

2nd October 1936

THE

LEGISLATIVE ASSEMBLY DEBATES

(Official Report)

Volume VIII, 1936

(29th September to 8th October, 1936)

FOURTH SESSION

OF THE

FIFTH LEGISLATIVE ASSEMBLY,
1936



NEW DELHI
GOVERNMENT OF INDIA PRESS
1937

Legislative Assembly.

President :

THE HONOURABLE SIR ABDUR RAHIM, K.C.S.I., KT.

Deputy President :

MR. AKHIL CHANDRA DUTTA, M.L.A.

Panel of Chairmen :

MR. S. SATYAMURTI M.L.A.

SIR LESLIE HUDSON, KT., M.L.A.

MR. ABDUL MATIN CHAUDHURY, M.L.A.

MR. M. S. ANEY, M.L.A.

Secretary :

MIAN MUHAMMAD RAFI, BAR-AT-LAW.

Assistant of the Secretary :

RAI BAHADUR D. DUTT.

Marshal :

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Petitions :

MR. AKHIL CHANDRA DUTTA, M.L.A., *Chairman.*

SIR LESLIE HUDSON, KT., M.L.A.

PANDIT NILAKANTHA DAS, M.L.A.

MAULVI SYED MUETUZA SAHIB BAHADUR, M.L.A.

MR. N. M. JOSHI, M.L.A.

CONTENTS.

VOLUME VIII.—29th September to 8th October, 1936.

	PAGES.		PAGES.
TUESDAY, 29TH SEPTEMBER, 1936—		FRIDAY, 2ND OCTOBER, 1936—<i>contd.</i>	
Questions and Answers	1987—2020	Motions for Adjournment <i>re—</i>	
The Arya Marriage Validation Bill—Discussion on the consideration of clauses not concluded	2020—63	Indian-owned Shipping Service between India and Europe—Ruled out of order	2242—45
WEDNESDAY, 30TH SEPTEMBER, 1936—		Secrecy of Vote in the Rural Areas of the United Provinces—Disallowed by the Governor General	2245—47, 2280
Questions and Answers	2065—96	The Indian Companies (Amendment) Bill—Discussion on the consideration of clauses not concluded	2247—79, 2280—2300
Short Notice Question and Answer	2096	Message from His Excellency the Viceroy and Governor General	2280
Motion for Adjournment <i>re</i> Government's Currency Policy—Disallowed by the Governor General	2097—98, 2129	MONDAY, 5TH OCTOBER, 1936—	
The Indian Companies (Amendment) Bill—Discussion on the consideration of clauses not concluded	2098—2129, 2129-54	Member Sworn	2301
Message from His Excellency the Governor General	2129	Questions and Answers	2301—44
THURSDAY, 1ST OCTOBER, 1936—		Short Notice Question and Answer	2344—45
Questions and Answers	2155—88	Motions for Adjournment <i>re—</i>	
Motion for Adjournment <i>re</i> Control of the Soldiers on the Football Ground at Annandale, Simla—Negatived	2189—91, 2224—36	Death of Detenu Naba Jiban Ghosh—Disallowed by the President	2345—47
Statement of Business	2191—92	Prohibition of the Recital of <i>Madhe-Sahaba</i> in Lucknow—Disallowed by His Excellency the Viceroy	2347—49, 2380
Resolution <i>re</i> Interference from Public Servants in the ensuing Elections—Discussion not concluded	2192—2223	Message from the Council of State	2349
FRIDAY, 2ND OCTOBER, 1936—		Statement laid on the Table	2350—51
Member Sworn	2237	The Indian Companies (Amendment) Bill—Discussion on the consideration of clauses not concluded	2352—80, 2380—2408
Statements laid on the Table	2237—42	Message from His Excellency the Viceroy and Governor General	2380

	PAGES.
TUESDAY, 6TH OCTOBER, 1936—	
Members Sworn . . .	2409
Short Notice Questions and Answers . . .	2409—13
Expunction of certain passages in a question put by Mr. Kabeer-ud-Din Ahmed . . .	2413
The Indian Companies (Amendment) Bill—Discussion on the consideration of clauses not concluded . . .	2413—77
WEDNESDAY, 7TH OCTOBER, 1936—	
Member Sworn . . .	2479
Questions and Answers . . .	2479—2521
Short Notice Question and Answer . . .	2521—22
Message from the Council of State . . .	2522
The Indian Companies (Amendment) Bill—Passed as amended . . .	2523—74

	PAGES.
THURSDAY, 8TH OCTOBER, 1936—	
Member Sworn . . .	2575
Questions and Answers . . .	2575—2623
Unstarred Questions and Answers . . .	2623—64
Motions for Adjournment <i>re—</i>	
Cancellation of the Press Gallery Pass of the Correspondent of the <i>Amrita Bazar Patrika</i> —Disallowed by the President . . .	2664—65
Protection of Female Passengers travelling in Female Compartments of Trains—Disallowed by the President . . .	2665—67
Revision of the Indian Currency and Exchange Policy—Negative . . .	2667—68
Bill passed by the Council of State . . .	2668, 2700—20
Resolution <i>re</i> Interference from Public Servants in the ensuing Elections—Discussion not concluded . . .	2668—2700

LEGISLATIVE ASSEMBLY.

Friday, 2nd October, 1936.

The Assembly met in the Assembly Chamber at Eleven of the Clock, Mr. President (The Honourable Sir Abdur Rahim) in the Chair.

MEMBER SWORN.

Mr. Susil Chandra Sen (Government of India : Nominated Official).

STATEMENTS LAID ON THE TABLE.

Information promised in reply to starred question No. 1593 asked by Mr. M. Asaf Ali (on behalf of Mr. S. Satyamurti) on the 14th April, 1936.

DISCONTINUANCE OF THE USE OF CASTOR OIL AS LUBRICANT ON STATE RAILWAYS.

(a) Yes.

(b) (i)—(vi). Yes.

(c) Yes.

(d) A statement giving the information is attached.

(e) Yes.

(f) The Local Governments mainly interested are doing considerable work to encourage the castor oil industry. The United Provinces Department of Agriculture have an oil Technological Section at the Harcourt Butler Technological Institute, Cawnpore, with specialist staff to give technical advice to oil mills and train up skilled personnel. The Oil Section has been paid a grant of Rs. 30,000 per annum for the last three years by the Imperial Council of Agricultural Research for the training of candidates in oil technology. The Government of Bengal have been encouraging the use of better *ghannies*. In the Central Provinces, improvement in oil crushing industry has been attempted by issuing useful notes in oil and its possibilities and giving expert advice to industrialists. In Madras the efforts have taken the form of publication of bulletins, conducting experiments and demonstrations and investigations of the possibilities of widening the market and improving milling machinery.

(g) The available figures do not justify apprehensions regarding the fate of the castor seed crushing industry as a result of the reduction in purchase of castor oil by railways.

(h) and (i). In many provinces castor cake is at present not appreciably used as a fertiliser for sugar cane and where it is used to any considerable extent, as in the United Provinces and Bombay, there are alternative oil cakes, and in some places safflower cake has actually been used in place of castor cake as a manure for sugar cane.

The effect on Indian Agriculture of a reduced demand of castor oil by railways is negligible.

(j) Experience has failed to show any marked superiority.

(k) Yes; but for most purposes, the advantages are more than counterbalanced by the higher cost.

(l) Government have no reason to believe that the substitution of mineral for castor oil as a lubricant has in any way enhanced the incidence of repairs to, or replacements of, locomotives.

(m) The intention of Government is to adhere to the Stores purchase rules, but railways cannot be expected to purchase indigenous oil when suitable imported mineral oils can be obtained for prices varying between 60 and 100 per cent. below that of the indigenous product.

(n) No.

Statement showing the quantities of castor oil and mineral oils purchased by the State-managed Railways during the years 1931-32 to 1935-36 and proposed to be purchased during 1936-37 for locomotive bearings.

Railway.	Purchased during 1931-32 to 1935-36.										Proposed to be purchased during 1936-37.	
	1931-32.		1932-33.		1933-34.		1934-35.		1935-36.			
	Castor oil cwts.	Mineral oil cwts.	Castor oil cwts.	Mineral oil cwts.	Castor oil cwts.	Mineral oil cwts.	Castor oil cwts.	Mineral oil cwts.	Castor oil cwts.	Mineral oil cwts.	Castor oil cwts.	Mineral oil cwts.
North Western	5,906	70,157	5,948	39,834	5,042	37,282	4,818	50,343	3,230	78,703	Nil.	64,000
Great Indian Peninsula	7,500	26,000	8,500	20,000	5,000	18,000	5,300	23,700	5,300	21,400	5,300	21,400
Eastern Bengal	Information not readily available.		28	14,745	276	13,318	164	16,029	155	15,776	195	17,440
East Indian	18,570	49,496	14,967	41,293	10,003	36,823	13,501	37,923	19,556	40,000	4,267	20,000
Burma	139	7,907	168	7,914	161	7,528	92	8,284	87	7,088	89	8,086
	32,115	153,560	29,611	123,786	20,482	112,951	23,875	136,279	28,328	162,967	9,851	130,926

Information promised in reply to starred question No. 1771 asked by Mr. S. Satyamurti (on behalf of Pandit Govind Ballabh Pant) on the 18th April, 1936.

DISCONTINUANCE OF THE USE OF CASTOR OIL AS LUBRICANT ON STATE RAILWAYS.

(a) Yes.

(b) (i)—(vi). Yes.

(c) Yes.

(d) A statement giving the information is attached.

(e) The Local Governments mainly interested in castor are doing considerable work to encourage the castor oil industry. The United Provinces Department of Agriculture have an oil Technological Section at the Harcourt Butler Technological Institute, Cawnpore, with specialist staff to give technical advice to oil mills and train up skilled personnel. The Oil Section has been paid a grant of Rs. 30,000 per annum for the last three years by the Imperial Council of Agricultural Research for the training of candidates in oil technology. The Government of Bengal have been encouraging the use of better *ghannies*. In the Central Provinces, improvement in the oil crushing industry has been attempted by issuing useful notes on oil and its possibilities and giving expert advice to industrialists. In Madras the efforts have taken the form of publication of bulletins, conducting experiments and demonstrations and investigations of the possibilities of widening the market and improving milling machinery.

(f) The available figures do not justify apprehensions regarding the fate of the castor seed crushing industry as a result of the reduction in purchase of castor oil by railways.

(g) and (h). In many provinces, castor cake is at present not appreciably used as a fertiliser for sugar cane and where it is used to any considerable extent as in the United Provinces and Bombay, there are alternative oil cakes, and in some places safflower cake has actually been used in place of castor cake as a manure for sugar cane.

The effect on Indian Agriculture of a reduced demand of castor oil by railways is negligible.

(i) Experience has failed to show any marked superiority.

(j) Yes; but, for most purposes, the advantages are more than counterbalanced by the higher costs.

(k) Government have no reason to believe that the substitution of mineral for castor oil as a lubricant has in any way enhanced the incidence of repairs to, or replacement of, locomotives.

(l) The intention of Government is to adhere to the Stores purchase rules but railways cannot be expected to purchase indigenous oil when suitable imported mineral oils can be obtained for prices varying between 60 and 100 per cent. below that of the indigenous product.

Statement showing the quantities of castor oil and mineral oils purchased by the State-managed Railways during the years 1931-32 to 1935-36 and proposed to be purchased during 1936-37 for locomotive bearings.

Railway.	Purchased during 1931-32 to 1935-36.								Proposed to be purchased during 1936-37.			
	1931-32.		1932-33.		1933-34.		1934-35.			1935-36.		
	Castor oil cwts.	Mineral oil cwts.	Castor oil cwts.	Mineral oil cwts.	Castor oil cwts.	Mineral oil cwts.	Castor oil cwts.	Mineral oil cwts.		Castor oil cwts.	Mineral oil cwts.	
North Western	5,906	70,157	5,948	39,834	5,042	37,282	4,818	50,343	3,230	78,703	N/L.	64,000
Great Indian Peninsula	7,500	26,000	8,500	20,000	5,000	18,000	5,300	23,700	5,300	21,400	5,300	21,400
Eastern Bengal	Information not readily available.		28	14,745	276	13,318	164	16,029	155	15,776	195	17,440
East Indian	18,570	49,496	14,967	41,293	10,003	36,823	13,501	37,923	19,556	40,000	4,267	20,000
Burma	139	7,907	168	7,914	161	7,528	92	8,284	87	7,088	89	8,086
	32,115	153,560	29,611	123,786	20,482	112,951	23,875	130,279	28,328	162,967	9,851	130,936

Information promised in reply to a supplementary question asked by Pandit Lakshmi Kanta Maitra to Mr. M. Asaf Ali's starred question No. 526 on the 18th September, 1936.

POSTAL CHARGES ON MAILS BY AIR.

Rates of Air Fee (excluding postage).

Country.	To India.			From India.		Remarks.
	Postcards (single).	Letters and packets.		Post-cards.	Letters and packets.	
	Rate of air fee in Indian currency,*	Unit of weight.	Rate of air fee in Indian currency †		Rate for half ounce.	
United Kingdom	Rs. a. p. 0 2 8 (includes postage).	$\frac{1}{2}$ oz.	Rs. a. p. 0 5 4 (includes postage).	The fee for postcards from India is two annas in all cases except to the U. S. A. for which it is three annas.	Annas. 7 $\frac{1}{2}$ (includes postage).	
Irish Free State	0 4 8	Ounce.	0 11 7		6	
Norway	0 4 9	5 grams.	0 4 9		6*	* Rate by India-Greece-Germany service is 8 annas for letters and 3 annas for postcards.
Sweden	0 4 6	5 "	0 4 6		6*	
Germany	0 3 6	5 "	0 3 6		6*	
Holland	0 5 7	5 "	0 8 5†		6*	† By Imperial Airways' service.
Belgium	0 5 8	5 "	0 5 8		8	
France	0 14 0	10 "	0 14 0		6	
Spain	1 1 6	10 "	1 1 6‡		6	‡ Rate for packets is 0-14-0 for 20 grams.
Switzerland	0 4 2	5 "	0 4 2		6	
Hungary	0 8 7	5 "	0 8 7		6*	
Italy	0 4 9	5 "	0 4 9		6	
Greece	0 7 10	10 "	0 7 10		6	
South Africa	0 6 8	$\frac{1}{2}$ Ounce.	0 13 4§		9	§ By Air to Rangoon.
Rhodesia (Northern)	0 4 5	$\frac{1}{2}$ "	0 9 9		8	
Rhodesia (Southern)	0 1 9	$\frac{1}{2}$ "	0 4 5		8	
Egypt	0 14 7	20 grams.	0 14 7		4	
Iraq	0 1 3	10 "	0 2 6		4	
Malaya	0 1 3	$\frac{1}{2}$ Ounce.	0 2 6		4	
Dutch East Indies	0 11 2	20 grams.	1 9 3¶		6	¶ By Imperial Airways. Rate by K. L. M. is one-third of the rate by Imperial Airways.
Australia	0 6 2	$\frac{1}{2}$ Ounce.	0 12 5		8 $\frac{1}{2}$	
New Zealand	0 10 8	$\frac{1}{2}$ "	0 10 8		8 $\frac{1}{2}$	
Canada	1 2 0	$\frac{1}{2}$ "	1 2 0		6	
U. S. A.	0 9 4	$\frac{1}{2}$ "	0 9 4		6	

* The rates of air fee are quoted from the List AV-1 (List of Air Lines, Routes, Surtaxes, etc.), May 1936, published by the International Bureau, conversion into Indian currency having been made through the medium of the gold franc from the monetary units as published in the Recueil des Taxes (corrected up to date) and at 14 annas to the gold franc. Conversion from sterling currency has been made at 1s. 6d. to the rupee.

Mr. S. Satyamurti (Madras City : Non-Muhammadan Urban) : Sir, before the proceedings begin, may I make a submission ? Yesterday, Sir, in the speech of Sir Muhammad Yakub.....

Mr. President (The Honourable Sir Abdur Rahim) : He is not here. Let the Honourable Member come, and then you can make your submission.

Mr. President (The Honourable Sir Abdur Rahim) : Short notice question by Mr. Bajoria. (Mr. Bajoria was not in his seat when he was called to put his short notice question.)

The Honourable Sir Frank Noyce : I venture to submit, Sir, that when an Honourable Member on these benches accepts a short notice question and gives the date on which it will be answered, courtesy demands that the Honourable Member who gave notice of the short notice question should be present in his seat.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable Member should have been present in his seat. I do not know what has caused his absence.

MOTIONS FOR ADJOURNMENT.

INDIAN-OWNED SHIPPING SERVICE BETWEEN INDIA AND EUROPE.

Mr. President (The Honourable Sir Abdur Rahim) : There is a motion for adjournment by Pandit Govind Ballabh Pant. He intends to ask for leave to move for the adjournment of the business of the House to discuss a matter of urgent public importance, namely, the refusal of the Government to foster and help the project for Indian-owned shipping service between India and Europe, as disclosed in the statement of Seth Walchand Hirachand, published in yesterday's *Hindustan Times*.

I should like to know how the matter is urgent.

Dr. Ziauddin Ahmad (United Provinces Southern Divisions : Muhammadan Rural) : May I request you, Sir, whether it will not be possible to postpone it till Monday ?

Mr. President (The Honourable Sir Abdur Rahim) : No, I can't do that. But I should like to know how this matter is regarded as urgent.

Pandit Govind Ballabh Pant (Rohilkund and Kamaon Divisions : Non-Muhammadan Rural) : Sir, a statement, was published in the *Hindustan Times* of yesterday which seems to have been issued off the authority of Seth Walchand Hirachand, the promotor of the Hind Lines, for the purpose of establishing overseas service between India and Europe. In that statement he says that he had tried to obtain the assistance of the Government of India, but failed in that endeavour. This fact came to my notice and of the public only yesterday when this statement appeared in the papers, and the moment I saw it I gave notice of this motion....

Mr. President (The Honourable Sir Abdur Rahim) : The question is an old one.

Pandit Govind Ballabh Pant : The refusal is a recent one.

Mr. President (The Honourable Sir Abdur Rahim) : Is there any change of policy ?

Pandit Govind Ballabh Pant : The Government of India are always apathetic to all sorts of Indian enterprises, and so far as this particular matter is concerned, there has been a breach of policy as announced and declared by the Government....

Mr. President (The Honourable Sir Abdur Rahim) : When was it announced ?

Pandit Govind Ballabh Pant : The Government of India announced their policy soon after the report of the Indian Mercantile Marine Committee.

Mr. President (The Honourable Sir Abdur Rahim) : When was that ?

Pandit Govind Ballabh Pant : In 1923. I will point out how there has been a breach. In that Report the Government of India gave an undertaking that they would help the country in establishing an Indian Mercantile Marine. After that, there was the Haji's Bill, of which you are aware.....

Mr. President (The Honourable Sir Abdur Rahim) : You mean the coastal traffic ?

Pandit Govind Ballabh Pant : Yes, Sir. After that, there was a shipping conference in 1930. After that, the Government of India again issued a communiqué to the effect that the Government of India recognised their responsibility in the matter of the encouragement and establishment of Indian shipping including overseas Indian trade, and there they also definitely said that they accepted their responsibility in this matter, Sir, you are aware that a number of questions were put in this House, in fact it has been one of the questions in the forefront, and it has been mooted on the floor of the House almost incessantly.....

Mr. President (The Honourable Sir Abdur Rahim) : During the Budget Session.

Pandit Govind Ballabh Pant : Yes, Sir, but the Government of India always took shelter under some plea or other. I may inform you, Sir, that there was some correspondence between the head of the Government of India and the promoter of this Hind Lines. This company was registered on the 9th September, 1936, and there was....

Mr. President (The Honourable Sir Abdur Rahim) : When was the company promoted ?

Pandit Govind Ballabh Pant : It was promoted on the 9th September, 1936. There was correspondence between the promoter of this company and the head of the Government of India, and he was informed.....

Mr. President (The Honourable Sir Abdur Rahim) : Was any request made ?

Pandit Govind Ballabh Pant : The request was that this company was being floated with an authorised capital of 10 crores, and 2 crores and 20 lakhs were needed for launching two ships of the type of Victoria and Lusitania, for payment to ship builders and for other accessories, and in that connection a request was made to the Government of India for a loan of 2 crores 20 lakhs guaranteeing interest at 3 per cent. for 10 years. But no response was made either by the Honourable the Commerce Member or the Finance Member. Then the promoter approached His Excellency the Governor General as the head of the Government of India.....

The Honourable Sir Muhammad Zafrullah Khan (Member for Commerce and Railways) : When the Honourable Member says that no definite response was made, does he mean that the request which was made was not accepted ?

Pandit Govind Ballabh Pant : Yes, the request was not accepted.

Mr. President (The Honourable Sir Abdur Rahim) : When was that ?

Pandit Govind Ballabh Pant : That was, I think, some time before August.

The Honourable Sir Muhammad Zafrullah Khan : Last winter, Sir. The *Hindustan Times* says it was last year.

Pandit Govind Ballabh Pant : Last year is a vague expression by itself. Anyway, the promoters did not take it as the final word, and they approached the head of the Government of India, and the Private Secretary to H. E. The Viceroy wrote like this on the 16th August, 1936....

The Honourable Sir Muhammad Zafrullah Khan : Sir, is the Honourable Member in order in reading a letter which purports to have been written on behalf of the Governor General by the Private Secretary ?

Pandit Govind Ballabh Pant : He is the head of the Government of India, and he replied in response to a request made to him.

Mr. President (The Honourable Sir Abdur Rahim) : Is it on behalf of the Government of India or on behalf of the Governor General ?

Pandit Govind Ballabh Pant : The contents of the letter clearly show that it was written by the head of the Government of India. It says :

" His Excellency has already asked the Commerce Department to reconsider the question of financial assistance to an Indian Company apart from the question of your own or the Scindia Company's participation in the venture."

This is in regard to the representation about overseas trade. It was in reply to a representation made to the head of the Government of India mentioning fully the history of the case and asking for such financial assistance as the Government of India were prepared to give and in reply to that there was correspondence and there were interviews. What I am concerned with is this letter that was sent on the 16th August, saying that His Excellency had also asked the Commerce

Department to reconsider the question of financial assistance. So, Sir, it was a continuing affair. His Excellency has asked the Commerce Department to reconsider the matter. Then after that another letter was written on the 23rd September which says : " He has, however, caused a copy of your letter to be sent to the Commerce Department who will be very glad to examine and consider any further memorandum that you may desire to submit on the subject ". This happened on the 23rd September and he was told to make any representation he desired to the Commerce Department with reference to this matter and he was asked to approach the Commerce Department.

The Honourable Sir Muhammad Zafrullah Khan : Is the Honourable Member quite sure about the date—23rd September ?

Pandit Govind Ballabh Pant : Yes. Then on the 29th September, the Commerce Secretary informed Mr. Walchand Hirachand that no financial help could be given and on the 30th September the Commerce Member was approached by the promoters, who were told that the request could not be entertained. On the 1st, this thing appeared in the Press. I could not have been more vigilant than this and I did not like to move the adjournment of the House until all possible avenues had been tried.

Mr. President (The Honourable Sir Abdur Rahim) : This is undoubtedly a matter of public importance but the question raised by this motion for adjournment is certainly a very old one. There have been many questions in this House before and there have been debates on this subject and what is now alleged to be a matter of recent occurrence is the reply of the Honourable the Commerce Member to certain representations made to him and I understand he refused to consider the request that was made....

The Honourable Sir Muhammad Zafrullah Khan : To re-open the previous decision of the Government of India.

Mr. President (The Honourable Sir Abdur Rahim) : No doubt so far as the Honourable Member, Pandit Pant, is concerned, he has come to this House with this motion based on a certain statement which appeared in the Press only on the 30th September, and to that extent he cannot be blamed for having delayed the matter but I have got to look at the substance of the whole position and there can be no doubt that the matter cannot be said to be of recent occurrence. Nor is it an urgent question within the meaning of the Rules and Standing Orders. Therefore, I rule the motion out of order.

SECRECY OF VOTE IN THE RURAL AREAS OF THE UNITED PROVINCES.

Mr. President (The Honourable Sir Abdur Rahim) : The next motion for adjournment is in the name of Mr. Mohan Lal Saksena, who wishes to move the adjournment of the House to consider a definite matter of urgent public importance, namely, the failure of the Government of India to secure the secrecy of vote in the rural areas of the United Provinces as recommended by the Legislative Assembly. The decision of the Governor, United Provinces, in this matter has come to my knowledge only today. The decision was published in an extraordinary issue of the U. P. Gazette which was not available till today.

[Mr. President.]

I should like to know exactly what is the question sought to be raised.

Mr. Mohan Lal Saksena (Lucknow Division : Non-Muhammadan Rural) : You are aware that this House had recommended while considering the Hammond Committee Report that throughout India the system of voting should be by means of coloured boxes with or without symbols. That recommendation had been passed by this House. About that, I put a short notice question which was answered on the 21st of September by the Law Member, in reply to which the Law Member had said that since the negotiations were still going on he could not make any public statement. On Monday last I had another question No. 643 on this very subject and then the Honourable the Law Member raised a point of order, saying that he had already answered a short notice question on this subject and 19 supplementaries and no further information was available and you were pleased to rule that the question was out of order. On that, I submitted that I had to put a few more supplementaries. I now find that the Governor in Council of the United Provinces has framed election rules that were published in an extraordinary gazette which was published on the 25th September. That copy was not available in the Library until yesterday.

Mr. President (The Honourable Sir Abdur Rahim) : When was it published ?

Mr. Mohan Lal Saksena : On the 25th September ; but on the 28th the Law Member himself said that there was no further information available.

Mr. President (The Honourable Sir Abdur Rahim) : What is the nature of the notification published ?

Mr. Mohan Lal Saksena : They are the election rules framed by the Governor in Council.

Mr. President (The Honourable Sir Abdur Rahim) : The election rules do not provide for secrecy ? Is it open voting ?

Mr. Mohan Lal Saksena : Yes. It is like this. In the case of illiterate voters the ballot papers will be marked by the presiding officer who may show it to a friend of the voter, while marking the ballot paper.

Mr. President (The Honourable Sir Abdur Rahim) : Was this not the practice before ?

Mr. Mohan Lal Saksena : This practice has been introduced this time in the United Provinces.

The Honourable Sir Nripendra Sircar (Law Member) : You are wrong there.

Mr. Mohan Lal Saksena : No, Sir. Up till now the practice was that the ballot papers were marked in the presence of the Agents by the Polling Officer but now the ballot papers will not be marked before them and will be shown to a friend of the voter. This is the new innovation. As a matter of fact, this House had recommended that this was undesirable. This proposal came before the House while we were considering the recommendation of the Hammond Committee.

and this House as well as the Select Committee appointed by it came to the unanimous decision that this practice should not be introduced and recommended that the system of voting should be by means of coloured boxes with or without symbols. So, I submit, this is a definite matter of urgent public importance and this House is concerned in this way, that under the new Government of India Act, the provincial legislative assemblies will form the electorate for the Federal Assembly.

Mr. President (The Honourable Sir Abdur Rahim) : Is the U. P. Council sitting now ?

Mr. Mohan Lal Saksena : It is not sitting. A resolution was also passed by the Council regarding securing secrecy of ballot.

Mr. President (The Honourable Sir Abdur Rahim) : Does the Honourable the Law Member take any objection ?

The Honourable Sir Nripendra Sircar : I have no objection to take in this forum.

Mr. President (The Honourable Sir Abdur Rahim) : The motion will be taken up at 4 o'clock.

THE INDIAN COMPANIES (AMENDMENT) BILL—*contd.*

Mr. President (The Honourable Sir Abdur Rahim) : The House will resume consideration of the Bill further to amend the Indian Companies Act, 1913, for certain purposes, as reported by the Select Committee. The following amendment is before the House.

“ That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

- (5) No managing agent, or where the managing agent is a firm a partner thereof, or where the managing agent is a private company any member or director thereof, or where the managing agent is a public company any director thereof, or the firm or private company of which the managing agent is a partner, member or director shall enter into any contract with the company for sale, purchase or supply of goods or materials except with the consent of the company in general meeting given generally or specifically :

Provided that nothing herein contained shall affect any contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.”

Babu Baijnath Bajoria (Marwari Association : Indian Commerce) : Sir, on a point of personal explanation. With regard to my short notice question of which I sent a notice, I was under the impression that since questions had been dispensed with, any short notice question would not be answered today ? However, since my impression was incorrect, may I read it now ?

Mr. President (The Honourable Sir Abdur Rahim) : No, no. Mr. James

Mr. F. E. James (Madras : European) : Sir, I was saying, when the House adjourned the other day, that while we agreed to all reasonable safeguards, we would oppose anything that is unnecessary, or undesirable, or in restraint of trade : and it is on these grounds that

[Mr. F. E. James.]

we oppose this particular amendment. I think, Sir, that this amendment is undesirable because, if it is accepted, it will open the flood-gates to all kinds of influences and manipulations. We think it is unnecessary in view of the safeguards that are already in the Act as amended or will be in the Act when subsequent amendments are accepted by the House. I would make a special appeal to my Honourable friend, Mr. Ayyangar, to consider withdrawing this amendment in view of subsequent amendments which have been tabled and which in our view offer a much more reasonable chance of agreement. If he is willing to make way for them, I hope, Sir, that, in view of these amendments that have been tabled, which might meet our point and which would I think secure a good deal of agreement in other parts of the House, he will be prepared to withdraw this amendment and the third one on the same order paper.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

- ‘ (5) No managing agent, or where the managing agent is a firm a partner thereof, or where the managing agent is a private company any member or director thereof, or where the managing agent is a public company any director thereof, or the firm or private company of which the managing agent is a partner, member or director shall enter into any contract with the company for sale, purchase or supply of goods or materials except with the consent of the company in general meeting given generally or specifically :

Provided that nothing herein contained shall affect any contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.’ ”

The motion was negatived.

Mr. M. Ananthasayanam Ayyangar (Madras Ceded Districts and Chittoor : Non-Muhammadan Kural) : Sir, I rise to move :

“ That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

- ‘ (5) No managing agent, or where the managing agent is a firm a partner thereof, or where the managing agent is a private company any member or director thereof, or where the managing agent is a public company any director thereof, or the firm or private company of which the managing agent is a partner, member or director shall enter into any contract with the company for sale, purchase or supply of goods or materials except with the unanimous consent of the directors previously obtained :

Provided that nothing herein contained shall affect any contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.’ ”

Since I moved amendment No. 2 yesterday, we have had a talk over this matter with my Honourable friend, Sir H. P. Mody, who has given notice of an amendment that the unanimous decision or consent of the directors need not be insisted upon but that if a resolution is passed at a directors' meeting where there is a three-fourths majority who are entitled to vote on this matter, this may be done. Even under the existing Act directors are not entitled to vote if they have a specific interest in the contract with the company. Barring such directors, the rest of the directors can

vote with respect to any contract to be entered into with a managing agent for the sale, purchase or supply of materials or goods, etc. That is the amendment of which he has given notice. I am, therefore, if the House has no objection, prepared to substitute for " unanimous consent " " a three-fourths majority of the directors entitled to vote ", and then, with that, my amendment may be accepted. There is a small difference between Sir H. P. Mody's amendment as regards the persons that are prevented from contracting and mine ; our intention is that the managing agent ought not to enter into a contract without the consent of three-fourths of the directors. I am trying to avoid those persons who may come in in the name of others,—indirectly. I think both ourselves and my friend, Sir H. P. Mody, are in favour of preventing a managing director getting a contract by putting up people entitled to vote, indirectly. Sir, a managing agent can enlarge himself into various groups, and instead of saying " direct or indirect ", which is a very wide term, I have put certain restrictions. My friend, Sir H. P. Mody, has also enumerated some of these categories but has failed to include some, and therefore this is more comprehensive than the other. That is why I am prepared to " unanimous consent " being replaced by a " three-fourths majority ".

The Honourable Sir Nripendra Sircar (Law Member) : I am not yet clear what is the difference. Probably, to shorten matters, my friend will tell us what is the portion in Sir H. P. Mody's amendment in Supplementary List No. 10, he is objecting to.

Mr. M. Ananthasayanam Ayyangar : There are seven categories of persons that I have mentioned in my amendment. The managing agent or a partner of a managing agent ; if the managing agent is a firm, a partner thereof ; if it is a company, a director of managing agent of that company ; if the managing agent is a public company, a director of such public company or a firm or a private company of which the managing agent is a partner. I have included all these seven categories of persons who can come in under the term of the ' managing agent ' or persons interested in the managing agent. Sir Homi Mody has included only five of those persons. Sir, I have nothing more to add except to say that in place of a unanimous decision the majority of three-fourths may be accepted. I move, Sir.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

" That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

- (5) No managing agent, or where the managing agent is a firm a partner thereof, or where the managing agent is a private company any member or director thereof, or where the managing agent is a public company any director thereof, or the firm or private company of which the managing agent is a partner, member or director shall enter into any contract with the company for sale, purchase or supply of goods or materials except with the unanimous consent of the directors previously obtained :

Provided that nothing herein contained shall affect any contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936."

Sir H. P. Mody (Bombay Millowners' Association : Indian Commerce) : May I be allowed to move my amendment, Sir, which stands as No. 1 : Supplementary List No. 10 ?

Mr. President (The Honourable Sir Abdur Rahim) : Yes, you can move it.

Sir H. P. Mody : Mr. President, I beg to move :

“ That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

- ‘ (5) Except with the consent of three-fourths of the Directors present and entitled to vote on the resolution, a Managing Agent of the Company, or the firm of which he is a partner, or any partner of such firm, or, if the Managing Agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.’ ”

Sir, in this amendment I have tried to follow the phraseology of my amendment with regard to directors' contracts with companies, which amendment was accepted by this House. I have also tried to meet the viewpoint of some of my friends who were wanting to go much further than I. My original amendment with regard to managing agents was for a bare majority of the Board of Directors. In view of the opinions held by some of my friends, however, I have inserted a further safeguard by insisting upon a three-quarters majority of the directors present and entitled to vote. I believe that with this safeguard most of the objections of my friends have been met and I submit for their consideration the acceptance of my amendment. I need not say very much with regard to another amendment which has been tabled, which requires the unanimous vote of the Board of Directors. I have only to say, that it would make things extremely difficult if on a Board of Directors there was only one member who was inclined to be fractious or to put difficulties in the way of the management. That will make things unworkable. I consider that a three-fourths majority should be regarded as satisfactory by my Honourable friends. Sir, I move.

Dr. Ziauddin Ahmad (United Provinces Southern Divisions : Muhammadan Rural) : What do you mean by “ entitled to vote ” ?

Sir H. P. Mody : “ Entitled to vote ” means that a director interested in the transaction could not possibly vote.

Mr. M. A. Jinnah (Bombay City : Muhammadan Urban) : He cannot vote in favour of his own contract.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

- ‘ (5) Except with the consent of three-fourths of the Directors present and entitled to vote on the resolution, a Managing Agent of the Company, or the firm of which he is a partner, or any partner of such firm, or, if the Managing Agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936.’ ”

Mr. M. Ananthasayanam Ayyangar : May I, Sir, with your permission, explain how Sir Homi Mody's amendment differs from mine ?

He has excluded the managing agent as a firm or the firm of which he is a partner. The House will see that there is a lacuna. He says : " a managing agent of the company, or the firm of which he is a partner, or any partner of such firm."

There are two cases. One is where the managing agent is an individual and the other is where the managing agent is a firm or company. If he is a partner in a firm, of which he is a member, that partner is distinct from the firm as a whole. These three categories are sought to be included by Sir Homi Mody's amendment instead of the managing agent being an individual.

The Honourable Sir Nripendra Sircar : Sir Homi Mody has excluded nothing.

Mr. M. Ananthasayanam Ayyangar : He has excluded managing agent as a firm.

The Honourable Sir Nripendra Sircar : No. He says ' the firm of which he is a partner '. That is to say, if the managing agency is a firm then he is a partner of that firm. Nothing is excluded.

Mr. M. Ananthasayanam Ayyangar : If the managing agent is a firm itself, he cannot be a partner of another firm. The managing agent there is an individual.

The Honourable Sir Nripendra Sircar : That is covered by the first portion—a managing agent of the company. Nothing has been excluded. I do not know what the Honourable Member is chasing.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

" That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

" (5) No managing agent, or where the managing agent is a firm a partner thereof, or where the managing agent is a private company any member or director thereof, or where the managing agent is a public company any director thereof, or the firm or private company of which the managing agent is a partner, member or director shall enter into any contract with the company for sale, purchase or supply of goods or materials except with the unanimous consent of the directors previously obtained :

Provided that nothing herein contained shall affect any contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936."

The motion was negatived.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

" That in clause 42 of the Bill, after sub-section (4) of the proposed section 87D, the following be inserted :

" (5) Except with the consent of three-fourths of the Directors present and entitled to vote on the resolution, a Managing Agent of the Company, or the firm of which he is a partner, or any partner of such firm, or, if the Managing Agent is a private company, a member or director thereof, shall not enter into any contract for the sale, purchase or supply of goods and materials with the company, provided that nothing herein contained shall affect any such contract for such sale, purchase or supply entered into before the commencement of the Indian Companies (Amendment) Act, 1936."

The motion was adopted.

Mr. T. S. Avinashilingam Chettiar (Salem and Coimbatore *cum* North Arcot : Non-Muhammadan Rural) : Sir, I beg to move :

"That in clause 42 of the Bill, in sub-section (1) of the proposed section 87E, for the words 'under management by the same managing agent' the words 'under same management' be substituted."

Sir, this amendment does not make any vital alteration in the Bill. This alteration would only make the meaning clear of section 87E which refers to loans to or by companies under the same management. The section says :

"No company.....which is under the management of a managing agent shall make any loan to or guarantee any loan made to any company under management by the same managing agent."

As it is worded, it would not cover the meaning of managing agents which we have accepted and which we have sought to incorporate in every amendment before the House. Even the amendment which has been passed just now to make the meaning clear says :

"A managing agent of the company, or the firm of which he is a partner, or any partner of such firm, or if the managing agent is a private company, a member or director thereon."

By this amendment I seek to make the meaning clear. That is why I want to substitute the words 'under same management' for the words 'under management by the same managing agent'. In my next amendment I seek to put in an *Explanation* to show the meaning of 'under same management'. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

"That in clause 42 of the Bill, in sub-section (1) of the proposed section 87E, for the words 'under management by the same managing agent' the words 'under same management' be substituted."

The Honourable Sir Nripendra Sircar : Sir, I oppose this amendment. If it had only made clear what was intended in the Bill, I would not have opposed it, but it leads to various consequences all of which I cannot contemplate just now. For instance, supposing there is a holding company under a subsidiary company, the holding company has a managing agent, whereas the subsidiary company has none. To a certain extent the directors have a control over the first holding company and they have complete control over the subsidiary company. They may be hit by the words 'same management'.

Mr. T. S. Avinashilingam Chettiar : My amendment does not refer to directors, it refers only to managing agents.

The Honourable Sir Nripendra Sircar : If you want to put the word 'managing agent' who is managing a holding company? There is a managing agent who is subject to the powers given to him, but still the management is in the directors of a holding company.

Mr. T. S. Avinashilingam Chettiar : If my Honourable friend refers to the *Explanation* contained in my next amendment, it will make things clear. My *Explanation* in amendment No. 106 reads :

"For the purpose of this section and section 87F any two companies shall be deemed to be under the same management if a managing agent of one company or where such managing agent is a firm or company a partner of the firm or director or member of the company is directly or indirectly concerned or interested in the remuneration payable to the managing agent of the other company under his contract of management."

The directors do not come in here at all. It refers only to the managing agent.

The Honourable Sir Nripendra Sircar : My Honourable friend is assuming that amendment No. 106 makes it simpler. I think he is mistaken. I have very strong objections to amendment No. 106 which has not yet been moved. It is carrying matters so wide that I shall discuss it when it comes on. At the present moment I am opposing amendment No. 105 because I do think that it does not make the position clear ; it leads to situations which we cannot just now contemplate. Supposing the *Explanation* contained in amendment No. 106 is not accepted and only amendment No. 105 is carried, the position will be one of great difficulty. I oppose the amendment.

Mr. Akhil Chandra Datta (Chittagong and Rajshahi Divisions : Non-Muhammadan Rural) : Sir, this amendment No. 105 also stands in my name. I do not however agree with my Honourable friend, Mr. Avinashilingam Chettiar, that the amendment merely aims at making matters clear. I think there is better substance in this amendment. What I mean is this. Supposing one and the same gentleman "A" is the managing agent of a certain company and he happens also to be the managing director of another company which is not being managed by a managing agent. This is a case in which practically both the companies are under the same management.

The Honourable Sir Nripendra Sircar : That is exactly what I had in my mind when I said that it will lead to impossible situations in respect of subsidiary companies, a subsidiary company being managed by directors and a holding company being managed by managing agents.

Mr. Akhil Chandra Datta : The real question is, is it desirable that one company should make a loan to another company, although both the companies are practically under the management of the same gentleman. That is the whole thing. If it is not considered desirable, then I submit this amendment should be accepted. It is really a question of principle.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That in clause 42 of the Bill, in sub-section (1) of the proposed section 87E, for the words 'under management by the same managing agent' the words 'under same management' be substituted."

The motion was negatived.

Mr. B. Das (Orissa Division : Non-Muhammadan) : Sir, I move :

"That in clause 42 of the Bill, to sub-section (2) of the proposed section 87E, the following be added at the end :

'and the managing agent who is accessory to the contravention of sub-section (1) shall vacate his office automatically.'"

Sir, I find that my friends on the Select Committee have provided a penal clause in sub-section (2) about any director or officer who is accessory to the loan to any subsidiary company by a fine of one thousand rupees. But the real culprit, the managing agent, who controls from the top all these companies and who allows the subordinate officials or even a willing and subordinatedly minded director to accede to the policy of giving loans from one company to another goes scot-free. Therefore, I want that that managing agent should not go scot-free and there should be certain penalties provided. I wish to remind the House of the recent Calcutta case where certain directors of the Dhakeswari Cotton Mills were

[Mr. B. Das.]

punished because money was advanced from one company to another. We know of the well known case in the Punjab where the funds of the Bharat Insurance Company were utilised by the managing agents of subsidiary companies to finance other companies. Although the present High Court of the Punjab has got hold of the managing agent and the case is *sub judice*, yet the law does not provide any punishment for the managing agent. I want to ask the Honourable the Law Member a question. Why punish the poor officers or the helpless director? Why provide penal clauses for them and not for the managing agent who is the real culprit and who mismanages the funds of a successful concern in financing unsuccessful concerns which he wants to continue to exist so that he can thrive and draw his fat allowances and managing agent's commission? I do hope I will have the support of my Honourable friend, Sir Homi Mody, who in all fairness and honesty of successful running of subsidiary companies and good companies ought not to advocate that managing agents should play ducks and drakes with the companies' money as it has been played in the Punjab and in Bengal. And no doubt there are such instances in Bombay which I need not quote and with which my Honourable friend, Sir Homi Mody, is so well familiar. Sir, with these remarks I commend my amendment to the House.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 42 of the Bill, to sub-section (2) of the proposed section 87E, the following be added at the end :

‘ and the managing agent who is accessory to the contravention of sub-section (1) shall vacate his office automatically.’ ”

The Honourable Sir Nripendra Sircar : Sir, I very much regret that my Honourable friend referred to the case of the Dhakeswari Cotton Mills. If he had gone through the papers of that case he would have found that although they were found technically guilty and punished, there was no question of any misappropriation or dishonesty on the part of the people who were the accused. What happened was that instead of showing Rs. 40,000 which in strict accounting they ought to have done on both sides of the account, they had omitted it altogether, the amount not appearing on either side. The balance would have been the same in any case and the court found that there was no dishonesty and nobody put any money in his pocket. I only hope that these things should not be said in a responsible place like the Assembly which are likely to cause misunderstanding. Be that as it may, I am not fighting their case.

Mr. B. Das : I did not mean to make any personal reflection against any particular director. I am sorry if any reflection was meant.

The Honourable Sir Nripendra Sircar : My friend was again wrong when he said that the only punishment is a fine of one thousand rupees. Of course one thousand rupees to him is nothing, it is a very small amount. But if you will read the provision you will find that the punishment is fine not exceeding one thousand rupees, and

“ shall be jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee.”

Mr. B. Das : You are only punishing the director and the officer, not the managing agent.

The Honourable Sir Nripendra Sircar : Yes, after all the loan is to be given by some director or officer, and this automatic vacation I will oppose in any case.

Prof. N. G. Ranga (Guntur *cum* Nellore : Non-Muhammadian Rural) : Sir, I am happy to be able to agree with my Honourable friend, Mr. B. Das, in regard to this amendment. Usually it is very difficult for both of us to agree in matters like this, but in regard to this he seems to be really anxious to safeguard the interests of the shareholders in a very wholesome manner. I am not able to understand why the Honourable the Law Member has found it impossible to accept this amendment. It may be, Sir, that the Law Member is right in thinking that these people, the director as well as the officer, will be held jointly and severally liable for any loss incurred by the company in respect of such loan or guarantee. Sir, the director or the board of directors come into the picture only when a meeting of the board is held and their advice is sought to be taken. Otherwise for all usual purposes and on all business occasions it is the managing agent who really is responsible for taking any administrative action, for taking any particular decision, and giving any particular orders to the officers working under him. Therefore, Sir, I do not see any reason why the managing agent who really is made responsible for the day to day conduct of the affairs of the company should be made to go scot-free while the helpless director who may for the time being be there and be obliged to sign that paper sanctioning that loan and also that officer who executes that particular order are made liable to suffer. If it were found that a loan has been made in an illegitimate fashion and in a manner which is detrimental to the interests of the company and to cause loss to that particular company, then certainly the managing agent should also be made liable to punishment. And as this particular sub-section (2) runs, it is only the director or the officer who is liable to be punished. I should like to know whether the managing agent will also be considered to be one of the directors and whether he actually and directly sanctions that particular loan or not. Since he is considered to be in charge of the daily affairs of the company, will he also be considered as one of the directors for that particular loan and therefore made liable to the punishment enjoined here? If it were to be considered that he can escape this particular punishment, I think it is naturally fair that my Honourable friend's amendment should be accepted so that he can also be held responsible for this offence.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 42 of the Bill, to sub-section (2) of the proposed section 87E, the following be added at the end :

‘ and the managing agent who is accessory to the contravention of sub-section (1) shall vacate his office automatically.’ ”

The motion was negatived.

Mr. T. S. Avinashilingam Chettiar : Sir, I move :

12 Noon.

“ That in clause 42 of the Bill, in the proposed section 87G, after the words ‘ issue debentures or ’ the words ‘ issue any capital or make calls or dispose of the whole or part of the undertaking of the company or refuse to transfer shares ’ be inserted.”

[Mr. T. S. Avinashilingam Chettiar.]

Sir, the House will see that 87G reads as follows :

"A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or, except with the authority of the directors, and within the limits fixed by them, a power to invest the funds of the company, and any delegation of any such power by a company to a managing agent shall be void."

It is clear that he can do everything else than issuing debentures and investing the funds of the company. This is rather too wide and by this amendment I seek to put some restrictions on the actions of the managing agents ; I want that these things—making calls, etc.,—should be done with the consent of the directors. By the amendment accepted previously—No. 10 on the Revised Final List—the amendment of the Deputy Leader of my Party, the directors of a public company shall not, except with the consent of the company concerned in general meeting, sell or dispose of the undertaking of the company or remit any debt due by a director. Part of the principle of it has been accepted in this amendment and I seek to include certain other things in regard to which the managing agent will be required to take the consent of the directors. I think this is a very healthy provision and will not place any obstacles to the transaction of business.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

"That in clause 42 of the Bill, in the proposed section 87G, after the words 'issue debentures or' the words 'issue any capital or make calls or dispose of the whole or part of the undertaking of the company or refuse to transfer shares' be inserted."

Sir H. P. Mody : On a point of order, Sir : I just want to know how my Honourable friend could introduce in this clause the last prohibition, namely, "or refuse to transfer shares" ? That has been disposed of—that comes under an entirely different provision of the Act ; and he is putting it into a clause of the Bill where it does not fit in at all.

Mr. President (The Honourable Sir Abdur Rahim) : What is the point of order ?

Sir H. P. Mody : That does not come in here.

Mr. S. Satyamurti (Madras City : Non-Muhammadan Urban) : Yes : read the whole clause.

Sir H. P. Mody : The clause will, with the amendment, read :

"A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or any capital or make calls or dispose the whole or any part of the undertaking of the company or refuse any transfer of shares, or, except with the authority of the directors, and within the limits fixed, etc., etc."

There is no question of the sanction of the board of directors here. . . .

The Honourable Sir Nripendra Sircar : There is no point of order here.

Sir H. P. Mody : Refuse to transfer shares : how does it come in here ?

The Honourable Sir Nripendra Sircar : Sir, I do not think there is any point of order ; but I oppose the amendment on the ground that I think it is wholly unnecessary and possibly somewhat confusing for this

reason : the House will remember that it accepted an amendment moved by my Honourable friend, Pandit Govind Ballabh Pant, the result of which is that issue of capital and the sale of the whole or part of an undertaking have got to come before shareholders.....

Mr. Bhulabhai J. Desai (Bombay Northern Division : Non-Muhammadan Rural) : I thought you declined to accept the issue of capital.

The Honourable Sir Nripendra Sircar : I stand corrected. In so far as the sale of an undertaking is concerned, if the managing agent could sell at all, that must be under delegation from the directors or the company. We have prohibited the directors from doing that ; and I do not really see how the managing agent can sell off the whole undertaking of a company if what the House has done stands, as it must. As regards issue of capital, either the managing agent can do it or he cannot. I do not think he can do it.....

Mr. Bhulabhai J. Desai : He may have a delegated power.

The Honourable Sir Nripendra Sircar : He can do it only if that power has been delegated to him. But my Honourable friend's amendment is mixed up with so many matters that I have got to object. There is first of all the issue of capital, then dispose of the whole or part of the undertaking and lastly refuse to transfer shares. I cannot accept the amendment as it is put here.

Mr. T. S. Avinashilingam Chettiar : May I know which you accept ?

Pandit Govind Ballabh Pant (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : Sir, may I, with your permission, move that the words "or dispose of the whole or part of the undertaking of the company" be omitted from the amendment under discussion ?

The Honourable Sir Nripendra Sircar : It is not objection for the sake of objection that I am taking : what I want to know is this : he will have no power to refuse transfer of shares : will he have the power to accept transfer of shares ?

Pandit Govind Ballabh Pant : Yes : if they want to refuse, then the directors must refuse, not the managing agent.

Mr. M. S. Aney (Berar Representative) : May I just point out how it will read then ? It will read :

"A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or issue any capital or make calls or refuse to transfer shares, or except with the authority of the directors, etc., etc., to invest funds....."

The authority of the directors relates only to the investment of funds. It has got nothing to do with what goes before. I believe the amendment as it stands takes away the powers of the managing agents in respect of these matters : and that is not the object of the Mover of this amendment, I know : but the way in which he has worded his amendment, creates this difficulty.

Mr. Bhulabhai J. Desai : Sir, may I point this out ? Perhaps it will clear the position. It is true that in so far as the amendment now proposed is concerned, it will take away from the managing agents the

[Mr. Bhulabhai J. Desai.]

exercise of the three sets of powers there mentioned. But it is not necessary to say "except with the authority of the directors" there for this reason. In many of these cases you do find these powers not merely delegated *ad hoc*, but generally delegated in the sense that it appears as among the powers of the managing agents. And what is intended is that they should not be included in the powers of managing agents. There is no need to delegate anything. If the directors say, for instance, we shall issue calls or we shall refuse to transfer shares, there is no further need for any delegation whatever. Therefore, if the objection is that the directors cannot delegate such power, it is an objection without substance because they have exercised it themselves and there is no occasion for delegation. For instance, the directors may refuse to sanction a transfer, the directors may issue a call. Then there is no point in saying that the managing agent may do so with the sanction of the board of directors. There is no point in saying that, and the object really is to safeguard the existence of general powers conferred upon the managing agent in this behalf, taking them away entirely from the directors, for it is so possible to do by means of articles. Therefore I would ask my Honourable friend to reconsider this matter and accept this amendment.

Mr. T. Chapman-Mortimer (Bengal : European) : I should like to place one or two considerations before the House before we vote on this question. I would agree with my Honourable friend, the Law Member. The words are, "issue any capital or make calls or dispose of the whole or part of the undertaking of the company". In regard to both these points, as has already been pointed out by various speakers, the directors will have no power to delegate this power to the managing agent by virtue of this very Bill which we are now passing. In regard to the third point, if it is going to be taken away from the managing agent to act under general authority from the directors—to refuse to transfer shares,—an enormous amount of detailed work is going to be thrown on the directors. The usual practice in company management in a matter of this kind is for the directors to authorise the managing agent within certain limits to refuse to transfer shares. Very often the refusal has to be on purely technical grounds. All these have to be reported to the board and the board will certainly not authorise the managing agent to refuse to transfer shares except for some very technical reasons. If you are going to say that the directors cannot delegate this power in a general way you are going to make business extremely difficult. I oppose this amendment.

Mr. T. S. Avinashilingam Chettiar : I beg leave of the House to withdraw my amendment.

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

Pandit Govind Ballabh Pant : There is an amendment in my name, No. 117, on this very subject. With your permission, I would move only this much :

"That in clause 42 of the Bill, in the proposed section 87G, after the word 'or' the words 'any capital or make calls or' be inserted."

I omit the words "dispose the whole or any part of the undertaking of the company or refuse any transfer of shares or". The amendment in the shape in which I have moved it is very restricted in scope. If Honourable Members read clause 87G they will find that a managing

agent will have no power to issue any debentures. The matters covered by my amendment are much more important than the issuing of debentures, such as the issuing of capital or making calls. And I think all business men in this House will accept that these matters should not be left to the discretion of the managing agent. So, I move that whenever such occasions arise the directors should dispose of them, if not the company itself, and in no case the managing agents.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 42 of the Bill, in the proposed section 87G, after the word ‘ or ’ the words ‘ any capital or make calls or ’ be inserted.”

The Honourable Sir Nripendra Sircar : Sir, it is rather difficult to adjust oneself to rapidly changing amendments. It strikes me in this way. I have tried to put the words in the clause and it reads like this :

“ 87G. A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or any capital or make calls except with the authority of the directors.....”

Mr. President (The Honourable Sir Abdur Rahim) : No, no. It will read thus :

“ A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or any capital or make calls or, except with the authority of the directors.....”

The “ or ” is kept there, after the word “ calls ”.

The Honourable Sir Nripendra Sircar : I have nothing to add.

Mr. G. E. J. Robertson (Burma : European) : On behalf of the European Group I submit that such last minute amendments are really very confusing and it is rather a complicated subject. Even my Honourable friend, the Law Member, is finding it difficult to keep up with these last minute amendments. Apart from that, I really cannot see what difference the amendment now proposed makes to the existing position. It simply wants to provide that capital may not be issued or calls may not be made without the authority of the directors.....

The Honourable Sir Nripendra Sircar : No, no. He has added another “ or ” now.

Mr. G. E. J. Robertson : It is rather difficult to follow.

Mr. Bhulabhai J. Desai : The matter is very plain, and with great deference, I may say that there is no confusion. The rest of the Act is far more difficult than this simple point. All we want is that the managing agent shall not have the three sets of powers. One set is already mentioned in the section, namely, the issue of debentures. As regards the issue of capital and the making of calls we want that they should be reserved for directors, or, if the articles require, for the company in general meeting. The point is that the managing agent shall not get the right to exercise both these powers by a general article in that behalf.

Sir Leslie Hudson (Bombay : European) : Does not Regulation 71 which is now compulsory cover the whole thing ?

Mr. Bhulabhai J. Desai : No, it does not. It is subject to the regulations. This is a common form of regulation—I call it article, you will excuse my using it, because that was the original name. It still leaves power to the company under an article whereby the two powers, now the subject of discussion, could form part of the powers of the managing agent. What we say is that that should not be so, and I think we are right. Directors are the persons to make calls or issue capital. There is nothing severe. 71 certainly does not cover it.

Sir Cowasji Jehangir (Bombay City : Non-Muhammadan Urban) : May I ask Pandit Pant whether he has deleted the word “ or ” or not, because it will make a big difference to the answer.

Pandit Govind Ballabh Pant : The amendment as it now stands reads thus : “ any capital or makes calls or ”. The word “ or ” is not deleted.

Mr. F. E. James : In that case we have no option but to oppose it. If the words are as I understand them, then the managing agents shall not do these things. What happens in the case of directors wishing to delegate powers to agents ? We cannot possibly accept it.

Mr. Bhulabhai J. Desai : It is a mere assertion.

Mr. M. S. Aney : If the section is worded like that, shall the managing agents have the power to do these things ? Is there any clause debarring them from doing these things. Can he do it with the authority of the directors ?

Mr. Bhulabhai J. Desai : I think my Honourable friend has not understood us, I have admitted that even with the authority of the directors he shall not be able to do it. There is an explanation, that there is no need for such a delegation having regard to the subject matter of the three points. Once the directors decide to issue debentures, to issue capital and to make calls, there is no question of delegating that power.

Sir Cowasji Jehangir : Mr. President, much depends upon whether you retain that word ‘ or ’ or delete it. I understand that the Mover of the amendment desires that the managing agent, with the approval of the directors, shall make calls.

Pandit Govind Ballabh Pant : No. What I am proposing is that the decision with respect to these matters should be taken by the directors themselves. Once a decision is taken by them, the execution of the decision will certainly rest with the managing agents. I do not want the managing agent to possess the right of deciding these things.

Sir Cowasji Jehangir : I am not a lawyer. There are two very eminent lawyers in this Honourable House. According to me, a layman, if the word “ or ” is retained, it will mean that the directors cannot make calls except with the sanction of the shareholders. It will mean that they cannot issue debentures or issue capital. If that is so, I will strongly oppose it.

Mr. Susil Chandra Sen (Government of India : Nominated Official) : I think there is a good deal of confusion in the minds of members about this amendment. My Honourable friend, the Leader of the Opposi-

tion, made the object of the amendment clear. The object of the amendment is to debar the managing agents at all times from exercising three powers, namely, the power of issuing debentures, the power of issuing capital and the power to make calls. The question is whether a case has been made out as to why the directors should be debarred from delegating these powers to the managing agents at all. As regards the first one, there is no trouble, because we are all agreed that the managing agents should not issue debentures and that too on very good grounds, because the issuing of debentures means charging the assets of the company and that is a power which they should not exercise. As regards the other two matters, I venture to submit for the consideration of my Honourable friends that they stand on a different footing and I do not think my friends can place the three matters on the same level. The second matter, namely, the question of issuing capital we have discussed threadbare. We discussed the same question with relation to the powers of the directors. As I said on that occasion, any shareholder who buys a share in a company knows exactly what the capital of the company is to consist of, in what class of shares it may be divided and he always knows that there is power in the directors or in those who have the management to call up the unissued capital to the extent which has been notified in the memorandum. Now, Sir, the question is as to whether this should be limited for exercise only by the directors or whether it may be delegated under the power of delegation by the directors to the managing agents who after all are only agents of the company. There is one aspect which it appears my Honourable friends opposite have not considered. It is this. A delegation in order to be effective must be by the entire board. With all the safeguards which we have now provided about the constitution of the Board, about the attempts to make it independent of the control of the managing agents, why should we suspect that a delegation made unless by the entire board is confident it would not be abused. That is the point which I want my Honourable friends to consider and I think that if the Board unanimously choose to delegate such a power, it can be taken that it has been left to the managing agents without any chance of its being abused. The third matter certainly stands on a much worse footing, if I may be pardoned for saying so. The making of calls is nothing but the enforcement of a liability which has already been incurred by the shareholders. Once he has subscribed for the shares, the shareholder runs the risk of the calls being made on his shares. The question is as to the time when the calls should be made. In the case of a company under the management of a managing agent they have been entrusted with the management, as appears from the very definition he has the entire control of the company and is it so very surprising that the directors, who when they appoint them should be given a free hand to decide if they should leave the question of the enforcement of a liability which has been incurred by the shareholders to the managing agent. I submit, Sir, the third one is the weakest of the lot. On the whole, Sir, I really want my friends opposite to answer and agree that it would really serve no good purpose by insisting on this amendment.

Mr. S. Satyamurti : Sir, I am surprised that my friend, Mr. Susil Sen, after his return from Calcutta, should take up this attitude of not accepting a reasonable amendment like this. I want to deal with the question of delegation. As the article will read, it will only

[Mr. S. Satyamurti.]

mean this that the directors cannot, under any circumstances, delegate this power. What is the delegation my friend is thinking of? It may be in the actual article itself. Although the directors may be there the articles may provide that the managing agent may make calls or issue capital. Then, there is no question of the directors' minds being applied at any time, whereas, if on the other hand, my friend contemplates specific delegation from time to time, as the Leader of the Opposition pointed out, the very act of the delegation is complete for this purpose. There is no need for directors to meet, except for this. Where they will make a further call, they may generally delegate that power to the managing agents, and then they go out of the picture altogether, and the managing agents dominate the show. I think this amendment ought to be accepted.

Then, secondly, as regards the issue of capital or the making of calls, can my friends deny that they are really important matters for financing the whole concern? Why should they not leave it to the directors themselves to decide these questions from time to time? After all, they are not every day occurrences. They occur only once in a way. If they do occur, what is wrong in asking the Directors to decide the whole question? Moreover, Sir, is not the power to issue debentures never to be exercised by the managing agents? I do not see how the Government can consistently object to equally important powers, like the issue of capital or the making of calls, being vested in the directors themselves. Moreover, they have already accepted the position under Amendment No. 10, that so far as the selling or disposing of the undertaking of a company or remitting any debt is concerned, they ought to go to the company. So far as this section is concerned, it will be found that all these powers may be delegated to the managing agents once and for all by the articles. I have not yet heard a single argument as to what business interests will be affected by accepting this amendment.

My friend, the Leader of the European Group, asked a question of the Leader of the Opposition, whether Regulation 71 does not contemplate these things. It does not, but I take the meaning of that question is that, so far as he is concerned, Regulation 71 contemplates these things, and he has no objection to that.....

Mr. F. E. James : No.

Mr. S. Satyamurti : My friend Mr. James says "No". I am talking of the Leader of the European Group, but I think his question was a *bona fide* question, and he asked that question for the purpose of elucidating the matter. The Leader of the Opposition answered that. Therefore, I have yet to hear, except that they are against it, why they ought not to accept this position. I want to put it to the Leader of the Congress-Nationalist Party, my distinguished friend, Mr. Aney, as to why he thinks this power ought not to be vested solely and exclusively in the directors.....

Mr. M. S. Aney : I have only tried to explain the meaning of the clause as it stands.

Mr. S. Satyamurti : I am glad that my friend accepts the position, that, so far as these three powers are concerned, they can and may well be vested in the directors alone. Sir, I want the House to look at the question

from a dispassionate point of view. If the power to issue debentures can be exercised only by directors and never by managing agents, even by delegation, I say the case is stronger with regard to the making of calls. These managing agents are not the owners of the company. Supposing they have mismanaged the company, and they want more money, they can ask for it without the shareholders having any voice at all. Is it right, Sir, that the shareholders' representatives should have no voice? I put it to all shareholders here. They should think either of a general or specific delegation. Specific delegation is an unnecessary waste of time, because if the directors meet and decide on the 2nd of October, 1936, to make specific calls, there is no need for delegating their power to somebody else. They can straight away decide it. Similar is the case with regard to the issue of capital. Sir, it seems to me that no business interests will be affected; on the other hand shareholders' interests will be protected by the directors meeting and deciding this fundamental question. I support the amendment, and I hope the House will accept it.

Some Honourable Members : Sir, the question may now be put.

Dr. Ziauddin Ahmad : Sir, I think this amendment appears to be a reasonable one, because the responsibility for the administration of a concern rests with the directors; they are primarily responsible for the good administration of any company. Therefore, it is very fair that they should know when the capital should be increased not only in regard to the issue of debentures but also in regard to the issue of fresh capital. With these words, I support the amendment.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“That in clause 42 of the Bill, in the proposed section 87G, after the word ‘or’ the words ‘any capital or make calls or’ be inserted.”

The Assembly divided :

AYES—38.

Abdullah, Mr. H. M.
Aney, Mr. M. S.
Ayyangar, Mr. M. Ananthasayanam.
Bajoria, Babu Baijnath.
Chaliha, Mr. Kuladhar.
Chattopadhyaya, Mr. Amarendra Nath.
Chettiar, Mr. T. S. Avinashilingam.
Chetty, Mr. Sami Vencatachelam.
Das, Mr. B.
Das, Mr. Basanta Kumar.
Das, Pandit Nilakantha.
Datta, Mr. Akhil Chandra.
Desai, Mr. Bhulabhai J.
Deshmukh, Dr. G. V.
Gadgil, Mr. N. V.
Giri, Mr. V. V.
Govind Das, Seth.
Hans Raj, Baizada.
Hosmani, Mr. S. K.

Jogendra Singh, Sirdar.
Joshi, Mr. N. M.
Kailash Behari Lal, Babu.
Lalchand Navalrai, Mr.
Mudaliar, Mr. C. N. Muthuranga.
Paliwal, Pandit Sri Krishna Dutta.
Pant, Pandit Govind Ballabh.
Parma Nand, Bhai.
Raju, Mr. P. S. Kumaraswami.
Ranga, Prof. N. G.
Saksena, Mr. Mohan Lal.
Satyamurti, Mr. S.
Singh, Mr. Ram Narayan.
Sinha, Mr. Anugrah Narayan.
Sinha, Mr. Satya Narayan.
Som, Mr. Suryva Kumar.
Sri Prakasa, Mr.
Varma, Mr. B. B.
Ziauddin Ahmad, Dr.

NOES—51.

Abdul Hamid, Khan Bahadur Sir.
Acott, Mr. A. S. V.
Ahmad Nawaz Khan, Major Nawab Sir.
Ahmed, Mr. K.

Ayyar, Diwan Bahadur R. V. Krishna.
Bajpai, Sir Girja Shankar.
Benjamin, Mr. H. D.
Bhat, Mr. M. D.

NOES—*could.*

Buss, Mr. L. C.
 Chapman-Mortimer, Mr. T.
 Craik, The Honourable Sir Henry.
 Dalal, Dr. R. D.
 DeSouza, Dr. F. X.
 Dey, Mr. B. N.
 Ghuznavi, Sir Abdul Halim.
 Gidney, Lieut.-Colonel Sir Henry.
 Grant, Mr. C. F.
 Griffiths, Mr. P. J.
 Grigg, The Honourable Sir James.
 Hidayatallah, Sir Ghulam Hussain.
 Hudson, Sir Leslie.
 James, Mr. F. E.
 Jawahar Singh, Sardar Bahadur Sardar Sir.
 Jehangir, Sir Cowasji.
 Khurshaid Muhammad, Khan Bahadur Shaikh.
 Lal Chand, Captain Rao Bahadur Chaudhri.
 Metcalfe, Sir Aubrey.
 Milligan, Mr. J. A.
 Mody, Sir H. P.
 Morgan, Mr. G.

Mukherjee, Rai Bahadur Sir Satya Charan.
 Naydu, Diwan Bahadur B. V. Sri Hari Rao.
 Nind, Mr. W. W.
 Noyce, The Honourable Sir Frank.
 Rajah, Rao Bahadur M. C.
 Rau, Mr. P. R.
 Rau, Mr. P. S.
 Robertson, Mr. G. E. J.
 Roy, Mr. S. N.
 Sarma, Sri Srinivasa.
 Scott, Mr. J. Ramsay.
 Sen, Mr. Susil Chandra.
 Sharma, Mr. D.
 Singh, Rai Bahadur Shyam Narayan.
 Sircar, The Honourable Sir Nripendra.
 Spence, Mr. G. H.
 Thorne, Mr. J. A.
 Tottenham, Mr. G. R. F.
 Witherington, Mr. C. H.
 Yakub, Sir Muhammad.
 Zafrullah Khan, The Honourable Sir Muhammad.

The motion was negatived.

The Assembly then adjourned for Lunch till Quarter Past Two of the Clock.

The Assembly re-assembled after Lunch at Quarter Past Two of the Clock, Mr. Deputy President (Mr. Akhil Chandra Datta) in the Chair.

Mr. Deputy President (Mr. Akhil Chandra Datta) : I think we have finished Amendment No. 117. Amendments Nos. 118, 119, 120 and 121 stand in my name. They will stand over for the present till the resumption of the Chair by the Honourable the President.

Sir Cowasji Jehangir : Mr. Deputy President, I beg to move :

“That in clause 42 of the Bill, the proposed section 87H be omitted.”

This section runs as follows :

“A managing agent shall not on his own account engage in any business which is of the same nature as the business carried on by a company under his management.”

Sir, whenever an amendment has been suggested in this House, my Honourable friend Mr. Sen, has been pointed out as an authority, and his report has been brought forward as an argument that the House should accept it. I propose to do the same thing. This is an amendment which was not suggested by Mr. Sen in his report, for very good reasons. It was suggested, I believe, by the committee of experts that was appointed by my friend, the Leader of the House, to help him to draft this Bill. Now, Sir, the amendment in short means that a managing agent shall not do the same kind of business as the business of the company of which he is the managing agent. I feel, Sir, that this will cause considerable inconvenience, and, what is more, it will be a hindrance to our industrial expansion, and therefore I suggest its omission. I can give you one or two

instances from my own experience. Take the case of a managing agent who has also some other investments. I will take the instance of a company with which in our part of India we are most familiar, I mean a cotton mill company. A managing agent of a cotton mill lends his own money—it has nothing whatever to do with the company of which he is the managing agent,—on a mortgage of another cotton mill. That cotton mill company is not able to pay off the mortgage, and the next thing that he may have to do is to take possession of that cotton mill. I am not a lawyer, and I do not express any opinion whether under this section he could be a mortgagee in possession. I have consulted some lawyers, and I have been told that there is nothing to prevent him from being a mortgagee in possession. But after that, the next stage is that he will have to buy up the mill. Then he becomes the owner or the proprietor of that mill. There cannot be the slightest doubt that he cannot be the proprietor of a mill while continuing to be the managing agent of a company which runs another mill. Well, Sir, under those circumstances, what is going to happen? I presume, the only alternative for him is to convert the mill which comes into his possession into a limited company, but that cannot be done immediately. Some time must elapse. That is one instance.

Then there are gentlemen who do the business of selling agents; they sell cloth. I know of some cases where these selling agents, very big business men in themselves, are also managing agents of cotton mill companies. Under this clause they cannot be both. Either they give up their business as selling agents, or they give up being managing agents of a cotton mill. The business of a mill company is to manufacture and sell cloth. Well, if there is a person who is a selling agent, *viz.*, who buys and sells cloth, he is also doing the business of a managing agent of a cotton mill. Under these circumstances, I am advised that under this section it may be held that he cannot do both businesses.

Then take an investing company. I am again advised that if a man is the managing agent of an investing company, it will be very difficult for him to be the managing agent of any other company. These are only a few instances which I give from my personal experience in my part of the country. They may be multiplied by others in this House with experience of other parts of India. I believe the same would apply to a jute mill. It will also apply to many other industries.

The object of this Bill is not to hinder the expansion of industry in any way but to so control it as to see that the managing agency system, that has been abused in the past, will not be abused in the future. It is a very tall order, but that is the aim and object of these clauses—not to hinder them in any way, not to hinder the expansion of trade or industry, but to see that industry is carried on in a way beneficial not only to the country itself but to the managing agents themselves and to the shareholders. I venture to suggest to my Honourable friend, the Leader of the House, that this clause is not conducive to fulfilling the principle I have just laid down. I contend that it will be a hindrance to the expansion of industry. It has been said over and over again in this House by all sections that there are comparatively very few men in this continent of India who interest themselves in industries. There are fewer still who can promote new industries: and therefore those who are already interested in industry are

[Sir Cowasji Jehangir.]

more likely to promote other industries than those who have up till now have had no interest in an industry. Now, you will prevent all these persons, already interested in industry, from helping to expand and enlarge the sphere of industry all over the country. Well, Sir, under these circumstances, I will not enlarge very much more upon a good cause, to what appears to me to be a tired House. And may I appeal to the Honourable the Leader of the House (*An Honourable Member* : Appeal to the Leader of the Opposition) ; I will content myself at present with appealing to the Leader of the House and I trust I shall have the sympathy of the Leader of the Opposition in the amendment I have moved. I place it before the House for favourable consideration.

Mr. Deputy President (Mr. Akhil Chandra Datta) : Amendment moved :

“ That in clause 42 of the Bill, the proposed section 87H be omitted.”

Mr. Bhulabhai J. Desai : Mr. Deputy President, I quite agree that the Honourable Member appealed to another corner of the House. He fully realizes that he wants this omitted in order to meet what he himself described as a single, possible, hard case. (*Sir Cowasji Jehangir* : “ I mentioned two or three.”) Well, so far as I am able to appreciate them, they fall in the same category ; I may be wrong. The case that he mentioned was a case something like this, that a person who is the managing agent of a company happens to have lent himself to another company and, therefore, either as a mortgagee in possession or as a debenture-holder he is—normally he would not do it if he can help it,—in the ordinary language of commerce, landed with this particular mill on his hands : and if legal opinion has any value, I can assure him that the classes of case that he thinks of are not at all hit by this section, but, for fear that they may possibly do so, you are destroying a very salutary provision of the Act. The provision of the Act is.....

Sir Cowasji Jehangir : May I interrupt my Honourable friend ? I said that at first he is the mortgagee in possession, and I expressed doubts myself whether it fell within the mischief of this section. Then, after becoming the mortgagee in possession, he has become the owner. That is the next step, he has become the proprietor.

Mr. Bhulabhai J. Desai : My friend only satisfies me and the House that the case is becoming narrower and narrower still, because so long as I resolve his doubt to the stage of being the mortgagee in possession and as such the managing agent, he concedes me grudgingly the possibility that he may not be hit by this but he then says, “ the court may pass a decree ”, and then says he, “ possibly he may be the purchaser and nobody else ”, then “ possibly he may still want to run it on his own ”. Therefore, as you go further and further, you see how less and less are the possibilities for which he wants to make a law. It is therefore not right, for cases of this character which are hardly likely to arise and which can be easily met and of which the instances must be extremely few, to destroy the salutary principle in 87-H. And here I won't even speak for myself, though, generally speaking, my mind, I may honestly confess, works more on what I conceive after due deliberation to be right than in the direction of quoting twenty or thirty or fifty opinions in my favour. But as the custom here stands, I may point out to the House that practically all the Chambers of

Commerce have accepted the principle of 87-H, as it now stands and what does it say? It only says this that, while you are managing agent of one concern, you may not on your own private account have a competing business, and I do not wish to take much time in order to tell the consequences of this sort of conflict of "interest" and "duty"—generally, as we know, the "interest" is advanced and the "duty" is sacrificed. It is only human that it does so happen and I therefore do ask my friend to consider again whether he would really insist on destroying a good section for saving a possible hard case.

Sir Leslie Hudson : Sir, if I heard my Honourable friend the Leader of the Opposition aright just now, he said that the majority of the Chambers of Commerce were in favour of 87-H. My reading of the opinions sent in after circulation of the Bill is, however, that practically every Chamber of Commerce, Indian as well as European, was definitely against the provisions of 87-H, which were variously described as impracticable and unnecessary. The Select Committee themselves had the greatest difficulty in framing the present sub-section in the Bill and the Select Committee themselves found it extraordinarily difficult to clarify the section, and I contend that the result is still a very unsatisfactory solution. It is vague and ambiguous. The section as framed in the Bill before the House would leave managing agents in the position that a managing agent would contravene these provisions if he happened to carry on for his own gain any business of any description which was similar to that of any part of the company for whom he is managing agent for any part of that business. I contend that the section even now is so vague and ambiguous that it could only lead to controversy and extensive litigation. The term used "they are not of the same nature as" could be interpreted by the courts in such a manner that there would be restraint of trade, and that was definitely not the intention. (Ironical Laughter from the Opposition Benches.) It would be so.....

Mr. Bhulabhai J. Desai : I have never known this theory advanced before, where a competing business is prevented.....

Sir Leslie Hudson : Take certain firms whom my Honourable friend knows as well as I do, where they have businesses which may include the managing agency of a cotton mill and whose business may also include the importation of cotton piecegoods from overseas.

Mr. Bhulabhai J. Desai : That, I think, is wrong.

Sir Leslie Hudson : After all, the trade of this country is not to be entirely, for the present at any rate, enclosed within the very high tariff walls in which it has been surrounded. After all, there must be some business with outside countries and there must be some exchange of trade with outside countries.

Mr. Bhulabhai J. Desai : We are only trying to break the rigours of monopoly.

Sir Leslie Hudson : There is no monopoly about it at all. I still contend that a provision of this sort is going to put a restraint on trade and that in this country or in any other country this is not a public policy. I strongly urge the House to accept the amendment moved by my Honourable friend, Sir Cowasji Jehangir.

Mr. M. S. Aney : I think that the provision as it stands looks no doubt very salutary but I feel one or two doubts and I believe either my Honourable friend, the Leader of the Opposition, or the Leader of the House, will help me in clearing those doubts. First of all, I want to know whether a person who has got certain business already in existence will be debarred under this clause from becoming a managing agent of another concern ?

The Honourable Sir Nripendra Sircar : No.

Mr. Bhulabhai J. Desai : He can be a managing agent of as many concerns as he likes on his own account.

Mr. M. S. Aney : Section 87-H says :

“ A managing agent shall not on his own account engage in any business which is of the same nature as the business carried on by a company under his management.”

Now, he has on his own account a business already in existence. For a similar business a company is started of which he wants to be a managing agent. Now, when business on his own account is already in existence, would the existence of that business come in the way of his becoming a managing agent ?

Mr. Bhulabhai J. Desai : Yes.

Mr. M. S. Aney : Why this clause should not be a bar in the case of other concerns ?

Mr. Bhulabhai J. Desai : It is a bar.

Mr. S. Satyamurti : Sir, I am surprised at the courage of some of these managing agents here, who are trying to take away from this Bill even such a modest provision as is to be found in 87-H. Their appetite seems to grow by what it feeds on. Thanks to the somewhat accommodating nature of the Government, I see the managing agents are at their old game again. After all, what does the section say ? It simply says that a managing agent shall not, on his own account, engage in any business which is of the same nature as the business carried on by a company under his management. We have been told all these days that these managing agents must have their contract respected, their remuneration respected, and they must have at least 20 years because they are people who combine in themselves ability, efficiency, sacrifice and what not, and without them the industrial development of the country will come to a standstill. Now, Sir, this section simply provides that if a managing agent is paid a handsome remuneration by the company for giving all his time, his energy, his talent, and his capacity, he ought not to have a competing call on all these great and enviable qualities of his by another company which he is carrying on on his own account, and which does the same business as the business carried on by the company under his management. My Honourable friend, the Leader of the European Group, is always restrained in his language, but today he has beaten his own record by saying that this section is a ‘ restraint on trade ’. I think somebody has been pulling his leg. I cannot understand that anybody can reasonably say that this section is any restraint on any trade whatever, except the trade of managing agents. Barring that, there is not a single trade which is sought to be covered by this section. Then, my Honourable friend gave an example which I think is conclusive the other way about. Supposing a firm or an individual is a managing agent to a cotton manufacturing concern. Supposing, at the

same time, he carries on on his own account the import of cotton piece-goods. My Honourable friend went into the question of this country having to import articles. I shall not join issue with him on that matter now. Assume, we have got to import cotton piecegoods, is it right, I put it to the Honourable House and also to the Honourable the Leader of the House, that the managing agent should simultaneously seek to manage a company whose business is to manufacture and sell cotton textile goods at the same time import foreign textiles on his own account? What will be his interest, and what is his duty? His duty is to see that the factory or the mill of which he is the managing agent makes the greatest possible profit, sells in all the best markets, and tries to capture as much of the market as possible. On the other hand, all the time on his own account he is engaged in the importation of cotton textiles. Does it require very great imagination to agree with me that that is bound to affect the interests of the company of which he is the managing agent?

Sir Leslie Hudson : No.

Mr. S. Satyamurti : The managing agents can do anything, and nobody will suffer.

Sir H. P. Mody : The managing agents can do no harm.

Mr. S. Satyamurti : I am glad to be told by my Honourable friend that the managing agents can do no harm. The King, the Pope, the Government of India and the Managing Agents can do no wrong. But I think that statement is its own condemnation. It seems to me, being a humble layman, and I am glad I am supported by the Leader of the Opposition in this matter, that, so far as the language of this section goes, it prevents an evil which is obvious on the face of it, and which ought not to be allowed to continue. I, therefore, hope that the Government will not encourage the managing agents by accepting this amendment but will put their foot down so that the managing agents may not go on moving similar amendments in the future.

Mr. Sami Vencatachalam Chetty (Madras : Indian Commerce) : Sir, I quite agree that in matters like this, there is a likelihood of the position of a managing agent being misunderstood. It looks to me quite reasonable to suppose that if a managing agent has got a textile mill under his control and he is also an importer of foreign piecegoods, that the interests of both should apparently conflict. But I am afraid we will be upsetting the trade and the business in several lines of articles if we were to conclude all at once that in all these matters there should necessarily be a conflict of interest and duty. I do not think in all cases it should be considered that there would be conflict of interest and duty. As a matter of fact, businessmen think of starting indigenous manufactures having had experience in the line of imported goods. They originally started as merchants in imported piecegoods, imported paints, imported hardware, imported steel, imported cutlery and all similar goods. Then, they began to realise that there was so much of demand and that these articles could possibly be manufactured in this country with the necessary capital and co-operation and also the help from Government by way of protective duties. Thus it is they feel encouraged in the starting of manufacturing industries. But if the prohibitive amendments are accepted, the moment they begin to organize the starting of a factory or an industry in order to compete in the article in which they were originally trading, they have

[Mr. Sami Vencatachelam Chetty.]

got to stop the importation and give the go-bye to their business and speculate upon the possibility of the success of the new venture that they are undertaking. That seems to me a definite set back to the growth of the industries and manufactures in this country. Moreover, I am glad that my Honourable friend, Mr. Satyamurti, has stated the very question of piecegoods trade. But it is in that one trade there can be the least conflict of interest and duty. If I may explain the matter by way of illustration, there may be certain lines, certain varieties of cloth that the mill over which one is the managing agent would manufacture, whereas in regard to other varieties of cloth, you might conveniently import.....

Mr. Bhulabhai J. Desai : That is not competing business.

Mr. Sami Vencatachelam Chetty : I am glad, but according to my Honourable friend, Mr. Satyamurti, it is competing business and he has stated that to be so. He gave that very illustration.

Mr. S. Satyamurti : It may be that the courts will decide.

Sir Cowasji Jehangir : More work for lawyers.

Mr. Sami Vencatachelam Chetty : One has to spend money on lawyers for these things. That seems to me a thorough misunderstanding of the position. Moreover there are numerous cases of commercial firms who are both managing agents of manufactures in this country and also simultaneously commission agents in respect of goods which are imported from outside. Generally in the piecegoods business of which mention has been made by my Honourable friend, Mr. Satyamurti, these importing firms more or less act as indentors for those customers who want to indent goods ; they get the goods for them and pass on. That does not affect, so far as the existing mills are concerned, the interest of those mills. On the other hand in several cases, both businesses, both of the imported and the indigenous manufacture, are going on very amicably and complementary to each other. In regard to the various trade agreements which we are now entering upon with other countries, we make it a necessary condition that Japan may import certain varieties of cloth whereas India must be given the choice of manufacturing certain other varieties without being competed by Japan and in that case my Honourable friend, Prof. Ranga, would very rightly ask for a similar guarantee as regards handloom weavers. Is it suggested that if a managing agent is the managing agent of a manufacturing concern of piecegoods that he should not be allowed to deal with handloom products ? That seems to me a definitely reactionary proposal. As a matter of fact, this matter has been, as has been reminded, thoroughly discussed in the Select Committee and I quite concede that it is very desirable that the managing agent should not embark upon a venture which would directly come into conflict with the concern of which he is the manager. For instance, if he is the managing agent of a textile mill, he ought not to run a textile mill of his own in order that these goods might not come into conflict with the products of the mill of which he is the managing agent. I think all other amendments in respect of this would either give more liberties to the managing agent or unduly restrict the reasonable position which the managing agents are now occupying. For instance, if I may anticipate the amendment which the European Group has given notice of, namely to add ' and is calculated to prejudice ', even that phrase seems to me to cut both ways. It is just

possible that a business might be considered, even though it is not actually prejudicial, to be calculated to prejudice. This will lead to unnecessary litigation. Sir, while opposing the amendment of my Honourable friend, Sir Cowasji Jehangir, I would say that the existing provision be left untouched.

The Honourable Sir Nripendra Sircar : Sir, I think the Leader of the Opposition was contradicted by my Honourable friend, Sir Leslie Hudson, when the Leader asserted that the Chambers were in favour of a provision like section 87-H. It is quite possible that my Honourable friend, Mr. Desai, has put it in a slightly wider form than the opinions justify. But I will leave it to the House to judge what is the opinion of the Chambers from what I am reading. This is what the Bengal Chamber of Commerce says :

“ The new section introduced by the Bill, the new section 87H appearing in clause 35 as drafted apparently prohibits a managing agent from acting for more than one company carrying the same type of business.”

I stop here for a moment. This criticism was directed and rightly directed to the draft as it then appeared which prevented a managing agent from running two companies. Sir, that criticism has now no force. Now, let me proceed :

“ This clause so obviously destroys the existing managing agents contracts and prohibits future contracts and apart from anything else is contrary to the achievement of the greatest economy that the Chamber must strongly oppose it.”

All this is directed to the fact of the managing agent being prevented from running two companies. I would like to draw the attention of the European Group, to what they proceed to state :

“ The Chamber trusts however that the intention is merely to prevent managing agents themselves from competing with a company which they manage, a principle to which the Chamber takes no exception.”

I would ask my Honourable friend, Sir Leslie Hudson, to say whether the Bengal Chamber of Commerce has not approved of the principle of section 87-H as it stands. I shall have some observations to make about improving that section, to which I shall come later on. So, it is obvious that the Bengal Chamber of Commerce is saying that as you have drafted the provision it prevents some managing agents from running two companies ; to that we strongly object, but the Chamber trusts that the intention is to prevent managing agents from competing with a company which they manage, a principle to which the Chamber takes no exception. Therefore that has been approved, the principle underlying this section has been approved by the Bengal Chamber of Commerce. I have got to make some submission later on about the drafting of this section. Now let us take the Bombay Chamber of Commerce. They strongly oppose this section and the opposition as we know was due mainly to the fact that the provision as drafted prevented the managing agent from running two companies. The Chamber says :

“ My Committee strongly opposes this section.”

Then, they proceed to say, why it is not desirable that the managing agent should not run two companies. I need not tire the House with

[Sir Nripendra Sircar.]

that because that has gone out of the section altogether. Then, it proceeds to say :

“ My committee cannot bring themselves to believe either that it is the intention of Government to introduce legislation of this nature or that Government would seek this very inappropriate method of doing it. The intention underlying this clause is presumably to prevent a managing agent diverting to himself the profits which should properly accrue to the company. With this my committee are in sympathy, but they do not feel called upon to suggest a redraft.”

Now, Sir, what does it mean. The Bengal Chamber of Commerce says this is an admirable principle and all that they want is that the managing agent should not be prevented from running two companies. That, Sir, has now gone. We have not suggested that. The Bombay Chamber of Commerce although they would not help us with a redraft they accept the principle that the managing agent should not on his own account make profits from business which competes with the business of which he is the managing agent. Therefore, Sir, I think my Honourable friends of the European Group are rather incorrect in saying that the Chambers have opposed it. It is quite true that they opposed, and vehemently, the part of our provision which no longer appears in the Bill. But, as I have said, I have certain observations to make about the drafting and that is this. As we have drafted it in the Select Committee, it runs like this :

“ A managing agent shall not on his own account engage in any business which is of the same nature as the business carried on by a company under his management.”

Therefore, the only description is that the rival business should not be of the same nature. Obviously this is not a happy draft, and for this reason. To give an illustration, supposing a managing agent has his own business in, let us say, making bricks at Tinnevely in Madras where he supplies bricks to local people who want it ; and supposing a company is being run in Assam and they do exactly the same kind of business, namely, making bricks. Obviously this will be hit by this section because their business is of the same nature. That is not our intention. The intention of the Select Committee really was,—at any rate I speak for myself,—that managing agents should not on their own account start a business or be engaged in a business which may be a source of danger to the business managed by them, by reason of competition. I would therefore suggest to the House, in spite of what my Honourable friend, Mr. Chetty, said, that they should not agree to the complete deletion of 87H, but that they would favourably consider amendment No. 125 when it comes on later to which I will draw the attention of the House. It says :

“ That in clause 42 of the Bill, in the proposed section 87H, after the words ‘ which is of the same nature ’ the words ‘ and is calculated to prejudice ’ be inserted.”

Possibly No. 126 would be still more favourable to managing agents.

I should like to hear what is the fear of the managing agents if as a matter of fact they are prevented from on their own account running a business which will directly compete with the business of which they are managing agents. So far as the illustrations which have been given by my Honourable friend, Sir Cowasji Jehangir, are concerned, I do not think that any of them will be touched by this section if this precaution is added. And I do not think anybody will dispute that as a matter of

fact it is not the right principle that the agent should be allowed to compete with the business which he is managing with his own private business. Therefore my position is this, that I hope I should not be asked to make up my mind as to whether I should either oppose or support 87H as it stands. My attitude is that the principle of 87H ought to stand but the language should be improved and I therefore suggest to my Honourable friends here.....

Mr. M. A. Jinnah : With the addition of the words "calculated to prejudice" ! That would lead to all sorts of difficulties.

The Honourable Sir Nripendra Sircar : Yes, I quite agree that in disputed cases the court has got to decide it. But as it stands it is much wider. All that has got to be proved is that the two businesses are of the same nature. We have not used the words "competing business" at all, and one business may not be calculated to prejudice the other. It may not be competing with the other, but yet that is roped in by the language of 87H. That is my fear. I quite admit my Honourable friend, Mr. Jinnah's point that even if you put the words "calculated to prejudice", that does not remove the difficulties, and if such a situation arises that the matter has to go to court, the court has to decide on the evidence, on such evidence as it has, having regard to the locality in which the business is carried on, the nature of the business, the quantity of goods they supply, possibly the nature of the consumers, and so on. All those have got to be taken into consideration. But if some other way could be found which would be even an improvement on amendment No. 125, I need hardly say that I shall still more gladly accept it. But my point now is that 87H as it stands should not be supported and it should be limited by the words appearing in amendment No. 125 or some other more suitable form of words which can be suggested from any part of the House. That is my position.

Pandit Govind Ballabh Pant : Sir, I have always held that there should be no limit to the number of directorships that a man can hold, I am also of the opinion that there should be no limit to the number of managing agencies that any competent and efficient firm may hold. But at the same time I believe that it is against public policy to allow any man to engage in a competing business on his own account, when simultaneously he has to run another business as an agent on behalf of a principal. That would be against the very elementary canons of business morality. Now, I may inform Honourable Members of this House that the clause that is under discussion in substance agrees with the provisions of many of the articles of respectable companies like the Tata Steel Company. In the agreement of Messrs. Tata and Sons with the Tata Steel Company there is a provision to the effect that the managing agents will not engage in any business competing with the business of the principal concern. And I hope Sir Homi Mody will bear me out that even in a respectable concern like that, run by persons of supreme reliability and dependability as Messrs. Tata and Sons it is considered desirable and necessary that the agreement should contain a provision to the effect that the managing agents will not engage in business competing with the business which they have to conduct in their capacity of managing agents. That seems to me to be a conclusive argument as to why the law should make a provision of this type. Now, I will remind Honourable Mem-

[Pandit Govind Ballabh Pant.]

bers of the language of the original clause in the Bill as it was introduced. Section 87H in the original Bill ran as follows :

“ A managing agent shall not, whether directly or as managing agent for another person, engage in any business which is of the same nature as, or which is of such a nature that, it directly competes with the business carried on by a company under the management of such managing agent.”

Under it, the managing agent of one concern was debarred from acting as managing agent on behalf of another concern where both were run on the same lines and both worked towards the same end. That was really a provision which went beyond the requirements of the case and might have injured the growth and expansion of industry. This has been now restricted to this extent that a managing agent is debarred from engaging in business on his own account and for his own personal benefit, where such business is of the same nature as the business carried on by a company under his management. If the present clause is wider than the original clause, I think the responsibility rests on Sir Homi Mody and other representatives of industry in the Select Committee. They wanted these words to be omitted, “ which competes with the business carried on by a company ” and it was with a view to accommodate them that these words were deleted. I personally think that they were mistaken for by omitting those words they have enlarged the scope of restriction, and I suggest that those words be again restored. The clause will then run thus :

“ Which is of the same nature as and directly competes with the business carried on by a company under his management.”

This language is, I think, better and clearer than the words “ calculated to prejudice ” which is a very vague expression and may be interpreted in various ways by various people. I quite agree that if a brick kiln is started in Bombay and another in Calcutta by the same firm of managing agents, there can in the ordinary course be no competition between the two.

Sir Cowasji Jehangir : Why not ?

Pandit Govind Ballabh Pant : Ordinarily, bricks if carried from Bombay to Calcutta will have to pay so much in the form of freight that it will perhaps exceed the local price of the bricks themselves.....

Sir Cowasji Jehangir : Why do you take bricks ? Take a cotton mill. If you have a mill in Bombay and another in Calcutta, they will compete ?

Pandit Govind Ballabh Pant : If they do, then the man must not do it.....

Sir Cowasji Jehangir : That is exactly the point.

Pandit Govind Ballabh Pant : But my point is this : that if he can carry on business without injuring the interests of the company which he manages as a managing agent, I would not stand in his way. If there is a real conflict, then I would certainly like such contracts and such sort of employment to be barred. But I am prepared to clarify the position and to introduce necessary words to guard against the possibility of managing agents being prevented from engaging in business which does not really compete with their work as managing agents. I suggest that the clause should be retained.....

Sir Cowasji Jehangir : May I ask what the Honourable Member means by "compete"? There are two mills in Bombay under the same managing agent: he is the proprietor of one and the managing agent of the other. They are not really competing in the sense in which my Honourable friend uses the word.

Pandit Govind Ballabh Pant : It depends on the counts, on the quality and the nature of the cloth manufactured by them. If one produced only cloth of 10 counts or 12 counts, and the other cloth of between 50 and 60 counts, there is not much competition: but if both turn out cloth of the same quality, say, between 10 and 20 counts there is obviously competition between the two: and if for example, the season is slack and the stocks are lying idle my own apprehension is--and if I were a businessman—which luckily or unluckily I am not—I would be inclined to dispose of my own stock first in a slack season, before selling the goods that I held as an agent. I need not elaborate my argument. This is obvious enough. I am trying in fact to help the House in arriving at some suitable form which, while preserving the principle of this clause, would not at the same time tend to restrict unduly the managing agent in the pursuit of new fields. I do not want to stand in the way of his expanding his business, if it does not in reality conflict with his duty as an agent.

Mr. M. S. Aney : There is already an amendment to that effect under No. 126 by Mr. Satyamurti: it is precisely in the terms in which my Honourable friend, Pandit Govind Ballabh Pant, has suggested.

Mr. T. Chapman-Mortimer : Sir, I rise to support the amendment of my Honourable friend, Sir Cowasji Jehangir. We have heard the Honourable the Law Member quoting the Bengal Chamber of Commerce, and if I may, I should just like to repeat what the Chamber have said: They said that they trust that "the intention is merely to prevent managing agents themselves from competing with the company". Now, as I understand it, the law of agency, quoted by my Honourable friend, Mr. Govind Ballabh Pant, makes it impossible for an agent to do anything which would deprive his principal of commission legitimately due to him; and in these circumstances the clause as it now stands simply is putting into some vague language what in fact is the law, namely, that an agent cannot take secret commission or any other kind of commission which should legitimately go to his principal: but as the clause is now worded—and that is what we have got to consider in this House—it is so vague that it may rope in all sorts of people who do perfectly legitimate business on their own behalf without in any way meaning to hurt the company under their management. It has been suggested that if the words "calculated to prejudice" are introduced or if the words "or which is of such a nature that it directly competes with" are inserted, this clause as it stands would be improved. I submit that that will not be the case. It is only improvement to this extent, that it will enable people to fight the case out in court. You cannot conduct business on those lines: if you have got to go to court, or still more, if you are liable to be taken to court for everything you do, it becomes practically impossible to do any reasonable business at all; because quite apart from the fact that you have to waste a great deal of money on legal expenses and lawyers' fees, you have also to waste a great deal of time which might seriously jeopardise the welfare of the company. What we have now to consider is whether this

[Mr. T. Chapman-Mortimer.]

clause as it is worded or even as amended by my Honourable friend, Mr. Satyamurti's amendment, will in effect be of any use at all. I submit it will not; for this reason that if my Honourable friends will look at the clause they will see it says: "A managing agent shall not *on his own account* engage in *any business* which is *of the same nature* as the business carried on by a company under his management". Now, I have before me a memorandum of a newly started company. Obviously if a matter of this kind is taken to court, the court will say "What is the business of the company?" and the first thing they will do is to find out from the memorandum of association and the articles what the business of the company purports to be. In this particular memorandum that I have before me, among other things the business of the company is as follows:

"To carry on the business of insurance of every description...."

I may say that the company is a company that is called the Safe Deposit Company, but it contains in this memorandum a clause which reads as above. It contains another clause:

"To acquire and undertake the whole or *any part* of the business, property and liabilities of *any person* or company carrying on *any business* which the company is authorised to carry on or possessed of property suitable for the purposes of the company."

That is a very wide clause. It appears in this memorandum. If the managing agent of that company does any of these things, that is to say, undertakes the whole or *any part* of *any business* of *any person* or company carrying on *any business*—I submit that these words are so wide and this clause as it is now framed is so wide, that if it is going to mean anything, ordinary business will be so surrounded by hampering restrictions from beginning to end that you cannot conduct business in any shape or form on these lines. (*An Honourable Member*: "Oh.") My friend says "Oh": probably he is not a business man—he is probably a lawyer! Take again another clause of this memorandum—"sell, let, exchange or otherwise, etc., etc., shares, debentures or securities". What is to be the position of the managing agent of a company in such a case or in the case of a company which is solely, for example, an investment company? If he buys Government paper, if he buys any shares, it may some day be brought up against him by some member of that company that the managing agent has been carrying on business against the interests of his own company. As the clause now stands, he does not have even need to say that. If he merely says that the managing agent has been carrying on business "*on his own account*", that will do under the clause as it now stands. I submit that sort of thing is hopelessly bad law. We are all agreed in principle that it is a thoroughly bad thing for any managing agent, or for that matter, any director, or any managing director, or any member of a company, to carry on business which is dishonest in that he is possibly buying jute or cotton and then when things go wrong, debiting the company, and when they go right, appropriating the profits to himself. We all know that under the law of agency he can be prosecuted today without this proposed section. We also know that in any decently run company, whether it is run by directors or by a managing agent, any man who does a thing like that will immediately render himself liable

to instant dismissal. I submit that the clause as it stands, or even as amended, as suggested by my Honourable friend, the Law Member, or by my Honourable friend, Mr. Satyamurti, will still be so vague and so wide as to be definitely one which will hamper trade and be in restraint of trade as my Honourable friends have said. I support the amendment of my Honourable friend, Sir Cowasji Jehangir.

Mr. M. Ananthasayanam Ayyangar : If provision in a similar statute with respect to a similar transaction can be of any use, I can suggest that a reference may be made to a similar provision in the Indian Contract Act under section 259. No doubt, there is a separate Partnership Act which has come into existence, but the thing is the same. Section 259 runs as follows :

“ If a partner, without the knowledge and consent of the other partners, carries on any business, competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby.”

Each partner is an agent of the other partners and all partners are agents of the firm. Therefore, the position of managing agent with respect to the company is practically on all fours with the relationship of one partner to the other partners or of all the partners jointly and severally to the firm. Therefore, if, instead of the word “ prejudice”, the words “ any business, competing or interfering” are used, the difficulty will be solved. If those words had given rise to any difficulty, the same difficulty may also be continued in this Bill. But so far as I am aware, it has not led to any difficulty. In cases of this kind the court has also to go into this matter whenever a dispute arises and find out whether in respect of a particular transaction or a series of transactions the business was competing or interfering. So far as human ingenuity allows, we can try to be absolutely specific with respect to the language used, but having regard to the nature of the transaction some amount of doubt and difficulty always arises. Therefore, I would suggest that the words “ competing or interfering with” may be used. I would also refer to section 27 of the Contract Act. This is an answer to the very valuable remarks that have come from the lips of the Honourable Members of the European Group in respect of the restraint of trade. The section says :

“ Every agreement, by which any one is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void.”

But there are exceptions. One is :

“ Partners may agree that some one or all of them will not carry on any business other than that of the partnership during the continuance of the partnership.”

Another one is :

“ Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership.”

The language of section 259 is “ competes or interferes with such business”, that is, the business of the partnership. Either the one or the other may be used. To give an unrestricted right to the managing agent to carry on business on his own account will lead to a lot of complication. The general law relating to agency ought not to be abrogated by this. If the company wants to claim damages on account of the competing business the general law permits a suit for compensation

[Mr. M. Ananthasayanam Ayyangar.]

or damages. We should not give scope for such competition lest it might involve the company in a lot of litigation. Therefore, I suggest that the words "competing or interfering" may be used. Then it will read like this: "carries on any business competing or interfering with that of the firm".

The Honourable Sir Nripendra Sircar : May I put a question to my Honourable friend if he will allow me? Having regard to what he has said, is there any objection to his taking amendment No. 126, provided the word "or" is changed into "and"? In that case two conditions have to be complied with, that is, the business must be of the same nature and it must also directly compete. Has my Honourable friend any objection to that?

Some Honourable Members : No.

Mr. Deputy President (Mr. Akhil Chandra Datta) : Before putting the question, that is, amendment No. 122, I want to state that some suggestions have been made to remove controversy. One is that the present clause 87H may be retained subject to such amendments as are suggested in amendment No. 126.

Mr. M. A. Jinnah : What is to happen to amendment No. 122?

Mr. Deputy President (Mr. Akhil Chandra Datta) : I am explaining the position. One suggestion is that the present clause 87H may be retained subject to some such amendments as are suggested in Nos. 125 or 126, or as suggested by Pandit Govind Ballabh Pant with the words "as directly competes with". There is another suggestion which has been made by Mr. Ayyangar. In view of all these suggestions, what is the position of the Honourable the Mover? Does he want to withdraw this amendment No. 122 or does he want to press it?

Sir Cowasji Jehangir : I will certainly withdraw my amendment on the understanding that the words "competing and interfering" are inserted in the section.

Mr. Deputy President (Mr. Akhil Chandra Datta) : There can be no understanding with the Chair.

Sir Cowasji Jehangir : Then, I ask for permission to withdraw.

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

Mr. S. Satyamurti : With your permission, I should like to move my amendment in a different form. I should like to move it in this form :

"That in clause 42 of the Bill, in the proposed section 87H, after the words 'same nature as' the words 'and directly competes with' be inserted."

This is a formal amendment. I think the House is in a favourable mood to accept the amendment. Sir, I move.

[At this stage, Mr. President (The Honourable Sir Abdur Rahim) resumed the Chair.]

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That in clause 42 of the Bill, in the proposed section 87H, after the words 'same nature as' the words 'and directly competes with' be inserted."

The motion was adopted.

Mr. Mathuradas Vissanji (Indian Merchants' Chamber and Bureau : Indian Commerce) : Sir, I beg to move :

"That in clause 42 of the Bill, in the proposed section 87H, before the words 'A managing agent' the words 'Unless otherwise determined by the company in general meeting' be inserted."

There is no doubt that this is a very salutary proposal and as the debate has gone on it has been shown that serious complications might be created. An interpretation of the clause may have to be sought in a Court of law. To avoid such possibility and save costs, I think it is much better that a provision like this should be inserted. Suppose a case has got to be decided and the company or the managing agent take the view that the sanction of the company in general meeting should be obtained, that will obviate all the difficulties. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

"That in clause 42 of the Bill, in the proposed section 87H, before the words 'A managing agent' the words 'Unless otherwise determined by the company in general meeting' be inserted."

Sir Leslie Hudson : Sir, I support this amendment. After all this Bill is not supposed to be entirely prohibitory and it is in accordance with the general underlying sentiment of the Bill that the shareholders should have something to say on important matters. I think that in this case the shareholders should have a say in the matter.

The Honourable Sir Nripendra Sircar : I oppose this amendment. After all, we know some managing agents want to make out that they have been crushed altogether, but after all, what has been done. The managing agent has been asked to observe the ordinary rules of honesty as embodied in the Contract Act, namely, that he should not as agent put himself in a position where his interest of making profits on his own account would be in conflict with the interests of the company which he is managing. We have put in two safeguards, first of all, that business must be of the same nature and now that Mr. Satyamurti's amendment has been accepted it must be not only of the same nature but it must be directly competing with the other business. If any shareholder has the hardihood to say that a case has happened which complies with both the conditions, it will be for him to make it out and ask for damages or injunction. If we accept this amendment, it will be really doing away with the whole thing. I oppose this amendment.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That in clause 42 of the Bill, in the proposed section 87H, before the words 'A managing agent' the words 'Unless otherwise determined by the company in general meeting' be inserted."

The motion was negatived.

MESSAGE FROM HIS EXCELLENCY THE VICEROY AND GOVERNOR
OR GENERAL.

Mr. President (The Honourable Sir Abdur Rahim) : Order, order. I have received an Order from His Excellency the Viceroy and Governor General with respect to the motion for the adjournment of the House sought to be moved by Mr. Mohan Lal Saksena this morning. The Order runs as follows :

"In exercise of the power vested in me by sub-rule (2) of rule 22 of the Indian Legislative Rules, I, Victor Alexander John, Marquess of Linlithgow, hereby disallow the motion of Mr. Mohan Lal Saksena to move the adjournment of the House for the purpose of considering 'the failure of the Government of India to secure the secrecy of vote in the rural areas of the United Provinces as recommended by the Legislative Assembly' on the ground that the motion relates to a matter which is not primarily the concern of the Governor General in Council.

(Sd.) LINLITHGOW,
Viceroy and Governor General."

Sd/-,

The 2nd October, 1936.

(Hear, hear.)

Pandit Govind Ballabh Pant (Rohilkund and Kumaon Divisions : Non-Muhammadan Rural) : May I just put a question, Sir ? Is not the Federal Legislative Assembly a primary concern of the Government of India ?

Mr. President (The Honourable Sir Abdur Rahim) : I cannot answer that question.

THE INDIAN COMPANIES (AMENDMENT) BILL—contd.

Mr. President (The Honourable Sir Abdur Rahim) : There are several amendments which stood over, in the name of Mr. Akhil Chandra Datta. I suppose they will be moved now ?

Mr. Akhil Chandra Datta : Yes, Sir, I beg to move :

"That in clause 42 of the Bill, in the proposed section 87G, after the words 'a power to' where they occur for the second time the words 'lend or borrow with or without security or incur expenditure on capital account or' be inserted."

If this amendment is accepted, the second portion of section 87-G. will read like this :

"A managing agent shall not exercise in respect of any company of which he is a managing agent a power to issue debentures or, except with the authority of the directors, and within the limits fixed by them, a power to lend or borrow with or without security or incur expenditure on capital account or invest the funds of the company, and any delegation of any such power by a company to a managing agent shall be void."

Sir, the point of this amendment is this. Section 87-G has laid down that the managing agents will not exercise these two powers, viz., issuing debentures and the investment of the funds of the company with

out the authority of the directors and except within the limits fixed by them, and I propose to add that certain other powers should not be exercised by the managing agents without the authority of the directors, viz., lending money, borrowing money and incurring expenditure on capital account; these are very large powers, the power of incurring of expenditure on capital account, and also borrowing money. As a matter of fact, in the case of almost all respectable companies, these are powers which are given under the articles of association to the directors. Therefore, Sir, I propose that these three powers should also be included in 87-G.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 42 of the Bill, in the proposed section 87G, after the words ‘ a power to ’ where they occur for the second time the words ‘ lend or borrow with or without security or incur expenditure on capital account or ’ be inserted.”

The Honourable Sir Nripendra Sircar : Sir, I oppose this amendment. What my Honourable friend proposes to do is that the statute should provide that the managing agent can do these four or five things. I do not see any point in that. By the very definition laid down, the managing agent can do whatever is necessary for managing the business subject to the rights of the directors. Why pick out these four or five items and say that the managing agent can do one, two, three, four ? I think my Honourable friend might as well have proceeded to say, “ he can take his luncheon at one o'clock ”. Sir, I see no object in this.

Mr. Akhil Chandra Datta : At your cost.

The Honourable Sir Nripendra Sircar : Now, Sir, I do not want to take the time of the House. I cannot really understand the point : when there must be a managing agency agreement, and when how far the management is going to be delegated to the managing agent must be the subject-matter of that agreement, I cannot see why four items of business should be picked out and put in the statute and made statutory. I oppose this amendment.

Mr. Akhil Chandra Datta : Sir, may I ask one question ? In that view of the matter, is it at all necessary to have 87-G ? That argument applies not only to the proposed three powers but also to the power of issuing debentures, and the power of investing funds ?

The Honourable Sir Nripendra Sircar : My Honourable friend will notice that 87-G takes away the power of managing agents to do certain things : what my friend is providing for is that out of twenty-five things he can do, he picks out four and says, “ the managing agent can do these things ”.

Mr. N. C. Ghunder (Calcutta : Non-Muhammadan Urban) : I think my friend the Honourable the Law Member is under a misapprehension, Sir. He thinks it is 119 which Mr. Datta has proposed, but it was 118.

The Honourable Sir Nripendra Sircar : I thought he read out No. 119 ? (Laughter.)

Mr. Akhil Chandra Datta : May I then know from the Honourable Member what is his position regarding 118 ?

The Honourable Sir Nripendra Sircar : I take the same attitude of hostility.

Mr. M. Ananthasayanam Ayyangar : Sir, there cannot be the same hostile attitude even with respect to this amendment, and there is no need to persist when a mistake has been made. I would say, "except with the authority of the directors, and within the limits fixed by them, a power to invest the funds of the company", etc., because when no funds of a company are invested, then that company collapses to that extent, and there is a loss. You are imposing a further obligation on the company. The same reason which holds good in the case of imposing a limit in the case of investments also holds good with equal force to the case of borrowing. I would therefore strongly support this amendment.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That in clause 42 of the Bill, in the proposed section 87G, after the words 'a power to' where they occur for the second time the words 'lend or borrow with or without security or incur expenditure on capital account or' be inserted."

The motion was negatived.

Mr. Akhil Chandra Datta : Sir, I beg to move :

"That in clause 42 of the Bill, after the proposed section 87G, the following section be inserted :

'87GGG. A managing agent may, subject to the control of the directors, exercise in respect of any company of which he is a managing agent the following powers, namely :

- (i) to allot or dispose of any shares of the company ;
- (ii) to make calls ;
- (iii) to refuse transfers of shares ;
- (iv) to incur expenditure on capital account ;
- (v) to lend or borrow money with or without security ;
- (vi) to dispose of the whole or part of the undertaking of the company ;
- (vii) to appoint, remove or suspend any officers, servants or agents of the company ;
- (viii) to institute, defend, compound, refer to arbitration or abandon any legal proceedings or claims by or against the company or its officer or otherwise concerning the affairs of the company ;
- (ix) to enter into contracts for sale or purchase or other transactions on behalf of the company ;
- (x) to effect insurance in respect of the property of the company '."

Now, Sir, the object of this amendment is not to prevent the managing agents from exercising these various powers. I rather propose to give them powers to do these things but only subject to the control of the directors. Now, there are two words in the definition of "managing agent" : "control" and "direction". I am anxious to point out that I have omitted the word "direction", and I am retaining only the word "control", and my main object is this : In the first instance, the managing agents are debarred from exercising these powers but all the same they will be subject to the control of the directors. If the managing agents use their powers, then the directors will have the power to interfere. But, in the first instance, the managing agents have these

powers. These are very important matters in connection with the management of a company and it is only desirable that the directors should have control over the managing agents in these matters. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 42 of the Bill, after the proposed section 87G, the following section be inserted :

‘ 87GGG. A managing agent may, subject to the control of the directors, exercise in respect of any company of which he is a managing agent the following powers, namely :

- (i) to allot or dispose of any shares of the company ;
- (ii) to make calls ;
- (iii) to refuse transfers of shares ;
- (iv) to incur expenditure on capital account ;
- (v) to lend or borrow money with or without security ;
- (vi) to dispose of the whole or part of the undertaking of the company ;
- (vii) to appoint, remove or suspend any officers, servants or agents of the company ;
- (viii) to institute, defend, compound, refer to arbitration or abandon any legal proceedings or claims by or against the company or its officer or otherwise concerning the affairs of the company ;
- (ix) to enter into contracts for sale or purchase or other transactions on behalf of the company ;
- (x) to effect insurance in respect of the property of the company ’.

The Honourable Sir Nripendra Sircar : Sir, for reasons already stated, possibly a little in advance of the proper time, I oppose this amendment.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 42 of the Bill, after the proposed section 87G, the following section be inserted :

‘ 87GGG. A managing agent may, subject to the control of the directors, exercise in respect of any company of which he is a managing agent the following powers, namely :

- (i) to allot or dispose of any shares of the company ;
- (ii) to make calls ;
- (iii) to refuse transfers of shares ;
- (iv) to incur expenditure on capital account ;
- (v) to lend or borrow money with or without security ;
- (vi) to dispose of the whole or part of the undertaking of the company ;
- (vii) to appoint, remove or suspend any officers, servants or agents of the company ;
- (viii) to institute, defend, compound, refer to arbitration or abandon any legal proceedings or claims by or against the company or its officer or otherwise concerning the affairs of the company ;
- (ix) to enter into contracts for sale or purchase or other transactions on behalf of the company ;
- (x) to effect insurance in respect of the property of the company ’.

The motion was negatived.

Mr. Akhil Chandra Datta : Sir, I move :

"That in clause 42 of the Bill, after the proposed section 87G, the following section be added :

' 87GGGG. A managing agent shall not, except with the previous approval of the Directors, exercise a power to sub-delegate the powers, authorities or discretions vested in him in relation to the management of the affairs of any company of which he is a managing agent '."

Sir, there are provisions in the various companies that the managing agents will have the power to sub-delegate their functions. As a matter of ordinary principle of jurisprudence, the managing agent has no right to delegate. Still, as a matter of fact, there are many agreements in which that power is given to the managing agents and is exercised by them. I may point out to the House that it is a very modest claim because my amendment says that the managing agents may sub-delegate the powers but not except with the previous approval of the directors. Therefore, I think there will be no objection to its acceptance. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

"That in clause 42 of the Bill, after the proposed section 87G, the following section be added :

' 87GGGG. A managing agent shall not, except with the previous approval of the Directors, exercise a power to sub-delegate the powers, authorities or discretions vested in him in relation to the management of the affairs of any company of which he is a managing agent '."

Mr. Susil Chandra Sen : I am afraid, Sir, I must oppose this amendment moved by my Honourable friend, Mr. Akhil Chandra Datta.

Sir Cowasji Jehangir : Why ?

Mr. Susil Chandra Sen : My Honourable friend, Sir Cowasji Jehangir, says "Why". I thought he could just wait for two minutes because I was going to give my reasons. The position is this. We have now in the Act defined a managing agent as a person who has the control of the whole business of the company subject to the directions of the directors as contained in the agreement. In the first place, before the managing agent is appointed, he will have to get the directors to specifically fix upon the powers which they delegate to him. If the directors want to provide against sub-delegation, there is nothing to prevent them from doing so. But supposing they do not do so and the managing agent delegates it he does so at his own risk. The sub-delegation does not take away his liability to any extent. He remains liable to the company all the same and the company is not a loser at all. I therefore do not see the necessity of this amendment at all. If the managing agent remains liable, he can delegate, he can do what he likes, but *qua* the company his liability is there and he cannot escape it. Therefore, I submit there is no necessity for this amendment at all.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That in clause 42 of the Bill, after the proposed section 87G, the following section be added :

' 87GGGG. A managing agent shall not, except with the previous approval of the Directors, exercise a power to sub-delegate the powers, authorities or discretions vested in him in relation to the management of the affairs of any company of which he is a managing agent '."

The motion was negatived.

Mr. Susil Chandra Sen : Sir, I move :

"That in clause 42 of the Bill, to the proposed section 87H, the words 'or by a company which is a subsidiary company of a company under his management' be added at the end."

Sir, the reasons are obvious. The managing agent is already debarred by the amendment which has been carried in this House today from carrying on a business on his own account which competes with the business of the company of which he is the managing agent. Now, this amendment is only an extension. It debars him from carrying on a competing business of the type which is carried on by subsidiary companies, the main company being the holding company. Sir, as we have been told on many occasions, the real use of the subsidiary company is to carry on a business which cannot be conveniently carried on by the parent company. Therefore, it stands to reason that if a managing agent has been debarred from carrying on a business which is of a competitive nature with the holding company, that he should equally be debarred from carrying on a business of the same nature and which competes with the business of the subsidiary company. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

"That in clause 42 of the Bill, to the proposed section 87H, the words 'or by a company which is a subsidiary company of a company under his management' be added at the end."

Pandit Govind Ballabh Pant : Sir, I have just one word to say. If the Honourable the Law Member will look at my amendment No. 128, he will find that there is no difference in substance between what my Honourable friend, Mr. Sen, has proposed and what I had myself put down in this amendment. But I feel that my words will take less space, as they are only eight in number as against 15 or 16 of Mr. Sen. So, I suggest that in place of the language used by Mr. Sen, the language used in my amendment may be adopted.

Mr. Susil Chandra Sen : In view of what has been said by my Honourable friend and seeing that we are pressed for space, I beg leave of the House to withdraw my amendment.

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

Pandit Govind Ballabh Pant : Sir, I beg to move :

"That in clause 42 of the Bill, in the proposed section 87H, after the word 'management', the words 'or by a subsidiary company of such company' be inserted."

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

"That in clause 42 of the Bill, in the proposed section 87H, after the word 'management', the words 'or by a subsidiary company of such company' be inserted."

The motion was adopted.

Mr. T. S. Avinashilingam Chettiar : May I point out, Sir, that amendment No. 52 in the Revised Final List has been left over at the suggestion of the Honourable the Law Member until we had come up to section 87H. Now, that we have disposed of section 87H, I request I may be permitted to move my amendment No. 52.

Mr. President (The Honourable Sir Abdur Rahim) : Are there no other amendments to section 87H ?

Mr. T. S. Avinashilingam Chettiar : The rest of the amendments relate to sections after 87H.

Mr. President (The Honourable Sir Abdur Rahim) : In that case you can move.

Mr. T. S. Avinashilingam Chettiar : Sir, I beg to move :

“ That in clause 42 of the Bill, for clause (a) of the proposed section 87B, the following be substituted :

‘ (a) the office of a managing agent shall be vacated if—

(1) he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable ; for the purpose of this sub-clause where the managing agent is a firm or company an offence committed by a member of such firm or a director or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company ;

(2) he is adjudged insolvent ;

(3) he acts in contravention of the provisions contained in section 87H or 87J ’.”

An Honourable Member : We have not yet come to section 87J.

Mr. T. S. Avinashilingam Chettiar : It is the amended section of Sir H. P. Mody, section 87HH. I will not argue about the provisions of sub-clauses (2) and (3) of this amendment, for I see even when I made some observations over the general consideration of the Bill, the Honourable the Law Member said that the Government are tabling an amendment to the effect that if a managing agent is adjudged an insolvent, he will vacate his managing agency. I also see that amendment No. 66 is tabled by my Honourable friend, Mr. Sen, and it reads as follows :

“ That in clause 42 of the Bill, after the proposed section 87B, the following new section be inserted :

‘ 87BB. The office of a managing agent shall be vacated if—

(a) being an individual or a firm—he or the firm is adjudicated an insolvent ;

(b) being a private limited company—it is wound up except for purposes of a reconstruction ;

(c) he acts in contravention of section 87H ’.”

Therefore, I presume that the Government still stand by that amendment that they have tabled and I hope they will accept sub-clauses (2) and (3) of my amendment. The third sub-clause includes section 87HH.

Sir H. P. Mody : My amendment is not section 87HH. It was 4 P.M. originally so, but it is now section 87D(5).

Mr. T. S. Avinashilingam Chettiar : Then I will amend my amendment by inserting section 87D(5) for section 87J. By sub-clause (1) of my amendment, I want that a managing agent should vacate office if he commits a non-bailable offence. Section 87B deals with vacation of office by managing agents and it reads as follows :

“ A company may, by resolution passed at a general meeting of which notice has been given to the managing agent in the same manner as to members of the company, remove a managing agent if he is convicted of an offence in relation to the affairs.... ”

The rest of the words, I have taken from the Bill as it is altered by the Select Committee. The only thing that I omitted is that a resolution will be necessary to make them eligible. My reasons are these. In most of the companies managing agents have above 51 per cent. of the shares and it will be practically impossible to pass any resolution even though they commit the worst faults and frauds to make them vacate office. Supposing in many companies they have 40 per cent. of the shares, they are bound to have some shareholders or directors, some of their relatives and friends who will have ten per cent. more shares. In any case, in most cases, it will be impossible to pass a resolution, whatever be the offence that they have committed, asking them to vacate office. So, I have tabled my amendment. The effect of my amendment is that they must vacate office, if they commit a non-bailable offence. The reason why I ask them to vacate office automatically is that there is a conviction by the Court for a non-bailable offence. This has a long history behind it, which I mentioned on previous occasions. We do not want them to vacate office for any small offence, but only for non-bailable offence and in the case of a non-bailable offence, I believe there should not be any resolution necessary to make them vacate office. Sir, I move.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

" That in clause 42 of the Bill, for clause (a) of the proposed section 87B, the following be substituted :

' (a) the office of a managing agent shall be vacated if—

- (1) he is convicted of an offence in relation to the affairs of the company punishable under the Indian Penal Code and being under the provisions of the Code of Criminal Procedure, 1898, non-bailable ; for the purpose of this sub-clause where the managing agent is a firm or company an offence committed by a member of such firm or a director or an officer holding a general power of attorney from such company shall be deemed to be an offence committed by such firm or company ;
- (2) he is adjudged insolvent ;
- (3) he acts in contravention of the provisions contained in section 87H or 87D(5) '."

The Honourable Sir Nripendra Sircar : Sir, having regard to the amendments which have already been accepted by the House, it is not possible for anybody to support either No. 1 or No. 3, for this reason. Paragraph (1) will be inconsistent with amendment No. 58 which has been accepted by the House which is that a managing agent shall not be liable to removal under the provisions hereof if the offending partner, director or officer as aforesaid be expelled or dismissed by the managing agent within 30 days. So this will not fit in with that at all. The House has already said that the managing agent will not vacate his office if the offending partner is removed within 30 days. Then, with regard to (3), I am not raising a point of order but I am pointing out to my Honourable friend that 87H has now been amended and under 87H as it stands anybody who complains has got to show that the one business was directly competing with the other and was of the same nature. Is that going to be decided by anybody else except the Courts when there is a dispute ? Under this scheme shareholders have got to say, "you have been competing with us, you must go". And the Honourable Member has not even thought a resolution of the shareholders as necessary, but that

[Sir Nripendra Sircar.]

it shall be vacated if he acts in contravention of 87H. How is that going to be decided? Who is going to settle it, and who is going to dismiss him? With going to the Courts this is a complete misfit.

Apart from all these objections, on the merits I do not see why because a person has been convicted of a non-bailable offence punishable under the Indian Penal Code, he must automatically vacate his position. It may be any kind of offence; it may be an injury received or an injury given in a football match. Why should he automatically vacate his office because that sort of thing has happened? Sir, I object to this amendment.

Prof. N. G. Ranga : Sir, the Honourable the Law Member objected to the first item of this amendment on the plea that the managing agent may come to be convicted in a Court of law for an offence which may not have anything to do with the activities of the particular company. Sir, it is quite possible that one who is a managing agent of the Government of India may come to be directly or indirectly interested in the Durand football match either by financing it or in a philanthropic manner by subscribing to its support. But, Sir, if it is done in the course of his work carried on in the interests of a particular company, and it is for that particular purpose that he is found guilty in a Court of law for an offence which is non-bailable and for which offence he is convicted, I do not see any reason why he should not be made to vacate his office automatically as managing agent. Sir, he wants us to believe that it is not an impossible thing for shareholders to pass a resolution to the effect that the managing agent should vacate his office because he has been convicted of an offence in relation to the affairs of a company punishable under the Indian Penal Code and being under the provisions of the Code of Criminal Procedure non-bailable, etc. But my Honourable friend, Mr. Chettiar, has made it perfectly clear how impossible it is in ordinary circumstances for shareholders to pass a resolution like this.

The Honourable Sir Nripendra Sircar : How would you reconcile that with amendment No. 58 which has been accepted by the House?

Prof. N. G. Ranga : In regard to that it is only a matter of redrafting.

Sir Cowasji Jehangir : Redrafting what you have passed?

Prof. N. G. Ranga : That is for the legal acumen of the Law Member and also the other legal experts in this House to try and redraft this particular amendment in such a way as to make it fit in with that other amendment No. 58.

The Honourable Sir Nripendra Sircar : How can legal acumen override what has been done by the House?

Prof. N. G. Ranga : At the same time the Law Member has not disputed the necessity for taking some action against a managing agent who has been convicted of a non-bailable offence in relation to the affairs of the company, and I only plead that he should try to come to our rescue and help us in making such a provision in this Act so as to enable the shareholders to be rid of such a guilty managing agent. Sir, I cannot

understand why the Law Member is not as anxious as we are to help the shareholders to get rid of a managing agent who has been found guilty. I cannot understand why the managing agent should be given even this opportunity of going and placing his case before the shareholders after he has been found guilty in a Court of law. If he is found guilty in one Court of law it is still open to him to appeal to a higher Court of law. He can carry on this procedure of appealing until he is either tired of appealing or he is not able to appeal to any higher Court. But once he is found to be guilty of a non-bailable offence in connection with the activities of that particular company of which he is managing agent and from which he has been paid for so many years, I do not see any reason why he should be given any further opportunity of going to the shareholders and presenting his case and somehow or other manipulating the votes in such a way as to get a majority for himself and continue to be in management of that particular company. Therefore I appeal to the Honourable the Law Member to try to help us and co-operate with us in trying to provide a means by which the shareholders can be helped to get rid of a managing agent automatically as soon as he is convicted of such a serious crime. Sir, it is not that I am anxious to support this amendment as it is, with all the difficulties that the Law Member has pointed out, but I have said these few words only to appeal to him to try to come to our rescue and help us.

Mr. T. S. Avinashilingam Chettiar : Sir, may I say one word? Since the Law Member has agreed to sub-clause (2) and has also agreed to sub-clause (3) with reference to 87D (5), if I understood him correctly.....

The Honourable Sir Nripendra Sircar : No. I can agree to No. (2) if it is put in the proper place and in the proper way, but the whole of clauses (1) and (3) I strongly object to.

Mr. T. S. Avinashilingam Chettiar : In that case, Sir, can I be permitted to move the following?

“That in clause 42 of the Bill, after clause (a) of the proposed section 87B, the following be added as (aa):

‘(aa) The office of a managing agent shall be vacated if he is adjudged insolvent.’”

The Honourable Sir Nripendra Sircar : I am prepared to accept that if the present amendment is withdrawn and the House and the Chair allow him to move it.

Mr. President (The Honourable Sir Abdur Rahim) : I think that will be the proper course for the Honourable Member. He should withdraw this amendment and move another amendment in the terms suggested. Has the Honourable Member leave of the House to withdraw this amendment?

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

Mr. T. S. Avinashilingam Chettiar : Sir, I move:

“That in clause 42 of the Bill, after clause (a) of the proposed section 87B, the following be added as (aa):

‘(aa) The office of a managing agent shall be vacated if he is adjudged insolvent.’”

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 42 of the Bill, after clause (a) of the proposed section 87B, the following be added :

‘ (aa) The office of a managing agent shall be vacated if he is adjudged insolvent ’.”

Mr. S. Satyamurti : You will kindly notice, Sir, that I have got an amendment, No. 132 in the Revised Final List, at page 18, which seeks to add new clause—87J—including a number of contingencies under which office is vacated, and insolvency is one.

Mr. President (The Honourable Sir Abdur Rahim) : Then why should this be moved ? I do not know what Mr. Chettiar wants.

Mr. T. S. Avinashilingam Chettiar : This has been accepted by the Government.

Mr. President (The Honourable Sir Abdur Rahim) : But there is another and more comprehensive amendment of Mr. Satyamurti.

The Honourable Sir Nripendra Sircar : The position is, Sir, that the more comprehensive amendment may be lost : I do not know. Supposing the more comprehensive amendment is lost, I do not want my friend to be shut out by any technicality.

Mr. President (The Honourable Sir Abdur Rahim) : Well, it has been moved and I have put it to the House.

The Honourable Sir Nripendra Sircar : I have nothing to say : I accept it.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 42 of the Bill, after clause (a) of the proposed section 87B, the following be added :

‘ (aa) The office of a managing agent shall be vacated if he is adjudged insolvent ’.”

The motion was adopted.

Mr. S. Satyamurti : Sir, may I move amendment No. 132 ? I am not moving 87I, because it is covered by the previous amendment. I move :

“ That in clause 42 of the Bill, after the proposed section 87H, the following new section be added :

‘ 87J. The office of a Managing Director shall be vacated if the Managing Director—

(a) fails to obtain within the time specified in sub-section (1) of section 84, or at any time thereafter ceases to hold, the share qualification, if any, necessary for his appointment, or

(b) is found to be of unsound mind by a Court of competent jurisdiction, or

(c) is adjudged an insolvent, or

(d) fails to pay calls made on him in respect of shares held by him within six months from the date of such calls, being made, or

(e) without the sanction of the company in general meeting accepts or holds any office of profit under the company other than that of a Managing Director or Manager or a legal or technical adviser or a banker, or

(f) accepts a loan from the company in contravention of section 87D,

- The Honourable Sir Nripendra Sircar :** Sir, I have an objection to take to the moving of this amendment on a point of order. If I may draw the attention of the House and of the Chair to section 86G at page 16 of the Bill it says the office of a director shall be vacated if—then there are clauses (a) to (g). The amendment now proposed says that the office of a managing director shall be vacated if—then we have clauses (a) to (j).....

The Honourable Sir Nripendra Sircar : No ; when the Honourable Member moved it, he moved it as " managing director ".

The Honourable Sir Nripendra Sircar : We are at cross purposes : I thought what was moved was about managing directors.

The Honourable Sir Nripendra Sircar : But it is not a question of my friend apologising. I do strongly object to a thing like this being started now, that is to say, that the managing agent has got to be removed for any of these things in clauses (a) to (j). For that no notice has been given. I do not know whether this is necessary at all. My Honourable friend should not be allowed to correct that because it is not a merely small change. It is changing the whole thing. While moving he did not correct it, and the Chair should not allow him to correct it now, even though my friend may want it. The whole subject of managing agency will have to be gone over again *de novo* if that change is to be made.

Mr. President (The Honourable Sir Abdur Rahim) : I cannot allow it to be made now.

Mr. S. Satyamurti : Will you kindly allow me to make a submission ? Clause 42 of the Bill relates to managing agents and only to managing agents. My amendment is to clause 42 of the Bill. In section 87H also I proposed an amendment regarding managing agents : if you will kindly read the proposed amendment—section 87I, it also deals with managing agents. Looking at the context I submit nobody could have read it except as referring to managing agent. It is a mistake. This amendment is to clause 42 of the Bill : there is no managing director at all. In clause (e), you will find it supports my contention because I say “other than that of a managing director”.

Mr. President (The Honourable Sir Abdur Rahim) : I am not sure whether you should not give fresh notice. As objection has been taken, I cannot allow this to be moved. I can only go on the wording of the amendment as printed.

Mr. M. S. Aney : May I just put in a word, Sir ? If sub-section (2) of section 86G were read along with this amendment—that sub-section says :

“ Nothing contained in this section shall be deemed to preclude a company from providing by its articles that the office of director shall be vacated on grounds additional to those specified in this section.”

Evidently, the object of the Mover of the amendment was certainly to refer to the managing agent and not to the managing director. He wants the office of director also to be governed independently of the provisions made for the removal of the managing agent. It seems to me to be obviously a mistake in writing, or some such mistake.

Dr. Ziauddin Ahmad : The words “ managing director ” do not occur in the definition clause. In clause 2 of the Bill, “ manager ” and “ managing agent ” occur, and there is no such word as “ managing director ”. Evidently, it is a slip of my Honourable friend, or some such thing.

Mr. T. Chapman-Mortimer : Sir, this list of amendments has been in the possession of the House for the last ten days and if my Honourable friend does not till now discover that there is a mistake in his amendment, I do not think that this House should be lenient in the matter. My Honourable friend should give two days' formal notice. This is a very serious Bill and these amendments require a lot of consideration and I submit that you should not allow the Honourable Member to move his amendment now.

Mr. President (The Honourable Sir Abdur Rahim) : The Honourable the Leader of the House and other Members take objection to the moving of the amendment in the form now suggested and, I am afraid, therefore, I cannot allow it.

Pandit Govind Ballabh Pant : I move :

“ That in clause 42 of the Bill, after the proposed section 87H, the following be inserted :

‘ 87HHH. The office of a Managing Agent shall be vacated if the Managing Agent acts or is a party to the contravention of any of the provisions contained in—(it must be, ‘ clause ’, and not ‘ this section ’)—clause 42 ’.”

I move that in case of a breach of any of the provisions of clause 42 the managing agent shall vacate his office. The amendment is simple enough. Certain duties have been imposed on the managing agent and certain disabilities too, under this clause 42. He is required to do certain things and to abstain from doing others. If no penalty is provided, then there is little use in prescribing those duties or disabilities or imposing those conditions. In order to make the provisions effective, it is necessary to prescribe some sort of penalty. This Bill teems with many penal provisions in the form of fines, imprisonment, etc., but in clause 42 there is no provision of such a ferocious type. The penalty that I am providing here is much simpler and in case any action is taken by anybody which is not covered by this clause 42, then it will be open to the managing agent, as it is open to other person who is dealt with in an unlawful and illegal manner, to seek the assistance of the Court for the vindication of his rights. That is the remedy available to every person, and that alone is the remedy available to any one when his rights are interfered or dealt with in an unlawful manner. I hope that the House will agree that the provision I am making is necessary, wholesome and salutary.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 42 of the Bill, after the proposed section 87H, the following be inserted :

‘ 87HHH. The office of a Managing Agent shall be vacated if the Managing Agent acts or is a party to the contravention of any of the provisions contained in clause 42 ’.”

The Honourable Sir Nripendra Sircar : I do not want to raise a point of order, but I want the House to realise what is happening. We are now providing that for breach of any of the provisions in clause 42, which runs into four pages, the managing agent's office shall be vacated. We have in the different sub-clauses provided for penalties in respect of some. If the House will turn to page 20, they will find, for contravention of section 87D, which is in clause 42 :

“ In the event of contravention of sub-section (1) any director of the company who is a party to the making of the loan shall be punishable with fine which may extend to five hundred rupees.”

Section 87E, paragraph 2 :

“ In the event of any contravention of the provisions of this section, any director or officer of the company making the loan or giving the guarantee who is knowingly and wilfully in default shall be liable to fine and make good the loss.....”

So that, in some of the cases, not in all, we have provided a punishment or penalty for contravention of the sub-clauses of 42. I admit that there are many other sub-clauses about which there is no penalty.

Mr. Bhulabhai J. Desai : Assignment of office.

The Honourable Sir Nripendra Sircar : In respect of some of them penalties have not been specifically provided for, I mean they have been deliberately not provided for as being unnecessary. For instance, if the transfer is void, then it is for the company to proceed on the footing that the transfer is void. It is not necessary that for every contravention of the numerous sub-clauses the managing agent must be sent to jail.....

Pandit Govind Ballabh Pant : I am not sending him to jail.

The Honourable Sir Nripendra Sircar : On the merits, I have only one submission to make to this House. Of the numerous provisions, if there is the slightest breach of any one of them, what is the punishment ? He will vacate his office. As I said, my Honourable friend, I am quite sure, does not want to get rid of the managing agent, but at the back of his mind he is obsessed with the idea that the managing agent is a nuisance and should be removed. I am quite sure that he believes that he does not want the managing agent to be removed, but that is what he is doing. Here are sub-clauses which run into three pages. If there is a breach of any of them, then there is no half-way house, he must vacate automatically.

Sir Cowasji Jehangir : The punishment does not suit the crime.

The Honourable Sir Nripendra Sircar : Severe punishment. He must vacate automatically if any of the numerous sub-clauses which cover three pages are broken. I submit that on the merits it is too drastic a punishment even for the managing agent.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 42 of the Bill, after the proposed section 87H, the following be inserted :

‘ 87HHH. The office of a Managing Agent shall be vacated if the Managing Agent acts or is party to the contravention of any of the provisions contained in clause 42 ’.”

The motion was negatived.

Babu Baijnath Bajoria : In view of the fact that Regulation 71 has been made compulsory, I do not want to move amendemnt No. 136.

Pandit Govind Ballabh Pant : Again, I have to seek your indulgence. Amendment No. 138. In place of the words “ this Act ”, the words which in reality I wanted to write, it must be a mistake of mine, were “ any agreement ”, so that the amendment will read as follows :

“ That in clause 42 of the Bill, after the proposed section 87H, the following new section be inserted :

‘ 87HHHH. Nothing in any agreement or in the articles of association of any company shall prejudice the right of the company to remove the managing agent according to general law ’.”

An Honourable Member : What is the meaning of that ?

Pandit Govind Ballabh Pant : The meaning is that the managing agent is liable to be removed under ordinary law for many things which are not covered by this Act. A speech was made by the Honourable the Law Member dealing with this aspect of the matter.

Mr. M. A. Jinnah : As if the agreement did not exist ?

Pandit Govind Ballabh Pant : Yes, as if the agreement did not exist. In order to remove such misapprehension, I am introducing this clause. This has also another object.

Sir H. P. Mody : Can you give an illustration ?

Pandit Govind Ballabh Pant : Yes. Sometimes an agreement has a condition like this that in spite of the managing agent embezzling the money of the company he will not be liable to be removed or in spite of the managing agent dealing with the affairs of the company not only in an incompetent and inefficient but even in a dishonest manner he will be entitled to continue as a managing agent. I have seen agreements in which provisions have been made to the effect that the managing agent may be guilty of negligence or default or breach of duty, yet no action need be taken against him. By means of this provision I want to nullify all such restrictive clauses which tend to prevent the operation of the ordinary law and to protect the managing agent against the wrongs which are actionable in ordinary law. I would have preferred the language of clause 86C which is applicable to directors, auditors and other officers and has been taken from the English Act but unfortunately I did not table an amendment in that form. If the Law Member approves of it, as I have not much confidence in my drafting, I would suggest that the language of 86C be adopted with this little change that in place of the director or officer and so on, we may have the words managing agent. Then it will be very easy to draft. In fact the managing agent might be introduced in 86C itself. That will simplify matters. I do not know if the Honourable the Law Member will accept my assurance. I do not

want to hit the managing agent in an indirect manner. I would be sorry if I ever attempted to stab any one. I should rather like to fight him as man to man if necessary than in an indirect manner. I want the managing agent to be there but I want to protect him against such temptations as are likely to mislead even saints.

Mr. T. Chapman-Mortimer : On a point of order. I understood my Honourable friend to say that he wants to change his amendment. He wants that instead of the word "Act" there should be the word "agreement" (*An Honourable Member :* "any agreement")—he wants "any agreement", which makes it worse. It changes the whole sense of this amendment and then he goes on, if I understood him correctly, it is not to be 87H but 86C or some wording taken from it. I submit that a question of changing a Bill of this kind is very important and ought not to be allowed unless proper notice is given.

The Honourable Sir Nripendra Sircar : I do not raise any point of order. But the point really is of very great importance in this way. As I have said in my previous speech, we very often come across articles which contain rather peculiar clauses. It may be that my Honourable friend, Mr. Chapman-Mortimer, has not come across those clauses in the agreement.

Mr. President (The Honourable Sir Abdur Rahim) : At this stage, I should like to know whether the Law Member has got anything to say on the point of order raised by Mr. Chapman-Mortimer.

The Honourable Sir Nripendra Sircar : On the point of order, I say nothing.

Mr. President (The Honourable Sir Abdur Rahim) : I do not think that any Honourable Member has been seriously misled by the changes made in the wording of the amendment. I will, therefore, put the amendment to the House.

Amendment moved :

"That in clause 42 of the Bill, after the proposed section 87H, the following new section be inserted :

' 87HHHH. Nothing in any agreement or in the articles of association of any company shall prejudice the right of the company to remove the managing agent according to general law '."

The Honourable Sir Nripendra Sircar : If Honourable Members of this House will turn to page 15, 86C, what is wanted really by the amendment is that in 86C, after the words in the fourth line 'for exempting any director, manager or officer of the company' the words managing agent should be put in. Then the whole object is gained but possibly the difficulty is this. 86C really relates to directors. First of all that section has been passed and secondly it may not be appropriate to lump up the managing agent with the director but as regards the substance, I do not think my Honourable friend, Mr. Chapman-Mortimer, will oppose it, for this reason. 86C has been taken verbatim from section 152 of the English Act which runs thus (And I shall

[Sir Nripendra Sircar.]

submit in a moment that this is far more necessary here than in England) :

“ Save as hereinafter provided, any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any director, manager or officer or any person employed by the company as auditor from or indemnifying him against any liability which by virtue of any rule of law would otherwise attach to him in respect of such negligence, etc., shall be void.”

Unfortunately I have come across, in my experience at the bar, many extraordinary agreements. For instance, the managing agent is not liable to be removed for fraud, unless that fraud has been proved in a Court of justice and that having been done it must come before the shareholders. There must be a three-fourths majority. Every shareholder must be notified, the notice being of twelve months and a general notice will not do. This is an extreme case but there are other agreements also which relieve them from wilful default, negligence, neglect and all other grounds on which any agent should be removed. To prevent that, section 152 of the English Act has been enacted and it has been copied verbatim in 86C on page 15 and by reason of 86C, the provisions of the English Act apply to directors, officers and managers. It must be the intention of everybody not to exclude the managing agent and to make those clauses applicable only to directors, officers and managers and so on. The question is how this has got to be done. I am not sure whether the managing agent is not already included. I do not think I can agree to the form which has been proposed by my Honourable friend, because I fight shy of these general words “ according to general law ”, and so on. If you will go back to the language of 86C and move it in such a form that all that it means is that what applies to the director will also apply to the managing agent, to that I shall have no objection ; and I do suggest that the same result could be obtained by simply stating that the provisions of 86C will apply to managing agents.

Pandit Govind Ballabh Pant : Then you might move an amendment to my amendment ?

The Honourable Sir Nripendra Sircar : I have not given notice of any such amendment.

Mr. N. C. Chunder : Can't we say that for the purposes of 86C a managing agent shall be considered to be an officer of the company ? In that case it is the same thing.

The Honourable Sir Nripendra Sircar : I do not think my Honourable friend is proposing that. You cannot touch 86C now, but what he proposes is that in clause 42 you put in a sub-clause that for the purposes of this sub-clause the managing-agent provisions of 86C will apply to the managing agents. Of course the exact words I cannot formulate just now, nor do I know if it is necessary.

Mr. President (The Honourable Sir Abdur Rahim) : You want that to stand over ?

The Honourable Sir Nripendra Sircar : I think so, Sir ; this is a very important matter. I think we are all agreed upon the principle. Subject to what my Honourable friends have got to say, I do not see

any reason why you should apply the provisions of 86C to all officers, directors, auditors and everybody and exclude the managing agents. That surely is not our idea. It is purely a mistake on our part, if the managing agent has been excluded.

Mr. President (The Honourable Sir Abdur Rahim) : Very well, it will then stand over.

Mr. Suryya Kumar Som (Dacca Division : Non-Muhammadan Rural) : Sir, I beg to move :

“ That in clause 42 of the Bill, after the proposed section 87H, the following new section be added :

‘ 87I. The managing agent shall not hold directly or indirectly more than 25 per cent. of the share capital of the company :

Provided this sub-section will not apply to private companies ’.”

The Honourable Sir Nripendra Sircar : What will happen if he does hold 26 per cent. ?

Mr. Suryya Kumar Som : That will be illegal.

The Honourable Sir Nripendra Sircar : There is no provision in your amendment for anything happening to him.

Mr. Suryya Kumar Som : Then, he will not be considered as holding more than 25 per cent. of shares. Sir, I know this provision will have not the support of many but I have been hearing during this discussion on the Companies Bill a lot about the powers of the managing agent in the matter of controlling the votes, controlling the business, and controlling the directorate also, and, Sir, it has been often argued that managing agents, having secured fifty-one or sixty per cent. of the company's shares, can nullify all the salutary provisions that are being enacted in this Bill. This has been the gist of the arguments for all these days against the managing agents. Now, Sir, if there is really any intention to take away the controlling power of the managing agent over everything of the company against the wishes of the shareholder, I think some such provision should be made. It may be argued that if a managing agent be a very rich man, he can supply almost seventy-five per cent. of the capital and it will be to the advantage of the company to avail itself of that ; and it may be argued also that the people expect that the managing agent should come forward to finance the company. But I leave it to you to consider that the money can be supplied to the company in various ways other than by having shares purchased. The managing agent can supply capital as a debenture-holder, he can supply capital as loans, in fact in many ways without controlling the voting capacity of the company ; he can help the company in various other ways and thus justify his position as a managing agent. So far as I know it is the talk everywhere, whenever you find any injustice done by the managing agents to the shareholders, and when there is a combined attempt made by the shareholders to control the managing agent they find that in reality the managing agents control the majority of the shares, the cry among the public is as to how to check the powers of the managing agents. The difficulty however is this. If the managing agent controls the majority of the votes, how can the shareholders control him ? That has really been the helpless condition of the shareholders. Assuming for the sake of argument that a managing agent is thoroughly dishonest

[Mr. Suryya Kumar Som.]

in dealing with the affairs of the company, (I do not say that all managing agents are dishonest) if a managing agent proves to be such and is careful to evade the penal sections of the Act, the question is, how to control him? The only effective way would be not to allow him to have a control over the majority of votes. If the shareholders have the majority of the votes, they can compel him to obey their directions and they can impose limitations on his whims. Therefore, I propose that managing agents should under no circumstances hold more than 25 per cent. of the share capital and I therefore move this motion.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment moved :

“ That in clause 42 of the Bill, after the proposed section 87H, the following new section be added :

‘ 87I. The managing agent shall not hold directly or indirectly more than 25 per cent. of the share capital of the company :

Provided this sub-section will not apply to private companies ’.”

The Honourable Sir Nripendra Sircar : Sir, I oppose this amendment ; I do not propose to make a speech.

Mr. President (The Honourable Sir Abdur Rahim) : The question is :

“ That in clause 42 of the Bill, after the proposed section 87H, the following new section be added :

‘ 87I. The managing agent shall not hold directly or indirectly more than 25 per cent. of the share capital of the company :

Provided this sub-section will not apply to private companies ’.”

The motion was negatived.

Mr. S. Satyamurti : Sir, with your leave, and in order to shorten the discussion, may I ask one question of the Honourable the Law Member? There are three amendments of mine on the same subject,—viz., Nos. 141, 142, and No. 1 in Supplementary List No. 8 to the Revised Final List. Will my friend kindly indicate whether he will accept any of these amendments? I will then consider my course of action.

The Honourable Sir Nripendra Sircar : Sir, my position is this. I feel quite definite that this is not wanted at all. You need not say in this section :

“ Notwithstanding anything to the contrary in the Articles of Association or in any contract with the Company, no managing agent shall have any power to appoint a director of a Company of which he is the managing agent.”

That is my view. The section is quite absolute. You are barring something to be done, and in these two sections you need not say :

“ Notwithstanding anything to the contrary in the Articles of Association....”

“ But on the merits of 87K, no managing agent shall have power to appoint a director.”

I think my friend knows in that case what the answer will be. I shall oppose.

Mr. S. Satyamurti : What about 142?

The Honourable Sir Nripendra Sircar : We shall oppose that amendment. If it is now carried, it will mean that all the special directors, debenture-holders and Government men and so on will come out of the one-third which I shall oppose.

Mr. S. Satyamurti : Sir, in view of the statement of the Honourable the Leader of the House, I do not move my amendments Nos. 141 and 142, but I do move amendment No. 1 on Supplementary List No. 8 with a slight modification. I move :

“ That in clause 42 of the Bill, after the proposed section 87H, the following new section be inserted :

‘ 87K. No managing agent shall have any power to appoint more than one director of a company of which he is the managing agent ’.”

You will notice, Sir, and the House will notice that the Bill, as originally recommended by the Select Committee contained a provision providing for shareholders a minimum of one-third of directors and a maximum of one-third for the managing agents. By some accident that got knocked out and I am trying to repair the mischief at this stage. I am moving this provision that managing agents shall not have the power to appoint more than one director. The result of all these amendments so far carried is that managing agents have certain definite functions to discharge and the directors have certain other functions to discharge. Dyarchy is bad enough but if it is to consist of one-half of nominated members then it becomes monarchy masquerading as dyarchy. Today, the managing agents not only have all the powers under this Bill but also they have the power of nominating directors to an unlimited extent. I am sure all those Honourable Members who want the prosperity of our companies will agree with me that shareholders must have the right to elect directors. Of course, there may be some need for the managing agents to have their point of view presented on the directorate so that their cases may not be decided by default. That is why I provide that one director should be nominated by the managing agent. His functions are well-defined in the agreement or in the articles of association or under this Act. He knows exactly what his duties and responsibilities are. On the other hand, we must, I think, have an independent directorate independent of the managing agents who will be responsible only to the shareholders. I think it is a happy compromise by which we will have directors who will carry on the general management of the company and there will be the managing agents who will be discharging their duties under their contract with the company or under the articles of association or under this Act. It seems to me that that will be the best way of guaranteeing to managing agents their freedom, to directors their freedom and the shareholders having their voice on the directorate.

Babu Baijnath Bajoria : May I ask a question ? If there are six or eight directors, how many directors will be sent by shareholders ?

Mr. S. Satyamurti : The question is this. The managing agent ought not to manage the company directly himself and then pull the strings of the directors also. After all, the managing agent must have his rights and liabilities. It is not right that he should have all his rights and privileges under the contract, under the articles of association and under this Act and yet also seek to influence the directorate unduly.

[Mr. S. Satyamurti.]

Let him have his case represented by all means. Having done that, the entire management should be in the hands of the directors.

The Honourable Sir Nripendra Sircar : This may be required for repairing the mischief you have done, but no one has suggested one director so far.

Mr. President (The Honourable Sir Abdur Rahim) : Amendment
5 P.M. moved :

“ That in clause 42 of the Bill, after the proposed section 87H, the following new section be inserted :

‘ 87K. No managing agent shall have any power to appoint more than one director of a company of which he is the managing agent.’ ”

Further discussion of this amendment will be carried on on Monday.

The Assembly then adjourned till Eleven of the Clock on Monday, the 5th October, 1936.