In clause 66 (2), insert the words 'or such lesser sum as may be prescribed' after the words 'hundred rupees'.'

The motion was adopted.

Clauses 66, as amended, and 67 were added to the Bill.

**Sir Vithaldas D. Thackersey:** I beg to move:

'In clause 68, for the second proviso substitute the following:

'Provided further that section 19 of the Indian Income-tax Act, 1918, be so applied as if the legislation of 1918 in that connection had never been introduced and credit being given for sums paid in advance.'

The system of taxation of income-tax before the Indian Income-tax Act, 1918, was passed was that the income-tax was levied on the income of the previous year just as it is proposed now under this Bill. In 1918, the system was changed and adjustment of income-tax was introduced, so that in 1918-1919, the tax was paid on the income received in 1918-1919. The Bombay assesses did not require this change. At the same time, at the request of some parties the change was made, and I believe the demand was made from Calcutta. Now, the Government are going back to the view that the old system was right and therefore adjustment is abolished under the new Bill and income-tax is proposed to be levied on the income of the previous year. The effect of this change, in short, is this. We missed the year 1917 on which we would have paid income-tax, and now we are asked to pay tax for two successive years on the income of 1911-22. Is it fair to those whose income was progressive that their lean year should be omitted and a fat year should be taxed twice? I do not know where the justice of this section comes in? It may be argued by the Honourable Member in charge of the Bill that we want revenue and, therefore, let us have it by hook or by crook, by any method that we may think of, and I believe, when this suggestion was made from certain quarters, the Honourable Member jumped at the idea with great pleasure, because he is going to get income-tax for two years on the income of

[Sir Vithaldas D. Thackersey.]

1921-22 year. It is not fair to those who have progressive incomes that they should be asked to pay so much more income-tax for no fault of theirs. I believe that the justice of this amendment cannot be denied, and, therefore, I hope that the Government will accept it.

**Mr. Manmohandas Ramji:** I want to bring it to the notice of Members that, in the case of some companies, the change is going to operate adversely, while there may be an advantage to some from this change. Which party should we give the preference to? (Sir Vithaldas D. Thackersey: 'Be fair.') So, if we want to be fair, there could be nothing fairer than the proposal. (The Honourable Sir Malcolm Hailey: 'Which proposal?') I mean the original proposal.

**Mr. G. G. Sim:** Sir, this question of the procedure to be adopted in the year of changing back to the old system has been discussed for the last two years. The Joint Committee recommended that we should adopt the method proposed in the Bill, that is to say, that we should continue the adjustment for one year more. Sir Vithaldas Thackersey has referred to some unfortunate persons whose incomes are going up and who, under this proposal, will have to pay more tax than they would have paid if the change in 1918 had never been made. He has referred to the fact that the change was introduced at the instance of Calcutta in 1918. I may remind the Honourable Member that when the proposal to go back to the old system was made, it was made at the instance of assesseees who universally complained of the inequity of the present system. We consulted numerous authorities and associations as to the best method of making this change and there was a practically unanimous opinion that the change should take place in the way which has been proposed in this Bill. As an example, Sir, I shall quote to the House the views of the Mill Owners' Association of Bombay. In a communication, dated the 8th February, 1921, they said:

'The change proposed has the advantage of simplifying the procedure and the Committee express their approval of the same on condition however that before the change is introduced, an adjustment for a given year is made as the Committee are of opinion that the profits earned by companies are already on the decline.'

At that time, they anticipated that their profits would decline. We are now informed that their profits are rising, and their natural indignation at finding that the profits on which they are to be taxed have gone up instead of down, has been given suitable expression to by the Honourable Member. I do not think that the Honourable Member can seriously mean this proposal. As has been pointed out by Mr. Manmohandas Ramji, the proposal affects different people in different ways. Even in the case of Bombay, the result of continuing the adjustment system next year will, according to the latest information, result in Government having to make a net pay of 40 lakhs, that is to say, after collecting extra sums from the persons whose incomes are still going up, we shall have to refund, in addition to that, a sum of 40 lakhs to people whose incomes have gone down. I have no doubt as to the view the House will take of this amendment.

**Mr. President:** Amendment moved:

'In clause 68, for the second proviso substitute the following:

'Provided further that section 19 of the Indian Income-tax Act, 1918, be so applied as if the legislation of 1918 in that connection had never been introduced and credit being given for sums paid in advance.'



The question is that that amendment be made.

The motion was negatived.

Clause 68, the Schedule and the Preamble were added to the Bill.

**Mr. K. C. Neogy** (Dacca Division: Non-Muhammadan Rural): Before Sir Malcolm Hailey moves the motion standing in his name, I object under clause (2) of Standing Order 49 to his motion. It runs thus:

'If any amendment of the Bill is made, any Member may object to any motion being made on the same day, that the Bill be passed, and such objection shall prevail unless the President, in the exercise of his power to suspend this Standing Order, allows the motion to be made.'

We have already accepted several amendments to the Bill and some of them were at the instance of Government. It shows that the time at the disposal of Government was not sufficient for a careful examination of the Bill, and I do not think it will do any harm to the Finance Department to examine the Bill, as now amended, a little carefully and then bring forward this motion at a later stage.

**Mr. President:** If the Honourable Member has taken objection on the ground that further delay will give opportunity to amend the measure, I must remind him that fresh amendments cannot be moved on the motion that the Bill be passed, which is the only stage now remaining. I am prepared to hear him substantiate his objection, and also to hear the Government on the subject. The reasons he has given do not appear to me to be relevant to the issue.

**Mr. K. C. Neogy:** So far as non-official Members are concerned, I think that they ought to be in a position to re-examine the Bill, as now amended, and see if there is any inconsistency anywhere and whether the Bill requires further amendment, or re-commitment to the Select Committee.

**The Honourable Sir Malcolm Hailey:** Does the Honourable Member mean, Sir, that non-official Members, after further examining this Bill, will be then in a position to bring forward further amendments?

**Mr. K. C. Neogy:** Yes, so far as the amendment proposed by Mr. Rangachariar of clause (a) of sub-clause (3) of section 31 is concerned, a considerable section of this House would like to have the matter discussed again. And, as regards the technical objection taken by the Honourable the Finance Member with reference to Mr. Rangachariar's failure to move for the omission of the word 'reduce' in clause (a) of sub-clause (3) of that section, I think that the difficulty raised by the Honourable the Finance Member might be obviated by notice being given for the omission of that word, and the House would then be in a position to reconsider section 31.

**Mr. President:** The Honourable Member does not appear to have taken notice of the fact that the House in each case has passed the motion that these clauses do stand part of the Bill. The Title, the Preamble, the sixty-eight clauses and the Schedule are now all part of the Bill, and the next motion to be taken by the House is that this Bill be passed. No doubt, amendments might be made in another place which might call for reconsideration by this House; but that we will deal with when it arises.

Discretion reposes in the Chair as to whether Standing Order 49 should be suspended, and I must be guided by the reasons brought forward by Honourable Members for and against it. I am not much impressed by

[Mr. President.]

the reasons given by the Honourable Member, but I am prepared to hear any other reasons if he has any to advance.

**Rao Bahadur T. Rangachariar:** There is one matter on which I feel doubtful. I have not seen the draft of the amendment which was passed the other day at the instance of the Member from the Punjab. We did not have a copy of it and I do not know whether the phraseology may not require alteration. But, as suggested, the Bill will come back after consideration by the other House, and that matter might be then examined.

**The Honourable Sir Malcolm Hailey:** Sir, I do not feel that the House has to-day, or at its previous sitting, made any amendments of real substance. They are all amendments of detail and of procedure. I need not say that the Bill will be further scrutinised from the point of view of drafting, and if any small consequential amendments in drafting be required, it is perfectly competent for Government to put these forward elsewhere. And, in that point of view, Sir, I would suggest that the House, which has a good deal of work before it in the future, should not trouble to hold another sitting on this Bill merely in order to consider drafting or consequential amendments.

I beg to move, Sir, that the Bill, as amended, be passed. In doing so, I only desire to ask the House to join with me in expressing its obligations in regard to the great labour bestowed on this Bill by the Joint Committee of both Houses. They held long sittings. The Bill is a complicated one and required full consideration in detail. I think that the House has every reason to feel that it has profited by the result of these labours which were conducted under the able chairmanship of Sir Alexander Murray. (Hear, hear.)

**Mr. President:** The question is:

'That the Bill to consolidate and amend the law relating to income-tax and super-tax, as drafted by the Joint Committee and as here amended, be passed.'

**Rao Bahadur T. Rangachariar:** Sir, I wish to associate myself with the remarks made by the Honourable the Finance Member in the congratulations we have to offer to the Joint Committee for the great labour they have bestowed in considering this Bill and placing it before us. I wish also to add, Sir, a word of commendation of the great work which Mr. Sim has bestowed on this Bill. (Hear, hear.) There are certain matters in this Bill, which require the careful attention of the Government and I am sure, in the rules which they are going to pass, they will evince a sympathetic interest towards the tax-payer, while, at the same time keeping a grip on the revenue. Sir, I am not at all satisfied about the provision which is made for deducting at the source income-tax in respect of Government securities, and section 18 provides that, in deducting the income-tax due on the interest payable on Government securities, we may levy it at the maximum rate. Many persons in this country, who are widows and orphans, have got only certain securities, which perhaps do not yield even a taxable amount in the shape of interest, and I know it works a great hardship, in those cases, to deduct the income-tax at the source, and that at the maximum rate, as if those persons were receiving such an income as would be liable to the maximum rate. I did not want to bring any amendment to that section, because I trust that the Government are going to take steps to ameliorate the condition of these security holders. Already, Sir, they suffer a good

deal on account of the depreciation in value. I should like to know, Sir, what has been done with reference to the report which the Committee made in respect of these holders of the 3½ per cent. securities. Their capital has been greatly reduced in value and to levy income-tax on them at the maximum rate will be a greater hardship. I heartily join in supporting the motion for passing this Bill.

**Mr. President:** The question is:

'That the Bill to consolidate and amend the law relating to income-tax and super-tax, as drafted by the Joint Committee and as here amended, be passed.'

The motion was adopted.

### AMENDMENT OF STANDING ORDERS.

**Sir P. S. Sivaswamy Aiyer** (Tanjore *cum* Trichinopoly: Non-Muham-madan Rural): Sir, I beg to move for leave to amend the Standing Orders of the Legislative Assembly in the manner indicated in the various amendments under this head. I owe an apology to the House for not having brought up my suggestions earlier, so that they might have been referred to the Select Committee at the time at which the Honourable Sir William Vincent's amendments were so referred. With your permission, I propose to make a few explanatory remarks with regard to these amendments, and do so once for all, instead of dealing with each amendment separately. That course will, I am sure, save time and be welcomed by the House. Standing Order No. 23 relates to leave to make a motion to adjourn the House for the purpose of drawing its attention to some matter of importance. The procedure under the existing Standing Order is in my opinion unnecessarily cumbrous and open to other objections. First of all, when the Member who applies for leave gets up and announces his intention, the duty is cast upon some other Member of the House to take an objection to such leave being granted. Now, this duty of getting up and raising an objection is a somewhat invidious duty and, for that very reason, it is often not performed when it might be very usefully performed. If objection is taken, then the President asks those who are in favour of the leave being granted to rise in their places and if 25 people rise, then the leave to make the motion is granted. Very often it is found that, after the motion has been made and discussed, there is not a single person to support the Mover of the motion. That, I think, is a procedure which involves a needless waste of time. Why should we not have a straightforward and simple decision at once by the whole House on the question whether leave should be granted or not? It may be said that here too a person who has to object to leave being granted has to do a somewhat invidious duty; but the invidiousness is shared by the whole House and the weight of it is felt less.

My first proposal, therefore, is that the question should be determined by voices or, if necessary, by a division. Then, I propose, as an alternative, to omit the words 'if objection is taken.' I will not, at this stage, go into further details with regard to these various suggestions because it is only necessary for me to make out a *prima facie* case for the consideration of these suggestions and for referring them to the Select Committee.

With regard to Standing Order 30, I make certain suggestions for the purpose of making it clear in what cases notice is necessary and in what cases notice is not necessary. At present there is no Standing Order which sums up the cases in which notice is not necessary or states the cases in

[Sir P. S. Sivaswamy Aiyer.]

which notice is necessary. I think it would be a useful thing if we could have, summed up in one Standing Order, the cases in which previous notice is unnecessary. I may state that, in my amendment of this Standing Order and of a number of others which follow, I have based my suggestions on the Parliamentary rules of practice as they are to be found in Ilbert's 'Manual of Procedure of the House of Commons.' I do not think it is necessary to make any further explanatory remarks about this Standing Order, No. 30.

Then Standing Order No. 30 (b) says:

'If a Member desires to vary the terms of a motion of which he has given notice, he may do so by giving notice of the amendment to the Secretary in the manner prescribed for the original notice. But if the amended notice materially departs from the terms of the notice originally given, he will lose any precedence given to that notice. The amended notice must be given at the latest during a sitting of the House preceding a day appointed for the motion.'

This is practically taken from Ilbert's Rules.

Standing Order No. 30 (c) gives the right of postponing a motion to a later day to a Member who has given notice of a motion.

Standing Order No. 30 (d): This raises a question of practice with regard to which some explanation may be necessary. It relates to the question whether any seconding is necessary in respect of any motion. It has been the practice in the House of Commons to require a seconder in support of every motion. It has been the practice in most Assemblies, and, in fact, it is a practice which has been almost universally adopted. It may be said that it is not necessary to require a seconder, because you may take it for granted that there will be somebody or other speaking in support of the motion. Now, my reasons for suggesting that the Parliamentary practice should be maintained are these, that, if you insist upon this rule requiring a seconder, it may so happen that there are some propositions which do not find a seconder and which are therefore lost. So much, therefore, is gained in the matter of time. If a motion is so absurd that it cannot find a seconder, it will be lost without any more ado.

Then, there is another advantage. Very often, a man who proposes a motion may not be able to set forth all his reasons in favour of the motion, and, before he can finish the full statement of his case, he may be reminded by the President that his time is up. But if, on the other hand, you require a seconder, the seconder may be able to complete what  
4 P.M. has been left unsaid by the proposer, whereas, if you do not require any seconder, it is very uncertain upon whom the President's eye may fall and whether a person who intends to support the motion will be called upon to speak. It seems to me that, in this respect, it will be desirable to follow the Parliamentary practice which has been adopted in numerous other Legislative Assemblies and other bodies.

Then, with regard to Standing Order 30 (e), it is merely a proposal to vest distinctly in the President the power to split up a proposition into two or three and to put them separately to the vote.

Standing Order No. 30 (f):

'At any time after a question on a motion has been proposed from the Chair and before the voices both of the Ayes and of the Noes, have been collected, the motion may, with the leave of the House, but not otherwise, be withdrawn by the Member who proposed it.'

It is more for the sake of completing the Standing Orders upon the subject and making an express statement of the practice that this suggestion has been made, and it is also based upon the Parliamentary rule.

Standing Order No. 30 (g):

'A motion of which due notice has been given may, in the absence and at the request of the Member by whom notice was given, be made by another Member, but if not so made or if a Member announces his intention of withdrawing a motion standing in his name, the motion may be made by another Member and if not so made, the motion shall drop.'

This, I think, is a very important provision. At present, if a Member, who has given notice of a motion does not happen to be present at the time, his motion drops; but the motion may be an important one, other Members may be interested in it and they might not have given notice of a similar motion for the simple reason that notice was given by another Member who secured priority in the ballot. It is therefore desirable that a motion, of which due notice has been given, should be made by another Member at the request of the Member by whom notice was given, but, if not so made, or if a Member announces his intention of withdrawing a motion standing in his name, the motion may be made by another Member and, if not so made, it may be dropped. Supposing a Member who wants to make a motion does not make, and another Member wishes to make it, it is desirable that he should be allowed to do so.

Then Standing Order No. 30 (h) merely relates to the form in which a motion should be made.

Standing Order No. 32 (i) is a consequential amendment to the one which requires a seconder.

Standing Order No. 33:

'After sub-clause (4), insert the following as sub-clause (5):

'If an amendment is moved to a proposed amendment, the last mentioned amendment is dealt with as if it were the original question until all amendments of it have been disposed of.'

This is merely a convenient statement of a rule which is, as a matter of fact, followed at present.

'Sub-clause (6):

'Not more than one amendment shall be proposed for consideration at the same time.'

'Sub-clause (7):

'If an amendment referred to is not intelligible without a subsequent amendment or schedule, notice of the subsequent amendment or schedule ought to be given before the first amendment is moved so as to make the series of amendments intelligible as a whole.'

This again is based upon the Parliamentary rule and it is self-explanatory.

'Sub-clause (8):

'The President has the power to select from concurrent amendments and to determine the place in which an amendment ought to be moved.'

That again is a power the President ought to have and it is desirable to provide for it clearly.

'Sub-clause (9):

'An amendment moved may be withdrawn on the request of the Member moving it before the President has collected the voices.'

[Sir P. S. Sivaswamy Aiyer.]

There is nothing in the rules at present about the withdrawal of amendments, and that is why the suggestion is made.

### Standing Order No. 37 :

'In cases where motion for leave to introduce a Bill is required by the Rules any Member desiring to introduce a Bill should move for leave to do so. No amendment of the motion is permissible. The granting of leave to introduce the Bill shall not be deemed to commit the Assembly to any approval of the principle of the Bill.'

It is desirable to make it clear that the Assembly is not committed to the principle of a Bill by merely granting leave to introduce it.

### Standing Order No. 37 (a) :

'Where leave to introduce a Bill has been granted or no leave is necessary under the rules, a Member in charge of a Bill may introduce the Bill after giving 7 clear days' notice to the Secretary, provided that no Bill shall be introduced until 15 clear days' notice from the date of its publication or from the date on which copies of the Bill have been made available for the use of Members.'

One complaint which I have had to make and which, I dare say, many other Members will be in a position to make, is the shortness of time that is often given to us in respect of Bills, and the object of this Standing Order is to secure sufficient time to Members to study and consider the Bills which are intended to be brought forward.

In Standing Order No. 38(i), I would suggest that the proviso should be omitted. That is a consequential amendment following upon what I have just referred to.

Then, as regards Standing Order No. 39(ii), I suggest—and this I regard as an important amendment—that at the end of sub-clause (b), the following should be inserted as sub-clause (c) :

'It shall not be necessary for a Member moving a reference to a Select Committee to name the Members of the Committee in his motion, but when the Assembly has agreed to refer the Bill to a Select Committee, a separate motion may be brought forward for the appointment of the Select Committee by the Assembly.'

Upon this matter it has been ruled by our President that, at the time when a motion is made for the appointment of a Select Committee, the names of the Members should all be given. That has not been the practice in all our Legislative Assemblies; I know that in Madras, in the Legislative Council, under the old rules it was not necessary; the practice was first of all to make the motion to refer a subject to a Select Committee, and, after that motion is passed, to make a separate motion for the appointment of the Members of the Select Committee. But a contrary procedure has been adopted here according to the ruling of the Chair; and I think it will be far more convenient to Members first of all to move for reference to a Select Committee, and only if that motion is successful, it should be necessary to make the other motion that such and such persons should be appointed to constitute the Select Committee.

Then, again, with regard to Standing Order No. 40, I propose :

'At the end of sub-clause (5), insert the following as sub-clause (6) :

'Unless specially instructed by the Assembly to that effect it shall not be competent to a Select Committee to introduce a new clause in a Bill or to introduce any amendments which are not relevant to the subject-matter of the different clauses.'

This raises, again, an important question which has been raised in one of the amendments suggested by Mr. McCarthy; and it is this, if a

Bill is brought forward, is it or is it not competent to the Select Committee to go into matters not germane to the actual clauses of the Bill, but germane merely to the title and preamble of the Bill? Supposing, for instance, you bring in a Bill, say to amend the Code of Criminal Procedure or some other Act, and there are certain sections which are proposed to be amended in the draft Bill, and suppose certain chapters of the Criminal Procedure Code are left out entirely in the Bill, is it open to you to propose other clauses, new clauses having nothing whatever to do with the draft Bill, but relevant to the Bill only in so far as it is covered by the title? That is the important question at issue in regard to this matter. The President stated, at the time, that Mr. McCarthy's motion was brought, that the object of that motion was to bring up the question for consideration. That is also the object of my suggestion. It proposes an alternative rule to that suggestion which was made by Mr. McCarthy.

Then I suggest that in Standing Order No. 41:

'Between sub-clauses (1) and (2) insert the following:

'No business shall be transacted at any sitting of the Select Committee unless a majority of the Members of the Committee is present.'

Then I suggest that in Standing Order 46 (1), 'three clear days' should be substituted for 'two clear days', because it is really necessary to have a little more time for consideration of these matters.

Then, in Standing Order No. 61, I propose to insert the following as clause (c) :

'Or he may postpone the decision to a later date subject to the rules for the precedence of Resolutions.'

Standing Order 61 provides that a Member, in whose name a Resolution stands on the list of business, shall, when called on, do certain things; he has got certain courses open to him, he can either withdraw the Resolution or move the Resolution; he has no option given to him to postpone the motion to a later date. This is meant to give him that option.

I then propose to omit sub-clause (2) of the same Standing Order.

I then propose, in Standing Order No. 62, to substitute the following for the whole Standing Order:

'The Mover of a Resolution, when moving the same, and the Member of the Government to whose Department the Resolution relates may not ordinarily speak for more than 30 minutes nor may any other Member speaking on the Resolution ordinarily speak for more than 15 minutes, but the President may, in his discretion, extend the limits of time allowed.'

As the Standing Order stands at present, the President has very little discretion to extend the time in the case of a Mover or Seconder of a Resolution. Standing Order No. 62 provides:

'No speech on a Resolution, except with the permission of the President, shall exceed fifteen minutes in duration: Provided that the Mover of a Resolution, when moving the same, and the Member of the Government to whose Department the Resolution relates, when speaking for the first time, may speak for thirty minutes.'

Now, as a matter of fact, we have found in practice that this limit of thirty minutes cannot be rigidly adhered to; what length of time should be allowed to the Mover of a Resolution or to the Member of the Government must necessarily depend upon the importance of the subject and the ground which it has to cover, and it is impossible to lay down any rigid limit of time. The best course to adopt, therefore, is to vest in the President power to enlarge the time in the case of the Mover and the

[Sir P. S. Sivaswamy Aiyer.]

Member for Government to beyond thirty minutes, and in the case of other Members to beyond fifteen minutes. At present, as the Standing Order stands, the President has no discretion whatever to extend the time limit beyond thirty minutes. It is, therefore, desirable to make a provision clearly vesting the power in the President to extend the time limit. There need be no fear that the discretion vested in the President will not be used in the best interests of the House.

Then I come to Standing Order No. 64; that is:

'After the word 'moved' to insert the words 'and seconded'.'

This is really consequential.

Then I come to Standing Orders Nos. 67 and 69, both of which I believe are consequential.

Then I have put in another amendment, namely:—

'The Assembly may at any time, on motion made, suspend the operation of any of the Standing Orders with regard to any particular matter before the Assembly during a particular sitting.'

That, I think, is a very useful power to be conferred upon the Assembly. It may so happen that it is not possible to comply with all the Standing Orders. It is a power which has been conferred upon Legislative Councils in other provinces, and I think it is a very useful power to vest in this Assembly also. With these words, I beg to move for leave to amend the Legislative Assembly Standing Orders.

**Mr. President:** The question is that leave be given to amend the Legislative Assembly Standing Orders in the following manner:

*Standing Order No. 23.*

Omit all the sentences except the first and insert the following in their stead:

'The question shall be forthwith determined by voices or if necessary by a division. If the Assembly is in favour of leave being granted, the President shall intimate that leave is granted and that the motion will be taken at 4 p.m. If the Assembly is not in favour of leave being granted, the President shall inform the Member accordingly.'

If the above amendment is not accepted, omit the words 'if objection is taken' in the second sentence of the Standing Order.

After Standing Order No. 30 and before Standing Order No. 31, insert the following:

*Standing Order No. 30.*

(a) 'Save as otherwise provided in these orders every motion proposed in the Assembly requires notice except in the following cases:

- (i) A motion for the adjournment of the House or of the debate.
- (ii) A motion for a purely verbal amendment of a proposition before the Assembly.
- (iii) A motion for an amendment rendered necessary by or consequential upon an amendment which has been already carried.
- (iv) A motion for an amendment that a Bill be referred or recommitted to a Select Committee or circulated or re-circulated for the purpose of obtaining an opinion thereon.
- (v) Cases where notice is dispensed with by the general concurrence of the House.

(b) 'If a Member desires to vary the terms of a motion of which he has given notice, he may do so by giving notice of the amendment to the Secretary in the manner prescribed for the original notice. But if the amended



notice materially departs from the terms of the notice originally given, he will lose any precedence given to that notice. The amended notice must be given at the latest during a sitting of the House preceding a day appointed for the motion.'

*Standing Order No. 30.*

- (c) 'A Member may postpone to a later day a motion of which he has given notice; but cannot fix it for an earlier day.'

*Standing Order No. 30.*

- (d) (i) 'Every motion unless it is of a merely formal character must be seconded by another Member before it is put from the Chair.'  
 (ii) 'Any Member may second a motion by saying 'I second the motion' and may speak on the question during a subsequent period of the debate.'

*Standing Order No. 30.*

- (e) 'When a motion has been made and, where necessary, seconded, the President shall state the question for the consideration of the House. If a motion embodies two or more separate propositions, they may be proposed by the President as separate propositions.'

*Standing Order No. 30.*

- (f) 'At any time after a question on a motion has been proposed from the Chair and before the voices, both of the Ayes and of the Noes, have been collected, the motion may, with the leave of the House but not otherwise, be withdrawn by the Member who proposed it.'

*Standing Order No. 30.*

- (g) 'A motion of which due notice has been given may, in the absence and at the request of the Member by whom notice was given, be made by another Member, but if not so made or if a Member announces his intention of withdrawing a motion standing in his name, the motion may be made by another Member and if not so made the motion shall drop.'

*Standing Order No. 30.*

- (h) 'A question when proposed from the Chair may be amended :  
 (a) by leaving out certain words in order to insert other words, or  
 (b) by leaving out certain words, or  
 (c) by inserting or adding other words.'

*Standing Order No. 32.*

- (i) After the words 'has spoken' in the first line, insert the words 'and the motion has been seconded'.

*Standing Order No. 33.*

After sub-clause (4) insert the following as sub-clause (5) :

'If an amendment is moved to a proposed amendment, the last mentioned amendment is dealt with as if it were the original question until all amendments of it have been disposed of.'

*Sub-clause (6).*

'Not more than one amendment shall be proposed for consideration at the same time'

*Sub-clause (7).*

'If an amendment referred to is not intelligible without a subsequent amendment or schedule, notice of the subsequent amendment or schedule ought to be given before the first amendment is moved so as to make the series of amendments intelligible as a whole.'

[Mr. President.]

*Sub-clause (8).*

'The President has the power to select from concurrent amendments and to determine the place in which an amendment ought to be moved.'

*Sub-clause (9).*

'An amendment moved may be withdrawn on the request of the Member moving it before the President has collected the voices.'

*Standing Order No. 37.*

Substitute the following for this Order :

'In cases where motion for leave to introduce a Bill is required by the rules, any Member desiring to introduce a Bill should move for leave to do so. No amendment of the motion is permissible. The granting of leave to introduce the Bill shall not be deemed to commit the Assembly to any approval of the principle of the Bill.'

*Standing Order No. 37 (a).*

'Where leave to introduce a Bill has been granted or no leave is necessary under the rules, a Member in charge of a Bill may introduce the Bill after giving 7 clear days' notice to the Secretary provided that no Bill shall be introduced until 15 clear days' notice from the date of its publication or from the date on which copies of the Bill have been made available for the use of Members.'

*Standing Order No. 38 (i).*

Omit the proviso.

*Standing Order No. 39 (ii).*

At the end of sub-clause (b), insert the following as sub-clause (c) :

'It shall not be necessary for a Member moving a reference to a Select Committee to name the Members of the Committee in his motion, but when the Assembly has agreed to refer the Bill to a Select Committee, a separate motion may be brought forward for the appointment of the Select Committee by the Assembly.'

*Standing Order No. 40.*

At the end of sub-clause (5), insert the following as sub-clause (6) :

'Unless specially instructed by the Assembly to that effect it shall not be competent to a Select Committee to introduce a new clause in a Bill or to introduce any amendments which are not relevant to the subject matter of the different clauses.'

*Standing Order No. 41.*

Between sub-clause (i) and (2) insert the following :

'No business shall be transacted at any sitting of the Select Committee unless a majority of the Members of the Committee is present.'

*Standing Order No. 46 (1).*

Substitute 'three clear days' for 'two clear days.'

*Standing Order No. 61.*

Insert the following as clause (c) :

'Or he may postpone the decision to a later date subject to the rules for the precedence of Resolutions.'

*Sub-clause (2).*

Omit.

*Standing Order No. 62.*

Substitute the following for the whole Standing Order :

'The Mover of a Resolution when moving the same and the Member of the Government to whose Department the Resolution relates may not ordinarily speak for more than 30 minutes nor may any other Member speaking on the Resolution ordinarily speak for more than 15 minutes, but the President may in his discretion extend the limits of time allowed.'

*Standing Order No. 64.*

After the word 'moved' insert the words 'and seconded.'

*Standing Order No. 67.*

Omit.

*Standing Order No. 69.*

Omit.

The Assembly may at any time on motion made suspend the operation of any of the Standing Orders with regard to any particular matter before the Assembly during a particular sitting.'

The motion was adopted.

**Sir P. S. Sivaswamy Aiyer:** Sir, I beg to move that the proposed amendments be referred to a Select Committee.

**Mr. President:** Does the Honourable Member mean the Select Committee which has already been appointed to consider the Standing Orders of this Assembly?

**Sir P. S. Sivaswamy Aiyer:** I have no objection.

**Mr. J. N. Mukherjee** (Calcutta Suburbs: Non-Muhammadan Urban): As the matter is now going to be referred to the Select Committee and as it has been ruled that in such a case the principle of the matter about to be so referred should be taken as accepted by the Assembly, I should like to have a ruling as to whether, so far as the present motion is concerned, the Select Committee will be precluded from considering questions of principle involved in this matter.

**Mr. President:** I gave a definite ruling on the last occasion that, when the proposed amendments of the Standing Orders are sent to the Select Committee by order of the Assembly, the Assembly is not committed to the principle involved in each amendment.

The motion was adopted.

---

### THE POLICE (INCITEMENT TO DISAFFECTION) BILL.

**The Honourable Sir William Vincent** (Home Member): Sir, I move for leave to introduce:

'A Bill to provide a penalty for spreading disaffection among the police and for kindred offences.'

Sir, as this is only the first reading of the Bill,—I am only applying for leave to introduce it—I shall not detain the Assembly for any length of time. Further opportunity will be afforded to the Assembly of discussing the principles of the Bill at a later date, and I wish to treat this motion more or less, if I may, as a formal one. The position shortly is this. In 1920, when the non-co-operation movement was inaugurated, the programme of that movement included in its later stage attempts to get at the Army and the police. We addressed Local Governments, pointing out that the

[Sir William Vincent.]

laws as regards attempts to seduce soldiers from their duty was fairly complete, but that, as regards the police, it was apparently deficient, and we inquired whether it was thought that any amendment of the law was necessary. We had, of course, considered section 29 of the Police Act at the time. Nearly all Local Governments indicated that legislation was or would be necessary though organised attempts on the police were not then very prevalent. The mere publication of the intention of the non-co-operation movement to attack the police indicated a dangerous desire to create a spirit of disaffection among the police. Since then, attempts to create disaffection have become much more common and systematic, and leaflets have been issued, directly instigating the police to abstain from their duty. Our police are, as every one knows at present, subjected to constant harassment in the way of boycott and intimidation, but that is another matter. This Bill deals with attempts on their loyalty, which have, I regret to say, to a small extent affected their morale. I do not, however, want to depreciate the great service that the police has done or to give colour to any idea that the police as a whole are not loyal, because, that would be a most unjust accusation. They have performed the most trying duties—very difficult and dangerous duties—with great steadfastness and loyalty. I do not think that Members of this Assembly are aware of all they have suffered. They are always made aware if the police do anything wrong. In point of fact, many of them have been murdered and many have suffered grievous hurt for the performance of their duties. I do not want to enter into a discussion of that question now. I hope I will have an opportunity of doing so on a future occasion. Having received the opinions of Local Governments, and having regard to the incitements now constantly made on the police, we re-examined the position and as a result we now propose to introduce this Bill, modelled almost *verbatim* on an English Act dealing with the same point. It is not an old English Act, but an Act passed in the year 1919. As I say, I hope that I shall have a further opportunity of discussing in greater detail, with the Members of this Assembly, the principles of this Bill, but I hope that what I have said now will be sufficient at any rate to justify the Assembly in giving me leave to introduce the Bill.

**Mr. President:** The question is that leave be given to introduce a Bill to provide a penalty for spreading disaffection among the police and for kindred offences.

The motion was adopted.

**The Honourable Sir William Vincent:** Sir, I introduce the Bill.

### THE CIVIL PROCEDURE (AMENDMENT) BILL.

**The Honourable Sir William Vincent:** (Home Member): Sir, I now move for leave to introduce:—

‘A Bill further to amend the Provincial Small Cause Courts Act, 1887, and the Code of Civil Procedure, 1908, in order to provide for the award of costs by way of damages in respect of false or vexatious claims or defences in civil suits or proceedings.’

I think the House must be really tired of this Bill which has been before it three times already. In Simla, I contemplated making a motion for further considering the Bill as then introduced and subsequently postponed that in order to submit the principles of the measure to examination by a very influential Committee consisting of the Law Member, Mr. Lloyd, Munshi

**Iswar Saran, Rai Bahadur Pandit Jawaharlal Bhargava, Mr. Samarth, Mr. Kamat, Mr. Price, Mr. Krishnaswamy Rao, Mr. Hammond, Mr. Mitter, Mr. Moncrieff Smith and myself.**

Well, Sir, the Members of that Committee did consider that Bill at great length. I thought Dr. Gour was a Member of the Committee, but I do not see his name down. We made certain proposals to the Government, which were accepted and the present Bill gives effect to these proposals, the details of which will be considered at a later date. I do not think I need for a third time explain the objects of the measure. They are already explained in the Statement of Objects and Reasons.

The motion was adopted.

**The Honourable Sir William Vincent:** I introduce the Bill.

### THE INDIAN EMIGRATION BILL.

**Mr. J. Hullah** (Revenue Secretary): I move, Sir:

'That the Report of the Select Committee on the Bill to amend the law relating to emigration be taken into consideration.'

The Select Committee has made no important change of substance and has not attempted or suggested any change of principle. I have only to draw attention to their remarks in dealing with clause 24, that is to say, the rule-making clause. They say:

'At the same time we think we are not exceeding our functions in placing on record our opinion that on the passing of this Bill a Standing Committee should be constituted which would be consulted by the Governor General in Council before the issue of any rule under this clause.'

I have to announce that the Government of India accept this recommendation to constitute a permanent Standing Committee for Emigration; in fact, it is in accordance with their own intentions from the time when it was first decided to amend our emigration law. The Committee, of course, will deal not only with the drafting of rules under the Bill, but will be used to assist us in all important questions of emigration policy.

**Rao Bahadur T. Rangachariar** (Madras City: Non-Muhammadan Urban): I do not know if you intend to proceed with this Bill altogether to-day, after the long labour we had to-day. It is a very important Bill and I do not know if you consider it advisable that we should go on with it to-day.

**Mr. President:** I am prepared to hear opinions on that subject, but a variety of circumstances has brought it about that we shall probably lose two days next week, and it seems to me to be desirable that we should make such progress with this Bill as we can to-day. I am entirely in the hands of the House.

**Munshi Iswar Saran** (Cities of the United Provinces: Non-Muhammadan Urban): I agree with my Honourable friend, Mr. Rangachariar, that, having regard to the nature of this Bill, it is necessary that it should not be taken up at this late hour and at the fag end of the day when it is 25 minutes past 4, and I therefore join with him in the request that this Bill may not be taken up to-day.

**The Honourable Mr. B. N. Sarma** (Revenue and Agriculture Member): The Government has no objection to its being taken up on the next official day. We are entirely in the hands of the House.

**Mr. President:** I have no objection to rising now. The condition of the programme is, however, such that we cannot afford to lose any time, so that if any grievance arises hereafter in view of late sittings or other inconvenience to which the House may be put, the House is my witness that Members themselves are responsible for it. I understand that the Government has no objection to this Bill being postponed to the next day to which official business is allotted.

Before the House adjourns I have to inform the House that I have received an important communication, signed by a large number of Members of the House that, as February the 2nd is the occasion of an important Hindu festival, it would be inconvenient, not to use a stronger word, for many Members to be present on that occasion, and, therefore, I find it desirable to cancel the meeting on Thursday, the 2nd, which is a day usually allotted, as Members are aware, to the transaction of non-official business. An attempt will be made to regain the day thus lost, but I cannot exactly say how that will be done at this moment.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 31st January, 1922.