THE

COUNCIL OF STATE DEBATES

(OFFICIAL REPORT)

VOLUME I, 1928

(1st February 1928 to 22nd March 1928)

FOURTH SESSION

OF THE

SECOND COUNCIL OF STATE, 1928

CALCUTTA : GOVERNMENT OF INDIA
CENTRAL PUBLICATION BRANCH
1928

Pages.

COUNCIL OF STATE.

Wednesday, 7th March, 1928.

The Council met in the Council Chamber of the Council House at Eleven of the Clock, the Honourable the President in the Chair.

MEMBER SWORN.

The Honourable Mr. John Ackroyd Woodhead (Bengal: Nominated Official).

INDIAN LIMITATION (AMENDMENT) BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

THE HONOURABLE MR. S. R. DAS (Law Member): Sir, I present the Report of the Select Committee on the Bill further to amend the Indian Limitation Act, 1908.

INDIAN INCOME-TAX (AMENDMENT) BILL.

(AMENDMENT OF SECTIONS 10, 14, ETC.)

THE HONOURABLE MR. E. BURDON (Finance Secretary): Sir, I move that the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, as passed by the Legislative Assembly, be taken into consideration. This Bill, Sir, is designed to supply certain omissions in the Act, to give certain additional concessions to the assessees, and to make clearer that part of the law which is intended to secure that the resident shall not be unfairly handicapped so far as Income-tax is concerned, as compared with his foreign competitor, who has started a branch or agency in India; also to remove certain anomalies and to protect central revenues against encroachment by local bodies. One would expect therefore that it would be a non-contentious measure. I believe that, properly understood, it is such.

The Bill has been under the consideration of the Government for some time. It was circulated last autumn and a mass of criticisms was elicited, some of which were extremely helpful. The original draft has been considerably modified in the light of these criticisms by the Government, and the Select Committee of the Legislative Assembly, whose recommendations the Legislative Assembly has accepted. At present I will merely review the Bill rapidly clause by clause. Should occasion arise, I shall be prepared to deal with any clause in greater detail.

Clause 2 (*a*) at once supplies an omission and makes a concession. Hitherto the Act has contained no provision for any allowance on account of the deterioration of live-stock employed in business, corresponding to the depreciation allowance on buildings, machinery, plant and furniture. This clause allows the assessee to deduct from his taxable profits the original cost of live-stock that has died or become useless for his purposes.

Clause 2 (*b*) is intended to assert the principle that within the same sphere central must take precedence of provincial or local taxation. It is designed to meet a High Court ruling to the effect that certain cesses which, though in

[Mr. E. Burdon.]

form imposed on business premises, are in fact calculated on business profits, may be deducted from the profits liable to income-tax. This the Government of India consider objectionable in principle, and it is on principle that they have introduced this clause. The revenue directly at stake is unimportant.

Clause 3 goes with clause 5.

Clause 4 again fills a gap. The Act does not say how an assessment is to be made on a divided Hindu family in the year after separation. Obviously this case must be provided for. The precise method is of little concern to the Government so long as the revenue is safeguarded. What is proposed is to make an assessment as though no separation had taken place and to recover the tax so assessed from the separated members or groups proportionately to their shares.

This, I think, the House will admit to be fair. The original draft required notice to be given of every partition. This provision was justly criticised on various grounds, does not seem necessary, and has been dropped.

Clause 5 deals with two matters. It prescribes how an assessment shall be made when there is a change in the constitution of a firm and when there has been a change in the ownership of a business—a succession in fact.

In regard to both these matters, there are alternative methods, and it is really in the long run a matter of indifference to the Government which is adopted. In the first case, that of a change in the constitution of a firm, the principle already applied to super-tax by the proviso to section 56, introduced in 1925 and approved by the business community, is now extended to income-tax. The assessment is to be on the partners at the time of making the assessment according to their shares at that time.

In the Bombay Presidency alone, owing to a ruling of the High Court, the existing law is that the assessment is to be made according to the shares in the previous year. I am authorised to state that executive orders will be issued to protect any person in that Presidency who may be adversely affected by the change of system.

In regard to assessment after a change of ownership, where, for example, a company has succeeded a firm, different methods have been laid down by the Allahabad and Bombay High Courts. The Allahabad High Court has held that the assessment should be made as if there had been no succession, and the tax so assessed should be recovered from the successor. The Bombay High Court has held that, if a company is the owner of the business at the time of the assessment, it should be assessed as a company on the income earned by its predecessor in the previous year. This latter decision has been upheld by the Privy Council and has been embodied in this clause. It is interesting to note that it is in accordance with the practice of the Income-tax Department prior to the Allahabad decision.

Clause 6 merely extends to Commissioners and Assistant Commissioners exercising revisional and appellate authority the power that income-tax officers already possess to correct errors apparent on the face of the assessment record.

Clause 7 as originally drafted was designed to make the law clearer in regard to the computation of the profits of exporters (especially non-resident exporters). If such profits are received in British India, the whole of them is taxable. If they are not so received (as may often occur if the assessee is a non-resident) the portion to be deemed to have accrued or arisen from the transaction in British India has to be determined.

In the original draft a definite formula was embodied. It was proposed, where the exporter's transactions result in profit, to take as the Indian profits the profits that would have been earned had the goods been sold f. o. b. at the port of export. The original draft was approved by some important Chambers of Commerce, but was widely criticised as being too inelastic. In some cases it may be difficult or even impossible to ascertain the f. o. b. price. In others, the c. i. f. price, with certain obvious deductions, would be more suitable. In some, other methods may alone be applicable. It is therefore proposed to leave section 42 (*1*) as it is. The necessary formulæ will be prescribed by rules under section 59 (*3*) to suit the various cases. A new sub-section (*3*) is introduced in the same section by this clause, to make it clear that the entire profits of non-residents who buy or manufacture goods abroad and sell them in India through their own branches or agencies are taxable, since they are normally received here. That is to say, it affirms one main basis of liability under our Act, the basis of receipt in British India. There is, I submit, no reason why this basis should be applied to residents and abrogated in favour of non-residents.

There has, I am afraid, been much misunderstanding in regard to section 42 (*1*). It corresponds to section 33 (*1*), which was introduced into the Act of 1918 at the instance of business men in India, who complained that they were handicapped in competing with branches and agencies in India of foreign firms, because they were subjected to Indian income-tax and the foreign firms were not. It is not intended to place on an Indian seller of any commodity any liability in respect of profits earned abroad by a foreigner who regularly purchases from him as has been incorrectly stated. Regular purchase by a principal abroad from an independent principal in India cannot be held to constitute an agency. Income-tax has never, so far as I am aware, been levied in such a case, and there is no intention that it should be levied in such a case in the future.

Section 42 (*1*) is simply intended to give fair play to the resident with whom the non-resident is competing, and I must confess I find it hard to see eye to eye with those who contend that the best way to do this is to confer on the non-resident who has established an agency or branch in India immunity from Indian income-tax in respect of the profits that he earns thereby.

Clause 8 simply enables the income-tax officers to do what was always done in the past, namely, to impose a light penalty, in the first instance, for default in payment of tax, and gradually increase it up to the maximum if the default is persisted in. This is a convenient and effective system, but its legality seems doubtful as the law stands. There is no question of increasing the maximum penalty, or conferring any enhanced powers on the income-tax officers.

Clause 9 is designed to remove an anomaly. Even a very rich man living abroad can secure a refund of tax on dividends under section 48 if his income in India happens to be less than Rs. 40,000. If it is less than Rs. 2,000 he can recover the entire tax. Section 48 is intended to relieve persons with *small* incomes—that is incomes not liable to tax at the maximum rate. It is unnecessary and undesirable that wealthy men should be able to take advantage of it just because they live abroad. The clause therefore provides that claims by non-residents to refunds under section 48 shall be determined with reference to their entire income, foreign and Indian, while a non-resident who is neither a British subject nor a subject of an Indian State is to be denied such refunds altogether in accordance with the law in the United Kingdom.

[Mr. E. Burdon.]

Clause 10 is consequential on clause 5. New section 26 (*1*) covers the same ground as the proviso to section 56 which is therefore to be omitted as superfluous.

Finally, clause 11 simply substitutes for the word " review " in section 66 the more correct word " revision " which is used in clause 6.

I trust, Sir, that this sketch of the provisions of the Bill will have satisfied the House that the reassuring description of it which I gave in my opening words was accurate.

To summarise : clause 2 embodies a concession and asserts an essential fiscal principle. Clauses 4 and 5 simply supply omissions and clear up ambiguities. Clause 6 is at least as necessary from the point of view of the tax payer as from that of the revenue. Clause 7 is designed to place the foreigner in the same position as the resident with whom he is competing. Clause 8 is to legalise a long-standing and convenient practice. It is in no way disadvantageous even to the tardy tax-payer. And, finally, clause 9 removes an anomaly whereby wealthy non-residents enjoy, because they are non-residents, a privilege intended for people of small means.

I suggest, Sir, that these are all objects that I may reasonably expect this House to approve.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official) : Sir, if there is one Act of the Central Legislature which needs clarity and freedom from all ambiguity, it is the Income-tax Act. This Bill is of the character of a penal measure, and I think not only the Legislature but the public have a right to know exactly the position in which they stand in matters in which they are liable to taxation. It is my view, therefore, that in matters of income-tax especially, when amending Acts are brought forward, they must be drafted on lines which will dispel all doubt and ambiguity and which will make matters abundantly clear to the public. In the present Act I am afraid I cannot see any signs of such clarification. At least a couple of sections of this Act make the matters worse confounded than the existing Act. I shall only refer to clauses 2 and 7 of this Bill. I also understand that on clause 7 there is an amendment, which is to be moved by my friend Mr. Gray. I shall only refer to the general aspect and not speak on that amendment at this stage. Now, Sir, clause 2, proviso (*b*) has been necessitated by the desire of Government to maintain a principle, as Mr. Burdon....

THE HONOURABLE THE PRESIDENT : I would remind the Honourable Member that there are two amendments on the paper, both for the omission of proviso (*b*), so that he will have an opportunity of explaining his point of view with reference to proviso (*b*) later.

THE HONOURABLE SIR MANECKJI DADABHOY : At present I propose to make general observations, if you think, Sir, that they are not objectionable at this stage. What I am concerned about is to show that the principle they want not to depart from, is that the Central Government do not wish the Local Governments to encroach on their sphere of taxation. That is the main principle on account of which this clause has been revised and redrafted. Of course there is a much bigger principle involved in the matter, and that is that the public also should be protected against double taxation, and this point also has been realised by the Select Committee which went into the measure and made certain alterations in the drafting of the Bill. It clearly appears that this clause 2 has been necessitated, because the Calcutta High Court has lately come

to a decision that the road cess levied on coal mines is a perfectly valid and admissible deduction and may be claimed by the assessee as an allowance from his general assessment. The cess is actually calculated with reference to the annual profits of the mines though nominally levied on immoveable property. The Government of India desire to bring into vogue the practice which has hitherto prevailed before this High Court decision came into effect and altered the law. All that the Government of India say now is this. "We are not concerned at all with whatever happens in the provinces. Our principle is that we are going to tax you on profits and the assessee must pay: We are not going to allow you any reduction in matters of this cess. If you have got any grievance, you go back to your Local Government and fight out your battles there." I say this policy is wrong in principle altogether and should not be encouraged by this Council. In matters like this, where the Central and Provincial Governments clearly have disputes, legitimate disputes, they must settle the disputes themselves and not make the Legislature a field of discussion. In a matter like this, and especially in an income-tax measure, in my opinion there is nothing wrong in allowing a deduction in assessing income-tax on this sort of taxation; and, as Mr. Burdon has pointed out to-day, the amount of taxation is an unimportant matter. It is an unimportant amount. As far as I am able to ascertain, such taxation does not yearly exceed Rs. 1,30,000 altogether, and it only affects the two provinces of Bihar and Bengal. It is not a question of a small or unimportant matter of taxation. If the principle is wrong, I think it ought not to be encouraged. My own opinion is that the allowance which is claimed by the assessee in this matter is quite legitimate, proper and just. I should certainly have opposed this portion of the Bill, but in view of the assurance which has been given by the Select Committee that they will refer the question to Local Governments and see if this can be settled, I shall not go further into this matter. But I think it is my duty to point out in this Council that in matters like this, it is not necessary to involve the Legislature in a local controversy. This is a matter which ought to be settled between the Central and Local Governments.

As regards clause 7 the general observation which I would only make at this stage is that it leaves the law in a much more unsatisfactory condition than the law as it exists in section 42 of the Act. Instead of removing any ambiguity it makes matters worse. I do not think this section as it is worded and as it appears in the Bill at present is going to help either the Government of India or the Finance Department of the Government of India or the Income-tax officers in the elucidation of the many complex problems which confront them daily. My friend Mr. Burdon pointed out that the formula will be prescribed by the rules and that they were now only laying down the main proposition. I think there is more danger in the rules than in the Act itself, because when the Act is brought forward before the Legislature, the Legislature is in a position to ascertain how it stands and how far it is going to affect the public and the general assessee; but when certain things are brought, by rules, into the operation of the Act, the assessee knows nothing about it and they become a matter of law and they cannot possibly be questioned till the whole section is again revised. Mr. Burdon has also pointed out that the original draft was approved by the Chamber of Commerce, but it was widely criticised. They have now produced this ideal Bill. I quite see that the Government are not wholly responsible for this clause 7 as it is drafted. It was also due to the fruitless attempt on the part of certain Members in the Assembly to revise the drafting of the clause in a commercial matter which they were not expected to closely know. I do feel—and honestly feel—that this clause as it stands is going to cause a considerable amount of disturbance in the business not only of the income-tax officers, but is going to cause dissatisfaction to the general public.

[Sir Maneckji Dadabhoy.]

As regards my detailed observations on the Bill, if they are necessary, I shall submit them later on.

THE HONOURABLE MR. P. C. DESIKA CHARI (Burma : General) : Sir, I have no admiration for the Income-tax Act or for the way in which it has been worked, but the present amending Bill seems to be in the right direction ; and the principles which have been kept in view in drafting these amendments meet with my approval, because those are the principles which ought to be kept in view in amending the present Income-tax Act. But I would prefer the old Act being subjected to a thorough inquiry and being modified with reference to the present requirements all round. I find this, of all Acts, is more prolific, and at times we have got more than one or two amending Bills in the same Session. During the present session we find some other amending Bill also coming in. Sir, if the Government of India would only act upon the recommendation made during the last Session of the Council to form a Committee to go into these questions, then we should have a better Income-tax Act and would be relieved of all the worry and the annoyance of dealing with income-tax questions once every Session and at times more than once. At least once every Session we have got something or other with reference to the Income-tax Act. Possibly all these troubles can be minimised and we can have an Act, an up-to-date Act, like the one which is working so successfully in Great Britain. But the fact of the matter is that the Government happens to be the prosecutor and also the judge in these cases because the income-tax officers sit as judges in their own causes. And the Finance Department, whose representatives these income-tax officers are, are not prepared to consider any suggestions to make the law more equitable in favour of the assessee. Apart from all that, the present measure, as the Honourable Mr. Burdon put it, is a non-contentious one and, though I am not in agreement with the Finance Department in the matter of giving greater powers to the income-tax authorities circumstanced as they are, I think the amendments are in the proper direction in clarifying the law and in removing certain anomalies. I do not agree with my Honourable friend Sir Maneckji Dadabhoy when he says that it is the duty of the Central Government to interfere actively in matters of provincial taxation. No doubt, it will suit the assessees to say so, but it is wrong in principle. We want the Provincial Governments to be left entirely free in matters of taxation in their own spheres. If you admit that it is the sphere of the Central Government to levy all taxes on profits, then, I believe, it goes without saying that you ought to make it clear that the Central Government should not be deprived of the right to tax on profits in every direction, and it is not argument to say that the Government in the provinces tax them improperly on profits. It is for the public to agitate in the provinces to set matters right in their provinces. The Provincial Governments are also amenable to public pressure and agitation, and I do not see any reason why the Members of the Central Legislature should be anxious to get the support of the Central Government to bring pressure upon the Provincial Governments to set their provincial house in order in matters of taxation. Whatever it is, the Central Government is prepared to go a long way in impressing upon the Local Governments the desirability of not encroaching upon the sphere of the Central Government, and I think this ought to satisfy the Members of this House that there is no objection to clause 2 coming into the Bill at all. I have been closely following Sir Maneckji Dadabhoy when he said that the present clause 7 makes matters worse than what they were under section 42(*1*). In my opinion it is a distinct improvement. It is designed to place a resident trader on the same footing the agent of a non-resident firm here, and I do not see any reason why a

provision of the kind contained in the new sub-clause (*3*) should not be added to section 42. So far, I have not heard any arguments against the inclusion of this provision, but there is a good deal of force in what Sir Maneckji Dadabhoy says that these matters ought not to be left to be dealt with by rules because there is no knowing how they will be acted upon. If it comes within the Act in the form of a section, then it is quite possible to go through the various stages, *e.g.*, criticism can be directed and attention focussed upon particular things when they are put in the form of sections. But in the case of rules, they are brought to the notice of the public only when they are brought into operation, and whatever may be the agitation in the country it is not possible to abrogate them once they have been put into operation. We know very well that all the departments of the Government of India, especially the Finance Department, are very anxious to strengthen their own hands. The Finance Department is always clamouring for more and more powers in matters of income-tax and is not likely to respond to public pressure when we point out patent anomalies and real hardships that are felt owing to the existence of certain rules. Still, when you have to consider that it is very important to remove this handicap to the local merchants, I think we ought to do something to favour the local merchants when they are seriously handicapped by agents of foreign companies. I think, on the whole, the Select Committee has done well to keep the old section 42 (*1*) as it was and did not interfere very much in a hurry. I can very well see that a great deal of modification can be done at a later stage with greater care and attention.

As regards the other clauses, they are, I think, a distinct improvement on the old Bill. I therefore feel myself in the happy position of being able to extend my support to the Government.

THE HONOURABLE THE PRESIDENT: The question is:

"That the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, as passed by the Legislative Assembly, be taken into consideration."

The motion was adopted..

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 2 do stand part of the Bill."

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN:.....

THE HONOURABLE MR. E. BURDON: I rise on a point of order, Sir. May I have your ruling whether the amendments of my Honourable and gallant friend are in order regard being had to the terms of Standing Order 32 (1). It appears to me that the propositions which the amendments embody are not related to the purposes of the amending Bill. The Preamble states the purpose of the Bill as being to amend the Indian Income-tax Act, 1922, "for certain purposes hereinafter appearing", and it seems to me that my Honourable friend's propositions are not related to or connected with any of these purposes.

THE HONOURABLE THE PRESIDENT: The Honourable Major Nawab Mahomed Akbar Khan has given notice of amendments to two of the clauses of sub-section (*2*) of section 10 of the Indian Income-tax Act. It is always a little difficult to decide in the case of an amending Bill whether further amendments are within the scope of the Bill or not, but inasmuch as the Government Bill itself purports to amend sub-section (*2*) of section 10, it is, I think, a little difficult for me to hold that any amendment relating to that sub-section is also outside the scope of the Bill; otherwise we should find ourselves in the position

[The President.]

of confining ourselves to a very small portion indeed of an Act which was open to amendment. I agree that when a Bill is introduced for the purpose of amending an existing enactment and the Preamble states that the Bill is to amend the enactment for certain purposes, then amendments dealing with sections that are not touched by the amending Bill would, as a rule not, be within the scope of the amending Bill. But here we have one sub-section of a section of the existing Act thrown open to amendment and I propose to allow the Honourable Major Nawab Mahomed Akbar Khan to put forward his amendments to that sub-section.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN (North-West Frontier Province : Nominated Non-Official) : Sir, I rise to move the amendment standing in my name which consists of two parts, one dealing with the Chawkidara or yearly wages of Chawkidars and the other with the municipal taxes or scavenging and house taxes.

With regard to the former, I would like to bring it to the notice of the Honourable Members that Chawkidara is a kind of expenditure similar to the premium paid towards insurance against risk of damage or destruction of buildings, allowance for which for the purposes of assessment has been provided in clause 4 of sub-section (2) of section 10 of the Income-tax Act, 1922. Now, since there are no insurance companies available in the North-West Frontier Province, the system of keeping armed Chawdkidars is usually resorted to in that part of the country. This system is even safer than the system of insurance, for the Chawkidars are employed to watch and guard the property as well as the lives of our tenants against the frequent raids in that exposed part of the country. It will be seen, therefore, that the employment of armed Chawkidars serves the two purposes of keeping watch and guard of the house property, as well as the lives and properties of the tenants. Consequently, the expenditure borne towards salaries of these armed Chawkidars, otherwise called Chawkidara, can fairly be taken as premium paid in respect of insurance against risk of damage or destruction of buildings, and in fair justice ought to be allowed for in respect of income assessments on the Frontier. The condition of the country urgently demands employment of armed Chawkidars to safeguard the property as well as the lives of the tenants, which purpose cannot be served by the insurance companies. Being so, it would have been fair justice to allow credit of the full sum spent towards the maintenance of the Chawkidars while making assessments and not part credit as had been the practice during previous assessments, but the worst of the matter is that its allowance has been recently discontinued as a whole. I fail to understand what justification there can be on the part of the Income-tax Department in discontinuing its allowance in face of the fact that it corresponds to the premium in respect of insurance for which allowance has been provided for in clause (*iv*) of sub-section (2) of section 10 of the Income-tax Act. In the absence of Chawkidars, we can have no tenants, with the result that our income from that source is open to tremendous loss, which state of affairs is sure to tell on the public revenue also, for when there is a decrease in the assessee's income, his share of income-tax will automatically fall. Under the circumstances, it will prove advantageous to the owner of the property as well as the public revenue to allow credit of the sum spent on the maintenance of Chawkidars employed in lieu of insurance.

The second part of my amendment concerns the scavenging and house taxes in specification of the municipal taxes as provided for in clause (*viii*) of sub-section (2) of section 10 of the Income-tax Act. I should like to say

that it seems quite unfair and inequitable to assess a man's income twice without giving him the credit for the tax paid by him under the former taxation. To my mind, at the time of income-tax assessment the assessee ought to be allowed credit for the sum paid by him towards some local taxation. In case there is any fear of decrease in the central revenue, the Government ought to devise some equitable measure to make good its loss, but under no circumstances should it deprive the tax-payer of the credit of the sum paid by him towards some local taxation. The scavenging and house taxes are a kind of taxation which comes under the category of local taxation. I would like to bring to the notice of Honourable Members that scavenging and house taxes are imposed by the Notified Area Committee in places where Municipal Committees do not exist. For instance, there are Notified Area Committees in the North West Frontier Province who impose scavenging and house taxes at the rate of 7 pice per rupee. Where there are many proprietors of house property, the collection of these taxes is taken on by the Committees concerned, but when the property belongs to a single person, the said taxes are collected by him on behalf of the Committee in order to economise and expedite their collection. The sum thus collected is paid to the committee concerned immediately after its recovery every month, but Honourable Members will be surprised to hear that the income-tax authorities regard it as a part of the owner's income, with the result that they include the sum thus realised in his income liable to assessment. Exhaustive representations against this attitude of the income-tax officer in including the sum of house tax in an assessee's income have been made even to the Income-tax Commissioner, but the difficulty is that this officer also adheres to the views taken by his subordinates in this respect. I fail to understand the justification on the part of the income-tax authorities in holding the sum of house tax as a part of the owner's income, when, as already explained, it is collected by him on behalf of the committee concerned simply in compliance with its request and paid to it immediately after its collection every month, and yet the income-tax authorities are persisting in including the sum thus realised in the income arising from one's house property. Since all explanations and representations against this method of including the sum of house tax in an assessee's income have so far failed to induce the income-tax authorities from desisting from the view taken by them in the first instance, there remained no alternative but to bring in this amendment, and I hope Honourable Members will see that it is carried so as to enable the assessees concerned to take full advantage of the allowances permitted under clause (*viii*) of sub-section (*2*) of section 10 of the Income-tax Act, 1922. With these remarks, Sir, I commend the amendment standing in my name to the acceptance of this Honourable House consisting of the representatives of large landowners who can judge this inconvenience better than others elsewhere.

THE HONOURABLE THE PRESIDENT: The Honourable Member has omitted to move his amendment.

THE HONOURABLE MAJOR NAWAB MAHOMED AKBAR KHAN: I beg to move my amendment, which runs as follows:

"That in clause 2 of the Bill—

(1) the following sub-clause be inserted, namely:
'(*a*) at the end of clause (*iv*) the following shall be added, namely:
'or in the North West Frontier Province, the amount paid as Chawkidara or yearly wages of Chawkidars';

(2) sub-clause (*a*) be re-lettered as sub-clause (*b*); and

(3) for sub-clause (*b*) the following sub-clause be substituted, namely:
'(*c*) in clause (*viii*) for the words 'or municipal taxes' the words 'Municipal taxes or scavenging and house taxes' shall be substituted'."

THE HONOURABLE THE PRESIDENT: I allowed the Honourable Member to move his amendments and to support them by one speech, because I thought that course would in the end save the time of the House. I will put them separately.

THE HONOURABLE MR. E. BURDON: Sir, the first part of my Honourable and gallant friend's amendment relating to the amount paid as Chawkidara or yearly wages of chawkidars is, in my opinion, clearly superfluous. If the amount is actually paid for the purpose of guarding the business premises of a man engaged in business or for the purpose of guarding his stocks, then the expenditure on Chawkidara or yearly wages of chawkidars would, under the existing law, be admissible as a deduction from the profits. The particular section is section 10 (*2*) (*ix*) and the ground of the deduction would be that the expenditure was expenditure incurred for the purpose of earning the profits. If, on the other hand, the amount is paid otherwise than in connection with a business, that is to say, is a tax paid by a house owner in respect of protection of his private residence and is in no way connected with business expenditure, then of course the deduction will not be admissible and there is no reason why it should be admissible. My Honourable friend has referred to a particular case. I gather from what he said that it was a case in which a man paid Chawkidara in respect of protection of his business premises or shop. If that is the case, if deduction has not actually been allowed, I should be very glad if my Honourable and gallant friend will let me have full particulars, and I will have the matter investigated. But the position is as I stated that if the Chawkidara is paid for the purpose of guarding a shop or business premises, then it is admissible as a deduction before profits are computed. The existing law provides completely for the case which, I understand, the Honourable Nawab Sahib has in mind.

As regards the other amendment relating to scavenging and house taxes, the position is again exactly the same. Such taxes would be admissible as deduction under section 10 (*2*) (*viii*) so long as they are levied as a tax on the premises as distinct from a tax on profits. It is conceivable that my Honourable friend has it in mind that section 10 (*2*) (*viii*) covers only taxes levied by municipalities and not by other local bodies, but I can assure him that that is not the case. So long as the tax is levied on premises used for the purpose of business, it will be admissible as a deduction, whether the tax is levied by a municipality or by any other local body. As a matter of fact, Sir, from certain of the Honourable mover's observations, I gather that he has in mind the case of the assessment to income-tax of income from property and not from business, and if that is the case, then of course the amendment which he has put forward would be entirely out of place in a section which relates not to income from property but to income from business. For these reasons, I oppose the amendment.

THE HONOURABLE THE PRESIDENT: The original question was:

"That clause 2 do stand part of the Bill."

Since which the following amendment has been moved:

"That in clause 2 of the Bill—

the following sub-clause be inserted, namely:

'(*a*) at the end of clause (*iv*) the following shall be added, namely:

'or, in the North West Frontier Province, the amount paid as Chawkidara or yearly wages of Chawkidars'."

The question is that that amendment be made.

The motion was negatived.

THE HONOURABLE THE PRESIDENT: That decision carries with it the Honourable Member's second* amendment.

Further amendment moved:

"For sub-clause (*b*) the following sub-clause be substituted, namely:
'(c) in clause (*viii*) for the words 'or Municipal taxes' the words 'Municipal taxes or scavenging and house taxes' shall be substituted'."

The question is that that amendment be made.

The motion was negatived.

THE HONOURABLE SIR GEORGE GODFREY (Bengal Chamber of Commerce): Sir, I beg to move the amendment which stands in my name and which runs as follows:

"That the word 'and' at the end of sub-clause (*a*) and the whole of sub-clause (*b*) of clause 2 be omitted."

I speak now with special reference to the road cess levied on the collieries of Bengal and Bihar and Orissa, and I am confident that it will only require a few brief remarks from me to convince this House that the proviso that has been included in this Bill is wrong in principle and impossible or unsuitable in practice. It will perhaps help to make the situation clearer, and I think on the whole this is necessary because it seemed to me that in the discussion which took place in the other House there was no clear perception of what the real point was; therefore, as I say, it will help to make the position clear to members in this House, if I give a short outline or sketch of the evolution of the road cess problem in Bengal and Bihar and Orissa. Many years ago the coal mining industry started in these provinces, one province as it was at that time, in sparsely populated country where roads did not exist. Those interested in the coal mining industry impressed upon the Local Government the advisability of construction of new roads. The Local Government actually agreed that this was necessary. The financing of this work was undertaken, or was considered, and naturally the solution was that as the roads were required for the benefit of the new industrial population growing up in the colliery areas and in particular to assist the various collieries in earning their profits and in carrying on their business, it would be fair and reasonable to levy upon the collieries a road cess to provide the money required. I say it is a fair and reasonable and also that it was a practical solution of the problem, because what would have been the alternative? Those collieries which were in the worst position for roads would have been obliged to construct their own. They would have had no public rights for acquiring land; they would have had to build roads to and from their own collieries as private roads, and they would generally take steps to prevent unauthorised people using them. The position would have become involved in private disputes, friction, unnecessary and wasteful expenditure and no general satisfaction.

12 Noon. But, and this is a point which I wish to emphasise as it has a special bearing on my amendment, such expenditure by the collieries under those conditions would have undoubtedly been allowed, without question, as part of the working expenses of the collieries. But this futile position was avoided by the Local Government introducing the Bengal Cess Act of 1880, and since then roads have been constructed which, it is true, are not yet sufficient, but construction is still going on, and I will not deal with the point as to whether conditions are good, bad or indifferent. The collection of road cess having been decided on, difficulty then arose as to the method of collection with particular reference to collieries, and the Local Government was allowed to calculate the cess on past profits of collieries. Whether this was right or wrong from the Central Government's point of view may perhaps

* That sub-clause (*a*) be re-lettered as sub-clause (*b*).

[Sir George Godfrey.]

be open to question, but the method was adopted and has been going on and was applied to mines, tramways, railways and other immoveable property. The Central Government appear to have suddenly become alive to the fact that the cess was being collected or assessed on colliery profits, and, as we understand it now, they wish to maintain the principle that the Central Government alone is entitled to tax profits by means of its income-tax. The Finance Member has explained his view of the case in the Statement of Objects and Reasons to the Bill. He says :

"The Central Government have always contended that provincial or local taxes on profits should not take precedence on central taxes on the same profits, and if this principle is sacrificed, serious loss to central revenues may result."

The sudden realisation of the position appears to have been caused by a High Court decision that road cess levied on coal mines, on past profits, is an inadmissible deduction from the assessable profits of the mine. However, to administer a corrective to the opinion of a High Court and to maintain a principle which for no good reason whatever appears to be regarded as essential, the Government of India in the Finance Department wish to introduce special legislation in this Bill, whereas surely the practical way would have been, if this principle is so very essential, to call on Local Governments to adjust their methods of calculating road or any other cess on some different basis. It would not be impossible so to do ; it would not even be difficult. Sir, as the whole country knows, the coal industry is in a very depressed condition. This is not peculiar to India. The whole world is suffering from over-production of this mineral, and in India many collieries have had to close down because their sale prices are so low that they cannot carry on or cover their working expenses. And yet this is the time selected by the Central Government to try to squeeze a little more out of the collieries that can still carry on. The actual amount involved may be small. As Mr. Burdon has told us this morning, so far as the Central Government Budget is concerned, it is very small. In fact, I suppose we may call it trivial. But for the sake of this essential principle, or I should prefer to describe it as a non-essential principle, which has been hitherto inadvertently forgotten or missed, the Finance Department of the Central Government seeks to pass a special measure which will cause an additional expense to these collieries which are still able to work and carry on at a profit.

I may point out here that the Government of Bengal have stated as their view on this proviso that there can be no justification for a prohibition which goes back upon the established primary principle that local rates are allowable deductions, until it is shown that local authorities in assessing their rates are taking account of profits, in the sense of that word in the Income-tax Act, to an extent which could reasonably be avoided. And they add that so far as the Government of Bengal are aware no such case can at present be made out.

In the colliery districts there are other cesses such, for instance, as that to meet the cost of the Board of Health and the cost of the supply of water from the Jheria reservoir. These are admitted as good deductions. But the road cess, merely because it is calculated on profits, average profits of preceding years, not the profits as actually used for income-tax, is to be brought into the net of the income-tax collector for no justifiable reason whatever, I have emphasised the case very much from the point of view of collieries but there are other concerns in the country involved. On behalf of the constituency which I represent, we are mainly for the moment in regard to this point interested in the colliery problem, and for that reason I must very strongly protest against

the policy, I may say the grabbing policy, which is evidenced by this sub-clause.

Sir, I hope I have shown clearly that in the undeveloped condition of the coalfield areas roads were necessary to enable collieries to conduct their business and to earn their revenue. Road making or the cost of it is absolutely and naturally a working expense of a colliery. If the Central Government chose to attach importance to what is by no means an essential principle, there was an alternative method. I am confident that on this picture of the case and the explanation that I have given, I shall have the support of this Council in deleting the unnecessary proviso dealt with in my amendment.

Sir, I move the amendment which I read out at the commencement of my speech.

THE HONOURABLE MR. E. BURDON : Sir, I am afraid I have to oppose my Honourable friend's amendment ; and, before I proceed to deal with certain special points in his speech which require to be carefully answered, I wish to give this Council a brief account, which I hope to make as clear as possible, of the position which the Government of India have had to take in this matter. As will have been clear from the speech of the Honourable Mover himself, the point which he desires to urge is not a new one. It has been very carefully considered by the Select Committee of the Legislative Assembly, as will be seen from their report which is in the hands of Honourable Members. It was also specifically considered by the Legislative Assembly itself. In the Select Committee opinions were divided, but the Legislative Assembly decided against the view which the Mover of the amendment again urges, and I can see no reason why this Council should arrive at a different conclusion from that reached by the Legislative Assembly. My Honourable friend's main point of substance is, I think, that road construction in the colliery areas was always and still is the cause of expenditure incurred for the purpose of earning income. The cess is intended to be a cess on the annual value of the mine premises and to represent a payment for services rendered ; and on both these grounds it is held that it is correct in principle that it should be allowed as a deduction from the profits on which income-tax is levied. Now, Sir, I am prepared to admit that this argument so far as it goes is not without validity ; but it leaves out of account the plain fact that the cess is actually assessed upon the profits of the undertakings, and under the law as it stands at present, that portion of the profits which the cess represents, though it is in form and in fact part of profits, is protected from assessment to income-tax by the Central Government. The cess thus becomes a form of income-tax, and this means that a very important financial principle is infringed, the principle that the spheres of taxation of the Central and the Provincial Governments should not encroach upon each other ; and as the Council is well aware, the power to levy income-tax is under our present constitution reserved to the Central Government. The principle to which I here refer is not in dispute. Even the dissentient members of the Select Committee of the Legislative Assembly admitted the correctness of the principle. They merely held that the Government of India in the present case should seek some other means of restoring the operation of the principle. Now this latter position is one which the Government of India cannot possibly accept. They are the custodians of the principle : it is their responsibility to maintain it. They and the Central Legislature have open to them a direct and certain and perfectly proper means of fulfilling that responsibility, and the Government propose to take this means by enacting the proviso which forms the subject of my friend's amendment. They propose to affirm the basic principle and to leave it to the Local Government to make its administration conform to the

[Mr. E. Burdon.]

principle. Now, Sir, it seems to me to be clear that this is the correct order of procedure, and that the other alternative would be a reversal of the correct order, while it would have the further disadvantage of being less effectual than the procedure which the Government have decided upon. Accordingly, the Select Committee in their main report retained the provision under discussion. At the same time they made a recommendation that Government should take all measures in its power to secure that no local tax shall be assessed on profits, and I can assure the Council that the means of giving effect to this recommendation will be very carefully studied. I have endeavoured to make it clear that Government wish to press their view on grounds of principle. As I have said before, and as my Honourable friend has himself said, the amount of revenue at present involved is relatively small. And since it is small, the enforcement of the principle cannot reasonably be attacked on the ground that it will involve hardship to individual mine-owners in Bengal and Bihar and Orissa. Moreover, it is very relevant to point out in this connection that Government are not attempting by the clause under discussion to impose a fresh disability on the mine-owner. The effect will merely be to restore and give legal authority to a practice which had been followed for many years before the Calcutta High Court delivered the ruling which has led to the present proposal. That, Sir, is the position of Government in regard to this matter.

I will now turn to certain other points arising out of my Honourable friend's speech. In the first place, if I remember rightly, he said that Government suddenly became alive to the existence of the principle. That I submit, Sir, is not a correct description of the position. The point is that previously the cess had never been allowed as a deduction. Consequently, the principle for which we now stand remained intact. Then came the decision of the High Court, and that necessitated action, and action has been taken as quickly as possible thereafter. This is not a new principle, nor is the recognition of the principle on the part of the Government new either. My Honourable friend further suggested that there seemed to be no particular reason for the principle or for its being considered a good principle. I should have thought, Sir, that the reason for the principle would have been entirely plain. If the Central and the Provincial Governments are allowed to encroach upon each other's spheres of taxation, the ultimate result could only be financial chaos. The principle is one which is universally recognized in all federal systems of government, and I do not think that it requires any further justification from me on this occasion. My Honourable friend also suggested that the practical way of seeking a solution of the difficulty would be to do nothing ourselves but to ask the Government of Bengal to do something for us and he described that as a practical procedure. Well, Sir, from the observations which I have made already on this particular point, I think the Council will probably agree that the practical method is to do that which it lies in our own hands to do.

One further point and I have done. My Honourable friend read out a dictum of the Government of Bengal. According to that, the Government of Bengal are said to hold the view that all local rates should be allowed as deduction from profits in the matter of assessment to income-tax even if they are assessed to profits so long only as they are local rates and do not take an excessive amount of the profits, that is to say, do not encroach too severely upon the central domain of income-tax. Well, Sir, I never knew before that the Government of Bengal entertained that view. It is a view which, as the Council will see from various observations I have made, the Government of India could not possibly accept. For these reasons, Sir, I oppose the amendment.

THE HONOURABLE SIR ARTHUR FROOM (Bombay Chamber of Commerce) : Sir, I rise to say a very few words in support of the amendment moved by my Honourable friend, Sir George Godfrey. I will not again go into the details of this cess. They are known and generally understood by all the Members of this Honourable Council. This amendment wishes to put right a wrong where this road cess is not allowed as a good deduction for income-tax purposes, and my Honourable friend, the Finance Secretary, opposes the amendment on the question of principle. He even went so far as to say, because the Legislative Assembly had arrived at certain conclusions, he did not see why the Council of State shoud arrive at some other conclusions.

THE HONOURABLE MR. E. BURDON : On a point of personal explanation, Sir. I did not say that because the Legislative Assembly had come to a decision, *therefore* the Council of State should come to the same decision.

THE HONOURABLE SIR ARTHUR FROOM : I beg the Honourable Member's pardon, but I fancy I am right in saying that the Honourable the Finance Secretary did make some reference to the Legislative Assembly having arrived at certain conclusions, and he did not see why the Council of State should arrive at different conclusions. However, I would like to remind Honourable Members of this House that the Council of State on many occasions have arrived at different conclusions to those arrived at by the Legislative Assembly, very often to the great advantage of Government.

Now, Sir, the Honourable the Finance Secretary pointed out that this cess, where it had been calculated on profits had never been allowed as a good deduction. Well, I do not quarrel with this statement, but I would remind the Honourable the Finance Secretary that even a worm will turn and, presumably after suffering under this ruling of the income-tax authorities for a considerable time, a certain colliery asked for relief from the High Court of Bengal and got it.

Now, according to the report of the Select Committee, the Government undertakes to recommend to Local Governments that this method of assessing road cess on profits should not be continued and, as far as I understand it, the Finance Secretary takes his stand on that promise. Well, I am afraid we cannot accept that. I am afraid we must ask this Council to carry this amendment and make it legal that this cess calculated on profits should be allowed as a good deduction until the Government of India take their courage in both hands and take such steps as will prevent the local authorities anywhere calculating road cess on profits. To my mind, Sir, that is the correct way of dealing with this, and I maintain that the Finance Department, or perhaps I should say the Central Board of Revenue through the Finance Department, is approaching this problem from the wrong end. The Finance Secretary said that in proposing this amendment he was actuated by the lofty ideal of principle. Well, I agree with his principles up to a certain point. I do not think we, any of us, disagree with the principle that tax on profits is primarily the business of income-tax. But where a local tax is allowed on profits, it should be allowed as a good deduction until the Central Government make it their business to see that local authorities are not allowed to levy municipal or other cesses on profits. That, Sir, is our point. Then, again, in pursuance of this lofty ideal of principle, what do the Government seek to do in inserting sub-clause (*b*) of clause 2 ? They recognise what they say is wrong. By inserting this very clause they recognise that Local Governments have the power to levy a cess on profits. That, again, Sir, I say is the wrong way for them to proceed. They ought to take away this power if they object to it from the lofty ideal of principles.

[Sir Arthur Froom.]

Now, Sir, there is just one other point, and a point which I should like Honourable Members of this Council to bear very closely in mind. This Bill, this Income-tax Bill, has been circulated throughout the country for opinions, and opinions on this sub-clause (*b*) of clause 2 have been very freely expressed and this clause has been condemned by the following bodies and Government. As was to be expected, the Bengal Government condemned it. The Bengal Chamber of Commerce condemned it. The Assam Railways and Trading Association condemned it. Then we come to the other side of India. The Millowners' Association, Bombay, condemned it. The Ahmedabad Mill-owners' Association, far removed from the coal mines, also condemned it. The Indian Chamber of Commerce, Calcutta, condemned it. The United Provinces Chamber of Commerce condemned it. The Cochin and Tuticorin Chambers of Commerce condemned it. The Indian Chamber of Commerce, Lahore, also a long way from the coal mines, did not like it and condemned it. The Punjab Chamber of Commerce condemned it. What is the use of circulating a Bill for opinions if opinions of bodies who are in the best position to know and understand income-tax matters are not listened to by the Government ?

Sir, I whole-heartedly support the amendment moved by my Honourable friend Sir George Godfrey.

THE HONOURABLE THE PRESIDENT : The original question was :

" That clause 2 do stand part of the Bill ".

Since which the following amendment has been moved :

" That the word ' and ' at the end of sub-clause (*a*) and the whole of sub-clause (*b*) of clause 2 be omitted ".

The question is that that amendment be made.

The Council divided :

AYES—13.

Akbar Khan, The Honourable Major Nawab Mohamed.
Akram Husain Bahadur, The Honourable Prince A. M. M.
Dadabhoy, The Honourable Sir Maneckji.
Froom, The Honourable Sir Arthur.
Godfrey, The Honourable Sir George.
Gray, The Honourable Mr. W. A.
Khaparde, The Honourable Mr. G. S.
Moti Chand, The Honourable Raja.
Sethna, The Honourable Sir Phiroze.
Singh, The Honourable Maharajadhiraja Sir Rameshwara, of Darbhanga.
Singh, The Honourable Raja Sir Harnam.
Suhrawardy, The Honourable Mr. Mahmood.
Wacha, The Honourable Sir Dinshaw.

NOES—21.

Burdon, The Honourable Mr. E.
Charanjit Singh, The Honourable Sardar.
Chettiyar, The Honourable Sir Annamalai.
Commander-in-Chief, His Excellency the.
Corbett, The Honourable Sir Geoffrey.
Das, The Honourable Mr. S. R.
Desika Chari, The Honourable Mr. P. C.
Habibullah, The Honourable Khan Bahadur Sir Muhammad.
Haig, The Honourable Mr. H. G.
Hatch, The Honourable Mr. G. W.
Latifi, The Honourable Mr. A.
McWatters, The Honourable Mr. A. C.
Misra, The Honourable Rai Bahadur Pandit Shyam Bihari.
Natesan, The Honourable Mr. G. A.
Nawab Ali Khan, The Honourable Raja.
Sankaran Nair, The Honourable Sir.
Stow, The Honourable Mr. A. M.
Symons, The Honourable Major-General T. H.
Vernon, The Honourable Mr. H. A. B.
Weston, The Honourable Mr. D.
Woodhead, The Honourable Mr. J. A.

The motion was negatived.

Clause 2 was added to the Bill.

Clauses 3, 4, 5, and 6 were added to the Bill.

THE HONOURABLE THE PRESIDENT: The question is:

"That clause 7 do stand part of the Bill".

THE HONOURABLE MR. W. A. GRAY (Burma Chamber of Commerce): Sir, the amendment of which I have given notice reads as follows:

"That in clause 7 of the Bill—

(*i*) the following be inserted at the beginning:

'For sub-section (*1*) of section 42 of the said Act the following sub-section be substituted, namely:—

'(1) In the case of any person residing out of British India, (*a*) all profits or gains accruing or arising to such person from any property in British India, and (*b*) all profits or gains accruing or arising in British India to such person from business transacted in British India, shall be deemed to be income accruing or arising in British India and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:

Provided that no profits or gains which have accrued or arisen out of British India to such non-resident person shall be deemed to have accrued or arisen also in British India:

Provided also that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India'.

(*ii*) For the proposed sub-section (*3*) the following sub-section be substituted:

'(*3*) In calculating the profits or gains chargeable to income-tax under this section, no allowance shall be made under sub-section (*2*) of section 10 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains'."

This amendment falls into two parts—the insertion of a clause amending the existing sub-section (*1*) of section 42 of the Act and the amendment of the new sub-section (*3*) which the Bill seeks to add to the same section of the Act. I propose to deal with both these alterations in one amendment, because the principle which I wish to establish by the omission of certain words from sub-section (*3*) is the same as the principle which I wish to establish by the first proviso in my proposed sub-section (*1*). With this, however, I will deal later. First of all I will deal with one of the objects of my amendment in which I hope to have the support of the Finance Department; that object is the removal of some uncertainty which arises from section 42 of the Act as it stands at present. Sub-section (*1*) of section 42 of the Act reads:

"In the case of any person residing out of British India, all profits or gains accruing or arising, to such person, whether directly or indirectly, through or from any business connection or property in British India, shall be deemed to be income accruing or arising within British India, and shall be chargeable to income-tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income-tax:"

The Statement of Objects and Reasons with the original Bill in paragraph 6 says:

"Section 42 of the Act which deals with the assessment of non-residents is vague and this is neither satisfactory from the view of the Government nor fair to the tax-payer. Moreover, conflicting decisions on this subject have been pronounced by the High Courts of Madras, Calcutta and Rangoon".

[Mr. W. A. Gray.]

And with a view to removing this vagueness, it was proposed by the original Bill to substitute for the first sub-section of section 42 of the Act four new sub-sections designed to make the law more definite in regard to the assessment of the profits arising from import and export trade. The four sub-sections were, however, rejected by the Select Committee, who reported as follows:

"We recognise the difficulties created by the conflict of judicial rulings on the subject but, until a set of rules or principles can be evolved which would have in some way limited the action of the income-tax officer, we prefer the law as it is."

It should be noted however that seven out of the fourteen members who signed the report added a minute of dissent stating that they were not satisfied with the decision to allow sub-section (*1*) of section 42 to remain as it is at present, and they suggested an amendment of that sub-section.

The report of the Select Committee contemplates that rules will be made limiting the action of the income-tax officer, but I feel that this is leaving unduly wide powers in the hands of the income-tax authorities, and if we leave it in the power of the income-tax authorities to deem that profits have arisen in a place where, as I hope to show to the satisfaction of the House, they actually have not arisen, we shall be allowing a very dangerous principle to stand. Therefore I have proposed this amendment in the hope of removing some of the existing uncertainty. The main uncertainty arises from the exceedingly indefinite words "business connection" for which I have substituted a more precise description of the transactions of which the profits should be chargeable to tax.

I now come to the second object of my amendment, which is to define the portion of profits arising from import and export trade which shall be liable to Indian income-tax, and it is here that I am afraid that there may be a difference of opinion between the Finance Department and myself. My object is to relieve from liability to tax any profits which result, in the case of *exports from* British India, from operations which take place after the goods leave British India, and in the case of *imports into* British India, profits which result from any operations before the goods have arrived in British India.

I oppose the taxation of profits resulting from operations which take place outside British India, partly because it is impracticable and partly because it is inequitable. I say that it is impracticable for the following reason. Take the case of a branch or agent in Bombay *exporting* Indian curios to a principal in London. The principal in London may sell them to an American dealer who may take them to America and sell them to a retailer who may in turn sell them to another party. I say that it is quite impossible for the agent in Bombay to find out what profit has been made at the various stages of the transaction; and if he is charged for income-tax on a fictitious profit, it is quite impossible for him to recover any of the tax paid from any of the other parties concerned. Or again take the case of an agent in India *importing* manufactured goods. Let us take the case of an Angus Sanderson motor car. I do not know what the present practice of the Angus Sanderson Company is, but when they first started to produce motor cars, their procedure was to have all the various parts of the car manufactured by other companies who were considered to be most expert in the manufacture of those particular parts and the parts were then assembled and put on the market as the Angus Sanderson car.

Now if the Indian agent is to be charged for tax on profits arising out of operations which take place before the car reaches British India, he would

have to discover the profits of all the different companies who manufactured the different parts, which I say it is manifestly impossible for him to do. But perhaps I shall be told that in a case of this kind there is no intention of taxing the manufacturing profits, that it is only the intention to tax manufacturing profits when the non-resident who exports to British India is himself the manufacturer. But it seems to me, Sir, that it is manifestly inequitable to tax the manufacturer who does not work through a middle man while the manufacturer who exports through a middle man escapes. And this is not the only reason why I say that the proposal is inequitable. In the course of the debate in the other House the Honourable the Finance Member said :

" Where it is a question of export trade, we say part of the profits accrue or arise in British India "

and then later on in dealing with imports he says :

" Our object here was to interpret the existing clause 42 in a clearer way so as to make quite clear that the whole of such profits or gains shall be deemed to have accrued, in the circumstances to which reference is made. I think that the object of the Honourable Member is to get rid of our right to tax the manufacturing profits in such a case altogether. If so, I think I must clearly oppose the amendment ".

That is to say that the Honourable the Finance Member wants to have it both ways. If an article is manufactured *in* British India, the manufacturing profits accrue in British India. If an article is manufactured *out of* British India, the manufacturing profits still accrue in British India.

Sir, my Honourable friend Mr. Khaparde sometimes tells us stories to illustrate his points and I am going to follow his example ; and this is my story. There was once a landlord who had a garden which he leased to a tenant. Now adjoining this garden was an orchard belonging to another landlord, and some of the fruit trees in this orchard hung over the wall of the garden and some of the fruit fell into the garden. When the landlord of the garden saw this he went to the tenant and he said : " Look here, you are deriving benefit from the fruit which falls into the garden, which was not part of our bargain. Therefore I am going to take some of the fruit and also I am going to charge you rent for the part of the orchard in which the trees grow which overhang the wall." To which the tenant replied : " I don't mind letting you take some of the fruit, but I am certainly not going to pay you rent for land which is not yours "—and I think that Honourable members will agree that the tenant was quite justified in adopting this attitude.

Now this case seems to me to be exactly parallel to the point which I am discussing, if we substitute for the landlord of the garden the Government of India, for the landlord of the orchard the Government of some other country, for the orchard a manufacturing process, for the fruit the profits arising from the process and for the fruit which falls over the wall the profits which arise from operations after the goods have arrived in India. In short, Sir, I maintain that it is no more possible for profits to accrue and arise in two places than it is possible for an orchard to grow and arise in two places, however much anyone may " deem " to the contrary.

Now, Sir, let us consider the reverse process, and assume that the British Government decided to proceed on the same lines as the Indian taxation authorities wish to follow. Let us take again the case of a dealer in Indian curios, say ivory carvings. Suppose an Indian merchant sends carvings to a branch or agency in London, and the United Kingdom taxation authorities tax him on the manufacturing profit. Following the procedure which the Indian taxation authorities propose, the merchant in London would then instruct his branch in India to recover this tax from the Indian workman who made the ivory

[Mr. W. A. Gray.]

carving. I imagine that there would be a considerable outcry in India if any such action were attempted.

Another point, Sir, is that I have omitted from the proposed sub-section (*3*) amongst other words, the words " to have been received ". It is not quite clear what the intention of these words was, but it seems to be the intention to allow the taxation authorities to deem that where the sale proceeds are received, there also the profits are received, to this I cannot agree. The manufacturer may receive profits outside British India even if the goods lie unsold in British India ; and conversely the goods may be sold and the proceeds received, and yet the manufacturer may make a loss. Therefore I say that it is not correct to assume that the profits are received in the same place where the proceeds of sale are received.

Finally, Sir, I foresee that I may be told that the first proviso which I propose to insert in sub-section (*1*) of section 42 of the Act is incompatible with sub-section (*2*) of section 4 of the Act.

Sub-section (*2*) of section 4 of the Act reads as follows :

" Profits and gains of a business accruing or arising without British India to a person resident in British India."

It will be seen that this sub-section refers only to profits accruing to a person resident in British India, whereas the proviso which I wish to insert relates to the profits accruing to a non-resident person. Therefore, Sir, I do not see anything contradictory or incompatible in the amendment which I now submit for the acceptance of the House.

THE HONOURABLE MR. E. BURDON : Sir, I propose to deal first with the points of substance inherent in my Honourable friend's proposition, in which I may say at once I see some excellent features. The proposition is precise and limited in its scope and its purpose is simple and definite. Taken in two parts, my Honourable friend's contention is that in the case of commodities exported, tax should not be assessed on any profits made after export has taken place, and that, in the case of goods imported into India, no tax should be assessed upon profits made before arrival in British India. Now in regard to the first of these two propositions, there is, I think, no difference of opinion between us. In regard to the second point there is, and I shall address myself to that immediately, and I will endeavour to explain to the House as clearly and briefly as possible what the position of the Government of India is in regard to it and why they have adopted it. My Honourable friend's object is to secure that if a foreign manufacturer, or person who has purchased goods abroad, imports his manufactures or goods into British India and sells them there through an agency or a branch, only the merchanting profit should be charged to income-tax in British India and not the manufacturing profits. My Honourable friend holds it to be impracticable and more inequitable that the manufacturer's profits should be subjected to tax in India, since they do not accrue or arise there, but accrue or arise in the place of manufacture. Now, Sir, the clause which the amendment seeks to replace is deliberately intended to provide that all profits or gains in such cases should be subject to tax, both merchanting and manufacturing profits. There is in fact in regard to this matter a direct conflict of opinion. The Government of India hold it to be right that manufacturing profits in the circumstances mentioned should be subject to tax, and that such taxation does not mean the imposition of any undesirable penalty upon legitimate business. I may also explain that a tax on manufacturing profits is in accordance with past practice which has never

given rise, so far as I am aware, to any actual dispute ; and what is more important still, to tax manufacturing profits is strictly in accordance with one of the fundamental principles of our existing income-tax law. The whole of the profits, both merchanting and manufacturing profits, on imported goods sold by an agency or branch in India, being included in the sale price are received in British India, and Honourable Members of this Council are well aware that receipt in British India is one main basis of liability to Indian income-tax. We have only to look to section 4 (*1*) of the Indian Income-tax Act, 1922, which says that :

"This Act shall apply to all income, profits or gains from whatever source derived, accruing or arising or received in British India, or deemed under the provisions of this Act to accrue or arise or to be received in British India."

The Government of India can see no reason whatsoever why this criterion of receipt in British India, which otherwise operates universally, should be abrogated in one case only, with the effect of discriminating in favour of the foreign manufacturer or importer. I wish to make it clear—there has, I think, been some misapprehension on this point, particularly in regard to the converse case of export—that there is no intention whatsoever to touch transactions of regular sale by a principal abroad to an independent principal in India. In such cases no agency in India is constituted, and, as I have said, we only desire to tax profits in cases where it is actually the case that normally the whole of the profits, including the manufacturing profits, are received in British India. I should like in this connection to draw the attention of this Council to a cognate class of cases, that is, of the resident in India who owns a factory or business abroad and brings his profits back home to India within three years after they have been earned. These profits are subject to Indian income-tax, and it would seem to be altogether anomalous and altogether unjustifiable that in the case of a non-resident who receives profits in British India, these profits should be immune from tax. I have not overlooked the fact that the Taxation Enquiry Committee recommended the adoption of the f. o. b. price both for exports and imports, and of course the adoption of the f. o. b. price in the case of imports would be in conflict with our present proposal. Our proposal is to follow the recommendation of the Taxation Enquiry Committee so far as it concerns exports, the profits on which are not received in British India, because it is obviously fair in that case that we should only assume as the Indian profit that amount of profit which a resident exporter would have made who had sold the commodity to a non-resident customer. So far as imports are concerned, we do not propose to follow the f. o. b. basis, and it seems to us to be clear that the Taxation Enquiry Committee must have been under a misapprehension when they dealt with this particular point, because, so long as receipt in British India is one of the main basis of liability to income-tax, there can be no sufficient justification for adopting the f. o. b. price, that is to say, the price at the port from which the goods are exported to British India, and by so doing to exclude from taxation part of the profits which are in fact subsequently received in British India. I should like to add that there is no question here of the non-resident merchant being subjected to double income-tax. That is provided for by the system of double income-tax relief, and it seems to me to be clear that it would be entirely wrong and unnecessary to infringe in an isolated case one of our main principles, particularly when such infringement would serve no useful purpose and certainly cannot be described as in any way promoting the public interest.

My Honourable friend, in a later stage of his observations, supported his contention by a reference to what might possibly happen in the United Kingdom. I should like to point out that analogies from the income-tax law and the

[Mr. E. Burdon.]

income-tax practice of the United Kingdom are liable to be most misleading. Under the English system the main basis of liability is residence, and not receipt. Consequently, the two cases are entirely different. Further, in certain circumstances which were cited by my Honourable friend, he suggested that the effect of the clause which the Government propound would be something entirely different from that which we ourselves contemplate would be the effect. We do not wish to tax anyone except the foreign principal, and as the law stands at the present moment we cannot do so. Moreover, under the law as it stands at present we could not tax the profits of people who make parts of a motor car and sell them to an independent person who assembles them. I am afraid there is still a great deal of misunderstanding as to what the effect of this particular clause would be. The matter is exceedingly intricate and very difficult to explain in full Council. But I can assure my Honourable friend that he has undue apprehensions as regards the effect of the clause which the Government propound. Now, Sir, it will be evident from my observations that I have to oppose my Honourable friend's amendment and

1 P.M. I have given my reasons of substance for the attitude which Government have to adopt in this matter.

I shall now turn to certain questions of form. My Honourable friend in his opening sentences said that one of the objects in view was to make clearer and more intelligible the existing section 42 (*1*). Well, Sir, it does not appear to me that the amendment which has actually been proposed would have that effect. It is, I am afraid, true that the existing section is not particularly clear. Government tried to make it clearer, but the Legislative Assembly found themselves unable to accept the particular proposals which Government put forward in this respect. Our position is that clause 7 of the Bill is the best that can be done in the circumstances.

Now, Sir, I find in my Honourable friend's amendment two passages which seem to me to be entirely superfluous. The new sub-section (*1*) proposed to be made runs as follows :

" In the case of any person residing out of British India, (*a*) all profits or gains accruing or arising to such person from any property in British India, and (*b*) all profits or gains accruing or arising in British India to such person from business transacted in British India, shall be deemed to be income accruing or arising in British India and shall be chargeable to income-tax, etc., etc."

Now, Sir, it seems to me that the words " shall be deemed to be income accruing or arising in British India " are clearly redundant. The effect is merely to say that a thing should be deemed to be itself. Then, again, after having said in clause 1 (*a*) that " all profits or gains accruing or arising to such person from any property in British India," and in (*b*) " all profits or gains accruing or arising in British India.....shall be chargeable to income-tax ", a proviso is added :

" Provided that no profits or gains which have accrued or arisen out of British India to such non-resident person shall be deemed to have accrued or arisen also in British India."

I submit, Sir, that that also is superfluous and redundant, and I am afraid that the effect of the amendment, if it were made, would merely be to render the law even more nebulous and unsatisfactory than it is at present.

I would draw attention to one other point. My Honourable friend's amendment provides no test at all whereby the authority concerned would be able to distinguish whether profits have accrued inside or outside British India. No criterion is furnished, and I think the absence of a definite provision in regard

to this would prove a serious obstacle to the smooth administration of the law. I am afraid, therefore, that if these amendments were made, the situation would be that many very difficult matters would have to be left to the discretion of Courts. It is not easy to say what the ultimate result would be, but it will certainly lead to litigation and I am afraid that the result would very probably also be loss of revenue to a greater extent than my Honourable friend or any other member of this Council would desire.

Finally, Sir, it appears to me to be a matter of some doubt whether, even if the amendment were passed, it would have the actual effect which the Honourable Mover desires. As I have said before, manufacturing profits are normally received in India in the circumstances in which we desire to tax such manufacturing profits. Section 40 of the Indian Income-tax Act provides as follows :

" In the case of any guardian, trustee or agent of any person being a minor, lunatic or idiot or residing out of British India (all of which persons are hereinafter in this section included in the term beneficiary) being in receipt on behalf of such beneficiary of any income, profits or gains chargeable under this Act, the tax shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same amount as it would be leviable upon and recoverable from any such beneficiary if of full age, sound mind, or resident in British India, and in direct receipt of such income, profits or gains, and all the provisions of this Act shall apply accordingly."

Now, Sir, it seems to be clear that, while that section remains in the Indian Income-tax Act, the passing of the amendment proposed by my Honourable friend could not actually have the effect which he desires.

Sir, I oppose the amendment.

THE HONOURABLE SIR GEORGE GODFREY : Sir, I must congratulate the Honourable Mr. Burdon for the very able and clever way in which he has tried to prove the simple intentions of Government and to indicate that the amendment as moved by Mr. Gray is unnecessary. But I must confess that after listening to him with the greatest care and attention, I feel far more in that nebulous condition, to which he referred, than before He has quite clearly told us again that the Government of India do desire to secure income-tax on manufacturer's profits. As I understand it, the agent or the seller in India who has imported some manufactured goods from outside India, the property of a non-resident of India, and makes profits on the sale of those goods in India, will have to pay income-tax not only on his profits or commission, but also on the probable manufacturer's profits of the non-resident. Now, I quite agree that it is very difficult and very intricate, but I do feel that Mr. Gray's amendment makes the matter very much clearer. To me it seems that the taxable profit should be earned and should accrue in India, and that a manufacturer's profit made in some out-of-the-way country, in some Scottish town or in some Lancashire spinning town, ought not to be taxed. Now, I understand from the Honourable Mr. Burdon that that is the very profit that he does want to tax. I will try and give another instance, because in referring to Mr. Gray's instance of the motor cars, Mr. Burdon states that he thinks the Mover was under a misapprehension as to what the intentions of the Government of India are. Suppose a person in this country agrees to purchase, say, from Lancashire, a certain amount of dyed and printed goods. Those goods come out here and are sold at a price which has been agreed upon beforehand. The person who buys those goods is not running the office of a Home firm, he is not a branch of a Home firm ; but he is, as far as I can understand, undoubtedly an agent for the Home firm that despatches the goods out here. He has agreed to take these goods at a certain price. He adds the costs arising here in the way of import duty and landing charges. Then he sells the goods in the

[Sir George Godfrey.]

Indian market. That agent makes certain profits on his transaction and out of that profit he pays income-tax. But the manufacturer at Home is unknown to him. The goods are manufactured in some part of Lancashire ; they are sent to Manchester to be examined, tested and passed. They are then packed up and sent off to some other place for dyeing and perhaps to another place for printing. They then go back to the central office of the exporter. They are packed up and sent to India. Now, if I understand the position correctly, the Honourable the Finance Member wishes to tax the manufacturers' profits on all those transactions. . . .

THE HONOURABLE MR. E. BURDON: No, Sir.

THE HONOURABLE SIR MANECKJI DADABHOY: How do you account for Sir Basil Blackett's speech, which my Honourable friend Mr. Gray referred to ?

THE HONOURABLE SIR GEORGE GODFREY: I have tried to understand it, but I cannot see a way out of it, because if one turns to sub-section (*3*), it says—

" the profits or gains shall be deemed to have accrued and arisen and to have been received in British India."

I cannot see any other way out of it, Sir. I agree that the whole matter is very intricate, but I do strongly disagree with any suggestion that the Government of India has the right to levy in some way or other an income-tax on the manufacturer's profits of a non-resident outside India who is merely doing business with India. They have every right—and we acknowledge it—to tax the profits made by the people who deal in those goods in India. The acid test of any income-tax legislation should be whether it is practicable : and nobody, so far as I can see, can possibly say that this legislation is practicable.

THE HONOURABLE SIR MANECKJI DADABHOY: Sir, at this late hour I do not propose to tread over the same ground which has been so exhaustively dealt with by my firend, the Honourable Mr. Gray and also by my Honourable friend, Sir George Godfrey. Mr. Gray has made a detailed examination of the subject and has placed before this Council various reasons showing that it would be advisable to accept his amendment to the proposition as it is worded. I shall not travel over the same ground again, but I wish only to refer to certain remarks which fell from my Honourable friend, Mr. Burdon. He has admitted in so many words, as I am able to ascertain, that this clause 7 as drafted by the Legislative Assembly has not the wholehearted approval of Government. I find from his observations that this clause will not eliminate the difficulties and the troubles which the amendment of the law contemplates. He has also stated that to give effect to this amendment of Mr. Gray would be, to use his own words, to render the law more nebulous. He even frankly admits that the law as it stands is ambiguous. I may ask him with great respect, " Why substitute a bad law for a doubtful law, for a law which is already unintelligible ? " If you want to make improvement of an Act, make an improvement which will be quite clear and which will serve the professed purpose. It is no use substituting a bad law for a doubtful or uncertain law, or a law which is not clear for a law which is equally nebulous and doubtful. You are not going to improve the position of Government. He has also stated that if Mr. Gray's amendment is accepted, many matters would be left to the discretion of the Courts. Is he prepared to say that with the law as it stands at present not many matters are left to the discretion of the Courts ?

I am sure he will not make such an assertion. If that be the case, I submit on that part of the case too his ground is not altogether unassailable. He also stated that if Mr. Gray's amendment is accepted, it will cause a loss of revenue to the Government. May I again ask with section 432 as it stands does it not cause a loss to Government ? It was by reason of that very fact, that it was causing a loss of revenue to Government, that this amending Act has been brought forward and to make matters explicit on the subject. I submit therefore that no useful purpose is served by substituting an effective clause for an already nebulous clause, and it would have been commendable on the part of Government not to have embodied in the Bill such an ill-drafted and nebulous clause. I still appeal to Government, in view of their clear admissions to leave the law as it stands. Let section 42 remain as before ; there is no justification whatever for making this amendment to the Act which is not going to solve our difficulties . . . .

THE HONOURABLE MR. E. BURDON : On a point of personal explanation.

THE HONOURABLE THE PRESIDENT : I think the Honourable Member is trying to get in a reply under the guise of a personal explanation.

The Honourable Mr. Desika Chari.

(After some pause by the Honourable Member). I called the Honourable Member.

THE HONOURABLE MR. P. C. DESIKA CHARI : I am sorry. However, there seems, Sir, no doubt that section 42 (*1*) is very unsatisfactory. As has already been pointed out, it requires a great deal of improvement, and I certainly see that the amendment which is put in now by clause 7 of the new Bill improves it to some extent. It does not improve it on the lines on which we want it to be improved, but what I say is that the present amendment of the Honourable Mr. Gray does not improve it at all, but, on the other hand, introduces great difficulties into the question. The Select Committee has devoted a good deal of time and attention to the consideration of section 42 and they could not arrive at a satisfactory formula for improving section 42 (*1*). Under these circumstances, it was thought desirable to leave it for a later stage and not to hurry matters and to put in a hasty amendment which will not deal with the situation. So the procedure is on the whole satisfactory, because section 42 (*1*), which is bad as it is, should be allowed to stand with a view to bringing in a proper amendment at a later stage. If you amend it on improper lines now, it may be difficult to bring in a proper amendment at a later stage after further consideration. It was not possible for the Select Committee to go into that question fully with the materials available before them, and this question has to be considered with greater caution by inviting further opinions on the matter, so that it is better to leave things as they are and to make only small amendments in order to obviate a lacuna or defect which is patent on the face of the Income-tax Act, and that is what the amendment, as put in by the Select Committee, seeks to make. They do not want to go further. They want further time to consider, and it is left to Government or to the Legislature to improve it on proper lines on a future occasion. There is no use taking up matters in haste and rushing through some amendments which create more difficulty than the present section itself. It is on this ground that I oppose the amendment brought forward by my Honourable friend, Mr. Gray, which complicates the situation and does not improve it, but, on the other hand, far from being an improvement, is a retrograde step, having in view the proper principles applicable to income-tax. I therefore oppose the amendment.

THE HONOURABLE SIR ARTHUR FROOM: Sir, I do not propose to traverse the ground already covered by my Honourable friend, Mr. Gray, the proposer of this amendment and by Sir George Godfrey.

I shall merely content myself with saying that I am in full agreement with the views expressed on the question of income-tax on exports and income-tax on imports. I should like to remind the Council of what happened in regard to this Bill. The Government obviously do not like section 42, sub-section (*1*), of the Income-tax Act, and they made some sort of an attempt in the original Bill to explain that section. Then the Bill was sent to the Select Committee of the Legislative Assembly—quite forgetting that there are a certain number of business men in the Council of State—and that Select Committee said "We do not like these sub-clauses introduced by the Government and therefore we will drop them, sub-clauses (1), (1A) and (1B)." That is the position. The position is that Government by their own action in trying to amend section 42, sub-section (1), of the Act showed that it did want amending. It is obscure: it should be remedied and Government intended to remedy it. They attempted to do so. What happened? In the Select Committee those sub-sections were dropped. Then, my Honourable friend the Finance Secretary says he agrees with the views which the Legislative Assembly have taken with regard to this section of the Act. Are we to understand that he agrees with the views of the Legislative Assembly as expressed in merely dropping these clauses and leaving matters where they were and in leaving the administration of section 42 to be conducted by rules? Now, Sir, great as our faith may be in the present Central Board of Revenue, I have a great objection to the administration of the Income-tax Act being carried on by rules. The Government themselves have shown that they wished to amend the section and they failed. I say Government should have had another try than to say that the Legislative Assembly did not like their amendment. I do not say that the Legislative Assembly were wrong; Government have not said they are wrong, but they merely shrug their shoulders and say "We will proceed by rules; we will not take further trouble to clarify this very obscure section 42, sub-section (1) of the Indian Income-tax Act." It obviously does want clarifying. As I said, as regards the export business of this great country of India, the Central Board of Revenue through the Finance Secretary, who, I am sorry, has to reply to all these income-tax matters, have declared that they do not propose to tax profits further than the port of export. That, I think, is fair and reasonable and I have no quarrel with it. But this Act, this sub-section (1) of section 42 of the Act, could enable them to call upon an agent to declare profits in another country. Well, in this particular instance, we may have great faith in the present Central Board of Revenue, but who knows what it is going to be in the years to come? This section in the Act ought to be amended. Then, certain criticisms were levelled at my friend, the Honourable Mr. Gray, who has sought to bring in an amendment to clarify the situation. Mr. Gray is not a lawyer; I am not a lawyer. But I do understand the object of Mr. Gray's amendment which is couched in plain language. In what manner has it been received? It is received I do not say with sneering criticism—I should not like to go so far as to say that—but it is received with a considerable amount of adverse criticism, to the effect that "this will not do, and that will not do." But what is the Government's attitude? They have not sought to alter the section which they admit is wrong and wants clarifying. I say Government is wrong in this instance, entirely wrong.

At the beginning of my remarks I said I did not propose to traverse again the ground covered by the Honourable Mr. Gray and Sir George Godfrey. The issues are quite clear. We do not want to tax in India profits which

are made in another country and where another tax is already paid. We are quite ready to subscribe to any amendment made so as to make it quite clear that income-tax in this country should only be levied on the profits in this country. Of course the issue is very often confused by these words " accruing or arising " in the country. But the intention of the Indian Income-tax Act was to tax profits made in this country, and I repeat that that was the intention. I was a Member of the Joint Committee which sat on the Income-tax Bill of 1922, and the then Revenue Member told us that the intention of Government was to tax profits made in this country. Unfortunately, this clause 42, this obscure clause 42, which we discussed, went through. But at that time we were told that it would not be applied so as to tax profits made outside India. It just shows how wrong it is to trust to an obscure clause, and I say that the Government should now have taken the opportunity of clarifying this clause instead of sitting back and shrugging their shoulders. When their first attempt failed, they should have tried again.

I only have one more reference to make, Sir, and that is the same reference that I made in speaking on the previous amendment, *i.e.*, " Opinions." I will not weary the House by reading out the long list of opinions against this clause. I have got a list of them here (the Honourable Member showed a document) and I will show them to any Member afterwards. I might remind my Honourable friend who sits next to the Honourable Mr. Gray that the Burma Indian Chamber of Commerce and the Burma Chamber of Commerce on this occasion strongly objected to clause 7. In addition to the Burma Chamber of Commerce, the Bombay Government is another which objects to this clause. In fact, the weightiest opinions obtained when this Bill was circulated are all against this clause and Government have paid no attention to them.

THE HONOURABLE THE PRESIDENT: The original question was:

" That clause 7 do stand part of the Bill ".

Since which the following amendment has been moved:

" That in clause 7 of the Bill :—

(*i*) the following be inserted at the beginning :

' For sub-section (*1*) of section 42 of the said Act the following sub-section be substituted ; namely :—

' (*1*) In the case of any person residing out of British India, (*a*) all profits o gains accruing or arising to such person from any property in British India, and (*b*) all profits or gains accruing or arising in British India to such person from business transacted in British India, shall be deemed to be income accruing or arising in British India and shall be chargeable to income tax in the name of the agent of any such person, and such agent shall be deemed to be, for all the purposes of this Act, the assessee in respect of such income tax :

Provided that no profits or gains which have accrued or arisen out of British India to such non-resident person shall be deemed to have accrued or arisen also in British India :

Provided also that any arrears of tax may be recovered also in accordance with the provisions of this Act from any assets of the non-resident person which are, or may at any time come, within British India '.

(*ii*) For the proposed sub-section (*3*) the following sub-section be substituted :

' (*3*) In calculating the profits or gains chargeable to income-tax under this section no allowance shall be made under sub-section (*2*) of section 10 in respect of any buying or other commission whatsoever not actually paid, or of any other amounts not actually spent, for the purpose of earning such profits or gains'. "

The question is that that amendment be made.

The Council divided :

AYES—10.

Akbar Khan, The Honourable Major Nawab Mahomed.	Khaparde, The Honourable Mr. G. S.
Dadabhoy, The Honourable Sir Maneckji.	Sethna, The Honourable Sir Phiroze.
Froom, The Honourable Sir Arthur.	Singh, The Honourable Maharajadhiraja Sir Rameshwara, of Darbhanga.
Godfrey, The Honourable Sir George.	Singh, The Honourable Raja Sir Harnam.
Gray, The Honourable Mr. W. A.	Wacha, The Honourable Sir Dinshaw.

NOES—22.

Burdon, The Honourable Mr. E.	Misra, The Honourable Rai Bahadur Pandit Shyam Bihari.
Charanjit Singh, The Honourable Sardar.	Moti Chand, The Honourable Raja.
Chettiyar, The Honourable Sir Annamalai.	Natesan, The Honourable Mr. G. A.
Commander-in-Chief, His Excellency the.	Nawab Ali Khan, The Honourable Raja.
Corbett, The Honourable Sir Geoffrey.	Sankaran Nair, The Honourable Sir.
Das, The Honourable Mr. S. R.	Stow, The Honourable Mr. A. M.
Desika Chari, The Honourable Mr. P. C.	Symons, The Honourable Major-General T. H.
Habibullah, The Honourable Khan Bahadur Sir Muhammad.	Vernon, The Honourable Mr. H. A. B.
Haig, The Honourable Mr. H. G.	Weston, The Honourable Mr. D.
Hatch, The Honourable Mr. G. W.	Woodhead, The Honourable Mr. J. A.
Latifi, The Honourable Mr. A.	
McWatters, The Honourable Mr. A. C.	

The motion was negatived.

Clause 7 was added to the Bill.

Clauses 8, 9, 10 and 11 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. E. BURDON : Sir, before I make my formal motion, I wish to make a very few remarks in answer to two particular points which were made in speeches subsequent to my own. In the first place, I wish to refer to the case cited by the Honourable Sir George Godfrey in which he expressed the opinion that in such a case income-tax would be levied though it appeared to him to be undesirable that this should be permitted. I said then briefly, by way of interjection, and I wish to say more definitely now that in that particular case income-tax would not be levied under the authority of the clause which has been passed a few moments ago. Our policy is to levy income-tax on the profits of people who trade in India, and we entirely agree with the Honourable Sir George Godfrey that income-tax should not necessarily be leviable upon the profits of manufacturers who trade with India. In the case to which I am referring, the profits would not be taxable because they would be profits made by a manufacturer who has not identified himself with the subsequent seller in India. They would be separate and distinct persons.

The other point to which I wish to refer was contained in the observations of the Honourable Sir Arthur Froom. He objected very strongly to matters being provided for by rule, and I think other Honourable Members also took the same view. Now, Sir, I wish to explain that the Board of Central Revenue makes rules subject to the control of the Governor General in Council. That is my first point. My second point is that a very recent amendment of section 59 of the Act, an amendment which was carried out last Session with the consent of this Council, has given very much greater powers to make rules than was the case till then, and we hope to be able to employ the additional powers conferred upon us by this Council in order to make section 42 (*1*) clearer than it is at present.

With these observations, I beg to move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

ELECTION TO THE PANEL FOR THE CENTRAL ADVISORY COUNCIL FOR RAILWAYS.

THE HONOURABLE THE PRESIDENT : To fill the eight vacancies in the panel for the Central Advisory Council for Railways eight nominations were received, and I have pleasure therefore in declaring the following eight Honourable Members to be duly elected to the panel :

The Honourable Mr. G. A. Natesan.

The Honourable Rai Bahadur Lala Ram Saran Das.

The Honourable Mr. W. A. Gray.

The Honourable Sir Arthur Froom.

The Honourable Mr. P. C. Desika Chari.

The Honourable Major Nawab Mahomed Akbar Khan.

The Honourable Mr. Narayan Prasad Ashthana.

The Honourable Sir Phiroze Sethna.

The Council then adjourned till Eleven of the Clock on Friday, the 9th March, 1928.