

30th October 1941

THE  
LEGISLATIVE ASSEMBLY DEBATES

Official Report

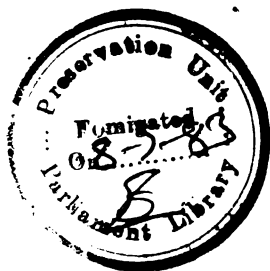
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Volume IV, 1941

*(27th October to 18th November, 1941)*

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FOURTEENTH SESSION  
OF THE  
FIFTH LEGISLATIVE ASSEMBLY,  
1941



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# LEGISLATIVE ASSEMBLY

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## *Deputy President:*

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

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## *Assistants of the Secretary:*

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KHAN BAHADUR S. G. HASNAIN.

## *Marshal:*

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

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SARDAR SANT SINGH, M.L.A.

MR. L. C. BUSS, M.L.A.

SIR ABDUL HALIM GHUZNANI, M.L.A.

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

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**CORRIGENDUM.**

In the Legislative Assembly Debates, Budget Session, 1936, Volume I, dated the 10th February, 1936, page 471, for the subject heading "DEMAND OF SECURITY FROM THE ABHYUDAYA OF ALLAHABAD." substitute the following independent heading, namely:—

"MOTION TO DISCUSS A QUESTION OF PRIVILEGE, NAMELY, HOW FAR PRESS PUBLICATION OF A MEMBER'S SPEECH IN THE ASSEMBLY IS PRIVILEGED."

# LEGISLATIVE ASSEMBLY.

Thursday, 30th October, 1941.

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

## STARRED QUESTIONS AND ANSWERS.

### (a) ORAL ANSWERS.

#### LISTS OF WAR REQUIREMENTS ARTICLES MANUFACTURED AND DRUGS PRODUCED IN INDIA.

52. \*Sardar Sant Singh (on behalf of Mr. Lalchand Navalrai): (a) Will the Honourable Member for Supply be pleased to state if Government informed the public of this country in May 1940 that India was producing within her own borders more than 90 per cent. of her war requirements and that no fewer than 20,000 articles, required by the Defence Department, were being manufactured in India? If so, will the Honourable Member be pleased to state if any list of these articles has been published by Government? If not, will he be pleased to place on the table a brief resumé in respect of these articles?

(b) Is it a fact that the Honourable the Commerce Member made a statement in the Legislative Assembly on the 20th March, 1941, that more than 70 or 75 per cent. of the drugs required are produced in this country? If so, will the Honourable Member be pleased to state whether any consolidated list of such drugs has been published by Government? If so, in which document? If not, will Government be pleased to place on the table a concise list of the drugs, specially those that have been newly manufactured in this country after the commencement of the present war?

The Honourable Sir H. P. Mody: (a) Yes; information of the kind referred to was given out in June and September, 1940. No complete list has been published by Government but a popular list will be found in the issue of *Indian Information* of the 1st October, 1941, a copy of which is in the Library of the House. A departmental list (which cannot of course include all the 20,000 items) is being prepared and will be placed on the table in due course.

(b) Yes, on the 17th March, 1941. No consolidated list has been published, but information is released to the Press from time to time, and an article on the subject and a list of the drugs newly produced in India will be found in the issue of *Indian Information* to which I have already referred.



**RAILWAY BOARD ORDERS AGAINST REDUCTION IN AN EMPLOYEE'S PAY.**

**53. \*Sardar Sant Singh** (on behalf of Mr. Lalchand Navalrai): (a) Will the Honourable the Railway Member be pleased to state whether it is a fact that the Railway Board issued orders on the 9th April, 1941, to the State-managed Railways that, in view of the recent ruling by a law court the reduction in an employee's pay was illegal under the Payment of Wages Act? If so, will the Honourable Member please lay a copy of these orders on the table of the House?

(b) Is it a fact that in Karachi Division of the North Western Railway, all reductions were stopped with effect from 3rd February, 1941, and prior to this date, but current on this date? Was this stoppage of reductions made applicable all over the North Western Railway with effect from 3rd February, 1941? If not, why not?

(c) Does the Honourable Member propose to order a refund of deductions made on account of reductions ordered on the Railways after 3rd February, 1941, and earlier but current on this date? If not, why not?

**The Honourable Sir Andrew Clow:** (a) The reply to the first part is in the negative, the orders merely stated that pending further examination the penalty of reduction should be discontinued for the time being; the reply to the second part is in the negative.

(b) I am not informed of the exact date from which the orders became effective but on the Karachi Division the infliction of the penalty of reduction was discontinued earlier than on other divisions of the North Western Railway. As the judgment as a result of which the action was taken was propounded in Sind, action was taken earlier in the portion of the Railway under the jurisdiction of that court.

(c) I cannot give an undertaking in this respect; but I understand the question is being examined in its application to certain cases.

**COMPLAINTS AGAINST NON-GRANT OF LEAVE PRIVILEGES DUE TO INADEQUACY OF RELIEVING STAFF ON NORTH WESTERN RAILWAY.**

**54. \*Sardar Sant Singh** (on behalf of Mr. Lalchand Navalrai): (a) Will the Honourable Member for Railways be pleased to state whether it is a fact that it was expressed by the Railway Board in March 1930, in issuing Revised State Railway Leave Rules, that a common complaint was made in respect of leave privileges being actually withheld for want of relief and on similar grounds, and whether the Board requested the administrations to examine the adequacy of the relieving staff with a view to facilitate the grant of leave to the extent admissible under the Revised State Railway Leave Rules? Has this object been achieved?

(b) Is it a fact that even now there are general complaints on the North Western Railway regarding non-grant of even the limited leave privileges due under the Revised State Railway Leave Rules? If so, do Government propose to compensate the employees who are unable to get leave due to them, by payment of extra wages for the period of such leave due but not granted?

(c) If the reply to the second portion of part (b) be in the negative, what steps are proposed to be taken to ensure that leave due is granted to the employees and not allowed to lapse? If not, why not?

**The Honourable Sir Andrew Olow:** (a) The answer to the first two parts is in the affirmative. As regards the last part, information available with Government suggests that the object has to a great extent been achieved.

(b) Complaints have occasionally been made when staff could not obtain leave at particular times, and as the grant of leave must depend on the exigencies of the public service, it is not practicable to meet every one's desires in the matter of the time at which leave is wanted. But investigation has shown that staff as a rule can obtain the leave for which they are eligible; the second part, therefore, does not arise. In any case leave cannot be claimed as of right and there can be no question of compensation for leave not enjoyed.

(c) As I have indicated, no special steps are necessary; the last part does not arise.

**Lieut.-Colonel Sir Henry Gidney:** In view of the reply given by the Honourable Member, and in view also of the practice of all Departments to have leave reserves, has the Honourable Member assured himself that there is adequate leave reserve for subordinates on State Railways, or not?

**The Honourable Sir Andrew Olow:** I have not investigated the case but I have no reason to suppose that the leave reserve is inadequate.

**Lieut.-Colonel Sir Henry Gidney:** In view of the reply just given, is it or is it not a fact that in all departments a certain percentage of the staff is employed as leave reserve. Is that the case on the railway? If not, does the Honourable Member want the sweat, tears and blood of the subordinate staff going without leave?

**The Honourable Sir Andrew Olow:** It is not a question of sweat, tears or blood. In certain categories of public service, there is a leave reserve within the cadres. In consequence, when leave is given, substitutes are not appointed. In other categories there are no leave reserves. In such cases persons are appointed to officiate for others who go on leave. In a great many categories of the railway staff, there are leave reserves and the special investigation which we made on the North Western Railway showed that in respect of categories where there is a leave reserve or relieving staff are provided, no difficulty is experienced generally in the grant of leave to subordinate or inferior staff.

**Lieut.-Colonel Sir Henry Gidney:** I thank the Honourable Member for his reference to that specific railway, but my vision goes to the other railways also. I mean the East Indian Railway and the Great Indian Peninsula Railway, which are big State Railways. Is the Honourable Member aware of the fact that one of his predecessors in office assured this House that adequate leave reserve did exist. If so, why has that not been continued?

**The Honourable Sir Andrew Clow:** The Honourable Member is under an entire misapprehension. So far as I know there is no question of the system of leave reserves being discontinued, nor did I suggest it.

**Lieut.-Colonel Sir Henry Gidney:** I did not say you did. It was your predecessor in office. Will the Honourable Member state whether he expects these men to work without leave, with their labour increased and their pay reduced . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member is arguing.

**Lieut.-Colonel Sir Henry Gidney:** May I ask whether it is or not a practice of the railways to reduce the amenities of their men and at the same time allow them to keep working without any respite?

**The Honourable Sir Andrew Clow:** I am not aware of the practice to which the Honourable Member refers.

**Lieut.-Colonel Sir Henry Gidney:** I am sorry. I shall have to make a speech to give you all the details.

†55\*—57.\*

#### APPOINTMENT OF THE AGENT GENERAL OF INDIA TO THE UNITED STATES OF AMERICA.

**58. \*Mr. Govind V. Deshmukh:** (a) Will the Foreign Secretary please state the functions of the Agent General, Sir Girja Shankar Bajpai, sent by India to the United States of America?

(b) Is this post temporary?

(c) What is the political status of the Agent General of India? Does this post create any change in the status and political relations of India with other countries? If so, in what way?

(d) Will the Agent General be responsible to the Secretary of State for India for his actions, or to the Government of India alone, or to both?

**Mr. O. K. Caroe:** (a) As representative of India in the United States of America the Agent General will co-ordinate India's part in all matters affecting the common interests of India and the United States.

(b) The appointment has, as was stated in the published announcement, been made in the special circumstances of the war. No decision has been taken as regards its term.

(c) The Agent General will be attached to His Majesty's Embassy at Washington. His appointment does not denote any constitutional change, but will enable closer and more direct contacts to be maintained between India and the United States.

(d) The Agent General will be responsible to the Government of India.

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†Not included in these debates as these questions were from members of the Muslim League Party—vide remarks of the Honourable the President on p. 189, ante—Ed. of D.

**Mr. Govind V. Deshmukh:** In questions of dispute between the United States and India, which fall within his jurisdiction, may I know whether he will receive instructions from India or the United Kingdom?

**Mr. O. K. Caroe:** I have nothing to add to what I said in reply to part (d) that the Agent General will be responsible to the Government of India.

**Mr. Govind V. Deshmukh:** If disputes arise as regards the responsibility for his action, then will he act without receiving any instructions? If he has to receive any instructions on those points, then from whom will he receive them, the Government of India or the United Kingdom?

**Mr. O. K. Caroe:** He will receive his instructions from the Government of India.

**Mr. Govind V. Deshmukh:** Will he act on those instructions given by the Government of India and would such action be liable to be revised by the United Kingdom?

**Mr. O. K. Caroe:** I do not know what the Honourable Member means by 'revised by the United Kingdom'.

**Sardar Sant Singh:** Will he act independently of the representative of the United Kingdom?

**Mr. O. K. Caroe:** No. He will act in concert with His Majesty's Ambassador.

**Sardar Sant Singh:** In case of conflict between the representative of the United Kingdom and the representative of India on a certain point, will he be bound by the instructions of the Government of India or will he follow the United Kingdom?

**Mr. O. K. Caroe:** I see no reason to anticipate conflicts. The suggestion is entirely hypothetical.

**Mr. Huseinbhai Abdullahbhai Laljee:** When he is attached to the British Ambassador, will it not be concluded that he will be under the Home Government?

**Mr. O. K. Caroe:** I do not see that follows at all.

**Mr. President** (The Honourable Sir Abdur Rahim): There are some more adjournment motions in the name of Mr. Kazmi. He wants to discuss . . . . . (A Voice: "He is not here"). Very well. The next one is about the hunger-strike. That has been disposed of.

## STATEMENT BY THE HONOURABLE THE PRESIDENT.

NON-INCLUSION IN THE LIST OF BUSINESS OF MATTERS RECEIVED FROM THE MEMBERS OF THE MUSLIM LEAGUE PARTY DURING THE CURRENT SESSION.

**Mr. President** (The Honourable Sir Abdur Rahim): [On the 28th October, the Leader of the Muslim League Party in the Legislative Assembly announced on behalf of his Party that the Party had decided to withdraw from the House during the present autumn Session to register their protest against certain decisions in connection with the present composition of the Executive Council and the Constitution of the Defence Council, and after making his statement he along with his Party withdrew from the House. In view of this announcement, I have directed the office not to take any action on the questions, Resolutions, Bills, adjournment motions or any other matter connected with the proceedings of the current Session of the Assembly of which notices have been received or may be received from the members of the Muslim League Party during this Session. No Resolution of a member of that Party which has secured a place in the ballot or any pending Bill which is in charge of a member of that Party or any question by a member of that Party will be included in the List of Business during this Session. If, however, the Party as a whole or any individual member of it intimates to the Secretary in writing their or his intention to attend the Session later on, this order will cease to have effect from that date so far as the Party as a whole or the individual Member is concerned as the case may be.]

## NOMINATION OF THE PANEL OF CHAIRMEN.

**Mr. President** (The Honourable Sir Abdur Rahim): I have to inform the House that under sub-rule (1) of rule 3 of the Indian Legislative Rules, I nominate Lieut.-Colonel Sir Henry Gidney, Mr. L. C. Buss and Sir Cowasji Jehangir on the Panel of Chairmen for the current Session. The name of the fourth member of the Panel will be announced later, if necessary.

## NOTIFICATION UNDER THE INDIAN EMIGRATION ACT.

**The Honourable Mr. M. S. Aney** (Leader of the House): Sir, I lay on the table a copy of the Education, Health and Lands Department Notification No. F.-144-1/38-O. S. (C), dated the 21st July, 1941, issued under the Indian Emigration Act, 1922.

## DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

### NOTIFICATION.

OVERSEAS.

*Simla, the 21st July, 1941.*

No. F.-144-1/38-O. S. (C).—Whereas for the purpose of implementing an agreement made between the Governor General of India in Council and the Governor of Burma it is necessary to issue this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) 30-A of the Indian Emigration Act, 1922 (VII of 1922), the Central Government is pleased to prohibit with effect from the 21st July, 1941, all persons from departing by sea out of British India to Burma for the purpose of unskilled work unless exempted by special order of the Central Government from the provisions of this notification.

G. S. BOZMAN,

*Joint Secretary to the Government of India.*

## STATEMENT RE SAFETY IN THE BUILDING INDUSTRY.

**Mr. H. C. Prior** (Labour Secretary): Sir, I lay on the table a statement indicating the action taken, and the decision reached, by the Government of India in pursuance of the Resolution adopted by the Legislative Assembly on the 25th March, 1938, regarding the Draft Convention and Recommendations of the International Labour Conference concerned safety in the building industry.

### STATEMENT.

In pursuance of the Resolution adopted by the Legislative Assembly on the 25th March, 1938, concerning the Draft Convention and Recommendations of the International Labour Conference regarding safety in the building industry, the Government of India asked the Provincial Governments to consider the desirability of legislation in the light of the extent and character of the hazards involved, the possibilities of eliminating or reducing risk in construction in the manner proposed and the expense of the inspection that would be necessary for enforcement. In particular their attention was drawn to the possibility of action within municipal areas, as suggested by the Honourable Mr. Ananthasayanam Ayyangar in the course of the debate on the Resolution. All the Provincial Governments and Administrations except two are unanimously of opinion that the Draft Convention and Recommendations the implementing of which requires legislative action are unsuited to conditions in India. Even the two Governments mentioned above, while they see no objection in principle to legislation, are not in favour of any particular action within their respective jurisdictions. The main reasons put forward by Provincial Governments against legislative action are :—

- (1) that the building industry is unorganised;
- (2) it will be difficult to enforce the legislation without an unduly large and expensive staff which will not be justified in view of the comparatively small risk to be countered;
- (3) accidents in the building industry are comparatively rare and in most cases where they occur, they are of a nature which cannot be minimised by legislation.

As regards the two Recommendations concerning co-operation in accident prevention and vocational education, regarding which the Provincial Governments were asked to consider the desirability of taking executive action the majority of the Provincial Governments have offered no observations. Those who have, do not consider any action to be possible or necessary.

In the circumstances the Governor General in Council has decided to take no further action in the matter.

## ELECTION OF A MEMBER ON THE STANDING COMMITTEE ON EMIGRATION.

**The Honourable Mr. M. S. Aney** (Member for Indians Overseas): Sir, I move :

“That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, one non-official member to serve on the Standing Committee on Emigration in place of myself.”

**Mr. President** (The Honourable Sir Abdur Rahim): The question is: "That this Assembly do proceed to elect, in such manner as the Honourable the President may direct, one non-official member to serve on the Standing Committee on Emigration in place of the Honourable Mr. M. S. Aney."

The motion was adopted.

**Mr. President** (The Honourable Sir Abdur Rahim): I may inform Honourable Members that for the purpose of election of members to the Standing Committee on Emigration the Notice Office will be open to receive nominations up to 12 Noon on Tuesday, the 4th November, 1941, and that the election, if necessary, will, as usual, take place on Thursday, the 6th November, 1941, in the Assistant Secretary's room in the Council House, New Delhi, between the hours of 10-30 A.M. and 1 P.M. The election will be conducted in accordance with the principle of proportional representation by means of the single transferable vote.

## THE CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

### APPOINTMENTS TO THE SELECT COMMITTEE.

**Dr. P. N. Banerjee** (Calcutta Suburbs: Non-Muhammadian Urban): Sir, I move:

- "(1) That Mr. Akhil Chandra Datta be appointed to the Select Committee on the Bill to simplify the procedure in appeals to the Federal Court in place of the Honourable Mr. M. S. Aney whose seat on the Committee has become vacant;
- (2) that the Honourable Mr. M. S. Aney be re-appointed to the Committee in place of the Honourable Sir Reginald Maxwell; and
- (3) that Mr. R. A. Gopalaswami be re-appointed to the Committee."

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

- "(1) That Mr. Akhil Chandra Datta be appointed to the Select Committee on the Bill to simplify the procedure in appeals to the Federal Court in place of the Honourable Mr. M. S. Aney whose seat on the Committee has become vacant;
- (2) that the Honourable Mr. M. S. Aney be re-appointed to the Committee in place of the Honourable Sir Reginald Maxwell; and
- (3) that Mr. R. A. Gopalaswami be re-appointed to the Committee."

The motion was adopted.

## THE RAILWAYS (LOCAL AUTHORITIES' TAXATION) BILL—contd.

**Mr. President** (The Honourable Sir Abdur Rahim): The House will now resume consideration of the following motion moved by the Honourable Sir Andrew Clow on Monday, the 27th October, 1941, namely:

"That the Bill to regulate the extent to which railway property shall be liable to taxation imposed by an authority within a province be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Mr. T. S. Sankara Aiyar, Dr. R. D. Daial, Mr. J. Ramsay Scott, Mr. Akhil Chandra Datta, Maulvi Abdur Rasheed Chaudhury and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

**The Honourable Sir Andrew Clow** (Member for Railways and Communications): Sir, since the House adjourned, suggestions have been made

to me by Leaders of Parties in the House that they would like a larger Committee to consider this Bill. I am anxious to meet, as far as I can, the wishes of Honourable Members, and, with your permission and if Members do not object. I would like to amend my motion by adding four names to the Select Committee. The names are those of Rao Sahib Sivaraj, Mr. C. P. Lawson, Mr. Jamnadas Mehta and Mr. Gopalaswami. I move that formally.

**Mr. President** (The Honourable Sir Abdur Rahim): I suppose there is no objection to this amendment being moved now.

**Honourable Members:** No.

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

"That in addition to the Members whose names have been already mentioned, the following names be also added as Members of the Select Committee:

'Rao Sahib N. Sivaraj, Mr. C. P. Lawson, Mr. Jamnadas M. Mehta and Mr. R. A. Gopalaswami'."

The motion was adopted.

**Mr. Jamnadas M. Mehta** (Bombay Central Division: Non-Muhammadan Rural): Sir, I find myself in a rather difficult position as regards this motion of the Honourable Sir Andrew Clow. I do not know whether to support it or to oppose it; I find that the objects and reasons and the text of the Bill are not quite in consonance with each other.

The Statement of Objects and Reasons is so tempting that I thought something good was being done for the Municipalities and that therefore the Bill would deserve a welcome. But on going through the text of the Bill, my enthusiasm has considerably cooled down, clause after clause, instead of giving real and permanent powers to the local authorities it is calculated to detract from them and to place them at the mercy of the Government of India with regard to their powers of taxation. I am sure that is not the intention of the Honourable the Mover of the Bill. I am sure it is not the intention of the Honourable the Mover that there should be a cleavage between the Statement of Objects and Reasons on the one hand and the text of the Bill on the other. I am sure he himself will admit that the Bill as it stands gives considerable room for apprehension. Clause 3 (2) of the Bill says:

"A notification issued under sub-section (1) may modify any tax in its application to any railway administration and in particular and without prejudice to the generality of the foregoing power may reduce the rate of the tax in respect of, all or any part of the property of the railway administration, or may define the manner in which the tax shall be assessed on any such property or may exempt any particular property or class of property or any specified area from the whole or any portion of the tax."

Sir, the House will appreciate that these powers are so far reaching and so comprehensive in actual operation that their tendency would be not to improve the finances of the local authorities but to cripple them. I do not see any particular reason why railways should enjoy a position different from owners of private property. Why should there be a difference between the Tata Steel Company's obligations to pay local taxes and the obligations of the railways to pay those taxes?



[Mr. Jamnadas M. Mehta.]

If anything, the railways are a standing nuisance because of the smoke which they spread over the countryside, thus rendering the task of the Municipal and Health authorities of the local boards far more difficult than any other single institution. The evils of smoke dust are familiar to any sanitary authority. Therefore, if possible the obligation of the railways to pay local taxes should be larger and not smaller, because they are a distinct liability to the local authorities on account of the enormous amount of the damage to the health and sanitation of the city by coal dust which they scatter all over the place.

Then, Sir, the railway authorities are likely to create malaria and overcrowding. Malaria is such an insidious disease that it is likely that it will harbour itself in any nook and corner in many of the dark places where the railways stock their moveable property. For these reasons, namely, that the Railways have no particular reason for being exempted from obligation to pay local taxation, secondly, that they are likely to create more responsibilities for the local authorities in the matter of public health that I would request the Government not to take such abnormal authority of interfering with the powers of taxation of local authorities.

I agree with the Statement of Objects and Reasons, where the Bill seeks to give powers of taxation to local authorities over some new property of the Railways which are not subject to local taxation today. To that extent it is a welcome feature. But simply for that little additional scope of increasing the revenue, the local authorities should not be exposed to the risk of a serious depletion of their funds on the part of the railways as the Bill proposes. It not only proposes total exemption but modification and reduction. Of course, the word 'modify' may mean conceivably 'increase' also, but 'modify' might also mean the reduction of the existing revenues of local bodies.

The difficulty is further increased by the fact that this Bill is likely to affect not any district local bodies but also large Municipalities, because the small Municipalities are not able to render any service to the railways in the matter of water supply or scavenging or even in the matter of sanitation and public health. There are nearly 10,000 railway stations or a little more or less and in most of these the local authorities will hardly be able to render any municipal amenities to the railways. Therefore, this Bill will largely apply to big Municipalities of the size of Calcutta, Bombay, Ahmedabad and such other big capital cities. There the railways add to the congestion more than any other authority. They take the fullest advantage of the municipal amenities being a commercial body. It is admitted that the railways are a commercial body. If they are a commercial body then they should be treated like any other commercial body subject to all the necessary local taxation which other commercial bodies bear. In Bombay, the Municipality, I am sure, is spending large sums of money in the direction of water supply, health, sanitation, scavenging, street lighting over the extent of railways and it, therefore, stands to reason that this Municipality should be adequately compensated by powers of taxation and they should not be left to the tender mercies of the Government of India.

Lastly, Sir, this Bill vests power in the Government of India to appoint an officer who will decide what amount in lieu of taxation should be paid by the railways. I submit this form of assessing generally leads to the appointing of an executive officer. I would prefer that when there is difference of opinion between the railways and the municipal authorities, the difference should be adjudicated by a judicial authority and not by the administrative authority set up by the Government. I cannot honestly say that the local authorities' revenues will be safe if any administrative officers of the Government of India were left to judge of the amount payable by Railways. On all these grounds my difficulty increases whether to support the Bill or to oppose it. The Objects and Reasons are so very gentle in their tone and the Bill itself is so harsh in its expression that I am driven to the necessity of wondering whether I should support the Bill or not. There is an Indian proverb which says that an elephant has two sets of teeth, one set for being exhibited and the other set for biting. The elephant in this Bill has a double set of teeth. The teeth which are ornamental are in the Objects and Reasons and the teeth which can bite are in the text. Between the two our difficulty is greatly increased and . . . . .

**Sir Cowasji Jehangir** (Bombay City: Non-Muhammadian Urban): Extract all the teeth and make an end of the matter.

**Mr. Jamnadas M. Mehta:** I can only hope, in allowing this Bill to go to the Select Committee, that no technical objection will be taken in the Committee to the deletion of any particular clause; and in this hope I will allow the motion to go through.

**Dr. P. N. Banerjee** (Calcutta Suburbs: Non-Muhammadian Urban): Sir, it is clear that a Bill is necessary in order to enable local authorities to levy taxation on railway property in cases where taxation has not been levied up to the present moment. But the question is, is this a proper and adequate Bill?

It is known to many Members of this House that a similar Bill was placed before the Legislative Assembly in 1938 and the motion for circulation was rejected by a majority of this House. Why was that circulation motion rejected? Because, as has been pointed out in the Statement of Objects and Reasons, fears were expressed that the Bill would confer an unreasonable advantage on railways at the expense of Provincial Governments and local bodies. Let us see if this Bill seeks to remove—and, if so, to what extent—those fears which were entertained in 1938. Clause 3(2) of the present Bill gives the most drastic power to the Central Government which may modify any tax or reduce the rate on any property or part of a property, or direct in what manner the tax shall be assessed, or exempt any particular property or class of property or any specified area from the whole or any portion of the tax. So long as this sub-clause exists can we say that the fears of the House have been removed? No. It appears to me that Government are seeking to take an undue and unfair advantage of the absence of a large number of elected Members of this House. Three-fourths of the elected Members of this House are absent and you thrust upon us a Bill which was rejected three years ago,—even the circulation motion was rejected and not a

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motion to refer it to Select Committee. This is extremely unfair. If you wanted a proper and adequate Bill you ought to have amended the original Bill in the proper manner.

Sir, the professed object of the Bill is to restore the position that existed before the 1st April, 1937. Did the sub-clause referred to by me exist in any of the notifications issued before 1937? No; in none of the notifications did it find a place. Therefore, the statement contained in the Statement of Objects and Reasons is in this instance a mis-statement. Further, I find that a notification was issued on the 7th January, 1901, in which it was made perfectly clear that it was not the intention of Government to evade the taxation of railway property. It was made clear that the policy of Government was not to relieve railway administrations from any liability to local taxation but to obtain control over the demands on railway administrations by municipalities and other local bodies in order to see that railway administrations were not unfairly exploited for the benefit of the local authorities. Has this provision been incorporated in this Bill? It is made perfectly clear in this notification that the object is not to relieve railway administrations, but on the other hand anyone who reads this clause 3 (2) of the Bill will find that Government are taking drastic power to exempt any railway property, and to do whatever they like, to define the manner in which taxation is to be levied, and so on. This is extremely unfair.

Then, Sir, some of the other provisions are also open to exception. In sub-clause (3) of clause 3 we find that the amount of tax payable by the railways is to be determined by an officer appointed by the Central Government; and he will, having regard to all the circumstances, from time to time determine what is fair and reasonable. Now, the phrase "officer of Government", unless it is qualified, usually means an executive officer of Government. So the Central Government which own the railways will appoint their own officer. Can he be expected to be impartial? He is likely to be a partisan. It is not laid down here that he will be a judicial officer. Even a judicial officer appointed by the Central Government will not be able to perform his duties in such a manner as to inspire full confidence in his sense of justice. Therefore, it is desirable that this matter should be decided by an impartial tribunal. Whenever there is any dispute, let the Central Government appoint one person and let the local authority appoint another person, and let the matter be referred to such a judicial tribunal. That would create confidence, and that would not be unfair to the Central Government or to the local authority. I do not want that the Railway Authority should be exploited by any local body. On the other hand, I do not also want that the local bodies should be exploited by the Central Government.

Sir, there is already a doubt in the minds of the people here that the Government are in need of money and the main object of the Bill is to help Central finances at the expense of local finances. That is the feeling which has gone abroad. In order to remove that feeling you must make such provisions in the Bill as will remove all causes of fear and apprehension.

But even that will not suffice. Even the appointment of a proper tribunal will not give satisfaction. The question is, what is to be the basis of assessment in the case of railway property? They must lay down a proper basis; otherwise even the best judge will fail to decide correctly and there will be differences in decisions; one judge will decide in one manner and another judge will decide in another manner, because there is no basis which is to guide the judges in deciding this matter. Therefore, a proper basis of assessment will have to be provided in the Bill. But no basis has been provided here. All that is said here is:

"having regard to all the circumstances of the case, from time to time determine to be fair and reasonable."

At one time, a particular judge may think that this is fair and reasonable in the circumstances, but another judge may at another time decide in a different way. This is not proper. You ought to have a proper basis of assessment.

Now, my Honourable friend may ask, where are we going to find a proper basis of assessment? I believe the Honourable the Railway Member has read the Report of the Taxation Enquiry Committee. In that Report the proper basis of assessment is given. The Taxation Enquiry Committee point out the difficulties in the existing system. They say that there are no principles to guide the officers who decide these matters and after pointing out the difficulties, they say there should be a basis which should be worked on uniform principles. This is laid down on page 331 of the Report:

- "(i) All buildings, Railway Stations, etc., should be assessed at six per cent, on the cost of building and land;
- (ii) Workshops and connected offices at five per cent, on the cost;
- (iii) Offices used for general administration purposes,—letting value;
- (iv) Residences, also letting value; and
- (v) Lands under rails and sidings, five per cent, on the actual value of the land."

Sir, this Taxation Enquiry Committee at least ought to be taken as an impartial body. It was presided over by Sir Charles Todhunter, a high Government officer at that time, who is now Private Secretary to the Maharaja of Mysore. The Committee consisted of members whose impartiality could not be questioned. Why don't you accept the basis suggested by this body? Now, if you are not satisfied with the basis laid down in this Report you may have it modified by referring this matter to another body of experts and be guided by their opinion. But, in any case, let there be a definite basis of assessment. In the absence of any definite basis in the past the officers appointed by Government have used the rule of thumb—a rough and ready method and procedure. Well, this method, I frankly admit, has worked—though not quite satisfactorily—at least tolerably well in the past. Why? Because in general the Commissioners of Divisions were given the work. They used to be appointed by the Government to deal with this matter. The Commissioners of Divisions—I am speaking of Bengal—had some experience of the work of municipal bodies, because no person could rise to the position of a Commissioner unless he had been Chairman of ten or twelve municipalities. Therefore, he had some experience, and as he was an officer of the Government he would not decide against the Government. Besides,

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having been a Chairman of Municipalities for a long time he would perhaps have some sympathy with the interests of the municipalities. That was the situation until 20 or 25 years ago. But now things have changed. The District Magistrates are no longer Chairmen of municipalities. The Commissioners do not actually possess any experience of municipal work. Therefore, being a Government officer, he naturally becomes a partisan. And, we all know, municipal bodies have now adopted a somewhat more independent attitude than before. They refuse to give addresses to the Commissioners and Magistrates and sometimes to the Governors of Provinces and even to the Governor General. Therefore, these Commissioners of Divisions always find an excuse to treat them in a manner in which they ought not to be treated. These Commissioners do not at the present moment inspire any confidence in the minds of the local bodies. The system, therefore, will have to be changed. So what we require now is to fix a proper basis, and, then if there is a dispute, to refer it to an independent tribunal. Further, there should be an appeal to the High Court. None of these provisions are to be found in this Bill.

I am sorry to find that the attitude of the bureaucratic Government is very unfriendly towards local self-government. Day before yesterday, I was surprised at the attitude taken up by the Honourable the Finance Member in this regard. Sir Jeremy Raisman has very good manners and my personal relations with him are of a very cordial character; but I must say that the attitude taken up by him on that occasion was far from what could be expected from him. If it had been some other person I would have said that it was unworthy of a man occupying the responsible position which he occupies . . . .

**The Honourable Sir Jeremy Raisman** (Finance Member): Sir, on a point of personal explanation: is it correct, in regard to opinions genuinely held on the merits of a measure, to import into them reflections or conclusions regarding the character or manners of a particular individual?

**Mr. President** (The Honourable Sir Abdur Rahim): I think the Honourable Member might confine himself to the measure under discussion.

**Dr. P. N. Banerjea**: I will merely refer to his statement with regard to the Calcutta Corporation. When it was pointed out that the Calcutta Corporation would lose to the extent of 2 3/4th crores . . .

**Mr. President** (The Honourable Sir Abdur Rahim): I think the Honourable Member should confine himself to the motion.

**Dr. P. N. Banerjea**: All right, Sir. I will not refer to it. But that is an instance of the unfriendly attitude of the bureaucracy towards local self-government, and I believe that is also the attitude of his neighbour, Sir Andrew Clow. There was a time when the development of local self-government was considered one of the duties of the bureaucratic Government; but now that they have ceased to be chairmen of municipalities and district boards, they are very unfriendly towards these bodies. Therefore, I would not trust any officer of Government with the task of determining what tax has to be levied on a particular piece of railway property.

I should like in this connection to refer to a cognate matter. For some time past, with reference to the property of the railways held under the jurisdiction of the Calcutta Corporation, a tendency has been observed of substituting the profits basis for the basis adopted by the corporation. The profits basis is a very complicated business . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): Is the Calcutta Corporation concerned in this Bill?

**Dr. P. N. Banerjee:** Yes, the Calcutta Corporation is concerned, and the Calcutta Corporation strongly opposes certain sections of this Bill. The basis that has been urged by the Government officers who inquired into it is the profits basis. Now, the profits basis is a very intricate business and the Calcutta Corporation is unable to decide whether this profits basis is the right basis or not. As a matter of fact, the Indian railways are mostly State Railways—at least the East Indian and Eastern Bengal Railways are State Railways; and their accounts are not kept on the profits basis as in commercial railways. The Government officers say that the profits basis is accepted in England; but it is accepted there because that basis is governed by certain Acts which prevail there; besides certain safeguards are laid down. The basis is decided upon by the Railway and Canal Commissioners, not by an officer of the Executive Government. These are the differences. When it is advantageous to the Government they will brush aside all considerations and they will urge that the profits basis exists in England. In England the railways are all owned by companies, whereas in India most of the railways are owned by the Government. That is one point of distinction. Then, again, in England definite laws have been passed to guide the conduct of the officers who investigate into this matter. Further a body known as the Railway and Canal Commissioners has been established. There is no such provision here. Lastly, the Act under which the Commissioners there work insists that the proper profits basis should be worked out. Here there are no such safeguards and no such provisions. Even then they say "We are guided by the profits basis", they do not place all their papers—there are no papers really,—before the Corporation. In India the State railways do not keep their accounts on the same basis as the railways in England are compelled to do.

Therefore, on these grounds, I urge that this Bill is very defective. It has many defects. In the first place, there is no proper basis for calculation of a tax. In the second place, the drastic power given to the Central Government did not exist before. In the third place, it is provided that the Central Government will appoint an officer of its own to fix the rate or amount payable to a local body, the local body having no say in the matter. It is a one-sided arrangement. Lastly, there is no provision for appeals in this Bill. Therefore, my present attitude is that this Bill should not be referred to Select Committee. But as I said in the beginning, a Bill is needed; and if an assurance is given that all these defects will be removed at the Select Committee stage, I will not object to such reference. Otherwise, it will be my duty to object to reference to a Select Committee.

Sir, it is a very important measure, although the Bill consists only of a few sections. The provisions of the Bill can be utilised in such a manner as to stifle local self-government in this country; they may be used in such a manner that the resources of local bodies will be greatly curtailed; and a great deal of unfair treatment may be meted out to local bodies under the

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provisions of this Bill. Therefore, I say again that if assurances are given that at the Select Committee stage these four points which I have raised will be considered, the four defects which I have pointed out will be removed, then I will support reference to the Select Committee; otherwise I will oppose.

**Mr. Husenbhai Abdullabhai Laljee** (Bombay Central Division: Muhammadan Rural): Sir, I entirely agree with the remarks that have  
12 Noon fallen from the previous speakers, Mr. Jamnadas Mehta and Professor Banerjee. It appears that the Government have brought up this Bill with the object of helping the local bodies. At the same time it does appear that while on the one hand they want to help the local bodies, on the other hand they want to keep all powers to themselves so as to regulate how much and at what time they can give these local bodies some help. Well, Sir, the question of questions is, why are we acquiring all these Railways from the companies for the Government? The whole object is to do good for the masses of our countrymen. All the surplus that the Railways make goes to the Finance Member for other purpose than for the purpose of helping the masses. Now, Sir, which is the body which does the greatest good to the masses? I say it is the municipalities, and specially at this stage of our national existence, it is only the municipalities which are able to do some good to the masses by extending to them facilities in the way of medical relief, sanitation and education. Sir, we have given from our purse very very little of medical relief or education to the masses, and the condition in which masses are kept today is really very deplorable, further if we look to the general health of the people at large it is very poor. Now, Sir, if the real object is to help the masses of this country,—and no civilised Government will deny it,—then I ask in all fairness that when the Railways belong to the Government, why should not the Railway administrations themselves come forward and give grants to municipalities for extending primary education, for sanitation and affording medical relief, in order that there may be efficient and healthy labour, in order that the poor masses may have some enjoyment or some amenities when they are for all the time under the stress of heavy debts and taxation?

My friend, Mr. Jamnadas Mehta, has pointed out that the municipalities and specially municipalities in major cities, have a much heavier responsibility for the welfare of the citizens living in the premises or buildings in or near about the railway lines. I can tell you, Sir, that right from the Victoria Terminus Bombay up to Kurla about 7 miles we have got 8 railway lines, and throughout the monsoon we find that a lot of water naturally accumulates in the vicinity. We cannot drain it away, because there are 8 lines and a number of sidings, there is besides the Wadi Bunder, the Carnac Bunder depots with practically hundreds of sidings and railway lines. The result is that certain localities in the immediate neighbourhood of these railway lines like the Frere Road, Mandvi and Dadar are full of malaria microbes, and the Municipality has to spend lakhs of rupees in exterminating these microbes or in carrying on the malaria campaign. This trouble is directly due to the railway lines and premises being in such close proximity to places where people live. Now, Sir, when we are bound to look after the health of the masses, when we are bound to do all these things not only

of the railway people but also of the general public who patronise the railways more so when it must be remembered that it is the local traffic which pays the railways the most that is the people who live in these localities who contribute to the profits of the railways,—here comes an authority, my own Government, I mean the peoples' Government as I put it, because after all the Government of India is running at the cost of the ratepayers of all the provinces,—that authority comes and tells me—"I won't give you power to spend money for your own benefit, I shall be your own judge". Not only this, Sir, but the Government will not trust even the peoples municipalities, and they say they must have their own man. Why, I ask? Is it because the Government have got only to look to the interests of their Imperial revenues,—for what purposes these revenues are really used God alone knows. So far, Sir, from Imperial revenues we have not been able to afford any relief in the way of sanitation or education or medical relief to the masses. We have a very big budget, but we have not been able to spare anything from it for the good of the masses of people. In fact the Government of India do not spend even one per cent of the money which they get for Imperial revenues for education, sanitation or medical relief of the masses. Therefore, I say that if some more money is given to the municipalities, it won't go into the coffers of anybody, but it will be utilised for the people by municipalities, by people who are managing the affairs of their cities. Let us encourage them, let us give them more. . . . .

**Dr. P. N. Banerjee:** We are asking only for a fair thing.

**Mr. Husenbhai Abdullabhai Laljee:** I have been in the Corporation of Bombay for 25 years, and we know how we have been treated. I can say this about Bombay. We spent nearly 4 (four) crores of rupees on the triplication of the Tansa water supply when I was its President and supply ninety gallons per head daily of filtered water and when we incurred this capital expenditure, the question arose about the rate, and the railways declined to pay us the rate that was due. That is the way we were treated. Therefore, Sir, I suggest that in this matter there should be a judicial authority. The Government can easily trust a judicial authority if there is any difference of opinion. If I were in the place of my friend, Sir Andrew Clow, and if I had to show a surplus in the administration of my department, then I would naturally appoint my own officer. The very party who are concerned to see that there should be a surplus in the railway revenues should not themselves be the judges in this matter; they should agree to appoint an independent judicial authority. I do hope that the Government of India will realise that so far as clause 3(2) is concerned, they will make certain changes. . . . .

**Dr. P. N. Banerjee:** It should be removed altogether.

**Mr. Husenbhai Abdullabhai Laljee:** Or in the alternative a judicial authority should be appointed. It is impossible for anybody to believe that people interested in showing a surplus railway budget would ever think of the other side of the question. After all, as I said, where will the money go if you pay a few thousands more to municipalities? It will help the Railways in getting healthy and intelligent labour, it will also help the localities from which the labour will come to the railways. Although we are few elected Members in numbers here today I trust the Government will listen to our demand. After all, it is also a part of the duty of the Government



[Mr. Husenbhai Abdullabhai Laljee.]

of India to look after the general health, education and sanitation of the people, and they should, therefore, be very liberal in making contributions, because I repeat so far they have done very little in this respect, which is not at all creditable.

**Sardar Sant Singh** (West Punjab: Sikh): Sir, I wish to make a few observations on the character of the legislation this Bill seeks to provide for. There are five clauses, and clauses 3, 4 and 5 relate to the substantive part granting power to the executive Government to legislate on behalf of this House in a manner which they consider to be just, fair and equitable.

Sir, in the Objects and Reasons it is stated that this legislation has been called for in view of section 154 of the Government of India Act. While in the body of the section it is stated that all property vested in the Federation shall be exempt from all taxes imposed by, or by any authority within, a Province or Federated State, the proviso to that states that until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable or to be treated as liable thereto. In conformity with this proviso we are asked to enact provisions so that local bodies may be in a position to levy taxation on property at present vested in the State-owned railways. Examining these three substantive clauses of the Bill one finds that those who are responsible for the framing of this legislation have not cared to define any principle on which they propose to act if such power is granted to them. Clause 3 says that in respect of such property a railway administration shall be liable to pay any tax in aid of the funds of any local authority, if and to such extent as the Central Government may, by notification in the official Gazette, declare it to be so liable. Under clause 4 power is asked to be given to them so that they can modify the existing liability to taxation. Clause 5 is a saving clause, and they want the railway administration to enter into an agreement with the local body.

My objection is this. This is that piece of legislation which the Chief Justice of England in his well known book, "The New Despotism" has called legislation over the head and the power of the Legislature. I will quote from that book for the purpose of concentrating the attention of our friends on the Treasury Benches, that such a piece of legislation has been seriously objected to by well known constitutional authorities. It seriously infringes the rule of law and it leaves people at the mercy of the executive. As a matter of fact, before the constitution of legislatures the power of law making vested entirely in the bureaucracy. The Legislature in India has been given restricted powers. The legislative powers under the Government of India Act, 1935, have been divided into two portions, one, those which are exercised by this House so far as the Central Legislature is concerned, and the other, which are exercised by the Governor General in his power of promulgating Ordinances. I am not now going into the question of the constitutional propriety of such a division. I am simply stating the fact and bringing to the notice of Honourable Members in this House that at such a critical time as the present, when we are called upon to concentrate all our efforts towards the successful prosecution of the war, we find that this House, the elected representatives of the people are not being taken into confidence, and most of the important legislation is being done

by way of Ordinances. At the beginning of the war I raised my voice of protest that this Legislature is being gradually ignored, not on account of certain acts of important parties in the country, but the hands of those who abstain from the present Legislature are being strengthened by the acts and conduct of the authorities themselves. The position, when analysed, of the Congress Party in this House, and now of the Muslim League Party, is, "You do not share the power with us. Therefore, we are walking away. We do not want to be in the House."

Most of the legislation is by way of Ordinances, and important principles of legislation are decided not by the vote of this House but by the exercise of the power of making Ordinances. Here is a sample of the kind of legislation which is brought before this House—this Bill itself. Probably it has nothing to do with the war, and I know it has nothing to do with the war. Legislations relating to war are kept at a safe distance from us, but even in regard to simple matters like this, what does the bureaucracy want? They want a blank cheque, without showing the amount, without showing the purpose for which it is wanted,—to be filled in by the Honourable Sir Andrew Clow, as representing not this House, owing no responsibility to this Legislature, but owing responsibility to a third power, and he wants us to give him a blank cheque to be filled by him as he likes. This method has been adversely commented on by no less an authority than the Chief Justice of the United Kingdom. In his book, "The New Despotism" he has condemned this method in no unmistakable terms. He says:

"It is one thing to confer power, subject to proper restrictions, to make regulations. It is another thing to give those regulations the force of a statute. It is one thing to make regulations which are to have no effect unless and until they are approved by Parliament. It is another thing to make regulations, behind the back of Parliament, which come into force without the assent or even the knowledge of Parliament. Again, it is one strong thing to place the decision of a Minister, in a matter affecting the rights of individuals, beyond the possibility of review by the Courts of Law. And it is a strong thing to empower a Minister to modify, by his personal or departmental order, the provisions of a statute which has been enacted."

A thoughtful writer himself, he has carefully analysed the modern tendency of getting powers from the Parliament by the bureaucracy. He has enunciated nine principles which the bureaucracy wants to empower themselves with. I do not want to tire the House by going into those nine principles, but I will read only one of them, namely, No. 8, for the benefit of Honourable Members. What does the bureaucracy want? They are experts in governing, and want to keep the power of legislation as much as possible in their hands. The writer says:

"This course will prove tolerably simple if he (the bureaucrat) can: (a) get legislation passed in skeleton form; (b) fill up the gaps with his own rules, orders, and regulations; (c) make it difficult or impossible for Parliament to check the said rules, orders and regulations; (d) secure for them the force of statute; (e) make his own decision final; (f) arrange that the fact of his decision shall be conclusive proof of its legality; (g) take power to modify the provisions of statutes; and (h) prevent and avoid any sort of appeal to a Court of Law."

If these points apply to any piece of legislation, they apply to the present Bill in all its entirety. What does the Honourable Member for Communications want us to do? He wants that he shall have the power to issue a notification subjecting railway property to any amount of taxation which is equitable not in the eyes of the second party, that is the local body, but to himself who is one of the parties. May I ask the Honourable the Finance Member in his income-tax regulations to give us

[Sardar Sant Singh.]

that power—to issue a notification enabling the assessee to pay what he wants to pay and not what the Honourable the Finance Member wants that he should pay? Will he give me that power?

**The Honourable Sir Jeremy Raisman:** Surely that would be the state of affairs if the power of assessment was entirely in the hands of the local authority concerned with its own local interest, which has no regard to the interests of India as a whole.

**Sardar Sant Singh:** I am very grateful for my friend's interruption. May I reply in answer to the observations which he has been pleased to make just now that the principles of assessment of property in the local territories where a particular local body exercises its powers are already fixed. They are not new and those principles are applied to other corporations as well as individuals who own property within the jurisdiction of a local body. Why this extraordinary power for the railway? You can say that those principles should be revised but under the Government of India Act you have given power to the Provincial Governments to regulate taxation. That taxation is not to be regulated anew for the property owned by Indian State Railways. Those regulations are already there. The bye-laws are already there. The rules of assessment are already fixed. Then why this exceptional treatment? Do you mean to say that this House should understand that the railway claims a superior position to other individuals and other corporations that are doing their business within the jurisdiction of those local bodies? Practically the effect of this legislation would be that the railway authorities would be made superior in all respects to other corporations and other local bodies. Local bodies will say to the railways: 'Will you pay 1£ as taxation on your property?' You will say: 'I am willing to pay 1s. You can take it or leave it'. That is what it comes to. If the railway occupies a peculiar position, we could have understood it. You could have impressed upon us that fact and we would have said that the principle on which railway property will be taxed will be this and not that which prevails in respect of other property. You could have said that the railways own much more property than any individual and, therefore, it is entitled to some sort of concession—that it will pay half or quarter and so on. I could have understood that. If you have got certain principles, you could come up to this House and ask our assent to them but you want autocratic, despotic, and Hitlerian powers to issue a notification and fix the rate and reduce it at your own sweet will. That is the power you ask for and if this House refuses to give you that power, you should not complain. That is not the sort of legislation which this House should be faced with. What is the principle underlying this Bill? Your Statement of Objects and Reasons does not give that principle. It does not define any principle except this, that you have got power to issue a notification at your own sweet will. That is no principle. I would not agree to this principle. I will, if I may, draw your attention once more to the proviso to the Government of India Act. It says:

"Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable or treated as liable to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto."

If my interpretation of this section is correct, and I would ask the Honourable the Law Member to correct me if I am wrong, this section does not give you the power to tax yourself in a manner which is pleasing to you. This only gives the power to this Legislature to declare that the property shall remain liable to the tax. The taxing power is given to the Provincial Legislature. You cannot say that the tax which has been levied by a Provincial Government for the benefit of a local body will be varied by this Legislature by its own legislation. That will be giving an over-riding power to this House over the head of the Provincial Legislature and that will be a discriminatory legislation. So, this Bill is open to this legal objection that this Bill claims over-riding power over the powers of the Provincial Legislature to levy taxation on subjects which are within their exclusive jurisdiction. Therefore, my submission is that this Bill giving such power is *ultra vires* of the powers of this Legislature. The section of the Government of India Act clearly lays down that you cannot vary the tax of the Provincial Government. You can only say that the railway properties shall be liable to that tax, no more and no less. Therefore, I will draw the attention of the Honourable Member in charge of the Bill and also the Honourable the Law Member to this aspect of the question too. My criticisms are two, that the character of this legislation is such that it asks for the power of legislation to be given to the bureaucracy. The second is that under the proviso to the Government of India Act no such power is given to this Legislature to vary the taxation that the Provincial Government has levied and which the Provincial Government has got the power to levy. With these observations I will resume my seat.

**Babu Baijnath Bajoria** (Marwari Association: Indian Commerce): It has been said very often that the railway administration is a commercial concern and I am very much surprised that in this Bill a commercial concern has been given, so to say, a one sided agreement, in which the municipalities and the local bodies have got very little say in the matter of assessment of railway properties or the properties of a commercial concern. Why this distinction has been made between a big commercial concern like the railways and a smaller industrial or commercial undertaking, I fail to understand. The result of this Bill from the commercial point of view will be that if the railways are exempted from the payment of tax for any portion of their holding or if they had to pay less than the others have to pay, then the others will have to make good the loss which will be incurred due to the exemption or the reduction of taxation to the railway administration. The other firms and residents in the locality will have to make good the loss because the municipality will increase the taxation on those people over which it has power to assess more. That will, I think, increase the hardship of the general public.

This Bill or a similar Bill, it has been stated in the Statement of Objects and Reasons, was moved for circulation in 1938 and even the circulation motion was rejected by this House. Taking advantage of the depleted strength of the opposition, a Bill has now been brought forward to pass such a measure in a very hurried fashion and refer the matter to a Select Committee and get it passed within a few days. In my opinion there must be equity and justice both for the railways and for the municipalities and the local bodies. After all, municipalities and the railways are both public concerns and they have got important officers with commonsense and they will be able to adjust a fair assessment for

[Babu Baijnath Bajoria.]

the railway property. In cases where they do not see eye to eye with one another, the matter must be referred to an impartial judicial body. Before that body the railways can put up their own case and the municipalities will also be able to state their own case. But to give a blank cheque to the railways to dictate what the assessment should be and to leave it to them as to what amount they will pay or will not pay at all, seems to me to be very unfair. With these few words I oppose the motion.

**Mr. N. M. Joshi** (Nominated Non-Official): Sir, I move:

"That the question be now put."

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

"That the question be now put."

The motion was adopted.

**The Honourable Sir Andrew GLOW:** Sir, when I was pressed this morning to include a certain gentleman in the Select Committee, I did not realise that his object in getting there was not constructive but destructive . . . . .

**Sardar Sant Singh:** You have not offered anything constructive in this Bill.

**The Honourable Sir Andrew GLOW:** . . . . and I was a little surprised at some of the arguments used by Mr. Jamnadas Mehta. Like Mr. Baijnath Bajoria he saw no difference whatsoever between the railways and a private factory. Obviously there is a very big difference. If Mr. Baijnath Bajoria is assessed to a tax, he has to put his hand in his pocket and pay, whereas if I, on behalf of the railways, am assessed, I put my hands in Mr. Baijnath Bajoria's pocket and pay. That is a vital difference and that is the whole reason underlying both the Government of India Act section and this Bill. In other words, we have here two different kinds of bodies serving the Government in different ways, the municipalities and the railways, and in this country both of them are being carried on at the expense of the taxpayers. It is a question of regulating the interests of the taxpayers in a small area against the interests of the taxpayers throughout the country. Mr. Jamnadas Mehta gave us the astonishing information that all the smoke generated by the railways was consumed within the municipalities and Mr. Husenbhai Laljee also referred to the municipalities as those bodies which were doing the greatest good to the masses. I suggest that he might look up the figures of population and see how many of the people live within municipal areas. The fact is that Mr. Jamnadas Mehta, with his fine public service that he has given in Bombay, has developed an urbanised mind which does not see anything outside municipal areas and forgets that great masses live outside their purview. These are the people who have to pay ultimately for the losses that fall upon the railways.

There was a good deal of confusion about sub-section 3(3). I am not myself a draftsman. I have consulted the draftsman but I am not going to expound on the floor of the House the meaning of every phrase in the Bill. But I think my statement in the Statement of Objects and

Reasons that we are prepared to restore the *status quo* is substantially true. If Honourable Members had only referred—and particularly Professor Banerjea—to section 135 of the Government of India Act, I think they would have seen that the Government of India have power to vary taxation as it stands. The clause to which so much exception has been taken which refers to the appointment of an officer will also be found to have been taken *verbatim* from the existing section 135.

**Dr. P. N. Banerjea:** But some of the other things have not been taken.

**Mr. President** (The Honourable Sir Abdur Rahim): If the Honourable Member wishes to make any remarks, he must go back to his seat.

**The Honourable Sir Andrew Clow:** The underlying principle behind sub-section 3(2) is, I think, fairly clear. The railways in most cases avail themselves of the services of a municipality. In such a case it is only right that they should contribute towards the cost of those services. In other places we have railway colonies where we provide a great many of the services, but these may happen to fall within municipal limits. I think the House will agree that while we should not try to exploit the municipalities, they should not try to exploit us.

**Dr. P. N. Banerjea:** Who is to judge?

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member is not in his seat again. If he wants to say anything, he should go back to his seat.

**The Honourable Sir Andrew Clow:** As I listened to the speech of the Honourable Member without interrupting him, I would ask him that he might show the same courtesy towards me.

The general principle, I think, is that both the railways and the municipalities are organisations which try each in their own way to serve the public interest and we should not try to secure an unfair advantage on either side.

**Dr. P. N. Banerjea:** Did I suggest that?

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member is again interrupting.

**The Honourable Sir Andrew Clow:** I must appeal to you, Sir, for a little protection. The Honourable Member suggested that section 3(2) was unfair and it was something new that has been introduced. Prof. Banerjea proclaimed that I had not fully alleviated his fears, that I had admitted that certain fears had been expressed on the preceding Bill and that this Bill did not entirely remove them. I am afraid if I had to draft Bills which would alleviate or remove the fears existing in my Honourable friend's mind, it would be a very difficult task. I can only assure him that this Bill has been framed in good faith to meet what I believe to be an honest difficulty.

My Honourable friend, Babu Baijnath Bajoria, put his finger very closely on the real point at issue when he said that unless we can tax the railways to a certain extent, then of course there will be heavier taxation on the people

[Sir Andrew Clow.]

living in that Municipality. That may be regarded as a glimpse of the obvious, but of course it works the other way too. If a Municipality can, on one pretext or another, screw out of the railways a lot of money, less will have to be paid by the persons living in that particular area, and that is precisely one of the fears, for I also am not entirely free from fears, that lie at the back of my mind. But the most astonishing speech of the morning came from my Honourable friend, Sardar Sant Singh, because he seems to have misunderstood both the position under the Government of India Act and what we are attempting in this Bill. The position under the Government of India Act is that the section which he cited is practically a freezing order. It means that any tax which existing at the time the section came into force goes on in perpetuity, no other tax can be added. So that where the Municipality ceases to give service, the tax cannot be removed, and whatever services any new Municipality starts to render or goes on to render, it can never be paid anything for those services. The most curious part of his speech was the one in which he seems to regard this as bureaucratic avarice for power and me as one of those against whom Sir Gordon Hewait's strictures were directed. I can assure the House that if I had approached this subject merely from the point of view of railways and not from that of the wider interests which I think we ought to consider in this Bill, then it contains powers which I do not want at all. Nothing would suit the Railways, regarded in isolation, better than that the existing position should continue. There is no doubt whatever that the Municipalities are going to render greater service to the railways and if they can stabilise the taxation at the figure at which it stands at present, and if the Government of India had no power whatever to issue fresh notification, the railways, on their part would be entirely content."

**Sardar Sant Singh:** Which part of the Government has to issue notification? Is it the legislature or the executive? That is the point.

**The Honourable Sir Andrew Clow:** The position is we had power to issue notification up to the time the Government of India Act came into force. Since then no one has had the power at all, and nothing would suit the Railways better, as I said, regarded in isolation and ignoring all other interests, than that the position should continue, in other words, no one should have the power to change the existing position.

**Sardar Sant Singh:** My attack is that by the passage of this law, you want the assent of this House and the assent of this House is directed to give you power to issue notification varying the levying of the amount in whichever way you please, not what the House pleases. That is my objection.

**The Honourable Sir Andrew Clow:** The House cannot obviously decide in every case what a municipality is to be paid. I am sure that my Honourable friend does not advance that proposition in all seriousness. The point I am making is that so far from this being in the interests of railways anxious to exercise what my Honourable friend regards as wide power, it is a power that is going to be distinctly embarrassing from the railway point of view and in my humble opinion it is bound to cost them more. I regard it, from the railway point of view as a measure of self-abnegation and self-sacrifice.

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

"That the Bill to regulate the extent to which railway property shall be liable to taxation imposed by an authority within a province be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Mr. T. S. Sankara Ayyar, Dr. B. D. Dalal, Mr. J. Ramsay Scott, Mr. Akhil Chandra Datta, Mulvi Abdur Rasheed Chaudhury, Rao Sahib N. Sivaraj, Mr. C. P. Lawson, Mr. Jamnadas M. Mehta, Mr. R. A. Gopalaswami and the Mover, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

The motion was adopted.

## THE EXCESS PROFITS TAX (SECOND AMENDMENT) BILL.

**The Honourable Sir Jeremy Raisman** (Finance Member): Sir, I move:

"That the Bill further to amend the Excess Profits Tax Act, 1940 (*Second Amendment*), be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Mr. J. F. Sheehy, Mr. C. W. Ayers, Mr. T. Chapman-Mortimer, Mr. Husenbhai Abdullabhai Laljee, Babu Baijnath Bajoria, Khan Bahadur Sir Abdul Hamid, and the Mover with instructions to report on or before the 5th November, 1941, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, my Honourable colleague who just sat down used a phrase which seems to me to be extraordinarily appropriate. I think he spoke of self-abnegation and self-sacrifice. I consider that the main object of this Bill might also come within that exalted phrase. The House will remember that at the time when the original Excess Profits Tax Bill was before them, an acute controversy developed over the question of the treatment of borrowed money in determining the capital of assesseees. In the course of the Select Committee proceedings I had advanced to the position of being prepared to treat such borrowed money, when it consisted of advances from banks, in the same way as capital for the purpose of application of the statutory rate of profits. There was then considerable pressure that I should go further and treat all borrowed money in the same way. Well, Sir, I must admit that at that time I was impressed with the danger of abuse which such a concession might lead to. It appeared to me possible that collusive loans might be arranged, the result of which would be that there would be thrown on the Department in a large number of cases the onus of proving that the amount of capital actually employed by the assessee was excessive for the purpose of his business, and that this would lead to interminable alterations and would place the Exchequer, and the revenue in a highly vulnerable position.

Now, Sir, the discussion on that point has continued since that time and I am now prepared to advance beyond the point which I then reached and to extend this concession to all borrowed money. I still am not entirely free from some apprehensions as to the danger of this step, but I consider that on the whole it is a reasonable and justifiable concession and as it is no part of my intention to discriminate between the different agencies which function in the financing of business, and that is the form which the issue has now taken, I am prepared to make this change. The amendment therefore, has the effect of removing the existing difference between the treatment in computing capital of money borrowed from a person carrying on a *bona fide* banking business and of money borrowed otherwise. It is proposed that as from the 1st April, 1941, there shall be no deduction of borrowed money in computing capital and, consequently,—this follows as a natural corollary,—as from the same date interest or other consideration



[Sir Jeremy Raisman.]

paid for the use of borrowed money shall not be deducted in computing profits. Provision is also made to secure that where the minimum standard of Rs. 36,000 a year applies interest payable in respect of borrowed money during a chargeable accounting period shall not be disallowed; and also that where a direction has been given by a board of referees under section 6 (3) or by the Central Board of Revenue under section 26 (1), any interest on borrowed money payable in respect of a chosen standard period shall be added to the substituted standard of profits resulting from such a direction.

Another important point which this Bill deals with is the question of what are usually called wasting assets. Clause 6 recognises that in consequence of war-time requirements a business concerned with the winning of oil or other minerals may so increase its output as to bring about an exhaustion of the deposits that it is working earlier than would otherwise have been the case; and it, therefore, empowers the Central Board of Revenue, upon application made to it, to order an equitable allowance therefor in computing the profits of the chargeable accounting period. This is a matter which excited considerable discussion both in the United Kingdom and to some extent here; and the admission of the principle should, I think, be welcome to assesses who are concerned with what are known as wasting assets.

There are other clauses of this Bill,—and these no doubt led to the cries of “Question” when I talked of self-sacrifice and self-abnegation,—there are other clauses which are intended to counter operations having for their object the avoidance of Excess Profits Tax and unnecessary and extravagant expenditure the cost of which would fall to a major extent upon the revenues of the country. It is a familiar fact and it is, I am prepared to admit, one of the weaknesses and the dangers of an Excess Profits Tax that there is a temptation to an assessee when he has reached a certain stage to embark on any kind of expenditure rather than allow the profits to go to the revenue. I do not expect that the provisions which are made in this Bill will ever have to be used, but I do feel that unless you have some provision in your system of taxation, unless you have some provision which will enable you to deal with gross attempts of that kind, you are practically inviting the assessee to pursue certain devices when the state of his profits reaches a certain figure. It is admitted on all hands that this kind of danger does exist and it is known that there were abuses during and after the last war under the old Excess Profits Tax system. And my object in making provision against it is merely to show the red light to persons who would exploit this opportunity in a manner which would be entirely unfair to the general taxpayer and to the revenue.

Then, Sir, in view of the change of basis in the computation of capital and profits which it is proposed should take effect from the same date as the increase in the rate of tax, that is, as from the 1st April, 1941, it is necessary to lay down the basis on which the excess or deficiency of profits of a chargeable accounting period which commences before and ends after that date is to be computed. This is dealt with in clause 4 which, briefly, provides that a computation shall be made on the old basis for the whole period and a due proportion of the result treated as an excess or deficiency for the part of the period ending on the 31st March, 1941, while a due proportion of the result of a computation for the whole period under the new basis is to be treated as an excess or deficiency for the part of the period ending on the 1st April, 1941. I trust that my explanation of this

amendment is not of the nature of what the logician calls *obscurum per obscurius*, but I am afraid that attempts to explain some of these provisions in ordinary prose are about as fruitful as attempts to explain algebraical formulæ in ordinary English.

Then, Sir, another important point in this Bill is that which deals with the profits of business arising in Indian States. Following the proposed amendment of the Income-tax Act, clause 3 of this Bill brings the Excess Profits Tax into line by providing for the complete exclusion of such profits from the profits assessable to Excess Profits Tax. Sir, it may well be that the notes on clauses attached to the Bill may need some further explanation and clarification in matters of detail, and for this reason I commend to the House the proposal that the Bill be referred to a Select Committee.

Sir, I move.

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

"That the Bill further to amend the Excess Profits Tax Act, 1940 (*Second Amendment*), be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Mr. J. F. Sheehy, Mr. C. W. Ayers, Mr. T. Chapman-Mortimer, Mr. Huseinbhai Abdullabhai Laljee, Babu Baijnath Bajoria, Khan Bahadur Sir Abdul Hamid, and the Mover with instructions to report on or before the 5th November, 1941, and that the number of Members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

**Lieut.-Colonel Sir Henry Gidney** (Nominated Non-Official): Sir, with your permission and the permission of the House, I beg leave to suggest that the name of Sir Cowasji Jehangir be added to the Select Committee.

**The Honourable Sir Jeremy Raisman**: I am quite prepared to accept that.

**Mr. President** (The Honourable Sir Abdur Rahim): Then the name of Sir Cowasji Jehangir will be added.

**Sir Cowasji Jehangir** (Bombay City: Non-Muhammadan Urban): Sir, it is not usual for me to speak on a motion to send a Bill to a Select Committee, but I desire to do so on this occasion because there are two or three points in this Bill of a very unusual character. My Honourable friend, the Finance Member, tried to take the credit for a remark made by Sir Andrew Clow about self-sacrifice. I may tell him that during the few years we have been together in this Assembly I have not seen much spirit of that self-sacrifice coming from my Honourable friend. It may have come from the Honourable the Railway Member on more than one occasion,—I am not aware of it,—but I certainly have not seen it in the Honourable the Finance Member. In this Bill he may be rectifying one or two injustices that he may have done. It is by no means so innocent a Bill as he tried to make out.

Now, Sir, he has been kind enough, at the instance of Sir Henry Gidney, to include me on the Select Committee. I should have thought that in a House of this character the name of the elected representative of Bombay might have struck him in the first instance.

**The Honourable Sir Jeremy Raisman**: Sir, I must point out that the names for the Select Committee were produced under the ordinary procedure by which names are usually produced.

**Sir Cowasji Jehangir:** He seems to forget that Members who do not belong to any Party are also included and they are included at the instance of the Finance Member or any Member in charge of a Bill; and I should have thought that, leaving aside ordinary courtesy, in order to do justice to a very important part of India which pays this tax, he would have the fairness to include the name of the elected representative Member from that province. I have nothing further to say in that matter.

**The Honourable Sir Jeremy Raisman:** Sir, I must again point out that there is a regular procedure whereby names for Select Committees are obtained by the Government Whip; and, as far as I am aware, the ordinary procedure was followed and a list of names was handed to me at the last moment.

**Sir Cowasji Jehangir:** All I can say is, Sir, that I realize that my Honourable friend did not mean to do it, but I put it down to a  
 1 P.M. lack of experience. I have been in the House much longer than the Honourable Member and I find that it is a lack of experience.

Now, coming to the Bill itself, there are two clauses which are of vital importance and which affect all excess profits tax-payers throughout India. I will first refer to Clause 5 of the Bill and I trust, Mr. President, that you and the Honourable the Finance Member and the House will excuse me if I have to go into a little detail because these are not simple questions. They require a little elucidation to be able to be understood. Clause 5 of the Bill attempts to add another section to the Act—Section 10A. Section 10 of the Act gives the officers of Government in this Department the right to point out any fictitious or artificial transactions that the assessee may have gone in for and then set aside that transaction with regard to the accounts so far as the Excess Profits Tax is involved. When this Section was before the Select Committee it was pointed out to Government that this Section in itself went further than the corresponding Section in England. There were protests from the commercial community in India with regard to Section 10. I will again repeat what Section 10 is: It enables the officers of Government in the Department to find out fictitious or artificial transactions which may have been made by the assessee in order to reduce his income. Nobody can object to it. We are all in favour but I again repeat that when this Section in the Act was originally in the Bill and before the Select Committee, it was pointed out that it went further than the corresponding Section in England. Not satisfied with that, my Honourable friend, so self-sacrificing as he desires us to believe, brings in a clause in the Bill which provides another Section. He calls it 10A and I am going to read out this proposed 10A to the House for them to understand it clearly:

“Where the Excess Profits Tax Officer is of opinion that the purpose, or one of the purposes, for which any transaction or transactions was or were effected (whether before or after the passing of the Excess Profits Tax (Second Amendment) Act, 1941)”

—i.e., to give it retrospective effect—

“was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counter-act the avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions”, etc., etc.

Now this is a Clause which gives power to the officers of the Department to interfere, without rhyme or reason, it may be, with the accounts of a company on the allegation that a certain transaction, which is *bona fide* and honest and allowed by the law, should not have been effected because it had the effect of reducing the income of that company. Now, Sir, such wide powers to officers of Government are unprecedented. No such powers are given in the Excess Profits Tax Act in England, so far as I know.

**Mr. C. W. Ayers** (Government of India: Nominated Official): Yes, such powers were given in 1939.

**Sir Cowasji Jehangir**: I doubt it. It gives powers to officers of Government of extraordinarily wide nature and I strongly object to give such wide powers to officers of Government in such an important matter. It has been held by the High Court in England—I have got the judgment—that any assessee can make such changes or take such action within the four-corners of the law whereby he can reduce his taxation. Suppose, now, a company finds it necessary to take a certain action for its benefit or for the benefit of the shareholders, which may cost some money and thereby reduce the profits. Any officer of this Department can turn round and say, “You should not have done it, it is not in our interest, you have decreased your profit by ten thousand rupees because you did that”, and I have to prove that it was in the interest of my company that that expenditure was incurred. Is that not going much too far? Now, Sir, we will be told that we can appeal. We will be told that the officers of Government all over India—I am not talking of those who sit on the Benches here; they are on the top of the tree, they do not know what is going on—are absolutely just, absolutely fair and no injustice will be done. We have been told that dozens of times. When I was green and young I believed in it. I am beginning to doubt it now not because the officers want to be hard or unfair. They are afraid of the top. They are afraid of being accused of being lenient and, therefore, they go to the other extreme. The screw is being put from the top: “get more money out of the assessee.” I do not blame the poor officials of Government. They do not want to get into trouble, they want to keep their jobs like everybody else, but the result is they are much stricter than they ought to be. Sometimes they are stricter than their conscience permits them to be. The result is that clauses of this sort effect the greatest injustice on the assessee. I know it is not possible to get men of the calibre of my friend, Mr. Ayers, to serve all over India, nor can we get Mr. Sheehy to serve in all the departments under his own department. I would be quite satisfied if Mr. Ayers and Mr. Sheehy were permanently in Bombay to hear my appeal and the appeals of assessees: I will not say a word, I will let the whole of this Bill be passed. But I know that is not so and I do blame the top for putting pressure upon these officers . . . .

**The Honourable Mr. M. S. Aney** (Leader of the House): Who is at the top?

**Sir Cowasji Jehangir**: My Honourable friend, the Finance Member: who else is at the top? In fact all of you, the whole of the Government. Of course, they may have their own apprehensions that the officers may not be doing their work well; they look at the returns—just as I did when I

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was in a similar position, to see whether the revenue was much less in any year and if so why, and then ask for explanations. If I did not think them satisfactory of course I put on the screw—may be quite unfairly—and that is what my Honourable friend, the Finance Member, and his two satellites behind him are doing, with the result that we the assesses are suffering on account of clauses of this sort in the Bill. It is such clauses as these that I strongly object to. By all means protect your interests. I am all for protecting your interests, but I am strongly against your having powers which may be badly misused; and we have experience now.

I shall now come to clause 7 of the Bill. There is only one portion to which I would like to draw attention. It is the addition of a rule; I will read that rule and you will then clearly understand what they desire to do. Rule 12 (1) it is going to be and it says:

"In computing the profits of any chargeable accounting period no deduction shall be allowed in respect of expenses in excess of the amount which the Excess Profits Tax Officer considers reasonable and necessary having regard to the requirements of the business and, in the case of directors' fees or other payments for services, to the actual services rendered by the person concerned."

Now, what does that mean? If I have got a very hardworking servant and I desire to give him a substantial increase in salary, my Honourable friend will turn round and say "You did this on account of your very high profits and therefore we will disallow it." If I choose to give a handsome bonus at the end of the year to my hardworked servant during these hard and critical times—and remember most of them are working for Government—this clause gives a right to Government to say "You should not have given that bonus, now pay out of your net profits." That is to say, the company would then have to pay this bonus out of the 20 per cent. profits that they will keep for themselves, about 80 per cent. going to Government. It will not be treated as an expense. When I was discussing this question I was given an instance of how it could be done unfairly. For instance, if the manager of a company or agent or managing director is unscrupulous, he will employ his brother-in-law on a salary of Rs. 5000 a month and he will pay that 5000 to his brother-in-law but by arrangement put it in his own pocket. He may do that, if he is thoroughly unscrupulous and dishonest, but you have a remedy still in the Act. Let us now . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): I think the Honourable Member can resume his speech after Lunch.

**The Honourable Mr. M. S. Aney:** Sir, we have decided to allot Tuesday next for the discussion of Sir Abdul Halim Ghuznavi's Resolution on the Burma Agreement.

There will be very little new business available for the two other official days next week and I think that it would meet the convenience of the House if any business on the current agenda which may not be completed today were left over for next week so as to leave tomorrow free for the meeting of Select Committees. I would, therefore, request you, Sir, to cancel the meeting fixed for tomorrow.

**Mr. President** (The Honourable Sir Abdur Rahim): I suppose that will meet the convenience of the House?

**Honourable Members:** Yes.

**Mr. President** (The Honourable Sir Abdur Rahim): Very well; I order accordingly.

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

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

**Sir Cowasji Jehangir:** Sir, when the House rose for Lunch, I was dealing with clause 7 of the Bill, and I believe I did read the proposed rule 12 to the House, and I gave the House my idea of what this rule was intended to effect. I also gave an instance to the House where, in ordinary parlance, hankey-pankey of the worst order could be played. But, in my humble opinion, the rule goes much too far and can be taken advantage of by the Department and I feel will be taken advantage of. Now, Sir, I would like to read the Objects and Reasons for having introduced this rule into the Bill.

Clause 7 (b). "This clause is designed to prevent the dissipation of excess profits by expenditure that has no relation to the requirements of the business, the major part of the cost of which might be met out of reduced taxation. In order, however, that this power of disallowance should not be exercised without the fullest consideration, it is provided that the authority of the Commissioner of Excess Profits Tax is to be a condition precedent to its exercise, and further the assessee is given the right of appeal to the Appellate Tribunal in the case of any disallowance under this provision". This clearly shows that in the mind of the Government there is an apprehension that the assessee will do something which will fall under section 10 of the Act. You have already got section 10 of the Act which prevents you from allowing the assessee to take advantage of any fictitious or artificial transaction. Therefore, your objects and reasons clearly show that you want to prevent artificial or fictitious transactions. But you have already got the power for it. What is the object now of having this new power? I contend that section 10 covers the ground, and if you have any apprehensions with regard to the conduct of assessees, section 10 is sufficient and strong enough to meet the case. Sir, this new rule will hamper the discretion of the management of business houses; they will be nervous about providing certain amenities that they otherwise would, simply fearing that they might be sat on when the time comes a year hence, and the expenditure would not be allowed as expenditure legitimately incurred. You will be doing a great deal of injustice to a great number of business houses who will not be able to provide amenities to their employees. I place this case before the Government for their consideration.

Now, Sir, with regard to both these clauses, if the assessee does spend more money than he ought to have spent, Government must realise that a part of the money is theirs and a part of the money is the assessee's who is not going to throw it away deliberately. I contend that such bonuses, such increases in wages as may be considered legitimate should not come out of

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the 20 per cent. but they should come out of the whole 100 per cent., and then divide it into 80 per cent. and 20 per cent. What you are forcing industries and business houses to do is to give such bonuses and increases out of their balance of the 20 per cent. That is grossly unfair, and I would urge that this House as a whole should take really some interest in this matter when the Bill comes before them again and try and reflect on whose shoulders these burdens will be ultimately placed. When they come to realise that, I think they will come to the conclusion that neither of these two clauses as they stand today, I mean such portions of them as I have referred to, should be in the Bill. If the ingenuity of our friends of the Treasury Benches can find some means to meet the objections, I have no objection myself. I have no objection to their being satisfied that there shall be nothing done by the assessee which will deliberately dissipate the profits. I am as keen as they are that Government should get their legitimate dues; but at the same time I am also anxious that Government should not place heavy burdens on the assessee which by this Bill they propose to do.

Mr. Deputy President, these piecemeal legislations, which we are told are so innocent, have sometimes been found to be most dangerous to both sides, and I would urge, now that they have joint responsibility in Government, that clauses of the Bill such as these should have the approval and backing of the Government as a whole. Perhaps it has been done. I am not aware of it . . . .

**The Honourable Sir Jeremy Raisman:** I must point out to the Honourable Member that legislation that is brought forward in this House has always received the approval of Government.

**Sir Cowasji Jehangir:** I am very glad to hear it, and I trust it will be a reality in the future. I have nothing more to say.

**Babu Baijnath Bajoria** (Marwari Association: Indian Commerce): Sir, the Honourable the Finance Member said that by this Bill he was giving away something and was applying the principle of self-sacrifice. I have my doubts about it. Of course, this Bill is good from the assessee's point of view in some directions. It is at the same time equally bad in other directions. First, as regards the income from the States, I spoke on this aspect of the Bill at some length the other day in my speech on the Income-tax (Amendment) Bill. Today I can only say this much that by introducing this amendment Government is not giving away anything, but is preserving a lot of money or saving the drainage which otherwise would have taken place to them if this amendment had not been introduced. Otherwise, the Indian States would have taken a big slice of their income, because . . . .

**Sir Cowasji Jehangir:** May I interrupt the Honourable Member for a minute? Does he believe that the Honourable the Finance Member is a philanthropist?

**Babu Baijnath Bajoria:** Because, Sir, there would have been considerable drain on the receipts from excess profits if the Indian States had taken their share of the income-tax on income earned by their subjects in British India. What I mean is, if taxation on accrual basis and double income-tax

relief provisions were retained as between the Indian States income and British Indian income, then it will be the Government of India who would have to suffer considerably. So, they have saved themselves full sixteen annas by this amendment, but so far as the assessee are concerned, they are given relief only partially. You have kept the rate at which assessment is to be made on the total income which will be earned by the assessee both in British India and in the Indian States. As I am on the Select Committee of both these Bills, I will explain this further in the Committee. I hope that I shall be able to convince the Honourable the Finance Member about further improvement that has to be made before this clause can be acceptable to us or the Marwari community who are greatly affected by its provisions. Lest I should be mistaken, it is not only the Marwari community that is affected, but there are other important trading communities on the Bombay side, such as Cutchis, Guzeratis, who are also greatly affected by its provisions.

As regards the question of allowing interest on borrowed capital other than from banks I am glad that at last Government have seen their mistake. When we on this side of the House appealed and pressed and urged with all the emphasis that we could command at that time, that it was very unfair on the part of the Government to treat Bank's money as if their rupee was made of gold, whereas the rupee advanced by a private merchant was made of copper. They did not listen to us, but now that a similar amendment has been made in the United Kingdom the Government have come forward with this. Better late than never. We are glad that they have seen their mistake and they have tried to rectify the mistake. But here I would like to draw the attention of the Government to the fact that the date from which they are going to give effect to this concession is from the 1st April, 1941. I do not understand why, when they have realised that a mistake was made, they do not give effect to it from the beginning of this Act, that is, from September, 1939. After all, I think only a very few cases,—as far as my knowledge goes, I may be mistaken—have been decided. Government could have given retrospective effect from the very beginning of the Act, or in any case from the 1st April, 1940, because the assessment for the chargeable accounting period 1940-41 has not been done. If there is any objection to doing any of these two things, I should like to hear from the Honourable the Finance Member.

As regards clause 5, I entirely agree with what has fallen from the lips of the great Baronet from Bombay. He has put the case very strongly and I cannot do better than what he has done. The sum and substance of this clause is that it is in the discretion of the Excess Profits Officer to disregard or not to take into account any transaction in which loss has been incurred, by saying, "You have done this only with a view to reduce liability". It is very easy to be wise after the event. The Excess Profits Tax officer sitting in his chair in his room could easily say, "Why have you incurred this loss? You should not have done this; you should not have done that. You have reduced the profit." But those who are in business—it is for them to decide, to do business in the manner they think best. Business is, after all, not like earning fat salaries where there is sure profit. In business there may be big profit, and there may also be big loss. So, this arbitrary power proposed to be given to the Excess Profits Tax Officer is not acceptable to us. Section 10 as it stands today is also objectionable. It gives the right to the Excess Profits Tax Officer to deal with fictitious or artificial transactions. Who is to judge, who is to decide whether these



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transactions are artificial or fictitious? It is the Excess Profits Tax Officer. He has already that wide power,—these are the very words in the clause now proposed: “any transaction which has for its purpose the avoidance of Excess Profits Tax”. He may say, “This transaction I won’t allow, because the profits will be reduced. I cannot count it as a loss. I must have my full pound of flesh on the profit which you have made. I ignore the loss which I consider you have incurred on transactions which should not have been entered into.” This I do not think is fair and equitable. Then again, there is clause 7 (b). The Statement of Objects and Reasons says:

“This clause is designed to prevent the dissipation of excess profits by expenditure that has no relation to the requirements of the business.”

Who is to judge what expenditure is required for the conduct and management of the business? Is it the Government, is it the Excess Profits Tax Officer, or—I do not mean any disrespect to the Honourable Members on the Treasury Bench who are sitting there, I think that even the Finance Member or Mr. Sheehy cannot be a judge of what expenditure should be incurred for the conduct and management of any particular business. It is for the person who conducts the business to decide what expenditure is to be incurred. It is easy to give god-fatherly advice. They take upon themselves, so to say, the duty of guardianship and advise, “Oh, this expenditure should not be incurred”, but it has to be borne in mind that the accounts will come to them after all this expenditure has been incurred. What they will do is they will not allow it for the purpose of computation of Excess Profits Tax. I think this is a matter in which the Government should not interfere. Sir Cowasji Jehangir has very rightly pointed out that Government have even taken exception to bonuses or increase of salary or commission to be paid to employees of the firm. It will be readily admitted that where any company or any firm has made large profits or greater profits than it did in previous years, it was due to the exertion of these very employees, and it is only fair and proper that these firms and companies should adequately remunerate their staff for the excess profits which they have made.

**Mr. N. M. Joshi** (Nominated Non-official): Remember this always.

**Babu Baijnath Bajoria:** Mr. Joshi thinks that he is the only friend of labour. We claim that the Indian businessmen and the industrialists are the greatest friends of labour, and but for us, but for the industrialists, Mr. Joshi would not have existed here at all.

Sir, I do not think that the Government should interfere in the internal management of the business and they should not step in and say that you should not incur this expenditure or that expenditure. If the transaction is a fictitious or an artificial one, they have already got the powers under section 10. You should not debar a company from giving any increased salary or bonus or commission to their employees or from managing their affairs in the way they think best. Any intervention on the part of Government is not at all desirable. With these few remarks, I support the motion for reference to Select Committee.

**Mr. Jamnadas M. Mehta** (Bombay Central Division: Non-Muhammadan Rural): I am one of those who believe that income-tax is the most

equitable burden which a citizen should bear and that those whose backs are broad should be made to pay to the tax-payer back a part of what they have earned. Besides, being a direct tax, it is the easiest to collect. For these reasons I am generally disinclined to listen to the grouse of the industrialists when they oppose any measure of income-tax or super-tax or excess profits tax and I would not have minded if a further burden was placed where that burden was capable of resting; as a result of income-tax it is possible to render some service to the masses who deserve consideration at the hands of the State and I would not have intervened in this debate but for the several apprehensions to which Sir Cowasji Jehangir gave expression this afternoon and I do so with the intention of finding out how far the fears are justified. One objection which he raised and with which everybody will have some sympathy is that this legislation is to be retrospective in effect. I think it is not possible to always avoid even retrospective legislation but Government should be very careful in interfering by *ex post facto* legislation in matters which were perfectly valid under law before and if there is any fear, as voiced by my friend, Sir Cowasji Jehangir, that there is going to be likelihood of illegalising what was legal before and thereby of reflecting on the honour and integrity of any firm or company or business man then it would require serious consideration and I would urge that every honest man must be protected against such possibility. The general rule of law is 'Better that a thousand guilty men should escape than that one honest man should be punished'. Sir Cowasji Jehangir said further that if this Bill is passed into law, it would be impossible to compensate valuable services rendered by the staff and even to pay bonuses.

**Sir Cowasji Jehangir:** I did not say "it would be impossible". I said 'it might be difficult, might be challenged'.

**Mr. Jamnadas M. Mehta:** Yes, it might be difficult to pay bonus to the staff or also to compensate or remunerate honest hard work done to a firm. I am sure Government do not contemplate any such thing and, therefore, if there is any loophole in the clause, it should be remedied. Clause 5, as it stands, is capable of that interpretation and if this applies to limited companies and it is going to give these wide powers to the income-tax authorities, many serious possibilities would arise. Up till now, whatever my friend, Mr. Bajoria, may say, the Indian industrialist is in the middle ages so far as the well-being of his workers is concerned. He has not accepted willingly any legislation forced upon him to improve the condition of the workers and while I agree that Mr. Joshi would not have been here but for industrialism, I feel Mr. Bajoria would not have been here but for the workers who make him big.

**Sir Cowasji Jehangir:** You would have been here, either as labour or capital.

**Mr. Jamnadas M. Mehta:** Yes, in either case, on my own merits. Today, Sir what is the position. Let us review labour legislation for the last ten years and I do not exclude even the Government from that.

**The Honourable Sir Jeremy Raisman:** I trust that the Honourable Member will not embark upon that review in connection with this Bill.

**Mr. Jamnadas M. Mehta:** I am saying in a general way that in the last ten years Government and private employers, except the Tatas, have not easily agreed to improvement in labour conditions. And, if the wording of clause 5 remains as it is, it will provide an excuse to the employers for staying still and place in the hands of the income-tax authorities powers of the widest character. Suppose a sugar factory were going to build houses for its workers and that they had a plan of spending five lakhs on building houses for its employees. There is nothing to prevent the income-tax authorities from saying that your workers were all right last year and that this five lakhs is being spent for the purpose of avoiding the payment of Excess Profits Tax. I am sure that is not the intention but there is the possibility. The law gives them the power. I shall point out that the law as is proposed to be enacted will place in the hands of the income-tax authorities the power to ban any scheme of amelioration of the condition of the workers on the ground that it is intended to evade the payment of the excess profits tax. There is still going to be a large volume of social legislation. . . .

**Sir Cowasji Jehangir:** May I point out that it is not allowed even now. It comes out of capital. I wish you would move an amendment that it should come out of revenue.

**Mr. Jamnadas M. Mehta:** My friend will bear with me for a minute. This is not the only illustration, I will give another.

The sugar factories today are paying a very small *modicum* for the price of sugarcane per ton. Supposing a sugar capitalist  
 3 P.M. wanted to increase it by two annas per ton, it might make a great inroad on the expenditure side of that sugar factory, and the total wage Bill might increase by two lakhs of rupees. It will be possible and permissible for the income-tax authorities, under this Bill, to say that you are deliberately trying to evade the payment of the excess profits tax and therefore, you have shown this generosity. I do not mind if the specific exemption is given to such items under this Bill explicitly. But I will not leave it to the discretion of the authorities themselves, because, while there is no doubt that a great deal of attempt to evade the payment of income-tax does exist, there is a great deal of suspicion also in the minds of the income-tax authorities and sometimes they run amok. I do not want to mention any particular case but those who are coming from Bombay know of a muddle that has been created by the income-tax authorities in Bombay during the last two years. When that muddle will end, God alone knows. If in the meantime, as a result of the over-zeal of the income-tax authorities, the parties concerned are unable to carry on their business, the income-tax authorities themselves suffer because the profits that might have been taxable do not materialise. For all these reasons I suggest that so far as the Government want to reach the evader, they have got my hundred per cent support. So far as they want to catch the man who is adopting dubious methods, they have my hundred per cent support. But in the pursuit of such individuals they shall not be allowed to use their discretion uncontrolled by any authority to suppress or to prevent any attempt at legitimate remuneration or amelioration of those who are as much wings of industry as

the employers. That is all I wish to submit and I hope the Select Committee will keep this aspect of the case in mind and, having done so, will go ahead with their legislation. Sir, I support the motion.

**Mr. Husenbhai Abdullahai Laljee** (Bombay Central Division: Muhammadan Rural): Sir, I have very little to add after listening to the reasonings of Sir Cowasji Jehangir and Mr. Jamnadas Mehta, but I would like to point out to the Honourable the Finance Member that it is inconceivable to think that his officers although competent are experts in every line. He has given them powers to judge what people do in various lines of business but does he expect that all his officers are so very competent as to judge the management of all the industries as also to judge the management accounts of all kinds of trade and commerce and their dealing in commercial and business circles. If they cannot be so competent then is it proper and right that these powers should be given to them. The only safe thing that he could do and he ought to do is whether the payment that has been made is an honest and *bona fide* payment. If he is sure that in a transaction that has been brought in losses are shown of a party who is connected directly or indirectly with the assessee, then he is right in hauling him up. But if a payment is made to a rank outsider or if a correct voucher has been produced that a man has been really paid, do you for a moment then believe that it is not correct to allow such payments. Surely, if there are transactions which appear doubtful or wherein you find that there is some dishonesty, then do apply your best test. In such cases by all means inflict some penalty. If there is a fraud or a cheat with the intention of hiding the profit which indirectly comes back to the assessee, then you have every right to penalise them. Furthermore, we have got a very good example before us of the experience of Income-Tax Officials. The Finance Member has found it out after some time that moneys that the business people use in this country does not come only from the banks but really very little in fact comes from the banks. If the Finance Department with the whole of the Income-tax Department did not get this very very essential fact of the finances of the trade and commerce and of the business firms, is it possible that their experts would be able to know all about all kinds of trade and commerce and of all the various kinds of industries. Therefore, I say it again that we ought not at the present moment to do a thing which would be unfair and inequitable by entrusting officers with such duties and powers.

Then, with regard to the expenditure, a lot has been said. There, again, you can apply the test. Even in the case of *chawls* for labour we usually put them down in the capital account and only the depreciation and the interest is added to the expenditure side. But if the *chawls* are in an insanitary condition and new sanitary appliances are put in, surely you will never say that it is an extraordinary expenditure and that it has been incurred unnecessarily out of the profits because necessity demanded it, but due to shortage in the capital they were not provided for before. Who is going to be the expert to judge all this? There, again, the test is, that you must find out whether the payment for the same has been made and that too to a *bona fide* contractor or a businessman from whom materials had been bought and that the money has not gone directly or indirectly to the assessee. That is the only test. Why don't you apply these tests and be equitable?

[Mr. Husenbhai A. Laljee.]

Now, Sir, with regard to the Indian States, my friend, Mr. Bajoria, referred to Cutchies. I happen to come from Cutch but for years now I am a British subject so has been my family for a good many years. But here is a very important question to which I wish to draw the attention of the Honourable the Finance Member. There are not many States in India where the income-tax is charged and there are many many Indian States where it is not likely that the income-tax would be put. Now, how are you going to assess an income of the assessee from there? You are certainly entitled, you can rightly claim to assess them on the income made in British India. With regard to the income made outside, as Mr. Jamnadas Mehta said yesterday there are Chiefs who would number something like 7,000. In their case, where are you to get anything like the returns from there? Are you going to hold up all your assessments? How is it possible? Kindly consult your Political Department and find out how many States are there in India and how many of them have got the income-tax. Even those States who have now introduced the income-tax, such as, Bikanir, have done it on the advice of some eminent lawyer who must have helped the Government of India also in framing the Income-tax Act. But how are you going to work it? Supposing I have got a house in Samagoga in Cutch. Now, in the Cutch State there is no income-tax and I know that you will not get a reply from that State for three years. Besides, the population of Samagoga is only of 200 persons and the chief of that place Samagoga is not under Cutch. There is no policeman and there is no light on the roads. In fact, there are no roads. Am I to get you assessment report of my income from there? And if I do not do so, are you going to haul me up? How are you going to do all that? Therefore, what is fair is that you have to get really what you can get out of business in British India and from the people in British India. People do not keep nor have not got large sums of money in the Indian States. I will admit the fact that there was a time when the incidence of income-tax was going up, there were some clever businessmen who changed the mode of accounts and put some money to the credit of their offices which were in the Indian States. But those very States where these ingenious people had their offices have now themselves introduced the income-tax. I am sure my friend, Mr. Bajoria, or any big businessman has not much to do in Bikanir or Jaipur, much less in far away Cutch, but you take it from me that businessmen would anyway like to be assessed and dealt with in the British India rather than in the Indian States. That fear has again disappeared to a great extent. Therefore, it is but fair that you will not make the capital shy from British India. It is only with capital that commerce and industry will thrive. It is only with capital that commercial centres in India have thrived. It is very seldom that commerce and industry and trade in India has been helped by Indian or European banks. If you read carefully the report of the Indian Banking Enquiry Committee and of the various Committees which the Government of India set up since 1924, you will find that hardly one per cent of the Indian business is being financed by Indian Banks. Indian Banks have become much more careful because of the fact they have got to compete with Exchange Banks who will very seldom deal with inland trade. These are the points which the Honourable the Finance Member has to consider. Please do not allow capital to be shy from British

India. Capital if it comes into British India will give employment to your people and create prosperity in the country. In these circumstances, I do hope that the Honourable the Finance Member will consider these points at the Select Committee meetings and that we shall have a Bill which will give us much more satisfaction than the previous one.

**The Honourable Sir Jeremy Raisman:** Sir, I am sorry that my Honourable friend, Sir Cowasji Jehangir, finds my record to be so consistently stony-hearted that I never concede anything. But I cannot understand why in the circumstances he proceeds to make impassioned appeals which presumably are directed to some quality in me which might respond. He does not seem to think it is a waste of time either to get up in this House and to labour his point for some time or in the course of Select Committee proceedings to take up quite a considerable amount of time in endeavouring to extract something from me.

**Sir Cowasji Jehangir:** May I point out, Sir, that when I was addressing the House I was explaining the position to the House and not only to the Honourable Member. I was explaining matters to the Members of the Select Committee of which he happens to be one, and it must be realised that both the Select Committee and this House are his and my masters.

**The Honourable Sir Jeremy Raisman:** I entirely agree. I have known cases where his and my masters were not in the least interested in the long and impassioned orations which nevertheless went on. I can only assume that the Honourable Member's inward convictions differ somewhat from his outward expressions. If he is prepared to give me up entirely as a bad job and never address any further appeals to me that will be "O. K. with me" to use an American expression.

**Sir Cowasji Jehangir:** I can assure the Honourable Member that that will not be so.

**The Honourable Sir Jeremy Raisman:** He referred then to piecemeal legislation. Well, Sir, I think he will remember that at the time when the original Bill was brought forward, it was one of his points as well as of some of the other Members that this legislation was a slavish imitation of the British Act and that it was brought forward hurriedly and prematurely and that once it reached the Statute-book, all kinds of undesirable consequences might follow, unless I was prepared to adjust it from time to time and make amendments as found necessary. I agreed that this legislation should be constantly subject to review and I undertook in response to what I understood to be the universal desire of this House to be prepared to amend the Excess Profits Tax Act as often as was found necessary. I may say, therefore, that I am a little aggrieved at the expression piecemeal legislation being thrown at my head.

Now, Sir, there is one thing on which I must congratulate the Honourable Member, Sir Cowasji Jehangir. He has managed to draw a red herring across the trail which has brought that doughty champion of the workers' interests, Mr. Jamnadas Mehta, to his feet and on his side, and he has succeeded in effecting what is usually known as an unholy alliance on the subject of the new Rule 12 which the Bill would introduce. I put it to the House, I do not wish to traverse points which can be and

[Sir Jeremy Raisman.]

which no doubt will be argued in the Select Committee. But on Sir Cowasji Jehangir's own admission, we have a position in which the capitalist, the businessman or the company is making profits of which nearly eighty per cent., by the law of this country, is due to the exchequer and his own interest is of the order of 20 per cent. or a little more. At the present moment, there is nothing in the Act to give the 80 per cent. shareholders in the profits any say in the way those profits are disposed of. I do not go so far as to claim that we should join in the management of every business which is liable to excess profits tax. I agree with my Honourable friend, Mr. Husenbhai Abdullabhai Laljee, that we have not got the staff nor the knowledge to do that. But we have the knowledge and it is our duty to scrutinise the accounts and look out for what I may call "funny business". We know that of the 100 per cent. of the profits, something approaching four-fifths is our share and I think it is at least necessary to warn the assessee that if he takes chances and that if he indulges in gross abuses of his position of trust, because that is what he is in respect of our 80 per cent., he may find that his cleverness has landed him where he did not mean to and that the trick he has played is in fact at his own expense.

I want to assure Mr. Jamnadas Mehta that Government have no intention whatever of interfering with or suggesting for a moment that the reasonable and indeed the generous treatment of labour by employers would not meet with their approval. On the contrary, I myself believe that when excess profits are being made, there is no reason why everybody who contributes to the making of them (and thereby usually to the war effort) should not receive his fair share. But what we are thinking of is something entirely outside the realm of even debatably legitimate increases of pay or even of legitimate bonuses. I would say that it would be quite impossible, it would be quite out of the question for any officer of my Department to raise a query in regard to the type of increase in wages which is normally the subject of negotiation between the employers and the employed and in fact, I would go so far as to say that if the employer raises in regard to a discussion of that kind the question as to whether that increase would be disallowed by the Department, that argument could be dispelled immediately by a reference to the Commissioner. What I have in mind is cases where entirely unjustifiable and on the face of them absurd types of expenditure are indulged in by the assessee merely in order to make away with the profit. These will not merely be artificial or fictitious transactions, that is transactions which might appear to dispose of part of the property or create legal interests which would have the effect of reducing the liability. Those are things which have no reality. These artificial transactions merely exist on paper; but the payments I am thinking of may be real ones. I will take Sir Cowasji Jehangir's own case where he said that a man might put his brother-in-law in the business and give him five lakhs a year and then take it back, as he said. It does not matter if he does not take it back. If the brother-in-law is not worth five lakhs a year and he suddenly appears on the pay-bill at five lakhs a year, he may get his five lakhs and it may be a real payment, but I consider that the general taxpayer of this country, who is represented to the extent of nearly four-fifth of these profits, is entitled to have somebody to ask on his behalf what is the justification for these five lakhs.

**Sir Cowasji Jehangir:** May I ask the Honourable Member to consult the Law Member whether such a case would not fall within the meaning of "fictitious" in clause 10?

**The Honourable Sir Jeremy Raisman:** With due respect to my Honourable colleague, the Law Member, I find it unnecessary to consult him on the question whether an actual payment of five lakhs, about which there is no dispute that it has taken place, is an artificial or fictitious transaction. Once the money has actually passed and has gone to the brother-in-law, it is a real thing. But the position merely is that the assessee would rather that his brother-in-law had five lakhs than that I had four, which might be quite an understandable position. Well, Sir, I do not wish to labour this point. It seems to me that it is quite clear and it is a point which has been recognised; and Sir Cowasji Jehangir was entirely wrong in suggesting that provisions of this kind do not exist elsewhere. They are provisions which have been found to be necessary. Also, in regard to the point taken by Mr. Jamnadas Mehta that 10A appears to have retrospective effect, I would point out that that is not so. The effect of 10A would only be felt in assessments which take place after the passing of this measure. But since all income-tax legislation relates to the profits of a year which may have gone, we are saying now that a certain type of artificial or fictitious transaction, no matter when it happened, will be liable to be disallowed. That is not retrospective.

Babu Baijnath Bajoria talked of the change in respect of borrowed money as if it was a mistake. I wish to assure him that there is no question of any mistake and that, therefore, there is no question of making this effective from the date of the beginning of the excess profits tax. It is definitely a change of policy and, as I indicated, I am not entirely free from misgivings even at this time. But I have agreed to make this provision and it will take effect as from the beginning of the current financial year, that being the date from which the enhanced rate of excess profits tax would take effect. The two are in that way linked.

I have only one concluding remark to make and that is in regard to my Honourable friend, Mr. Husenbhai Laljee's continuous references to capital. Capital is so frequently represented as a shy and timorous virgin to whom nothing rude should be said, that it is somewhat difficult to recognise in that appealing and panic-stricken figure the individuality which my Honourable friends, Mr. Joshi and Mr. Jamnadas Mehta are wont to arraign as a rapacious and self-seeking monster. I do not myself pretend to know which of these pictures is more correct, but I can assure Mr. Husenbhai Laljee that we have no intention of scaring away this timorous damsel from her legitimate activities in British India.

**Mr. Deputy President (Mr. Akhil Chandra Datta):** The question is:

"That the Bill further to amend the Excess Profits Tax Act, 1940, (Second Amendment) be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Mr. J. F. Sheehy, Mr. C. W. Ayers, Mr. T. Chapman-Mortimer, Mr. Husenbhai Abdullahbhai Laljee, Babu Baijnath Bajoria, Khan Bahadur Sir Abdul Hamid, Sir Cowasji Jehangir, and the Mover, with instructions to report on or before the 5th November, 1941, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.



## THE MADRAS PORT TRUST (AMENDMENT) BILL.

**The Honourable Sir Andrew Olow** (Member for Railways and Communications): Sir, I move:

"That the Bill to alter the constitution of the Board of Trustees of the Port of Madras be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Sir Frederick James, Mr. E. L. C. Gwilt, Raja T. Manavedan, Rao Sahib N. Sivaraj, Mr. Jamnadas M. Mehta, Mr. Amarendra Nath Chattopadhyaya, Khan Bahadur Sir Abdul Hamid, Mr. Muhammad Muazzam Sahib Bahadur, Mr. T. S. Sankara Aiyar and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

I do not propose to take the time of the House by discussing the opinions we have received. I have no doubt that these have been studied by Honourable Members and will be carefully considered by the Select Committee. I do not think it would be helpful if I entered into a discussion of the merits of various claims that have been put forward here. The Select Committee is obviously in a better position to assess these in the first instance.

**Mr. Deputy President** (Mr. Akhil Chandra Datta): Motion moved:

"That the Bill to alter the constitution of the Board of Trustees of the Port of Madras be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Sir Frederick James, Mr. E. L. C. Gwilt, Raja T. Manavedan, Rao Sahib N. Sivaraj, Mr. Jamnadas M. Mehta, Mr. Amarendra Nath Chattopadhyaya, Khan Bahadur Sir Abdul Hamid, Mr. Muhammad Muazzam Sahib Bahadur, Mr. T. S. Sankara Aiyar and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

**Mr. Jamnadas M. Mehta** (Bombay Central Division: Non-Muhammadan Rural): Sir, before the Bill goes to the Select Committee I have got two points to place before the House. The first is that the vicious principle of sending to the Port Trusts representatives on the basis of race is being perpetuated in this Bill. Time there was when the Indian commercial community was not properly organised, when there was no representative seeking place on the Port Trusts or other bodies of a like character, and the European members practically monopolised all the seats in the name of the Bombay Chamber of Commerce, the Madras Chamber of Commerce and the Calcutta Chamber of Commerce. Since then we have travelled considerably and I do not see that now at any rate there is any justification for giving representation to commercial bodies on the ground of their race. I do not mind the election of six European members to the Madras Port Trust from a joint electorate, but to say that out of eight or nine men for commercial representation four shall be Europeans is a thing which is an anachronism in the year 1941; and it is simply a continuation of the old and exploded system of racial predominance in India.

My Honourable European friends will appreciate that it will be more desirable for them to be representatives of the combined commercial interests of India as a whole than that they should continue to function as representatives of European trade as if it were something in contradiction or cleavage with the Indian trade. That is a most unhealthy thing to perpetuate now, and this division of Indian and European commercial interests ought to disappear once and for all. I am particularly anxious that the elimination of racial representation should not deprive my European friends of their representation. I won't mind in a joint electorate of

commercial bodies to get representation reserved for them if they like but they should be representatives of commercial interests jointly represented by a common franchise in the common electorate. In 1941 this attitude of my European friends in seeking representation to an Indian Port Trust management as Europeans is most unedifying. It appears to make them still stand out for racial domination and the sooner this unhealthy sign of racial difference in India disappears the better for all concerned. I would, therefore, suggest that there should be a joint electorate of all commercial bodies from which both Indians and Europeans might get representation and if there is any danger of Europeans not getting representation, which is absolutely imaginary, then I am prepared even to reserve a few seats for them, leaving them to seek further election through a joint electorate. But a separate electorate for European commerce and a separate electorate for Indian trade, keeping up perpetually before us the idea that in this country the European is the top-dog, is a thing which I absolutely discountenance.

The second point which I wish to urge is that in this Bill no notice is taken of the Andhra Chamber of Commerce. The Madras Presidency consists of three provinces: the Tamilian, the Malabarian and the Andhra. I have received complaints from the Andhra province that in the Madras Presidency the Tamilians are getting things their own way and Andhra is being treated as a step-child and out of 15 members not one member is likely to be a member from the Andhra Chamber of Commerce. If that complaint is true then a representation for the Andhra Chamber of Commerce, if it is a commercial body of sufficient weight and importance, is necessary. I would, therefore, urge upon the Government not to forget their representation in trying to divide the representation between Europeans and Tamilians. I do not say that the exclusion of any section is the object of the Bill, but complaints have been received and I would certainly desire that no such complaint or lack of representation for commercial bodies should remain to mar the importance of the Bill. For the rest, I shall certainly discuss other points in the Select Committee. In Bombay there are often stories of quarrels between the European and the Indian Members in the Port Trust, quarrels which sometimes reach the scale of a public scandal. In order to avoid that, this separate representation should be absolutely abandoned and a joint electorate, both for European and Indian commercial interests, with reservation of a reasonable number of seats for our European friends, would be a desirable substitute.

**Babu Baijnath Bajoria** (Marwari Association: Indian Commerce): I am glad that this Bill provides for more adequate representation of Indian commercial interests on the Madras Port Trust and it also gives representation to other interests as it should be. My intention in taking part in this debate is to draw the attention of the Honourable the Communications Member that it is high time that a similar Bill is brought for the Calcutta Port Trust. Calcutta Port Trust, as it is constituted at the present moment has also got a die-hard constitution. It has got predominantly European interest there and the Indian commercial interests' representation is very small and quite inadequate, to the great share in the export and import trade of Calcutta which the Indian community has got there. I would, therefore, urge, Sir, to the Government of India that they should, at a very early opportunity, bring forward a Bill to re-constitute the Board of

[Babu Baijnath Bajoria.]

Trustees of the Port of Calcutta and to see that the Indian commercial interests there are adequately represented, and here they must also bear in mind that there are several Indian Chambers of Commerce who want representation.

**The Honourable Sir Andrew Clow:** I suggest that this is hardly in order. We are discussing about the constitution of the Board of Trustees of the Port of Madras whereas the Honourable Member is drifting to the Port of Calcutta.

**Babu Baijnath Bajoria:** I won't be very long, but this is the only opportunity, when we are re-constituting the Board of one Port, to remind the Honourable Member to do something for the Port from which I come.

**The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar** (Commerce Member): That you have done.

**Babu Baijnath Bajoria:** I think, Sir, that the Honourable the Communications Member must know that there is a demand for it, because otherwise he will say that there is no demand and nobody is asking for it. That is why I want to impress upon him that the people of Calcutta—the Indian commercial people of Calcutta—are very anxious that the constitution of the Board of Trustees in Calcutta should also be re-constituted on a fair and equitable basis on which European interests must have their due representation and the Indian interests must also have theirs.

**The Honourable Mr. M. S. Aney** (Leader of the House): Do you oppose this Bill because the Calcutta Port Trust Bill is not being introduced?

**Babu Baijnath Bajoria:** I am not opposing. I welcome it.

**Mr. N. M. Joshi** (Nominated Non-Official): When the motion was made for circulating the Bill, I suggested that the representation provided for labour should not be by nomination by the Central Government as is suggested in this Bill but should be by some method of election by the Registered Trade Unions in the Madras City. I hope, Sir, that the Select Committee will accept my suggestion. If they don't accept this suggestion, they are not believers in democracy. I would also suggest to them as an alternative that they should at least provide that the nomination of labour representative should be made in consultation with the Registered Trade Unions in the Madras City. I hope the Select Committee will accept my this suggestion.

**Sir F. E. James** (Madras: European): Sir, my Honourable friend, Mr. Jamnadas Mehta, has suggested that the representation of commercial bodies on the Madras Port Trust is on the basis of race. He is really mistaken in that assumption. In the debate in this House on the same subject last March I did call the attention of the Honourable the Communications Member to a reference in his own Statement of Objects and Reasons—he seems to be very unfortunate in his Statements because I believe another of his Statements has been already criticised today—I pointed out that it was not so much an adjustment between Indian and

European commerce as an adjustment between the bodies which should be represented on each Port Trust. In his reply he admitted that, generally speaking, the basis of representation on Port Trusts should be the direct interest in the export and import trade of the Port, which would mean, broadly, the volume of trade done by the interests concerned in the Port, quite irrespective of race. It is perfectly true that the Madras Chamber of Commerce and the Madras Trades Association are predominantly European in their membership; but there is no racial basis for their membership qualifications. As a matter of fact there is not the slightest reason why the Madras Chamber of Commerce should not be represented on the Port Trust by an Indian member of that Chamber, and it is a matter of history that the Madras Trades Association has been represented by one of its Indian members.

The point that particularly interests me in this Bill is a fairly narrow one, and that is, that in the re-adjustment of seats between these various bodies the Madras Trades Association goes out altogether after a continued representations on the Port Trust of some 57 years. One would have thought that, in a House which respects tradition so strongly as this House does, that that by itself would have been some reason why the Association should have been allowed to continue to have its representation on the Port Trust. I do feel very strongly that there is a case for the retention of representation by this body. I will not go into figures as to volume of trade—I shall place those figures before the Select Committee for them to judge. I should like to make it perfectly clear that when we suggest that the Trades Association should continue to have representation, we do not grudge the additional representation that is given to some other bodies like the South Indian Chamber of Commerce. I know it is argued that these bodies should be Indianised at all costs. I do not really accept that argument, because as I say, representation on these Trusts should be based upon the direct participation in the actual work of the Port by the members of the bodies which are represented, whether they are Indians or Europeans. But even assuming that it is the object of the Honourable Member to Indianise at all costs, then I suggest that that is no reason for doing an injustice to a body which has held representation for so many years and held it not on any communal basis—there are Indian members on this body today—but because of the interest which it holds in correct and proper administration of the port. Sir, there is no sanctity in the actual maximum at present prescribed or proposed to be prescribed in the Act for the composition of the Madras Port Trust. There is, I understand, the present suggested maximum of 16 members. I am quite aware that in pressing for the continued representation of the Trades Association that I might, if that maximum were held, be doing an injustice to other interests. I do not want to do that. There is no reason why the numbers of the Port Trust should not be increased by one or two to allow for the continued representation of the Association, and, if it is really thought advisable by the Select Committee, to allow one of the other bodies to be represented on it, as my friend, Mr. Jamnadas Mehta, has suggested.

One of the difficulties of course is the question of expense. I did mention this on the last occasion this matter was before the House. The fee for attending the meetings of this body is Rs. 30, and of course the result of attaching a fee to attendance is that there has been a remarkable

[Sir F. E. James.]

regularity and assiduity in the attendance at the meetings of the Port Trust by the members thereof. Therefore, if I suggest that there should be an increase in the numbers, I also suggest at the same time that the fees should be abolished. A great deal of the controversies which have been there in the past would pass away if fees were abolished. But I am quite prepared, as Mr. Joshi's friends are to be represented on that body, to admit the existence of a very much reduced fee. I am quite sure that if that fee is reduced, the regularity and assiduity of the attendance of members would also be reduced, so that the administration of the Port would not be embarrassed by a small increase in the number of Trustees.

I believe that the suggestion I am making in regard to the Madras Trades Association has the good-will of all the bodies which are now represented on the Port Trust in South India. They are, of course, naturally concerned lest by giving a seat for the Trades Association they do not lose one themselves. I quite agree, and I hope in the Select Committee I shall be able to convince the Honourable Member and my colleagues that there is a reasonable case for the retention of the Madras Trades Association on the Port Trust. If I feel that they will support me in that, I shall not be backward in helping them to secure what they feel just to their interests as well.

**Mr. Husenbhai Abdullabhai Laljee** (Bombay Central Division: Muhammadan Rural): Sir, I quite agree with the views that have been expressed by my friend, Mr. Jamnadas Mehta. I am very sorry I cannot entirely agree with the views of my friend, Sir James. It is all very well to say that these are different bodies and that there is no communal feeling or bias. That might have been many many years before; but the very fact that there does exist at every important city in India two Chambers of Commerce—Indian as well as European—call it Bengal or European, Bombay or European, Madras or European and the fact that they have come into existence for the last 25 years with all important commercial interests therein, are the facts as clear as the existence of the Muslim League and the Congress. To say now and at this stage that so far as the Madras Chamber is concerned it is not a European body because a few Indians are there and to say again that in Bombay the Bombay Chamber is not a European body is really too late. The Indian Merchants Chamber of Bombay has 400 members as against about 80 members in the Bombay Chamber of Commerce and they act as two clear compartments separate and distinct. It is also a fact which we as businessmen must admit that so far as the membership of the one or the other is concerned, I having been the President of the Indian Merchants Chamber, hardly found a single English firm or European firm making an application to become a member of that body, and *vis-a-vis* is the case with the European Chamber. I have also very strongly felt, Sir, that there are practically now very very few Indian businessmen or firms in the Bengal Chamber of Commerce, —I have been a member of that body,—and this body has been in existence for over last fifty years. Therefore, the fact is that there are two distinct bodies more or less run on communal lines. I would go further and say,—and it really pains me much to say it,—they are what may be called European and Asiatic bodies and—not bodies of Britishers and Indians. We feel that we ought to work together, our friends ought to co-operate freely and frankly with us, but it is regrettable they will care more for a

German or a South African Boer than for an Indian. Personally, I feel more bitter for a welcome in India of a South African than to a German firm. It cannot be denied that there is now a clear and complete distinction and there are two distinct bodies on communal lines, and the best thing is, as my friend, Mr. Jammadas, said, we have to be more practicable, more businesslike. Let my European friends become more businesslike now, let them create mere businesslike spirit between India and Britain. Let them for the time being at least during the time of this great war remove that discrimination. Make a mixed electorate of Indian merchants and British merchants. But if my friends will insist and say still and even now that their Chambers and our Chambers are different and there should be separate representation for each, that our interests and their interests are separate, then as my friend, Mr. Jammadas, has said, the Indian businessmen must have a better and stronger representation than Europeans as such.

Then, Sir, reference was made by my friend, Sir Frederick James, to the volume of business or to the direct participation in the use of the Port. That does not appeal to a businessman at all. Because a European firm is mentioned in the custom entry as importer it does not mean that he is the real importer. There were more than a dozen German firms agents in Bombay and other cities who were really indenting agents. My friend, Mr. Bajoria, goes to their office, gives an order for, say, ten lakhs of rupees worth of piecegoods. That indenting firm will order out the goods for Mr. Bajoria. When the documents are received, they are passed on to Mr. Bajoria who will pay for these goods, clear them from the docks, pay the Port Trust dock fees, custom dues and then store the goods in his godown. So the indenting firm is not actually the importer. Von Muller or somebody who was the indenter cannot be said to be importer and the volume of business that has been entered in his name cannot be that of European. If you honestly and sincerely point out all the figures relating to goods imported and paid for by British firms and European firms and also goods imported for and on behalf of Indian firms and for which the Indian firms have paid Port Trust, the correct position will be seen.

**Sir F. E. James:** I can give my friend those facts and figures for the Madras Port Trust, but I refrain from doing so because they would destroy his arguments.

**Mr. Husenbhai Abdullabhai Laljee:** Today it is Madras, tomorrow it is Bombay. The fact is I am the real importer, I am the real exporter and the Port Trust belongs to me. Now, take the case of Indian States. Take the Bhavnagar State, Okha, Baroda or Jamnagar State. They have Port Trusts but there are none but Indians on their bodies but real parties who pay the Port dues are Indians.

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

Therefore, the best thing is to have a mixed electorate, and there should be a common feeling that we are all businessmen and act as such which will be really to the advantage of both the manufacturers and labourers of both India and Great Britain. It is this good feeling we should create and I have always pleaded for it.

**The Honourable Sir Andrew Clow:** Sir, I have very little to say. I think most of the points that have been raised will be better considered.

[Sir Andrew Clow.]

in the Select Committee. I am sorry my friend, Mr. Jamnadas Mehta, introduced the racial issue. No one would be better pleased than I if we had a single Chamber representative of all interests, of all communities and races. I feel it is very unfortunate that the division of these interests, which in nearly every phase of life are identical, has proceeded on those lines. I do not attempt to assign the blame; I do not know who is to blame. But legislating as we do today, we have got to recognise that they exist, and the obvious objection to Mr. Jamnadas Mehta's suggestion of some complicated system of election by individuals is that Chambers and organizations are the proper bodies, and not individuals, to be represented in associations like the Port Trust. I hope the Select Committee will agree to keep the figures of the Port Trust small. It was suggested by Sir Frederick James that we need not be afraid of larger numbers because if we add to the numbers there will be absentees. I would rather see a small Port Trust, the members of which were assiduous in their duties, than a large one the members of which, owing to the absence of a substantial fee, are generally absent.

There is one other change which, with your permission, Sir, I would like to make. I have been able to persuade my Honourable colleague on my right, who is very well acquainted with the Port and with Madras, to assist me in the Select Committee, and I would like to substitute the name of Diwan Bahadur Sir Ramaswamy Mudaliar for Mr. T. S. Sankara Aiyar.

**Mr. President** (The Honourable Sir Abdur Rahim): Is it the pleasure of the House that the name of Diwan Bahadur Sir Ramaswamy Mudaliar be substituted for the name of Mr. Sankara Aiyar?

**Several Honourable Members:** Yes.

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

"That the Bill to alter the constitution of the Board of Trustees of the Port of Madras be referred to a Select Committee consisting of the Honourable Sir Sultan Ahmad, Sir Frederick James, Mr. E. L. C. Gwilt, Raja T. Manavedan, Rao Sahib N. Sivaraj, Mr. Jamnadas M. Mehta, Mr. Amarendra Nath Chattopadhyaya, Khan Bahadur Sir Abdul Hamid, Mr. Muhammad Muazzam Sahib Bahadur, Diwan Bahadur Sir A. Ramaswamy Mudaliar and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be four."

The motion was adopted.

## THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL.

**The Honourable Sir Sultan Ahmad** (Law Member): Sir, I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration."

Sir, this is a very innocent Bill, and it is designed to provide for an efficient method of securing the attendance of an accused in British Indian Courts who may be, at the time in India, but outside British India, and *vice versa*. The position

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up to recently was that warrants and summonses used to go to courts outside British India and used to be executed by them. Similarly warrants and summonses issued by Courts in centrally administered areas, etc. which were outside British India, used to be executed in British India. But recently a decision of the Sind Court laid down that this procedure was absolutely irregular and without jurisdiction, and the only way in which it could be effected was under the Extradition Act. That decision seems to have been followed by another High Court,—the High Court of Patna. Under those circumstances, it became necessary that some more efficient and expeditious method must be found out instead of having recourse to Extradition Act which the House knows is a very cumbersome procedure. That is the reason why this Bill has been brought before the House. You will find from the Statement of Objects and Reasons that it will be necessary for correlative notifications to be issued under the Foreign Jurisdiction Order in Council, 1902, the Indian (Foreign Jurisdiction) Order in Council, 1937, and some other relevant provisions of law in order to give effect to the object we have in view. Sir, I move.

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

"That the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**The Honourable Sir Sultan Ahmad**: Sir, I beg to move:

"That the Bill be passed."

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

"That the Bill be passed."

The motion was adopted.

## THE CODE OF CRIMINAL PROCEDURE (SECOND AMENDMENT) BILL.

**The Honourable Sir Sultan Ahmad** (Law Member): I beg to move:

"That the Bill further to amend the Code of Criminal Procedure, 1898 (Second Amendment), be taken into consideration."

The Statement of Objects and Reasons, so far as this Bill is concerned, will show the necessity of this Bill. There are two provisions of law which have to be considered in this connection. Sub-section (1) of section 162 of the Code of Criminal Procedure provides that any statement made during investigation in a criminal case to a police officer, if the statement had been recorded in writing, cannot be evidence except in circumstances which are mentioned in the section. The other section which is relevant is section 27 of the Evidence Act which provides that confessions and statements made to a police officer which may lead to the discovery of any fact may be admitted in evidence. Up till recently it was the settled law in the whole of India that section 162 of the Criminal Procedure Code did not affect section 27 of the Evidence Act, but recently the Privy Council in a



[Sir Sultan Ahmad.]

case which went to their Lordships from Patna threw a certain amount of doubt on that point, and, in fact, suggested the possibility of the repeal of section 27 of the Evidence Act by section 162 of the Criminal Procedure Code. After that, the matter was discussed in various Courts in India. A full Bench of the Lahore High Court and another full Bench of the Allahabad High Court held that section 27 of the Evidence Act stood repealed. On the other hand, the Madras High Court, the Patna High Court and the Nagpur High Court held that the two sections were independent of each other just as it was held to be the settled law before. After the decisions of the Lahore High Court and the Allahabad High Court, Acts were passed in the Punjab and in the United Provinces, by which they restored what was the settled law before the Privy Council decision. It is now felt that there should be uniformity of legislation on this point throughout India and, that is why this Bill has been introduced in this House. Sir, I move:

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

"That the Bill further to amend the Code of Criminal Procedure, 1898 (Second Amendment), be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**The Honourable Sir Sultan Ahmad:** Sir, I beg to move: "

"That the Bill be passed".

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

"That the Bill be passed."

The motion was adopted.

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### THE FACTORIES (AMENDMENT) BILL.

**Mr. H. C. Prior** (Labour Secretary): Sir, I move:

"That the Bill further to amend the Factories Act, 1934, be taken into consideration."

This is a very short Bill to amend section 5 of the Factories Act. That section is a permissive section. It gives the provinces power by notification to declare any place wherein a manufacturing process is carried on, whether with or without power, and in which on any one day in the preceding twelve months ten or more persons are employed, to be a factory. Almost all the provinces have made very good use of this permissive power that has been given to them. At the time the Whitley Commission came to India, I think they had notified only some 190 factories under this section, whereas the latest figures we have got show that they have notified nearly 2,000. I have not got the figures of factories which have people working in them, less than 20 and more than 10, and use power, or the number of factories which have more than 20 working in them and use no power. But the number that is notified is very considerable and the provinces may find it too much for

them to deal with more with their present staff of inspectors. In administering the present section provinces have found that certain difficulties have arisen, and it is to meet those difficulties that this Bill has been introduced. The difficulties are that, if they choose to notify a certain class of factories, if at that time any individual factory has more than ten working in it, that factory is notified, but if on a subsequent date some other factory goes up, say, from 8 workers to 10 workers, then they have to issue another notification to bring that factory within the scope of the section. Similarly, if once they have notified any particular class of factories, and one factory employs less than ten persons for a period of one year or more, then that factory goes out of the scope of the notification, and if it increases the number of its workers again, another notification has to be issued to bring it within the scope of the notification. That causes a certain amount of difficulty to Provincial Governments and it is to deal with those difficulties that this Bill has been introduced. Sir, I move.

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

“That the Bill further to amend the Factories Act, 1934, be taken into consideration.”

**Mr. N. M. Joshi** (Nominated Non-Official): I would like to offer a few remarks at this stage of the consideration of this Bill. There is nothing in this Bill that I should oppose. However, the remarks which I want to make concern the general efforts of the Government of India for ameliorating the conditions of the working classes by improving labour legislation. •

For some time the Government of India in my judgment are content by undertaking measures of very small importance. They have not undertaken any measure of major importance for a long time. The Government of India maintain a fairly well staffed Labour Department and I am prepared to admit the Labour Department consists of very able men. Unfortunately, these able men lack something. I do not know what they lack but they lack something and for a long time they have not brought forward any measure of major importance. They have got ability. I have absolutely no doubt about it. I have no doubt that if they mean to, they can undertake measures of greater importance but some how they do not do it. I really do not understand why. I would, therefore, like this Legislature to remind the Labour Department that they are a department of a great Government. They themselves are a great department and the department is staffed by great men. Therefore people are justified in expecting them to do work of some importance and not be content merely with bringing forward legislation to deal with notifications and matters of procedure. Leaving aside their general activities for labour legislation, taking the Factory Act itself which requires amendments and improvements in many ways and nothing is being undertaken by Government. I leave aside the Factory Act as a whole. I take up the question with which they are dealing in this Bill, namely, the definition of a Factory. The present definition of a factory is any place where 20 or more persons are working and power is used and manufacturing processes are going on. The Factory Act gives power to the Local Governments to apply the Factory Act to places

[Mr. N. M. Joshi.]

where manufacturing processes are going on and where ten or more persons are employed and whether power is employed or not is not a matter of consideration. Here we are dealing with the question of the definition of a factory—what should be considered a factory. The original definition was passed I think in the year 1922 and that is nearly 20 years ago. The Provincial Governments have been given power to extend the definition. They had these powers for twenty years. The Honourable Member in charge of the Bill said that the Provincial Governments are making good use. I am not satisfied with the progress that the Provincial Governments have made in the last 20 years. I am not saying that they have not used their power at all. They have used their power to some extent but not sufficiently. I would have therefore liked the Government to undertake the amendment of the substantive section and apply the provisions of the Factory Act to all factories which at least work with power and which employ ten or more persons. An improvement of that kind would not have been a very great reform but it would have been some substantial reform. I would, therefore, suggest to the Government of India to employ the great department which they maintain, to employ the energy of the very able men which that department includes on a more substantial work than the work on which they are at present employed. Sir, I have sent a small amendment to this Bill which will rectify the hesitant attitude which the Government of India is taking and enable them to take a little stronger step. I hope, Sir, when my amendment comes up for discussion, the Government of India will take some courage in their hands and accept it. I have nothing to object to this motion which is before the House.

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

"That the Bill further to amend the Factories Act, 1934, be taken into consideration."

The motion was adopted.

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

"That clause 2 stand part of the Bill."

**Mr. N. M. Joshi:** Sir, I move:

"That in clause 2 of the Bill, for the proposed new sub-section (1) of section 5, the following be substituted:

'(1) The Provincial Government shall, by notification in the official Gazette, within six months from the passing of this Act, declare that all the provisions of this Act applicable to factories shall apply to any place wherein a manufacturing process is being carried on or is ordinarily carried on with the use of power whenever ten or more workers are working therein or have worked therein on any one day of the twelve months immediately preceding';

'(2) The Provincial Government may, by notification in the official Gazette, declare that all or any of the provisions of this Act, applicable to factories shall apply to any place wherein a manufacturing process is being carried on or is ordinarily carried on without the use of power whenever ten or more workers are working therein or have worked therein on any one day of the twelve months immediately preceding'."

In spite of the long wording of this amendment I assure the House that the amendment is a very simple one. It provides that any place where manufacturing processes are going on, where power is used and where ten or more persons are employed should be notified as a factory.

This introduces a change in the Factory Act. As I have said, at present, the definition of factory is any place where 20 or more persons are employed, where manufacturing processes are going on. I am suggesting that instead of 20, the figure 10 should be substituted. The original definition was approved and passed by the Legislature nearly 20 years ago. The time has come when we should take a progressive step and I hope the Government will have sufficient progressive spirit and courage to take that step and if they are unwilling I would suggest to the Members of the Legislature that they should take courage in their own hands and pass my amendment. Sir, I move.

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

"That in clause 2 of the Bill, for the proposed new sub-section (1) of section 5, the following be substituted:

'(1) The Provincial Government shall, by notification in the official Gazette, within six months from the passing of this Act, declare that all the provisions of this Act applicable to factories shall apply to any place wherein a manufacturing process is being carried on or is ordinarily carried on with the use of power whenever ten or more workers are working therein or have worked therein on any one day of the twelve months immediately preceding';

'(2) The Provincial Government may, by notification in the official Gazette, declare that all or any of the provisions of this Act, applicable to factories shall apply to any place wherein a manufacturing process is being carried on or is ordinarily carried on without the use of power whenever ten or more workers are working therein or have worked therein on any one day of the twelve months immediately preceding'."

**Rao Sahib N. Sivaraj** (Nominated Non-Official): On a point of order, Sir, I think the amendment moved by Mr. Joshi is beyond the scope of the Bill. The Bill, as I see it, merely seeks to alter certain procedure in the issue of notifications with regard to declaring certain places coming under the Factories Act. But my friend's amendment seeks to alter the function of the factory itself.

**Mr. N. M. Joshi**: The Honourable Member hardy, if I may say so, understands the scope of this Bill. This Bill . . . . .

**Mr. President** (The Honourable Sir Abdur Rahim): Is the Honourable Member making a speech in reply?

**Mr. N. M. Joshi**: I am replying to the point of order.

**Mr. President** (The Honourable Sir Abdur Rahim): The Honourable Member cannot make another speech.

**Mr. N. M. Joshi**: If you rule it out of order, I shall not speak at all.

**Mr. President** (The Honourable Sir Abdur Rahim): Mr. Prior.

**Mr. H. C. Prior**: Sir, if I may go back for a moment to the speech made by my Honourable friend, Mr. Joshi, before he moved his amendment, I must thank him for the kind words he said about the Officers of this Department and I can assure him that we shall try to find out what that 'something' is which prevents us from going as fast as he

[Mr. H. C. Prior.]

wants. But I am afraid he will find that that 'something' is still lacking today, because I am not able to meet everything that he wants today, and I am afraid I must oppose his amendment. He asks us, in effect, to take away the permissive nature of this section and to force all Provinces to treat as factories those institutions in which more than ten persons are employed and power is used. The change is not revolutionary because I am glad to say that a large number of provinces are already notifying such factories as factories and they are doing so whenever they find that they are in a position to do so. The question as to when they notify depends very largely on the fact whether they have the necessary staff to inspect. I have here in front of me a report from one province which says that, unfortunately, they are unable to notify any further factories because they have not got the staff to inspect them. Does the House want us now to force these Provinces to notify factories which they cannot properly inspect? And if they utilise their inspecting staff for inspecting these factories, then they may be forced to neglect the larger factories which they are at present able to inspect competently. I do not think that would be a step in advance. It would be, in effect, a retrograde step. Provinces are doing their best to notify under the provisions of this section. They have to satisfy their own Legislatures in getting the necessary inspecting staff. It is for them rather than for us to say how far they can go. We give them the power. Let us leave them to exercise that power when they find it advisable to do so.

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

"That in clause 2 of the Bill, for the proposed new sub-section (1) of section 5, the following be substituted:

'(1) The Provincial Government shall, by notification in the official Gazette, within six months from the passing of this Act, declare that all the provisions of this Act applicable to factories shall apply to any place wherein a manufacturing process is being carried on or is ordinarily carried on with the use of power whenever ten or more workers are working therein or have worked therein on any one day of the twelve months immediately preceding';

'(2) The Provincial Government may, by notification in the official Gazette, declare that all or any of the provisions of this Act, applicable to factories shall apply to any place wherein a manufacturing process is being carried on or is ordinarily carried on without the use of power whenever ten or more workers are working therein or have worked therein on any one day of the twelve months immediately preceding'."

The motion was negatived.

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

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

**Mr. H. C. Prior**: Sir, I move:

"That the Bill be passed."

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

"That the Bill be passed."

**Mr. N. M. Joshi:** Sir, I want to make only a few remarks. The Honourable Member in charge of this Bill, in replying to my very modest and small amendment, stated that I am trying to compel the Local Governments to do something which he is not prepared to compel them to do and which they may not be willing to undertake themselves. He pointed out that if my amendment is accepted, the Local Governments will have to appoint a little larger inspecting staff than they have at present. It is quite possible that if my amendment had been accepted, a factory Inspector or two in each province may have to be appointed. But I pointed out one thing and the Honourable Member agreed with me that the change which I am suggesting is not a revolutionary one. It is a modest change and the Honourable Member himself will agree that it is a change which is overdue. Therefore, it is not right for the Government of India to plead that if they accept a small amendment of this kind, there will be any compulsion on the Provincial Governments.

Let us understand the relations between the Provincial Governments and the Central Government. The constitution has given concurrent power both to the Provincial Legislatures and the Central Legislature to legislate on labour matters. The object was that where a Provincial Government required a lead from the Central Government, the Central Government should be able to give that lead. Where it is necessary for the Provincial Governments to give a little push and a lead to the Central Government, they should be able to do so. With that object the concurrent power of legislation has been given. Unfortunately, what we are finding now is that the object of the constitution has been frustrated by both the Provincial Governments and the Central Government, lacking initiative and courage and being more or less reactionary. The Provincial Governments take advantage of the inaction of the Central Government. They say it is the business of the Central Government to legislate because it is a matter of all-India importance. The Central Government comes forward and says: "Well, it is the business of the Provincial Governments; we are, after all, a co-ordinating body. We are a Government, but we do not feel equal to the use of the powers which the constitution has given to us." Both the Governments, therefore, are helping each other to prevent action. This is not the situation which the Legislature should tolerate to continue. Whatever may be the fate of the amendment which I had suggested, the Legislature and the Government of India will realise their duty towards the working classes of this country and move a little faster than they are going today.

Sir, I have nothing more to add except to express my hope again that the Government of India will act with greater courage than they have done so far.

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

"That the Bill be passed."

The motion was adopted.

#### RESOLUTION *RE* AMENDMENT OF THE AUDITOR'S CERTIFICATES RULES.

**The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar** (Commerce Member): Sir, I move:

"That this Assembly recommends to the Governor General in Council to amend the Auditor's Certificates Rules, 1932. in such manner as to admit of the enrolment

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on the Register of Accountants of a restricted certificate holder who does not possess the normal qualifications for enrolment but satisfied the Central Government that he is a fit person to be enrolled."

Sir, in the year 1932, the Auditor's Certificates Rules were passed by the Government of India, following the amendment of the Companies Act. Before these Rules were passed, there were three sets of Auditors who were entitled to practise: Members of certain Accountancy Bodies in the United Kingdom like the Chartered Accountants and the Incorporated Accountants; holders of unrestricted certificates from the local Provincial Governments entitling them to act as Auditors throughout British India. Such persons possessed Accountancy qualifications having received practical and theoretical training under the Regulations for the award of the Government Diploma in Accountancy. These Regulations had the approval of the Government of India and a diploma was awarded by the Accountancy Diploma Board in Bombay. Any holder of these diplomas could apply to the local Government for the grant to him of an Auditor's Certificate entitling him to practise throughout British India. There is a third class of practitioners, called the holders of restricted Certificates from the Local Governments entitling them to act as Auditors within the limits of a particular Province. Such persons do not possess any diploma, but by reason of long practical experience, they were permitted by Local Governments to practise within the limits of a particular Province.

Well, Sir, on the passing of the Accountancy Rules, only the first two classes of persons were admitted to practise throughout British India. The restricted certificate holders could only practise with the permission of the Local Government within a particular area or within the Province. When this Amending Bill was before the House, my Honourable friend, Mr. Vidya Sagar Pandya, who was then the representative of the commercial interests in Madras, moved an amendment that these restricted certificate holders also should have the right, if they were considered proper and fit by their experience and their amount of practice which they enjoyed by their general linguistic qualifications, particularly in English, that they should have the right to practise throughout British India even as the other set of Accountants who had passed their examinations. At that time the Commerce Member was advised by an Accountancy Board or Panel which was nominated by the Government of India, because there was no question of election, the Accountancy Board at that time advised against giving these restricted Certificate holders the right to practise throughout British India. Following that advice, Sir George Rainy said that he was not prepared to allow the restricted Certificate holders the privilege of practising throughout British India. The Government of India framed certain rules. I may say that the rules framed even now by the Government of India allow restricted Certificate holders the power to practise throughout British India. There is no amendment of the Act required, perhaps a little change in the rules is all that is required for the purpose. Therefore, there was really no necessity for the Government to come before the House and ask the House for the approval of this course of action. But I felt that in view of the last decision of the Legislature which turned down Mr. Vidya Sagar Pandya's amendment, it was only fair that this House should have a voice in any change that is proposed to be made, if it is within the rule making powers of the Government of India. The Commerce Department examined this question, and I have come forward to ask this House

to approve of this change for two reasons. The total number of persons at that time who were having these restricted certificates were 51, and, at the present time, they are 48, owing to casualties. There is no possibility of this number being increased in any way. They are a group of persons who are dwindling in number and no additional person can from any source be added to that particular number whatsoever.

Now, Sir, as the House is aware, the power of electing to this Accountancy Board was given a couple of years ago and the present Accountancy Board is predominantly an elected body with a very small element of nominated Members, nominated by the Government to represent interests which are not already adequately represented through the door of election. Last year, in December, this Board met, as indeed it does once a year, and a Resolution was unanimously adopted that this small group of restricted certificate holders should be given the privilege of practising on the same basis as others. The Mover of that Resolution commended it to the acceptance of that body on the following grounds. He proposed that deserving restricted certificate holders in actual practice should be permitted to get themselves enrolled on the Register of Accountants. He said that some of them had long experience and were doing work far more ably than many of the Registered Accountants. They had been responsible for the training of many of the Registered Accountants, and, in his opinion, they could be brought into the register without detracting from the efficiency and prestige of the profession and their number would be about 50—actually it is 48 now—and that many of them were having very good practice and would welcome an opportunity to extend it. He further said that to find out deserving persons, the Government might devise their own methods and prescribe their own standards of judgment. He did not want to bring in people whose practice was not sufficient or who would not prove to be an ornament to the profession. This recommendation was unanimously accepted by the Board.

Apart from many representations that were made individually by restricted Certificate holders, the Government had before them the Resolution of a body which was constituted to safeguard the interests of Accountants as such and when this body recommended that this small group of people should also be brought in, the Government felt that it was time to re-examine the question and, in the re-examination of that question, they felt that the Legislature should also be associated in view of past history. It is in these circumstances that I move this Resolution. I may say that following the suggestions of the Mover of the Resolution himself it is intended to scrutinise these 48 people who are restricted Certificate holders, and all of them will not automatically come in for that exemption. It is not possible, for instance, to enrol, on the regular Register of Accountants, a person whose knowledge of English is so inadequate that he cannot discharge his duties with reference to the Indian Companies Act in British India. Some of them have been approved as Certificate holders by Local Governments because of their peculiar linguistic qualifications, such as Gujerati or Malayalam. These persons are certainly not fit to be made regular Accountants to practise all over British India. The quantum of their practice may also have to be taken into consideration as indeed the recommendation of the Board to the Government indicates. It is under these circumstances that the phrase



[Sir A. Ramaswami Mudaliar.]

of such persons as the Government of India may deem fit has been introduced in the Resolution. I ask the approval of the House of the course that we propose to take in this matter.

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

"That this Assembly recommends to the Governor General in Council to amend the Auditor's Certificates Rules, 1932, in such manner as to admit of the enrolment on the Register of Accountants of a restricted certificate holder who does not possess the normal qualifications for enrolment but satisfies the Central Government that he is a fit person to be enrolled."

**Sir F. E. James** (Madras: European): May I ask my Honourable friend, when he referred to the Central Government now seeking to decide whether these persons are fit to be enrolled or not, if he would indicate in very general terms the machinery which is to be adopted to test their fitness. Will it be a Committee of the Accountancy Board or will it be a purely departmental examination?

**The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar:** Frankly, we have not yet considered that question. We wanted to get the approval of the Legislature first to the course that we propose to take before we went into details. My Honourable friend knows that the Chairman of the Accountancy Board is the Secretary of the Commerce Department, and there is also a trained Accountant appointed by the Government as Secretary of this Board. In any case the Chairman of the Board will have the final power with reference to the selection of these persons. Whether we shall interpose a sub-committee of the Accountancy Board or any other agency before the recommendations of that body are scrutinized by the Chairman is a matter that still awaits the consideration of the Government.

**Dr. P. N. Banerjee** (Calcutta Suburbs: Non-Muhammadan Urban): Do I understand that some tests will be imposed other than the language tests?

**The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar:** Yes, Sir; the quantum of practice, as I said, is a very important test.

**Dr. P. N. Banerjee:** And the total number will perhaps not exceed 30?

**The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar:** Forty-eight is the maximum. The total number will be something below that. Probably it may not exceed 30.

**Sir Gowashj Jehangir:** Sir, I submit that these men are a body of old practitioners, some of them with a very large practice indeed and some of them with a considerable reputation, who were unable to get on to the list on account of their age and nothing else. It is these men who require relief and no examination is required. I think a statement placed before the Honourable Member giving the name, the number of years' practice, the amount of practice, their standing in the places in which they live, etc., would be sufficient for the Honourable Member to find out those who deserve to be included. I trust there will be no such

examination or careful scrutiny as is suggested. These are old men with a long practice and considerable reputation. Some of them, of course, will not be included, and the Honourable Member can find that out by glancing at the list.

**The Honourable Diwan Bahadur Sir A. Ramaswami Mudaliar:** There is no question of any examination at all. I can give that assurance.

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

"That this Assembly recommends to the Governor General in Council to amend the Auditor's Certificates Rules, 1932, in such manner as to admit of the enrolment on the Register of Accountants of a restricted certificate holder who does not possess the normal qualifications for enrolment but satisfies the Central Government that he is a fit person to be enrolled."

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 4th November, 1941.