

Wednesday, 19th November, 1941

THE COUNCIL OF STATE DEBATES

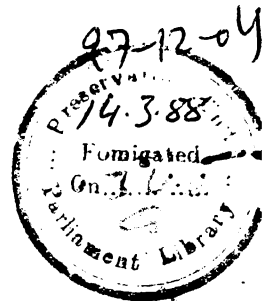
VOLUME II, 1941

(10th November to 22nd November, 1941)

TENTH SESSION

OF THE

FOURTH COUNCIL OF STATE, 1941



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CONTENTS.

Page.

Monday, 10th November, 1941—

Members Sworn	1
Welcome to His Excellency the Commander-in Chief	1—3
Questions and Answers	2—19
Statements, etc., laid on the table	19—24
	25—27
	34—42
Information promised in reply to questions laid on the table	24—25
	27—33
	42—43
Congratulations to recipients of Honours	43
Message from His Excellency the Governor General	44
Committee on Petitions	44
Governor General's assent to Bills	44—45
Bills passed by the Legislative Assembly laid on the table	45
Message from the Legislative Assembly	45—47
Defence Consultative Committee	47
Standing Committee for the Department of Supply	47—48
Statement of Business	

Tuesday, 11th November, 1941—

Questions and Answers	49—62
Statement re Non-participation by the Muslim League Party in the Autumn Session	62—63
Death of Sir Ganganath Jha	63—64
Bills passed by the Legislative Assembly laid on the table	64
Resolution re Purchase of the B. & N. W. R.—Adopted	64—76
Resolution re Registration of architects—Withdrawn	77—80
Resolution re Representation of India at the International Labour Conference—Adopted, as amended	81—91

Thursday, 13th November, 1941—

Questions and Answers	93—108
Defence Consultative Committee	108
Standing Committee for the Department of Supply	108
Bills passed by the Legislative Assembly laid on the table	108
Statements, etc., laid on the table	108—109
Central Advisory Board of Education in India	109
Code of Criminal Procedure (Amendment) Bill—Considered and passed	109—110
Code of Criminal Procedure (Second Amendment) Bill—Considered and passed	110—111
Factories (Amendment) Bill—Considered and passed	111—113
Maternity Benefit Bill—Considered and passed, as amended	114
Resolution re Amendment of Auditors' Certificates Rules, 1932—Adopted	114
Statement of Business	114

Monday, 17th November, 1941—

Questions and Answers	115—148
Bills passed by the Legislative Assembly laid on the table	148
Central Advisory Board of Education in India	148
Information promised in reply to questions laid on the table	149
Indian Limitation (Amendment) Bill—Presentation of Report of Select Committee	149
Aligarh Muslim University (Amendment) Bill—Considered and passed	150—151
Madras Port Trust (Amendment) Bill—Considered and passed	151 —155

Tuesday, 18th November, 1941—

Questions and Answers	157—185
Message from the Legislative Assembly	185
Resolution <i>re</i> Royal Indian Navy—Adopted	185—195
Resolution <i>re</i> Appointment of non-Official Visitors chosen from the Central Legislature to visit Security Prisoners in the Deoli Detention Camp—Adopted, as amended	195—201
Resolution <i>re</i> Atlantic Charter—Adopted	201—220
Professions Tax Limitation Bill—Considered and passed	220—222
Federal Court Bill—Considered and passed	222
Indian Merchant Shipping (Amendment) Bill—Considered and passed	222—223

Wednesday, 19th November, 1941—

Questions and Answers	225—231
Standing Committee for the Department of Supply	231
Indian Income-tax (Amendment) Bill—Considered and passed	231—246
Excess Profits Tax (Second Amendment) Bill—Considered and passed	246—251
Railways (Local Authorities' Taxation) Bill—Considered and passed	251
Indian Companies (Amendment) Bill—Considered and passed	252—253
Trade Marks (Amendment) Bill—Considered and passed	253

Thursday, 20th November, 1941—

Standing Committee for the Department of Supply	255
Indian Limitation (Amendment) Bill—Considered and passed	255—256
Resolution <i>re</i> Indianization in the Indian Police Service—Withdrawn	256—272
Resolution <i>re</i> Protection of the rights of Indians in Malaya—Withdrawn	272—290
Statement of Business	290

Saturday, 22nd November, 1941—

Questions and Answers	291—292
Information promised in reply to questions laid on the Table	292 —297
Motion <i>re</i> Joint Report of the Indo-Ceylon Delegations—Considered and adopted	298—315

COUNCIL HOUSE IN NEW
CORRIGENDA.

In the Council of State Debates,
1941, Vol. II,—

(1) On page 4, in the top line,—

for " India " read " Indian ";

(2) On page 136, in line 3 from the
top,—

for " one is at " read " that is,
with ".

(3) On page 142, in line 5,—

delete the words " at the time ";

(4) On page 147, in line 4,—

for " I lay a statement on the
table " read " A statement
has been laid on the
table ".

COUNCIL OF STATE.

Wednesday, 19th November, 1941.

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

QUESTIONS AND ANSWERS.

ORDERS FOR THE SUPPLY OF WAR MATERIALS PLACED WITH THE UNITED KINGDOM COMMERCIAL CORPORATION.

176. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (a) Will Government state whether orders for the supply of war materials have been placed by the Supply Department, or the Eastern Group Supply Council, with the English Commercial Corporation ? If so, for what articles, and for what value ?

(b) Are Government aware that the object of the English Commercial Corporation, as stated by Sir John Simon in the House of Commons on the 4th April, 1940, was that " Government had decided as a contribution towards the difficulties attending the development of trade with certain neutrals to form a special trading company called the English Commercial Corporation, the capital of which would be subscribed by the Treasury " ?

(c) Is it a fact that this English or United Kingdom Commercial Corporation which was primarily formed to develop British trade in the Balkans, has appointed Mr. C. W. Miles as their representative in India to maintain close contact with the Supply Department, and the Eastern Group Supply Council ?

(d) Do Government propose to give an assurance that the legitimate trade and economic interests of India will not be allowed to be adversely affected by the entry into the field of competition of this highly influential foreign commercial corporation ?

THE HONOURABLE SIR ALAN LLOYD : (a) No such orders have been placed.

(b) Yes. The statement was made on 5th April, 1940.

(c) Yes. The maintenance of close touch with the Supply Department and the Eastern Group Supply Council is, however, only incidental to Mr. Miles' duties.

(d) The Corporation will not interfere with normal private trade.

INTERNATIONAL COMMITTEE OF THE LEAGUE OF NATIONS UNION.

177. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (a) Is it a fact that an Allies " League of Nations " under the official title of " London International Assembly formed under the auspices of the International Committee of the League of Nations Union " has been formed in London ; and that, among other countries India also has been invited to become one of the members ?

(b) Do Government propose to consult the Central Legislature before admitting India as a member of this organisation ?

(c) What will be the financial implications if India is admitted as a member of this League ?

THE HONOURABLE MR. SHAVAX A. LAL : (a) I have seen a report to this effect in the press but I have no official information.

(b) I cannot attempt to anticipate the action which Government might or might not take in the event of an official communication on the subject being addressed to them. It is not clear from the press report whether the proposed League will be of a governmental or of a purely non-official character.

(c) Pending an official communication it is impossible to say what financial implications, if any, would be involved.

THE HONOURABLE MR. P. N. SAPRU : Is it a different body from the old League of Nations ?

THE HONOURABLE MR. SHAVAX A. LAL : Yes, Sir. The International Committee of the League of Nations Union is an entirely non-official body. I understand that this body was formed with a view to propagate the ideas of the League.

MR. J. HENNESSY, PRINCIPAL INFORMATION OFFICER.

178. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (a) Has Mr. Josselyn Hennessy, Principal Information Officer, Government of India, been deputed to go to the United States, of America, with the object of ensuring "more effective publicity of Indian affairs in America" ? Will Government state in somewhat greater detail the exact scope of his activities in America, and the instructions, if any, which may have been given to him ?

(b) What are the financial implications of his deputation, and of his activities in America ?

THE RIGHT HONOURABLE SIR AKBAR HYDARI : (a) Yes. Mr. Hennessy is being deputed as Information Officer with the Agent General for India in the United States of America. His duties will in general be to see that accurate information is made available, on request, to the American press and public about India.

(b) This is still under the consideration of the Government of India and I am unable to give any estimate at present.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Can Government tell us at least today whether the salary of Mr. Hennessy will be free of income-tax ? That was a question that was put yesterday to the Finance Secretary and he said that he could not for the moment reply to it.

THE RIGHT HONOURABLE SIR AKBAR HYDARI : Do you refer to Indian income-tax or American income-tax ?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : The question put yesterday was about the application of the Indian income-tax.

THE RIGHT HONOURABLE SIR AKBAR HYDARI : I require notice of that question, Sir.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : The question was mentioned yesterday and I thought Government would be ready today at least to give a reply to it.

THE HONOURABLE SIR JEREMY RAISMAN : If I may intervene, Sir, I would like to point out that a question like that does not admit of a "Yes" or "No" answer. The legal position is somewhat complicated. The first year in which a man leaves India, having been resident in the course of the year, he may have a liability, but he may not be liable at a later stage.

THE HONOURABLE MR. P. N. SAPRU : What will be the nature of the propaganda that he will be required to do, Sir ? Will he base his propaganda on the talking points ?

THE RIGHT HONOURABLE SIR AKBAR HYDARI : What I said was not propaganda but information.

DURGA PUJA HOLIDAYS.

179. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : Have the E. I. R. authorities cut down the number of Hindu holidays, specially the Durga Puja holidays, which have been reduced from two weeks to four days this year ? If so, what is the reason for this reduction ?

THE HONOURABLE MR. S. N. ROY : Government understand that under the Negotiable Instruments Act the holidays declared for Durga and Lakshmi Pujas were four and that the E. I. R. observed these as holidays. Such staff as lived some way off from their place of work were permitted to avail themselves of extra casual leave on the 1st, 2nd and 3rd October.

MRS. STAN HARDING, JOURNALIST PHOTOGRAPHER.

180. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (a) Have Government appointed a European photographer, Mrs. Harding, for the purpose of taking pictures of various aspects of India's war efforts, on a salary of Rs. 800 per month ? What is the approximate amount of the total expenditure involved in this undertaking ?

(b) Has a specially constructed motorvan with dark room equipment to facilitate movement all over the country been placed at her disposal ?

(c) What are this lady's special qualifications for the appointment ; and what was her position before she was appointed to this post ?

(d) Was the post advertised in the press ? If so, in what newspapers ? If it was not advertised, why not ?

(e) What efforts did Government make to find out that no suitable Indian photographer was available to fill the appointment ?

(f) Why was it deemed necessary to appoint a lady photographer ?

THE RIGHT HONOURABLE SIR AKBAR HYDARI : (a) Yes. The total expenditure will be about Rs. 16,800 annually. The expenditure during the current financial year is estimated at Rs. 13,650.

(b) Yes. The motorvan was paid for by the Ministry of Information, London, and is being utilised by the Government of India free of charge.

(c) Mrs. Stan Harding was for many years the Berlin Correspondent of the old *London Daily News* and also the Correspondent of an American daily. She has published her work in many leading illustrated magazines and is a Journalist-Photographer of international reputation. Before appointment to her present post, Mrs. Stan Harding was employed by the Government of India on a salary of Rs. 800 per mensem to work for the Ministry of Information. She was paid by the Ministry of Information, London. Before that she was an independent Journalist-Photographer, contributing to the *Illustrated Weekly, Sphere*, and many other reputable magazines all over the world.

(d), (e) and (f). The post was not advertised. The Government of India had already had some experience of Mrs. Stan Harding's work during the period she was employed on behalf of the Ministry of Information. She is considered to be one of the best Journalist-Photographers available in India, and her work challenges comparison with the well known experts on the staff of the *American Life* and the *British Sphere*. It was thought unlikely that a Journalist-Photographer of her reputation would be available in India, or, if available, would accept a salary of Rs. 800 only.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Is it a fact that the experience of the Government of India with regard to all important posts recently has been that a Britisher is preferable to an Indian ?

THE RIGHT HONOURABLE SIR AKBAR HYDARI : I did not catch your question.

THE HONOURABLE THE PRESIDENT : He wants your opinion—

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : No, Sir, it is a question of fact. Is it a fact that the Government of India have found with regard to all important posts recently that Britishers are preferable to Indians in every case ?

(No answer.)

THE HONOURABLE THE PRESIDENT : The Honourable Raja Yuveraj Dutta Singh.

SCHEME FOR A NEW CIRCULAR MOTOR ROAD ROUND SIMLA.

181. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (a) Is there any scheme for a new circular motor road round Simla in which the Government of India, the Government of the Punjab, and the Simla Municipality will share the cost ?

(b) What is the estimated total cost of the scheme ; and what is the quota of the Central Government ?

(c) What is the urgency of the scheme ?

THE HONOURABLE MR. G. S. BOZMAN : (a) Yes.

(b) About Rs. 8½ lakhs, half of which will be met by the Central Government.

(c) The project is part of a scheme designed to ameliorate the insanitary sum conditions existing in Simla, which are a menace to the health of the community.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : May I know whether any part of this expenditure has been incurred or whether Government will wait till the scheme is embodied in the next Budget ?

THE HONOURABLE MR. G. S. BOZMAN : I cannot say, Sir, whether any actual expenditure has been incurred but the work has been taken in hand.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Perhaps the Finance Member will be able to throw some light on the point.

THE HONOURABLE SIR JEREMY RAISMAN : Sir, the position is that the Government of India were asked to make a grant so that expenditure may have been incurred, although the question of grant will come up at some particular stage. No detailed information is with me on the subject.

INDIANS IN THE ROYAL AIR FORCE.

182. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (a) Will Government state whether there are Indian air pilots attached to the R. A. F. who have been taking part in almost daily raids over Germany ? If so, about how many ?

(b) Have Indian air pilots been sent to the Russian Front ? If not, why not ?

THE HONOURABLE MR. A. DEC. WILLIAMS (on behalf of His Excellency the Commander-in-Chief) : No detailed information is available as to the duties on which these officers are employed ; but it is a fact that some of them have been detailed for operational duties.

INCREASE IN CIVIL AND DEFENCE EXPENDITURE ATTRIBUTABLE TO THE WAR.

183. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : What is the approximate daily expenditure of the Central Government due to the war ?

THE HONOURABLE MR. C. E. JONES : It is not possible to estimate with any approach to accuracy the increase in Civil and Defence expenditure which can be directly attributed to the war ; but the Honourable Member is no doubt aware, from the monthly statements published in the Gazette of India, that the total expenditure on Defence Services during 1940-41 amounted to Rs. 73½ crores, and the expenditure during the first five months of the current year has averaged nearly Rs. 7 crores a month, giving daily averages of Rs. 20 lakhs and Rs. 23 lakhs respectively. Expenditure on Defence Services is however mounting, and for 1941-42 the daily average may amount to as much as Rs. 25 lakhs, as against the pre-war figure of Rs. 12 lakhs.

SUBSIDIES PAID TO THE P. & O. CO. AND THE BRITISH OVERSEAS AIRWAYS CORPORATION.

184. THE HONOURABLE RAJA YUVERAJ DUTTA SINGH : (a) Is the Government of India paying subsidies of about £30,000 per year to the P. and O. Company ; and of about Rs. 15 lakhs per year to the British Overseas Airways Corporation for maintaining the mail services ? In

view of the irregularity and curtailment of mail services due to the war do Government propose to make necessary adjustment and reduction in the subventions ? If not, why not ?

(b) Is it a fact that under the present agreement with the Indian Trans-Continental Airways, Ltd., a majority of the share capital of the Company is ensured to the British Overseas Airways Corporation ? If so, do Government propose to revise the agreement so as to enable the Government of India to have controlling interests in the affairs of the Indian Trans-Continental Airways ?

THE HONOURABLE MR. S. N. ROY : (a) The Government of India do not pay subsidies either to the P. & O. Company or to the British Overseas Airways Corporation, which are under contract with His Majesty's Government. Possibly the Honourable Member has in mind the contribution which the Government of India make for the use of the services operated by these Companies. The annual payment on this account for the P. & O. services, subject to final adjustment, is £28,000 and that for British Overseas Airways Corporation empire air services for the year ending 27th February, 1942 about Rs. 9 lakhs. The question of reduction in these payments, in consequence of the curtailment of services during the war, is under correspondence with His Majesty's Government.

(b) The British Overseas Airways Corporation as successors to Imperial Airways Limited hold a majority of the share capital of Indian Trans-Continental Airways, Limited. As regards the future, Government have made certain proposals to His Majesty's Government for the revision of the existing arrangements, but it is unlikely that any final settlement will be possible during the war.

THE HONOURABLE MR. P. N. SAPRU : What are the services for which these subsidies are paid to the P. & O. ?

THE HONOURABLE MR. S. N. ROY : I have just said, Sir, that the Government of India do not pay any subsidy. They make a contribution to His Majesty's Government.

THE HONOURABLE MR. P. N. SAPRU : What are the services for which contribution is paid to the P. & O. ?

THE HONOURABLE MR. S. N. ROY : For carrying mails between the United Kingdom and India.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : What is the proportion of the share capital held by the Overseas Airways Corporation ? Is it 51 per cent ?

THE HONOURABLE MR. S. N. ROY : 51 per cent.

POLICY FOLLOWED BY THE E. I. R. IN FILLING APPOINTMENTS TO THE HIGHER GRADES IN SCHOOLS.

185. THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Will Government state—

(a) Whether in making appointments to the higher grades and posts in railway schools the E. I. R. authorities have ignored the claims of the teachers already in service although they possessed the requisite qualifications and experience and recruited men from outside ?

(b) Whether in schools in Bihar, Bengal and the United Provinces the recruitment of headmasters and assistant masters is confined to teachers already in service ? If so, why is a different system followed by the E.I.R. authorities ?

(c) Whether several headmasters and assistant headmasters are due to retire in the near future ? If so, do Government propose to confine recruitment for the vacancies that will arise to the teachers already in service as is the practice in the provinces through which the E.I.R. passes ?

THE HONOURABLE MR. S. N. ROY : I have called for information and a reply will be laid on the table of the House as soon as possible.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : This is the reply to all questions asked about the E.I.R. It is very unfair.

STANDING COMMITTEE FOR THE DEPARTMENT OF SUPPLY.

THE HONOURABLE MR. A. DEC. WILLIAMS (Defence Co-ordination Secretary) : Sir, I move :—

“ That this Council do proceed to elect, in such manner as may be approved by the Honourable the President, one non-official Member to serve on the Standing Committee attached to the Department of Supply, in place of the Honourable Pandit Hirday Nath Kunzru resigned.”

The Motion was adopted.

THE HONOURABLE THE PRESIDENT : With reference to the Motion which has just been adopted by the Council I have to announce that nominations will be received by the Secretary up to 4 P. M. today and the date of election, if necessary, will be announced tomorrow.

INDIAN INCOME-TAX (AMENDMENT) BILL.

THE HONOURABLE MR. C. E. JONES (Finance Secretary) : Sir, I move :—

“ That the Bill further to amend the Indian Income-tax Act, 1922, as passed by the Legislative Assembly, be taken into consideration.”

I do not propose to take up a great deal of the time of this House in explaining in detail the purpose of the Bill since Honourable Members must by now be acquainted with the objects which it sets out to accomplish, while the Notes on Clauses attached to the Bill are exceptionally comprehensive and detailed.

The main change is the exemption given by clause 8 (b) of the Bill to income accruing or arising in an Indian State. It recently came to notice that if the States adopted, as in fact one State did, the residence basis introduced in the Indian Income-tax Act in 1939, and if the existing arrangements for double income-tax relief continued, we stood to lose considerably more revenue than if we reverted to the old basis of charge, *viz.*, the remittance basis in so far as the income accruing or arising in an Indian State is concerned. The solution therefore lay in exempting from tax the income accruing or arising in a State unless it was brought into or received in British India, but including it in the year of accrual for determining the rate of tax payable on the other income of the assessee. To obviate any hardship which would arise by including the income once again when remitted for determining the rate of tax

[Mr. C. E. Jones.]

the Select Committee added another sub-section which secures that in the year of remittance income which had been included previously for rate purposes will not again be taken into account for that purpose. Income which originally accrued to a British Indian assessee in an Indian State and is subsequently brought into British India will in consequence be assessed at the average rate applicable to the other income, or at the rate applicable to the amount of the income remitted, whichever is the greater. It follows as a corollary that we should now be justified in refusing to enter into double income-tax relief arrangements with States which trespass on our domain to any greater extent than we trespass on theirs.

Two other changes (clauses 6 and 13) that call for mention are those relating to the computation of written-down value and the priority to be given to the allowance for losses carried forward over the allowance for unabsorbed depreciation. As the law stands, the written-down value has to be computed by deducting all depreciation "due", whether actually allowed or not, except the unabsorbed depreciation up to the assessment year 1938-39 which was not excluded. According to the provisions as amended by this Bill, the written-down value will be the cost less depreciation *actually allowed* so far.

It is proposed also to give priority to allowances for losses carried forward, because some losses can be carried forward only for six years while depreciation can be carried forward indefinitely. If assessees are to get the full benefit of the carry-forward of losses this provision is necessary.

As recommended by the Select Committee these provisions, as also the one relating to the exemption of income accruing or arising in a State, take effect from the assessment year 1942-43. This will obviate any invidious distinction as between assessees whose assessments have been completed and those whose assessments remain to be completed.

Certain other clauses of the Bill which either seek to alter the scope of the charge or reduce or increase the quantum of tax may be mentioned. Clause 3 is designed to exempt official representatives of other Governments on a reciprocal basis, and clause 4 enlarges the definition of "residence" to cover the case of a person who comes to India for the purpose of residing in India, but actually arrives in the country too late in the year to qualify for residence in the year of arrival.

Clause 13 seeks to give effect to the intention underlying section 24 (2) of the Act, which is that only those partners of a firm who have suffered a loss should be allowed the benefit of a subsequent set off; the section as it stands does not achieve this.

The opportunity has also been taken to correct anomalies in sub-sections (3) and (4) of section 25. Under the 1886 Act, the "previous year" basis of assessment was followed and in 1918 a change was made to the "current year" basis. In 1922, we switched back again to the "previous year" basis. The effect of this change was to charge the assessee for one year more than the number of years for which he carried on business, and it was with a view to counteracting the effect of this change that these sub-sections were originally inserted. These conditions do not however apply in the case of super-tax or to companies except to the limited extent provided for in the amendment itself in clause 14. There is clearly no justification for continuing these concessions in these two cases.

Provision has also been made for strengthening the Collector's hands in the matter of the recovery of income-tax demands. At present his powers in this direction are inadequate in view of the largeness of the amounts involved, and it is proposed therefore in clause 24 to give him the powers which under the Civil Procedure Code a civil court would have for the purpose of recovering an amount due under a decree.

The House will also be interested to know that the Commissioner's powers of revision are being restored with a view to affording relief to the assessee where its necessity is clearly indicated. This will be found in clause 18. It is not proposed however to confer on him any power to pass an order prejudicial to the assessee or where the assessee has appealed to the Income-tax Appellate Tribunal. In any case of hardship within the knowledge of the Department, it would normally be the Department which would move the Commissioner to grant relief. But it will also be open to the assessee to apply to the Commissioner in certain circumstances, the application being accompanied by a fee of Rs. 25. This fee has been imposed with a view to preventing petty or frivolous applications.

The remaining provisions of the Bill are either clarificatory or are designed to improve the machinery or to assist the assessee in the matter of filing appeals, etc., and no special explanation seems necessary in regard to them.

Sir, I move.

THE HONOURABLE SIR RAMUNNI MENON (Nominated Non-Official) : Sir, I welcome this Bill because certain provisions of it are designed to give relief to a fairly large class of British Indian residents whose lot is cast both in British India and in Indian States and who sometimes get the worst of both. The provision in the existing Act by which incomes of these residents accruing in Indian States are liable to British Indian income-tax, even when they are not brought into British India, was a new provision introduced in 1939 ; and now by the amendment before us we are taken back to the old position. I think the restoration of the old position is very fair and welcome. One would have liked to believe that this change in policy on the part of the Government was due to the emergence of a new sense of equity towards the taxpayers but that is not the case. It is in fact due to the discovery that a considerable portion of income-tax collected in British India would have to be surrendered to certain Indian States who came rather unexpectedly on the scene, armed with their own income-tax laws, modelled, I understand, closely on the British Indian model. The cynic may be forgiven if he recalls the old proverb—When thieves fall out, honest men come by their own. Be that as it may, one need not look too closely into motives and methods when the result achieved is very agreeable and equitable. There are one or two other points which I would like to mention in this connection. The position as it stood before 1939 has not been completely restored. Before 1939 there was no question of world income, and income accruing in an Indian State was naturally not taken into calculation in estimating the total income of the assessee. Total world income was introduced in 1939. The amending Bill now before us does not take away the provision in the existing Act, by which Indian State income is included in the total world income for determining the rate of tax. I have no objection to its retention, because I consider it quite right that a man should not be able to evade his just share of income-tax by availing himself of facilities for splitting up the location or the sources of his income. But what I think is an anomalous feature is one which will not be apparent to the casual reader of this Bill, but, which actually exists in the

[Sir Ramunni Menon.]

Income Tax Act as it stands at present. The point I am referring to relates to agricultural income. As we are all aware, agricultural income accruing in British India is not subject to Central income-tax. I am quite aware that in certain provinces in British India there is a tax on agricultural income, but such income is not subject to Central Indian income-tax. When the present Act was discussed in the Bill stage in this Council in 1939, I remember pointing out the anomaly of making agricultural income accruing in an Indian State liable to British Indian income-tax. But my complaint fell on deaf ears and nothing came out of it. I assume—I am speaking subject to correction—that the retention of the provision by which Indian States income is included in the world income of an assessee means that his agricultural income accruing in an Indian State will also be so included. If that is the case, I must confess that it is an anomaly. When you are not subjecting agricultural income accruing in British India to Central income-tax, and when you are not taking it into account for the purpose of calculating the rate of tax, I think it is very unfair that you should make a departure in regard to agricultural income accruing in an Indian State—

THE HONOURABLE THE PRESIDENT : You said at the beginning that the Indian States have adopted the British Indian Income-tax Act.

THE HONOURABLE SIR RAMUNNI MENON : I am not sure whether, in this particular detail, they have followed the Income-tax Act of British India. If they have adopted it, I shall be very glad, because it will open the eyes of the Government of India. There will be such a loud complaint in British India that I am sure they will do something to redress the grievance.

THE HONOURABLE SIR JEREMY RAISMAN : May I point out that the position is that agricultural income arising in an Indian State does not fulfil the definition of "agricultural income" which is included in the Act.

THE HONOURABLE SIR RAMUNNI MENON : That is quite true. But what I want done is to amend the definition in the Act so that it covers agricultural income accruing in an Indian State. I want agricultural income in an Indian State to be exempted from income-tax in British India and to be excluded from total world income when the rate of tax is determined. I want the same principle to be adopted in regard to agricultural income, whether it arises in an Indian State or in British India. That is all my point.

With these few remarks, Sir, I have very great pleasure in heartily welcoming the Bill.

THE HONOURABLE MR. SHANTIDAS ASKURAN (Bombay: Non-Muhammadan) : Sir, let me, first of all, congratulate the Honourable the Finance Member for bringing in this measure to amend the Income Tax Act so as to set right certain defects and to redress the grievances arising from the original Act. I welcome, for instance, the most desirable amendment in clause 6 which enables the taxpayer to claim depreciation allowance on a legitimate part of his business assets to which he was not entitled before. But for this amendment, there would have been serious repercussions on business capital. The thanks of the business community are due to Government for this very desirable amendment.

Having said this, I must now proceed to point out—what I consider—some of the shortcomings in the Bill as it now stands, shortcomings which I feel will cause serious hardship and even injustice to assesseees. I have already expressed my approval of the principle of the amendment in clause 6. I have only to add here that the said amendment should, in all fairness, be given effect to from 1st April, 1940 from which date depreciation is to be computed on the written-down value. If this is not done, it will mean over-assessment of the taxpayer for income-tax as well as for the excess profit tax for certain periods. I do not see how the Government could have objection to this legitimate demand on the part of businessmen for being granted the benefit as from 1st April, 1940 when the validity of this computation has been accepted in principle from that date.

I come now to clause 7. This clause provides for depreciation on buildings let on hire along with machinery, plant or furniture, provided the letting of the buildings is inseparable from the letting of the machinery, plant and furniture. Why must this proviso be introduced? I suggest that simply the word “buildings” be substituted in the clause concerned for the words “machinery, plant or furniture belonging to him and also buildings and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture”. The amendment as now drafted, means nothing at all, for under the law as it now stands in view of the High Court decisions referred to in the Notes on Clauses, depreciation is already admissible in the case of such inseparable buildings. Under section 10 (2) (vi) the depreciation allowance is admissible in respect of buildings used by their owners for business purposes. Is it seriously contended, Sir, that a building depreciates less in the hands of the person to whom it is hired than in the hands of the owner? Commonsense warrants the opposite conclusion. Let such buildings be, therefore, entitled to as much depreciation as buildings used by the owners for business purposes. That is simple justice. The burden of taxation must fall equitably on all. There is a legitimate grievance if it is otherwise. The change in the wording I have suggested above seeks to right this wrong.

Let me now pass on to clause 18, which seeks to impose a fee of Rs. 25 as “the Government are unwilling to allow the unrestricted right of application to the Commissioner which existed before 1939”. Frankly, I do not see any justification for this levy. To make an application to the Commissioner does involve expenditure and trouble. That is sufficient deterrent to frivolous applications. Do the Government think that the assesseees have such a low opinion of their Commissioners that they expect to get relief by putting in frivolous applications? I hope not. Surely, the taxpayer is entitled to claim legitimate relief. To impose a tax on such a demand is to deny justice. There is not even a provision here for a return of the fee in case the Commissioner finds that there is a just grievance and a valid claim for relief. The fee is thus likely to become a penalty, pure and simple, for venturing to voice what the taxpayer feels may be a legitimate grievance. I suggest, therefore, that the idea of levying this fee of Rs. 25 should be given up entirely.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: They do not refund the deposit of Rs. 100 when an appeal is made to the Appellate Tribunal.

THE HONOURABLE MR. SHANTIDAS ASKURAN: That, we have complained about, last time.

Finally, Sir, may I only say that if the amendments I have suggested are accepted, the objects of the Bill will be achieved much better, with less hardship to the taxpayer, less worry to the Department, and with more justice to all concerned. Sir, I have done.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce): Sir, in the main we welcome the provisions of this Bill. In particular, it removes certain ambiguities and also certain inequities. My Honourable friend has just referred to the question of fees in respect of appeals. I do not know whether he has had any experience of this subject. I personally have. I spend many weary hours, on an average about an hour a day of my life, listening to appeals under another statute where there are no fees charged in respect of those appeals and I can assure him that at least 90 per cent. of them are, shall we say, frivolous, or anyhow very unsatisfactory.

THE HONOURABLE MR. SHANTIDAS ASKURAN: What about cases in which the appeal is decided in favour of the assessee? Would you suggest refund of the costs?

THE HONOURABLE MR. R. H. PARKER: There is only one particular clause to which I want to refer and that is clause 14 of the Bill, which deals with the provisions of section 25 of the Act under which certain equities are put on a proper footing when a business ceases to be carried on. I am not quite clear as to the effect of this on registered firms and partners in registered firms. In particular I would like to know if Government can tell me whether the exception in the proposed proviso under (a) to sub-section (4) of section 25 of the Act will apply to any partner in a registered firm who was assessed to super-tax in respect of that business for the first time for 1920-21 or 1921-22 and also I would like to know whether it would apply to any partner who was not assessed then but who had a predecessor who was. I should very much like enlightenment on this point.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : ~~Non~~ Muhammadan): Sir, I have no objection to the Bill which has been presented before this House by the Honourable Sir Jeremy Raisman, but I should like to say a few words about the administration of the Income Tax Department. The Honourable Sir Jeremy Raisman knows that I am no supporter of vested interests and I have never advocated a low income-tax. But in my own province and in other places I have heard complaints about the manner in which the Income Tax Act is being administered by the officials of the Income Tax Department. Income-taxpayers are put to all sorts of trouble. The accounts submitted by them are not normally accepted as true and all sorts of books, real or imaginary, which they are supposed to have in their possession are asked for by the Income-tax authorities, and often—I would not say often, but in some cases—the assessment is quite arbitrary. It is quite true that the Act provides an appeal; it provides for an appellate tribunal also. The appellate tribunal is to have a judicial element. I am not certain as to what the effect of the change proposed in the Bill will be, so far as the composition of this appellate tribunal is concerned. The idea was that this judicial tribunal should have half members possessing legal qualifications and half members possessing accountancy qualifications. I have not been able to understand the full significance of the new clause which is proposed to be substituted for the old clause in the new Bill. What I wish to say is this. Once an assessment has been made on some arbitrary basis, it is not easy for an assessee to have proper redress through the legal machinery. So far as the High Court is concerned it has only power to interfere where a question of law is involved and as we lawyers know it is only in very few cases that questions of law are involved. Most cases turn on facts and so far as facts are concerned

they are determined by the Income-tax Officer or Assistant Commissioner or Commissioner of Income-tax and then the Appellate Tribunal. The High Court gets very little opportunity of giving relief to an oppressed assessee on questions of fact. I think that a change in the income-tax law is needed in this respect. High Courts should be empowered, subject to certain qualifications or reservations, to review cases not only on law but also on facts and therefore—

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Non-Official) : What about the strength of the High Court? You would need to have 25 Judges in each Court.

THE HONOURABLE MR. P. N. SAPRU : I have said subject to certain restrictions and qualifications. That need not very much add to the work of the High Courts and if we have to increase the strength of the Courts we should be prepared to do so. We should make every effort to see that no injustice is done to any individual. Our supreme interests should be to see that injustice is avoided. Therefore I suggest that Government should take up the question of providing an appeal in suitable cases on questions of fact to the High Court also. Also I would press the Honourable the Finance Member to issue orders for the more sympathetic administration of the Act. When I say more sympathetic administration of the Act let me not be misunderstood. I do not want any assessee to escape payment. I do not want him to encourage in any manner whatever dishonesty. It would be grossly unfair to the honest payer if the dishonest payer is made to escape his legitimate dues ; but I have known cases where a professional man has not worked for a few months in the year ; his income happens to be in a particular year smaller than his income in the previous year and then his word which should be accepted by any court of law as absolutely true is not accepted by the Income-tax authorities. He is asked for this paper and that paper, this account book or that account book, and has to explain why there is a variation between his income of this year and that year. All that, Sir, I think is very annoying. Then there are poor people, who do not keep proper accounts and who are not possibly real income-tax payers and the Income-tax authority imagines that they are making a certain income. On the basis of that imagination he assesses them to a particular income. It is quite true that they have got an appeal against the Income-tax authority but then look at the cost that that appeal involves. Look at the trouble to which the poor man is put when he has to appeal and by the time the appeal is over he has probably spent more than the actual income-tax that he is required to pay. Therefore, there is a tendency since the Act was passed on the part of the Income-tax authorities to think that they have been given *carte blanche* ; they can do anything they like ; they can assess any individual in any manner they like. Sir, we had the other day in Calcutta the closing of the market on account of the manner in which the Income Tax Act was administered. I do not want to say anything about any particular case in Calcutta. I do not know the facts of that particular case. The Income-tax authorities may or may not have been justified in the action they took against the man who was made to pay Rs. 32 lakhs but what I say is that there is a feeling—and I am only referring to what happened in Calcutta as indicative of that feeling—that all is not well with the administration of the Income Tax Department. Therefore, I should like my esteemed friend the Honourable the Finance Member to look into the question.

[Mr. P. N. Sapru.]

of the administration of the Income Tax Department and redress to the extent that it is possible the grievances of the income-taxpaying public.

Then there is another point, Sir, that I wanted to refer to in connection with this Bill. I think, Sir, that Government servants are at an advantage so far as the income-tax is concerned. If a man is getting a salary of Rs. 2,000 he has got to pay tax on Rs. 2,000 per month and his tax is deducted before he gets his salary. Therefore he can pay his tax in instalments. Now, so far as firms and professional men are concerned, they have to pay the tax all at once.

THE HONOURABLE MR. R. H. PARKER: You get interest on your money.

THE HONOURABLE MR. SHANTIDAS ASKURAN: The Department gives time if it is a suitable case.

THE HONOURABLE MR. P. N. SAPRU: Some people have got the foresight to have an income-tax fund and so on. If, at the end of the year they have to pay a heavy income-tax they find it very inconvenient and therefore I see no reason why it ought not to be possible for you to introduce the instalment system in the case of all? Why should it not be possible for an individual to pay his income-tax in monthly instalments or in quarterly instalments. Why must he pay in one lump sum and I do not see, Sir, why the Government servant should be treated differently? The tax is paid on the income of the previous year. Therefore, what you have to tell the assessee is that he will be allowed to pay his tax in six instalments or in three or in four instalments? At one time that used to be the practice in the Income Tax Department. It is only latterly that that practice has been given up. Some people find it difficult—particularly if they are payers of large income-tax—to pay the income-tax in one lump sum. They would rather pay it by instalments and therefore if you introduce the system of instalments you will not be lowering in any way the income-tax. I do not want the income-tax to be lowered. I should be glad if you could raise it even higher. I am always for higher taxation, (Laughter) but I should like in these small matters facilities to be given to the payers of income-tax.

THE HONOURABLE THE PRESIDENT: I am not sure that all this serves any purpose. The income-tax is deducted every month from their salaries and paid at the source.

THE HONOURABLE MR. P. N. SAPRU: I am not thinking merely of firms; I am also thinking of the professional men. I know, Sir, that business and commerce are very important in this country but then there are people who are not in business and there are people who are not in commerce and I am thinking of the professional man also.

THE HONOURABLE THE PRESIDENT: But then this professional man may object to pay monthly.

THE HONOURABLE MR. P. N. SAPRU: No, Sir. I can assure you that I have had this request from various people: professional people, doctors, lawyers and members of other similar professions. I have mentioned this because they have pressed me to do so. Whenever they spoke to me about

income-tax, I have said, "Look here, I have some very peculiar views on the question of taxation; I am in favour of progressive taxation", but they have said, "You may be in favour of higher taxation. We do not ask you to give up any of your principles; we are only asking you to obtain some facilities for us. We think that if the instalment system were introduced it would be easier for us to pay the income-tax". They have to operate through the Bank on their credit to pay the Income Tax Department. They do not want to do that because they have got to pay interest to the Bank for the sum that they have borrowed. Therefore, I do not think that it should add very much to the work of the Department if this change was introduced. These are all the observations that I wanted to make on this Bill. I plead for a more sympathetic administration of the Income-tax laws of the country.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU (United Provinces Northern : Non-Muhammadan) : Mr. President, the Bill so far as it goes has no doubt been welcomed by the people. It removes certain hardships which the present law causes. It gives welcome relief to small assesseees and in regard to depreciation and the carry forward of losses it gives effect to views which businessmen have been placing before Government for some time. I am, however, not concerned today with businessmen. I should like only to represent the view of the small assesseees. Now, it is in their

12 Noon. interest that the revisional powers of the Commissioner have been restored. The smaller deposit that will be required will make it easier for them to appeal than the deposit of Rs. 100 required for an appeal to the Income-tax Tribunal. But I suggest that the Government should go further and bring their law into line with considerations of equity. When an appeal is made to an Income-tax Tribunal, a deposit of Rs. 100 has to be made, as I have already pointed out. The appellant may be successful, but the deposit made by him will not be refunded. I do not see any justice in this procedure. Again, an appeal may be made on a law point to the High Court. The appellant may win and the High Court may even say, as I understand it has said in certain cases, that the Income-tax authorities were negligent or did not assess the income-tax with the care that should be expected of them. But the appellant will not be awarded his costs or any portion of his costs, nor, I understand, are the higher income-tax authorities disposed to call the attention of the Income-tax officers to their laxity. On the contrary, an impression has prevailed that the officer whose business it should have been to supervise the action of the Income-tax officers has made them feel that their only business was to increase the amount of the income-tax to be levied, leaving all other considerations to be taken account of either by the Income-tax Tribunal or by the High Court in case of references made to either of these bodies. Surely, it is not desirable that such an impression should prevail. From what I have been told I feel that the impression that prevails is not without a fair amount of justification and I think it is the duty of the Government to look into the matter. I hope that when my Honourable friend the Finance Member rises to speak, he will tell us why successful appellants are not awarded the costs in the appeals which they have to prefer on account of the failure of the Income-tax authorities to observe the law fully.

There is only one other point that I should like to refer to in connection with this Bill. I am going to deal now with the grievances of members of Hindu joint families. There is no provision in the present Bill dealing with it, but as the Government seem now to be inclined to remedy defects in the Income-tax law and to remove hardships, I think it is necessary that they should consider with sympathy the difficulties of members of Hindu undivided

[Pandit Hirday Nath Kunzru.]

families. The present law virtually penalises the Hindu joint families. A Hindu joint family is under the law treated as an individual; the income of the individual co-sharers is not taxed separately. The income of the family is taxed as a whole. Now, this is done only in the case of Hindus. Members of other communities may live together. Each of them will, however, pay the income-tax on his separate income. But the members of Hindu joint families alone have the misfortune of being treated collectively and to pay a much greater amount by way of income-tax than the members of the other communities. I shall give two illustrations to show the effect of the law on Hindu joint families. Suppose there are three brothers living together and that their joint income is Rs. 5,700 and the share of each of them comes to Rs. 1,900. If they were taxed separately, no income-tax would have to be paid. But a fair amount of income-tax has to be paid by the Hindu joint family because the entire sum of Rs. 5,700 is taxed by the authorities. Take another case, which relates to a much higher income. Suppose the income of a joint family is Rs. 72,000, and if there are three brothers, the share of each of them will be Rs. 24,000 and each one will individually pay about Rs. 2,000. That is to say, the total amount to be paid will be Rs. 6,000. But as the entire income of the joint family is treated as a unit, the tax to be paid exceeds Rs. 16,000.

Now, I submit that the Hindu undivided family should not be penalised in this manner. If Government have come to the conclusion that Hindu joint families should be broken up, let them say so directly instead of trying to affect the solidarity of the Hindu joint families by indirect means. It may be said that Hindu joint families, if they suffer from certain disadvantages, have also been allowed certain exemptions. These exemptions are two in number. Under section 14, no tax is payable by an assessee in respect of any sum which he receives from the members of a Hindu undivided family. Secondly, where an amount is paid by an assessee to effect an insurance of his own life or the life of the wife or husband of an assessee, while an allowance of Rs. 6,000 is made in individual cases an allowance of Rs. 12,000 is made in the case of a joint Hindu family. It will be seen, however, that in the first case the Hindu undivided family as such gets no relief. All that happens is that in respect of income earned separately by brothers living together, no account will be taken

THE HONOURABLE SIR JEREMY RAISMAN: On a point of order, Sir I would not have interrupted if the Honourable Member had been making some passing reference to a general problem with which this Bill has no connection whatever. But I must point out that he is proceeding to make a considerable speech on a question which was thoroughly threshed out at the time of the general amendment of the Income Tax Act and which was settled by a majority vote of the Legislature. That question is not before the House now in any shape.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: Sir, this Bill gives relief in many cases which were considered last time when the amendment of the Income Tax Act was under consideration. Government have changed their opinion and accepted the opinion of their opponents. I am placing certain other hardships before them in the hope —

THE HONOURABLE SIR JEREMY RAISMAN: Will not that throw open the whole Income Tax Act to discussion?

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I have not really done so. There is no reasonable ground for the grievance of the Honourable the Finance Member. I do not see why he should be so touchy on this occasion. Perhaps he feels that his case is very weak.

THE HONOURABLE THE PRESIDENT : The point of order which he raised is really a sound one. All that he said was that the case of the Hindu joint family was fully considered when the amendment of the Income Tax Act was last undertaken.

THE HONOURABLE SIR JEREMY RAISMAN : And my further point was that there is nothing in this Bill which relates to Hindu undivided families.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I pointed that out myself but many other Members made reference to points which are not directly covered by this Bill. They have taken advantage of this amendment of the Act to direct the attention of the Government to certain other grievances which are legitimately felt by assesseees. Why should I be debarred when other Honourable Members have been given full opportunity of stating their case ?

THE HONOURABLE THE PRESIDENT : The only other Honourable Member who really spoke on the general administration of the Bill was Mr. Sapru. I must request you to be as brief as possible, because, there is no specific amendment proposed by you, and it is not usual to speak at some considerable length in such cases.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : I am certainly as brief as possible, but I do claim that the Finance Member has been very unfair to me. I have been dealing with a rather difficult subject and I have done it as briefly as I can. I have not used one superfluous word to represent the difficulties of Hindu undivided families to Government.

Sir, I shall only say one thing more on this subject before I sit down. It may be said that the brothers living together enjoy certain advantages because of their belonging to a joint family. It may be said that the joint family is something in the nature of a partnership. But I submit, Sir, that a partnership is better treated by the present law than a Hindu undivided family. For instance, if the assessee is a registered firm, the total income of the firm is determined but it is not taxed as a whole. It is distributed among the partners and taxed separately. The members of a Hindu undivided family may form a partnership and then they will get the advantage of the provisions with which I am dealing. But, so long as they do not enter into a partnership and do not get their firm registered they suffer because they wish on grounds of sentiment or on other grounds to be regarded as members of a joint Hindu family—

THE HONOURABLE THE PRESIDENT : You cannot regard a joint Hindu family as a partnership in any case.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU : Sir, Government have taken good care to see that a joint Hindu family is not regarded as a partnership, even though, morally speaking, it is so. In view of the attitude of the Finance Member which, let me repeat, has been very unjust and very unfair to me, I have no hope that he will take the matter into consideration, but at some other time—

THE HONOURABLE THE PRESIDENT: I must point out that the Honourable the Finance Member was perfectly justified in raising the point of order that he did and that was a very sound point. In fact, I have held that view several times before in this very House that when a Bill is before the Council, only those provisions which are in the Bill before the Council can be discussed.

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: All that I can say is that Government are expected to be impartial. Either a general discussion should not have been allowed or it should be allowed in all cases.

(At this stage the Honourable Sir Alan Lloyd made an interruption.)

You are not dealing with the matter and you have no right to interfere. The Finance Member is well able to take care of himself. The Finance Member having allowed other speakers to make general observations, he was I think, let me repeat, unfair to me in taking exception only to what I was saying.

THE HONOURABLE SIR JEREMY RAISMAN (Finance Member): Sir, I am very sorry that my friend the Honourable Mr. Kunzru should feel a sense of grievance. I had not intended, although, as you have said, Sir, the question was not strictly speaking in order, to draw your attention to the matter if the Honourable Member was merely reminding me of the existence of a feeling of disadvantage among Hindu joint families of which I am aware. But when he went on to make what I can only call a detailed exposition of the whole case, I did feel, Sir, that it was perhaps exceeding the limits admissible. In any event I could not now have dealt with his case because although I have at various times been familiar with all the arguments which are applicable to this subject, I have not come today prepared to deal with so controversial a topic.

I am glad that Honourable Members generally have accorded their approval to this Bill and I will not endeavour to traverse in detail the points raised, some of which, I regret to say, I was not able to pick up with sufficient precision to enable me to give an accurate answer on the floor of this House. There is, however, one question that was asked by the Honourable Mr. Parker which I can dispose of because it has been the subject of correspondence with the Central Board of Revenue and I am able to say what the answer is in regard to the point which he raised regarding clause 14. The answer, I understand, is that the Exception in sub-clause (a) will apply to any partner in a registered firm who was assessed to super-tax in respect of that business for the first time for 1920-21 or 1921-22. I would, however, go on to say that as the number of such partners, if any, must be very few, the question is largely academic.

Sir Ramunni Menon charged Government with making an amendment only when their pockets were touched and not from any feeling for the assessee. I would remind him that Government could have suited their pockets and refused to enter into double income-tax relief arrangements where a State adopted the residence basis. The victim then would have been the unfortunate assessee who would have been ground between a very large upper and a very large nether millstone. Although I do not claim laurels for altruism in this matter, I must point out that the convenience of the assessee was in Government's mind and that the disastrous effects to the assessee were very present to us. I will not deal now with the point which he raised about agricultural income except to say that agricultural income is a peculiar term which applies to income which is treated in a certain way, which has been subjected to certain taxation or treated in a certain way in British India,

and that you cannot loosely talk of agricultural income coming in from an Indian State.

The Honourable Mr. Shantidas Askuran approved of the Bill but wished that we should give retrospective effect to a certain concession. As I have had occasion to point out in another place, the difficulty is that whenever concessions are made we are faced with a demand to carry them back and we have to have a clear idea of how far we are prepared to go. A line must be drawn somewhere. He as well as certain other members objected to the provision of a fee of Rs. 25 in cases where an application is made to the Commissioner to exercise the powers of revision which this Bill would restore. The Honourable Pandit Hirday Nath Kunzru raised a similar point in regard to the Income-tax Tribunal. Sir, the object of these fees is quite frankly to deter people from making these appeals and applications and to endeavour to reduce the volume of work to something which it is possible for the authorities to deal with. Our experience was that in the days when an application could be made to the Commissioner without any fee the Commissioner was so completely overwhelmed with a mass of references—many of them of a petty character—that it was quite impossible for him to devote the requisite attention to his other work and it is a matter of great importance that some deterrent should remain in the system to prevent that state of affairs. But, as I mentioned in another place, it is our intention to instruct Commissioners that they should not confine their powers of revision to cases where an application has been made and a fee has been deposited but that they should of their own motion, as in fact they used to do in the past, take up petty cases where some injustice may have been done or some mistake may have been made; they should of their own motion take those up and make adjustments and see that refunds are issued. In cases of that type no question of fee would arise. ~~What~~ I am on that point I think my friend Mr. Kunzru was inaccurate in saying that even in cases that come before the High Court no relief is given in the matter of costs. If he will refer to sub-section (c) of section 66 of the Act, he will see a provision that where a reference is made to the High Court the costs shall be in the discretion of the Court and there is nothing to prevent the High Court from giving relief in cases of that kind where they think that an award should be made to a litigant.

Now I am left with the general criticism which the Honourable Mr. Sapru

THE HONOURABLE PANDIT HIRDAY NATH KUNZRU: May I ask what about the refund of the deposit when the reference to the Income-tax Tribunal is successful?

THE HONOURABLE SIR JEREMY RAISMAN: That point does not arise out of this Bill but all I can say is that there are three stages of deterrents, so to speak, in the provision of a fee. There is a fee which once paid can in no circumstances be recovered. That is the most deterrent form; there is a fee which can always be returned which is merely a deposit and which is hardly a deterrent at all, and there is the third which can be returned in certain circumstances.

THE HONOURABLE MR. P. N. SAPRU: Will it not form part of the costs? In cases where the revision succeeds will this Rs. 25 not form part of the costs? That is the ordinary principle of law.

THE HONOURABLE SIR JEREMY RAISMAN: As I say, it is the most deterrent form which a fee can take, namely, that it is to be paid down and will not be recovered. It means of course that in practice nobody would approach

[Sir Jeremy Raisman.]

the Commissioner where the tax was not considerably more than Rs. 25. Nobody would put down Rs. 25 to chase Rs. 25. But it is a matter on which different opinions may be held and I would not exclude the possibility that we might in the light of experience at some future date be able to take a different view on that point. At the same time I would not give an undertaking that a change would be made. I merely say that it is a point which will receive our consideration.

I was going on to attempt to answer the Honourable Mr. Sapru's criticisms about our income-tax administration. This is the sort of criticism which we constantly have to face and which it is inevitable that we should have to face when a tax of this kind is to be administered by human agency. I think it has been said that you have got two kinds of human nature involved. You have got the human nature of the assessee who naturally endeavours to minimise his liability and in certain cases may resort to extremely dubious means to do that; and on the other hand you have the officers of the Department whose duty it is to assess the liability and who must combat the tendency of the assessee to evade or avoid his liability. I would only say this, Sir, applying what may be called an *a priori* criterion. There is the assessee sitting on one side of the table who actually wants for himself every rupee he can escape paying. The Income-tax officer after all is merely collecting the tax on behalf of Government and the intensity of the motive is not so great in one case as in the other and in fact it is by no means an uncommon experience with us that the human nature of the Income-tax officer is weaker than the insistence of the assessee; and that is of course one of the reasons why we have to have a system of inspection. However sympathetically the Income Tax Act is administered, it will always be the case that there will be certain individuals who will have complaints to make; there will always be room for the view that in individual cases the assessment has been harsh. All I can say is that we at headquarters are prepared to devote our attention to cases in which it appears that injustice has been done or that action has been of an arbitrary character, but I must draw the attention of this House to the fact that the cases on which attempts are made to work up their emotions are usually the most undeserving type of cases. Now, I do not want to go into details of individual cases but it frequently happens that a wealthy assessee, who has at last been caught out and brought to justice and on whom at last an assessment has been made according to his deserts will go about screaming and saying, "Look, I have been assessed to this colossal sum". He does not state what are the facts or what is the income on which the assessment has been made but he merely suggests the figure as outrageous in itself, and it is to me an extraordinary thing that a body of responsible business men should actually stage a protest, an organised protest, on the basis of the fact that certain figures have been assessed on an individual. It is an extraordinary thing that they should say, "So many lakhs has been assessed on a man, it is monstrous", when they do not even know that on his own admission he may have had an income on which such an assessment is indisputably accurate. The amount of the assessment is flashed about and appears in telegrams, newspapers and so on in protest resolutions. It is a most ridiculous course of action. I can quite understand if questions of principle are seriously argued but that the mere quantum of an individual assessment should so fire the passions of a body of business men is really an extraordinary thing, and it is precisely that type of case, curiously enough, which usually lies at the bottom of the criticisms to which the Department is subjected. I have often found

that individuals have come to me and have said, " We are in favour of income-tax being collected and so on, but we do think that something quite extraordinary has happened in such and such a case " and almost invariably when I looked into the facts of that case I found that the assessment although large is entirely justified. Frequently also an assessee who has been behaving very badly and who might have been hauled up in a Criminal Court, or who merited a heavy penalty, is exactly the man who, in order to cover up his guilt or confusion, goes about telling his friends that an outrage has been committed upon him. I can assure my friend the Honourable Mr. Sapru that we are very sensitive on this point and that wherever cases are brought to our notice in which arbitrary, unwarranted, unjustified action has been taken—high-handed action on the part of individual officers—we are prepared to take the matter up.

The Honourable Mr. Sapru dealt with another point in which I think he seriously misdirected himself. He thought that Government servants had a certain advantage over other assessees. Well, in the first instance that is incorrect, because by the provisions of the law all salaried assessees are treated in the same manner as Government servants in this matter, and it is the duty of the employer to recover the tax at source, so to speak, and deposit it monthly in the Treasury. But he thought that that constituted a great advantage over the position of a professional or business man. Well, Sir, I would remind him, first of all, that tax on salaried assessees is recovered concurrently, that is to say on each month's salary. The tax is recovered immediately as the salary is paid. It is deducted at source and the effect of that is that such assessees on the average are paying their tax about 18 months before the other type of assessee.

As regards the advantage of payment in instalments, there is no reason why the other kind of assessee should not arrange for the payment of his tax in instalments. The Department is prepared to accept instalments in advance and in cases where a large sum of tax has to be paid they do arrange to accept instalments. But surely a business man, who is in the best position to know the liability which will come upon him, surely a business man, and even a professional man, should be able so to plan his affairs that he is in a position to make the payment when it falls due at a later stage, and, as you, Sir, rightly remarked, if I may say so, the business community as a whole would certainly not welcome the privilege of foregoing the interest on their tax by making payments from a year to 18 months earlier than they do at present. In that respect I think my Honourable friend has entirely misunderstood the position. I can quite understand that some of his friends in the professional classes have complained that at the time when the demand is made they find that they have made no provision for the payment and that it is a source of embarrassment, but I do not think that if they were asked to start making payments about 18 months in advance—monthly payments—they would relish the alternative. I do not think I should detain the House with any other points, Sir.

THE HONOURABLE THE PRESIDENT : Motion moved :—

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

Question put and Motion adopted.

Clause 2 was added to the Bill.

Clauses 3 to 15 were added to the Bill.

Clauses 16 to 31 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. C. E. JONES : Sir, I move : —

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

EXCESS PROFITS TAX (SECOND AMENDMENT) BILL.

THE HONOURABLE MR. C. E. JONES (Finance Secretary) : Sir, I move :—

“ That the Bill further to amend the Excess Profits Tax Act, 1940, as passed by the Legislative Assembly, be taken into consideration.”

Sir, the main object of the Bill is to bring on to an equal footing, for the purpose of computing capital for excess profits tax purposes, money borrowed whether from a person carrying on a *bona fide* banking business or from any other person. From the 1st April, 1941, therefore, there will be no deduction of borrowed money in computing capital, and consequently, from the same date interest or other consideration paid for the use of borrowed money will not be allowed as a deduction in the computation of profits. In respect of the profits arising after the 31st March, 1941 but not earlier, the new provisions therefore treat all borrowed money as capital both for the standard period, if any, and for the chargeable accounting period falling after that date.

The new basis of computing chargeable profits takes effect from the same date, viz., 1st April, 1941, from which the increase in the rate of tax from ~~50 to~~ 66½ per cent. is made. Clause 4 therefore provides the basis on which the excess or deficiency of a period falling partly before and partly after 31st March, 1941 is to be computed. In the case of a business the profits of which for any chargeable accounting period are measured with reference to the minimum standard of Rs. 36,000, the profits of the chargeable accounting period will be determined after deduction of the interest on borrowed capital. It has further been provided that where the standard profits have been raised by a direction given by the Board of Referees or the Central Board of Revenue, such profits will be increased by the amount of interest paid in the standard period for purposes of comparison with the profits of the period after 31st March, 1941.

Section 10 of the Excess Profits Tax Act relating to artificial transaction has been amended by the Select Committee to bring it into line with similar provisions in the United Kingdom law. A new section has also been introduced as section 10A to strengthen the provisions dealing with devices for avoiding or reducing liability to excess profits tax. It is, however, provided that the adjustments which the Excess Profits Tax Officer is empowered to make under this section cannot be made without the approval of the Inspecting Assistant Commissioner. An appeal is also provided to the Appellate Tribunal.

Following the amendment made by the Income-tax (Amendment) Bill, any profits of business which accrue or arise in an Indian State are excluded from the scope of the Excess Profits Tax Act. As this provision for income-tax purposes comes into effect from the assessment year, 1942-43, the Select Committee has added a provision that this exemption does not apply to the profits of any chargeable accounting period which forms the basis of income-tax assessment for any year prior to 1942-43.

Section 26 (3) has also been amended to enable the Central Board of Revenue to make reasonable allowances in computing the chargeable profits of concerns engaged in the winning of oils or other minerals where the increased output required for the prosecution of the war is likely to have the effect of prematurely exhausting the supply of such oils or minerals.

Sir, I move.

THE HONOURABLE MR. SHANTIDAS ASKURAN (Bombay: Non-Muhammadan): Sir, I appreciate the desire on the part of the Honourable the Finance Member to meet the widespread objections to the discrimination as regards the treatment of borrowed capital, between money borrowed from a *bona fide* banker and money borrowed from any other person. I welcome the provisions of the Amendment Bill in that respect. I would also express my appreciation of the amendment agreed to, by Government, in section 10 of the Act as reported upon by the Select Committee.

But I must confess that I am not happy with regard to the actual wording of some of the clauses of the Bill. Let me start with clause 6. Its object has been stated to be to cover any transaction which has for its purposes the avoidance of the excess profits tax. The new section 10A, as originally proposed, covered transactions the purpose or one of the purposes of which was to avoid the tax. The Select Committee has amended it so as to make it applicable to cases in which the main purpose was the avoidance of the tax. I think, however, that the clause should be applicable only to transactions of which the *sole* object is proved to be the avoidance of the tax liability. Unless this is done, the measure will be far too sweeping in its scope, and will involve great unfairness in practice. Suppose, a father and son are doing *bona fide* separate businesses. That will, of course, mean a smaller total excess profits tax than if both the businesses were combined. Now, the reason for doing separate business may be quite *bona fide*, whereas the effect would be, as indicated above, a smaller aggregate liability to the excess profits tax. The Excess Profits Tax Officer will in such a case, taking advantage of the relationship of the parties, think of catching hold of the lower liability consequent on doing separate businesses as proof of the assessee's desire to evade, or avoid the tax. This will mean that a person is to be presumed to be guilty unless he proves otherwise. This will be contrary to all principles of law and equity, and the right of appeal which is granted to an aggrieved party in such cases cannot really improve matters as long as the working of the clause is not improved so as to minimise the chances of such action being taken. I urge, therefore, that the section concerned should be re-worded so as to be applicable only to those cases in which the *sole* purpose, as judged from the evidence recorded in the case, is proved to be the avoidance or reduction of the liability to tax. The mere fact that two businesses or transactions, if taken together, would mean liability to a greater amount of tax, should be of no consequence at all. At any rate, I would like an assurance on the floor of this House that the new section 10A will not be put into operation without the previous approval of the Central Board of Revenue.

Next I shall take clauses 8 and 9 of the Bill together. The object here is the very laudable one of doing away with what has now been rightly admitted as an invidious distinction. One fails to see, then, why these clauses are to be operative from 1st April, 1941, though the tax is chargeable from 1st September, 1939. That the rate of tax is increased from 50 to 66½ per cent. from 1st April, 1941, cannot be a valid reason for allowing an unjust method of computation of capital to continue even after it has been found unjust. The procedure envisaged is tantamount to the levy of a higher rate of tax than 50 per

[Mr. Shantidas Askuran.]

cent. for the chargeable period up to 31st March, 1941. Even under the United Kingdom law, the revised procedure is to be applicable from 1st April, 1940.

THE HONOURABLE SIR JEREMY RAISMAN : Applicable from the date when the excess profits tax was raised to 100 per cent.

THE HONOURABLE MR. SHANTIDAS ASKURAN : Yes, I knew this would come from the Honourable the Finance Member, and I am prepared for it. My next sentence will meet that point.

That the rate of tax is 100 per cent. is no answer to this point. The effective rate in the United Kingdom is 80 per cent., for 20 per cent. is by way of a compulsory loan to Government. Moreover, even that 80 per cent. has to be judged in relation to the standard period which, in the case of the United Kingdom, was one of prosperity. In this country, as everybody knows, the case is different. The standard profit as defined in section 6 of our Excess Profits Tax Act was in many industries a period of depression. A higher percentage tax with the allowance of a higher standard profit, as in the United Kingdom, may, as one could easily see, mean a smaller burden than a lower percentage tax on a low allowance by way of standard profit as in this country. If, for instance, the profit for a chargeable period is, say, Rs. 1,00,000, and the standard profit allowed is Rs. 80,000, the tax liability at the 100 per cent. rate will be Rs. 20,000. Now, if the standard profit is Rs. 50,000 only, the tax payable even at the 50 per cent. rate will work out at Rs. 25,000, that is, 25 per cent. more than in the other case. This is, of course, a hypothetical illustration, but I do suggest that it is not an untrue picture of what is actually happening in this country in several places.

In view of the special conditions in this country, therefore, the Act should be administered more sympathetically. If an invidious distinction has been discovered, it must be removed right from the time it came into existence. I, therefore, urge very strongly that the amendment be made applicable from the time the excess profits tax came into existence, as suggested in the Minute of Dissent appended to the Select Committee Report.

One word more, Sir, and that is in regard to clause 8 (b) of the Bill. I agree that it is desirable to prevent the dissipation of excess profits by expenditure that has no relation to the requirements of the business. For this purpose, the Bill seeks to give, under this clause, very wide and radical powers to the Excess Profits Tax Officer by giving him the right to decide what is "reasonable and necessary to the requirements of the business", and that, Sir, is going too far. What is "reasonable and necessary" is an extremely delicate matter involving not only short period but also long period considerations. Have the Excess Profits Tax Officer and the Excess Profits Tax Commissioner such infallible knowledge of the intricacies of transacting all kinds of business that they can judge better than even the businessmen themselves as to what is "reasonable and necessary" expenditure? The businessman has, after all, spent his whole lifetime in developing his business. Is his honest conviction to be set aside so lightly? I am sure, Sir, this is an unwarranted encroachment, even granting the supreme necessity of finding more funds for the Exchequer. I plead, therefore, for a wholesale deletion of this sub-clause. Vexatious interference by officials only means killing the goose that lays the golden eggs.

I have noticed with some regret that amendments moved in the other House with regard to appeal to the High Court, both in clauses 6 and 8 of the

Bill, were rejected by a majority due to the opposition of Government. Government, I am sure, are well aware of the apprehensions in the public mind, not to talk of discontent, all over India in connection with the administration of the Income Tax Act. The only way to allay such apprehensions is to allow appeals to the High Court, not only on points of law, but also on points of fact.

(At this stage the Honourable the President vacated the Chair, which was taken by the Honourable Sir David Devadoss.)

Strong opposition on the part of Government only goes to further such apprehensions, and when the voice of the assessee becomes more vocal and Government are unable to resist their demands, I can only hope that on some future occasion Government themselves will be prepared to amend the Act allowing appeals to the High Court on all sections of both the Income Tax and Excess Profits Tax Acts as a general principle.

THE HONOURABLE LT.-COL. SIR HISSAMUDDIN BAHADUR (Nominated Non-Official): For the sake of information, may I ask one question? How many people in Bombay have multiplied these firms for reducing excess profits tax?

THE HONOURABLE MR. SHANTIDAS ASKURAN: I am not the person to give you the answer. The Government will give you the answer. You can ask the Government how many are over-taxed and also how many appeals the assessee has won.

THE HONOURABLE SIR JEREMY RAISMAN (Finance Member): Sir, the points which the Honourable Mr. Askuran has raised are the points which were debated at some length in the other place. He dislikes clause 6 of the Bill and he thinks that it should only be applicable to cases where the sole purpose—not the main purpose, but the sole purpose—of the transaction is the avoidance or reduction of liability to tax. This is a new criterion. When we first started with this clause it was drafted so as to apply to cases where one of the purposes of a transaction was reduction or avoidance of liability to tax. In the Select Committee Government accepted an amendment to bring it into line with the final form which this provision has taken in the United Kingdom, namely, that it should only be applicable to cases where the main purpose of the transaction was the reduction of liability to tax. Now, my Honourable friend would like to push me a little further and even in cases where admittedly the main purpose is the reduction or avoidance of liability to tax but where the assessee can adduce some other subsidiary purpose which is unconnected with the tax, he would exclude such cases from the operation of this provision. I can see no logic or equity in that position, Sir. It can only be justified by the argument that the interests of the community at large and the interests of the Treasury have no importance whatever in comparison with the facilities which should be given to the taxpayer to reduce his liability. He asks for an assurance on the floor of this House that this provision, when it comes into effect, will not be applied without the previous approval of the Central Board of Revenue. What I stated in the other place was that in practice cases of

1 P. M.

this kind will come to headquarters and will be examined. I would not put that on the footing of an assurance, but it is a statement of our practice and intention and I have no reason to think, in view of the nature of these cases, that there will be any change in that position. Instructions to that effect have in fact, I understand, been issued or are about to be issued.

THE HONOURABLE MR. SHANTIDAS ASKURAN: When that is the intention, honest intention, why not an assurance, Sir?

THE HONOURABLE SIR JEREMY RAISMAN : Merely because, Sir, I do not want to be involved in arguments about breach of faith or anything of that kind. I merely state that it is our intention, in order to keep the administration of this important clause on the right lines, that we shall actually examine all these cases at headquarters.

In regard to borrowed capital, my Honourable friend again appealed that the concession should be made retrospective from the time of the commencement of this tax and he adduced some rather remarkable arguments from the position in the United Kingdom. Well, Sir, I do not accept his contention that the position in the United Kingdom is more favourable to the assessee either in regard to the basic years or in regard to the 20 per cent. provision. He says that the home rate is now 80 per cent. That is not a correct abbreviation of the position. The position is that 20 per cent. of the tax levied will under conditions to be determined by the Treasury be liable to be refunded in future years for certain purposes and that—and this is very important—at the time of refund it will be liable to tax. And as the rate of income-tax is 10s. in the pound, there is at any rate a probability that as and when refunded in accordance with the conditions laid down by the Treasury it will amount to about 10 per cent., so that if you wish to summarise the position briefly you must at least call it a 90 per cent. tax. My position is quite clear, Sir. This is an amendment the merits of which are arguable. It is an amendment regarding which, as I have said, I still entertain some doubts. Government have decided to make this change, but they are quite clear that there is no necessity, there is no reason in principle, why it should be carried back retrospectively. It marks a definite advance or a change in policy, so to speak, and there is no inevitable necessity for it to be given retrospective effect. As in the case of all amendments one must make up one's mind from what point they shall be applicable; and what we have done is to give effect to this from the beginning of the current year, which to some extent is retrospective. We are not prepared to go further than that. I can understand my Honourable friend also entertains some misgivings about clause 8 (b), but this is a provision which our own experience has now demonstrated to be necessary. There was a stage when we did not think it was necessary and where we actually resisted an amendment of this nature which was moved from the unofficial benches. That I claim is a proof of our good faith in the matter. It was not until by experience we found that something of this kind was necessary that we brought forward the amendment. My Honourable friend talked about killing the goose that lays the golden eggs. I must remind him that from our point of view it is very important that those golden eggs should come into the right basket. Since four out of five of the golden eggs now belong to the Exchequer it is highly important that we should see that they are not mislaid.

THE HONOURABLE THE CHAIRMAN (The Honourable Sir David Devadoss) : Motion moved :—

“ That the Bill further to amend the Excess Profits Tax Act, 1940, as passed by the Legislative Assembly, be taken into consideration.”

Question put and Motion adopted.

Clause 2 was added to the Bill.

Clauses 3 to 9 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. C. E. JONES: Sir, I move :—

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

RAILWAYS (LOCAL AUTHORITIES' TAXATION) BILL.

THE HONOURABLE MR. S. N. ROY (Communications Secretary): Sir, I move :—

“ That the Bill to regulate the extent to which railway property shall be liable to taxation imposed by an authority within a Province, as passed by the Legislative Assembly, be taken into consideration.”

The Statement of Objects and Reasons explains the necessity for the Bill. Since 1890, the local taxation of railways has been regulated by section 135 of the Railway Act under which a Railway Administration is only liable to such local taxes as may be notified. Section 154 of the Government of India Act, which came into operation on the 1st April, 1937, exempted from provincial or local taxation all property vested in His Majesty for the purposes of the Federation, and therefore all railway property, save in so far as any law might otherwise provide ; but under the proviso to that section until such law is passed all the taxes payable by virtue of notifications under section 135 of the Railway Act continue to be payable. But no new tax can be levied in respect of such property, no changes can be made in existing taxation and no new property acquired by the State after the 31st March, 1937 can be brought under assessment. Legislation was attempted in 1938, but without success. The absence of legislation has thus probably benefited the Railways at the expense of the local authorities.

—The Bill, as introduced in the Assembly, was designed generally to restore the position that existed prior to April, 1937. It would have conferred on Government larger powers than are contained in the Bill now before the House ; but these powers have been deleted by the Assembly and sub-clause (3) of clause 3 has been modified, firstly, by the addition of “ services rendered to the railway ” as a very important consideration which should be taken into account in determining a fair and reasonable assessment, and, secondly, by the provision that the person who is to determine the assessment in a case of a dispute shall be a person who has been a Judge of a High Court or a District Judge. The changes which have been made will, I believe, commend themselves to the House.

Sir, I move.

The Motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 to 5 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. S. N. ROY: Sir, I move :—

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

INDIAN COMPANIES (AMENDMENT) BILL.

THE HONOURABLE SIR ALAN LLOYD (Commerce Secretary): Sir, I move :—

“That the Bill further to amend the Indian Companies Act, 1913, as passed by the Legislative Assembly, be taken into consideration.”

This Bill proposes to make two small amendments in the Company law. The reasons are fully given in the Statement attached to the Bill and Honourable Members will, I think, not expect me to cover the ground again. I would, however, like to add with reference to the second proposal, which will allow Companies to deposit Provident Fund moneys in the Post Office Savings Bank, that it needs complementary action in an amendment of the rules so as to allow the Post Office Savings Bank to receive such moneys. It has been arranged that such action shall be taken and the rules amended accordingly.

There is one other point also, Sir. With your permission I should like to make a personal reference of a somewhat pathetic nature. Looking through the file this morning I noticed that the second part of this Bill had its origin in a speech made in the Legislative Assembly by Mr. Leslie Buss. While the papers lay on my table, I heard the sad news that Mr. Buss had died this morning. Mr. Buss was not a Member of the Council but he has been a Member of the Legislative Assembly for some time and he must have been very well known, I think, to all Members of the Council. I feel sure that all Members will join with me in the deep feeling of regret that I have at the loss of a friend who had a winning personality.

Sir, I move.

THE HONOURABLE MR. P. N. SAPRU (United Provinces Southern : Non-Muhammadan) : Sir, while desiring to lend my support to the Bill which has been moved by Sir Alan Lloyd, I should like to associate myself and our Party with the tribute which Sir Alan Lloyd has paid to the late Mr. Buss. Though Mr. Buss was not a Member of this House he was well known to us all. He was a very prominent figure in the Central Legislature of this country. I was reading his speech only this morning and I had the pleasure of meeting him, I think, the day before. I could hardly believe, when I heard of this news, that he had died. We are all sorry that a useful life has been cut short and we hope, Sir, that you will convey to Mr. Buss's family our deep regret at his death.

THE HONOURABLE MR. R. H. PARKER (Bombay Chamber of Commerce) : May I just say one word. I understood that it was not customary to refer to the deaths of Members of the other House but other Members have now done so and I would like to associate myself with what has been said by them fully.

THE HONOURABLE THE CHAIRMAN (The Honourable Sir David Devadoss) : The Chair wishes to associate itself with all that has been said by the Honourable Members about the sad death of Mr. Buss.

The Motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR ALAN LLOYD : Sir, I move :—

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

TRADE MARKS (AMENDMENT) BILL.

THE HONOURABLE SIR ALAN LLOYD (Commerce Secretary) : Sir, I move :—

“ That the Bill to amend the Trade Marks Act, 1940, as passed by the Legislative Assembly, be taken into consideration.”

The reasons why Government have put forward this Bill, Sir, are fully explained in the Statement of Objects and Reasons and I do not propose to offer any further remarks at this stage.

Sir, I move.

The Motion was adopted.

Clause 2 was added to the Bill.

Clauses 3 to 10 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR ALAN LLOYD : Sir, I move :—

“ That the Bill, as passed by the Legislative Assembly, be passed.”

The Motion was adopted.

The Council then adjourned till Eleven of the Clock on Thursday, the 20th November, 1941.
