

*Tuesday,
17th March, 1914*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. LII

April 1913 - March 1914

ABSTRACT OF PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

From April 1913 to March 1914.

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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA
ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS
UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS, 1861 to 1909
(24 & 25 Vict., c. 67, 55 & 56 Vict., c 14, AND 9 Edw. VII, c. 4).

The Council met at the Council Chamber, Imperial Secretariat, Delhi, on
Tuesday, the 17th March, 1914.

PRESENT :

His Excellency BARON HARDINGE OF PENSURST, P.C., G.C.B., G.C.M.G., G.C.V.O.,
G.M.S.I., G.M.I.E., I.S.O., Viceroy and Governor General, *presiding*,
and 60 Members, of whom 52 were Additional Members.

STATEMENTS LAID ON THE TABLE.

The Hon'ble Sir William Meyer :—" My Lord, in replying on the 17th September last to a question asked by the Hon'ble Babu Surendra Nath Banerjee, I promised to give him certain further information when it became available. It is now available, and I beg to lay it* on the table."

The Hon'ble Sir Robert Carlyle :—" My Lord, I lay on the table the paper† showing the measures taken in the various major provinces and in the Army for the storage of hay in the manner referred to in paragraph 219 of the Report of the Famine Commission of 1901, which I promised in the reply given by me to the question asked by the Hon'ble Raja Kushal Pal Singh at the meeting of the Legislative Council held on the 9th January, 1914."

QUESTIONS AND ANSWERS.

The Hon'ble Sir Fazulbhoj Currimbhoj asked :—

1. (a) Has the attention of the Government been drawn to an article which appeared in the *Tribune* of the 1st January, 1914, referring to a recent decision

Opening of a
liquor shop
in Poona.

* *Vide* Appendix A.

† Not published with these Proceedings.

[*Mr. Clark* ; *Sir Fazulbhoy Currimbhoy* ; [17TH MARCH, 1914.]
Sir Ali Imam.]

of the Bombay Government in the matter of the licensing of a liquor shop in Poona as being contrary to the declared policy of the Government of India on the subject ?

"(b) Have the Government of India made any inquiry into the allegations contained in the article, and, if so, will they be pleased to state whether the action of the local authorities in the case referred to was in accord with the declared policy of the Government of India?"

The Hon'ble Mr. Clark replied :—

"(a) The answer is in the affirmative.

"(b) The Government of India have inquired into the matter and find that a country liquor shop previously existed at Ghoda but that it was closed some years ago. It now appears, however, that there are a number of persons in the locality who are in the habit of taking liquor and that the nearest shops are 10 or 15 miles away and not easily accessible owing to the nature of the intervening country. There have been indications that the local demand is being met by illicit manufacture and sale. After careful consideration of the circumstances of the case the local revenue authorities decided to re-open the shop ; and their action has been upheld by the Government of Bombay, on the ground that it is in accord with the declared policy of the Government of India as summarised in their Excise Resolution of the 7th September, 1905. In that Resolution, while it is expressly laid down that all considerations of revenue must be absolutely subordinated to the promotion of temperance, the Government of India declare that they have no desire to interfere with the habits of those who use alcohol in moderation, and call attention to the danger and deleterious results of stimulating illicit production by excessive taxation or excessive restriction of the use of liquor shops."

The Hon'ble Sir Fazulbhoy Currimbhoy asked :—

2. "(a) Is it a fact that, on the 28th October last, a deputation of the Chairmen of the Indian Railway Companies waited upon the Secretary of State for India in connection with the relations between those Companies and the Government of India ?

"(b) If so, does Government propose to lay on the table all papers in its possession, if any, connected with the deputation ?

"(c) Has any correspondence on the subject passed between the Secretary of State for India in Council and the Government of India ?

"(d) If there be any correspondence, does Government propose to publish it?"

The Hon'ble Mr. Clark replied :—

"The answer to the first part of the question is in the affirmative.

"The Secretary of State has not authorised the publication of the proceedings and in these circumstances Government do not propose to lay on the table papers or correspondence relating to the deputation."

The Hon'ble Sir Fazulbhoy Currimbhoy asked :—

3. "(a) Has the attention of Government been drawn to the remarks made by the retiring Chairman at the last annual meeting of the Bombay Chamber of Commerce, recommending a continuous Session of this Council in September in Simla, for the disposal of commercial and financial Bills ?

"(b) Has the point raised been considered by Government, and, if so, with what result?"

The Hon'ble Sir Ali Imam replied :—

"(a) The attention of the Government has been drawn to the remarks referred to.

Relation
between
Indian Rail-
way Com-
panies and
Government
of India.

Disposal of
commercial
and financial
Bills in
Simla.

[17TH MARCH, 1914.] [*Sir Ali Imam ; Sir Fazulbhoy Currimbhoy ; Mr. Clark.*]

"(b) The point has received the attention of Government, but it appears to them premature at present to consider the expediency of increasing the amount of legislative business to be transacted at Simla."

The Hon'ble Sir Fazulbhoy Currimbhoy asked :—

4. "Has the suggestion made by Mr. Marshall Reid, Chairman of the Bombay Chamber of Commerce, in connection with the question of raising in India some portion of the capital required for railway development, to the effect that Railway Companies should in the first instance issue 4% rupee debentures and then borrow in the London market only so much of the capital as is not subscribed here, been brought to the notice of Government?"

Raising in India of the capital required for Railway & other work.

"If so, has the suggestion been considered by Government and, if so, what action, if any, do they propose to take thereon?"

The Hon'ble Mr. Clark replied :—

"A similar suggestion has been under the consideration of the Government of India in connection with a proposal made to them by an Indian Railway Company for raising a large 4 per cent debenture loan in India."

"The Government of India were unable to agree to the proposal as, in their opinion, it would have prejudicially affected the annual borrowings both of Government itself and of Port Trusts, Municipalities and other similar bodies."

The Hon'ble Sir Fazulbhoy Currimbhoy asked :—

5. "(a) Is there any truth in the newspaper report that the Punjab Government have entered into a ten-year contract with a London syndicate, granting to them the monopoly of cement manufacture within the Punjab?"

Grant to a London Syndicate of the monopoly of cement manufacture within the Punjab.

"(b) If so, is the action consistent with the economic policy of this Government?"

"(c) Has the action been sanctioned by this Government?"

"(d) Does Government propose to lay on the table all the papers relating to the subject?"

The Hon'ble Mr. Clark replied :—

"The report referred to by the Hon'ble Member is not correct in all particulars. The facts are briefly as follows :—

The Government of the Punjab has entered into a ten-year agreement with the Kashmir Iron Mines and Power Syndicate, Limited, for the manufacture and sale by it to the Local Government of Portland and other cements, limes and plasters. The Syndicate is bound to erect a factory at or near Dandot for the manufacture of cement. The Government of the Punjab has undertaken to buy from the Syndicate during the currency of the agreement all the cements, limes, except unslaked white lime, which it may require for all Government works and works carried out by Government on behalf of Municipalities and local bodies. The contract fixes the maximum prices which are to be paid for articles purchased from the Syndicate. The rates prescribed are considerably below the prices at present paid by the Local Government, but the precaution has been taken to provide that if at any time the prices exceed the fair market rates, they are to be reduced accordingly. The Local Government has also agreed to grant to the Syndicate the exclusive right, during the period of the agreement to extract marl, shales, clays, loams, lime and sand stones or other rocks from all land belonging to the Local Government in the Dandot plateau. It has further stipulated that it will refrain during the currency of the agreement, from selling, leasing or allotting any Government land, and from granting any concession throughout the Punjab to any other person, for the purpose of manufacturing Portland cement.

"(b) and (c). The Government of India have approved the agreement which is not inconsistent with the general policy observed by them. In the

[Mr. Clark ; Mr. Monteath.]

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case of a nascent industry, they are not opposed to the grant of special concessions or to other special arrangements in order to enable a pioneer venture to tide over the difficulties which may beset it in its initial stage. The manufacture of cement has not hitherto been undertaken in the Punjab, and no other Company has made proposals for the local manufacture of this article. The high rates charged for cement imported into the province have been a very serious obstacle to important local engineering works, and, in particular, to the lining of canals. The Local Government consider that the arrangement made with the Kashmir Iron Mines and Power Syndicate will greatly benefit the province in many ways by providing an ample supply of cement at reasonable rates.

"(d). The Government of India do not propose to lay the papers on the table."

The Hon'ble Mr. Monteath asked:—

Prevention
of sale of tea
unfit for
human con-
sumption.

6. "(a) Has Government any information whether tea which is unfit for human consumption is sold in the bazars in the presidency towns and elsewhere in India? If so, are any steps being taken or contemplated to prevent the sale of such tea?"

"(b) If not, does Government propose to make inquiries, with a view to ascertaining whether the evil referred to exists and, if necessary, to consider measures to curtail it?"

The Hon'ble Mr. Clark replied:—

"Government have no information regarding the sale of tea unfit for human consumption. Inquiries on the subject will be made from Local Governments."

The Hon'ble Mr. Monteath asked:—

Delay in
transmission
of food sup-
plies, etc., to
stations in
the Jal-
paiguri and
Darjeeling
districts
by the
E. B. & N.

7. "(a) Is it a fact that there has been serious delay in the transmission of food supplies, goods and parcels to stations in the Jalpaiguri and Darjeeling districts by the Eastern Bengal State Railway?"

"(b) Have any complaints been made to Government on the subject by local inhabitants and Associations, and, if so, will Government be pleased to state what steps (if any) it is taking in the matter?"

"(c) If the answer to question (a) is in the affirmative, do Government propose to cause inquiries to be made into the causes of the delay, with a view to effecting an early improvement?"

The Hon'ble Mr. Clark replied:—

"It is the case that there has been serious delay in the transmission of food supplies, goods and parcels to stations in the Jalpaiguri and Darjeeling districts by the Eastern Bengal State Railway and complaints have been made to Government on the subject.

"The causes of the delay are that the Eastern Bengal Railway has had to deal with more traffic than it can handle, but very important works are in course of construction, which will largely increase the traffic capacity of the line. The opening of the Sara Bridge will remove the block which constantly occurs owing to the present necessity of transshipping at Sara all goods destined for places north of the Ganges. The broad gauge line from Sara to Santahar will also soon be ready for opening to traffic; and this too will afford considerable relief. Moreover, arrangements are in hand for building the Malda and Santahar ghord, which will reduce the heavy traffic that now has to travel via Santahar and Parbatipur towards Katihar.

"In these circumstances Government does not propose to cause inquiries to be made into the causes of delay, as they are well known and action is being taken to remove them."

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[Mr. Banerjee ; Sir Harcourt Butler ;
Mr. Rayaningar ; Sir Reginald Craddock ;
Sir Robert Carlyle ; Raja Jai Chand]

The Hon'ble Mr. Banerjee asked :—

8. " Will the Government be pleased to lay on the table a statement showing :—

Number of Municipalities in various Provinces.

(1) The number of Municipalities in Bengal, Bihar, the United Provinces, the Punjab, the Central Provinces, Bombay and Madras.

(2) The number of Municipalities in each of the aforesaid Provinces where the Chairmen are elected and where they are nominated by Government, Province by Province ? "

The Hon'ble Sir Harcourt Butler replied :—

" A statement* containing the information required by the Hon'ble Member is laid on the table."

The Hon'ble Mr. Rayaningar asked :—

9. " Has Government any information as to whether pauperism is increasing in India ? If so, does it propose to inquire into its causes and the means of checking it ? "

Investigation into the causes and remedies of Indian pauperism.

The Hon'ble Sir Reginald Craddock replied :—

" No statistics on the subject are available and the Government of India doubt whether any useful purpose would be served by an inquiry of the kind indicated."

The Hon'ble Mr. Rayaningar asked :—

10. " Has Government received any complaint from any Local Government about the insufficiency of the subordinate staff in the Provincial Agricultural Departments, and, if so, will Government be pleased to state what action it proposes to take in the matter ? "

Insufficiency of the subordinate staff in Provincial Agricultural Departments.

The Hon'ble Sir Robert Carlyle replied :—

" The Government of India have recently received proposals from the Government of Bihar and Orissa for strengthening the subordinate staff in that province in connection with a general scheme for the reorganization of the Agricultural staff of the Province, and the matter is under the consideration of the Government of India. The Government of India have not recently received complaints regarding the strength of the subordinate staff from any other Province and, as it is ordinarily within the competence of the Local Governments to sanction increases of such staff, they do not propose to take any action in the matter."

The Hon'ble Raja Jai Chand asked :—

11. "(a) Is it a fact that a new regulator and sluice above 'Harki Pawri' at Hardwar is now under construction ?

Construction of a regulator and sluice above 'Harki Pawri' a bathing place at Hardwar.

"(b) Is it a fact that the said 'Harki Pawri' is a sacred Hindu bathing place to which pilgrims resort in large numbers ? Is it also a fact that for the convenience of the pilgrims there is a line of *havelies* with bathing ghats from 'Harki Pawri' up to the temple known as 'Kangra Temple,' and that the current of the Ganges has hitherto supplied water for bathing purposes at these bathing ghats ?

"(c) Has the Government considered whether the probable effect of the proposed works will be the disappearance of the current of the Ganges from some of the said *havelies* and temple and, if so, does Government propose so to direct the construction of the sluice that a supply of sufficient water for bathing purposes is allowed to run along by the ghats as before ?

[*Sir Robert Carlyle*; *Maharaja Ranajit Sinha* of [17TH MARCH, 1914.]
Nashipur; *Sir William Meyer*; *Sir Ali Imam*;
Mr. Madhu Sudan Das.]

The Hon'ble Sir Robert Carlyle replied :—

"The answer to the first part of the question is in the affirmative. The Government of India have no particular information about the line of *havelies* and the Kangra temple mentioned, but special arrangements are being made to furnish a supply of water at all times to the bathing ghats at Hardwar."

The Hon'ble Maharaja Ranajit Sinha of Nashipur asked :—

Dismissal of
 Jogendra-
 nath Dey
 of the
 Accountant
 General's
 Office, Ben-
 gal.

12. "With reference to the reply given by the Hon'ble Sir William Meyer in reply to my question asked at the meeting of the Council held on the 4th February, 1914, regarding Jogendranath Dey of the Accountant General's Office, Bengal, I beg to inquire if the Government propose to alter the order of 'dismissal' to one of 'removal' in his case?"

The Hon'ble Sir William Meyer replied :—

"The Government have no proposals regarding this individual under their consideration."

THE REPEALING AND AMENDING BILL.

The Hon'ble Sir Ali Imam :—"I beg to move that the Report of the Select Committee on the Bill to amend certain enactments and to repeal certain other enactments be taken into consideration."

The motion was put and agreed to.

The Hon'ble Mr. Madhu Sudan Das moved that in the Second Schedule, in all instances where it is proposed to repeal them, the words 'and it shall come into force at once' be not repealed. He said :—"My Lord, the amendment I propose refers to certain Acts which are to be found at page 5 of the Bill. When the Hon'ble Law Member introduced this Bill into the Council he remarked that it was in compliance with a practice of this Council, to use his words 'to remove dead matter from the Statute-book every ten years', that he introduced the Bill. But an examination of the Bill shows that he has not only proposed to remove dead matter during the last ten years but also that he has proposed to remove all Acts which have become obsolete during the last 80 years. For the care and attention which a work of this nature involves we are all thankful to the Hon'ble Law Member. I am happy to say that the arduous task undertaken by him has been carried through with success.

The clauses which it is proposed to repeal are to be found at page 5 and refer to certain enactments, the first of which was passed in 1876 and the last in 1882, covering a period of 6 years. Now, on referring to the explanation which is to be found at paragraph 3 of the Select Committee's Report, it will be seen that they say 'We may explain, as there appears to be some misapprehension on the point, that only those commencement clauses have been repealed which provide that the Acts shall come into force either at once or on the passing thereof'. I find on referring to the Acts that Act XX of 1876 is an Act in which these words occur 'and it shall come into force at once' and yet that is not included in the Bill. Act XIV of 1879 also contains those words. That is not included in the Bill. All these Acts have these words 'It shall come into force at once': not only these but this is true of Act II of 1881, Act XI of 1881; so it seems that it has been thought proper to remove this clause in some cases and to leave it in others. Why it has been so, no reason has been given. It seems the same has been done with regard to the second clause, which is that the 'Act shall come into force on the passing thereof'. As regards 'passing thereof' it will be found that Act XI of 1879 says that it shall come into force

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on the passing thereof, but that is not included in the Bill. The same is true of Act III of 1878. So this statement in the Report of the Select Committee that it is proposed to remove all clauses which contain the words 'shall come into force at once or on the passing thereof' is not justified. I have only examined the Acts which were passed during these six years; but if it were possible to examine all the Acts which were passed during the 80 years—the period covered by the Bill,—I am sure there will be many more to which these remarks of the Select Committee would not apply. As I have said already, why this period was selected is not clear, and why, having selected this period, some of the Acts which came into force either at once or on the passing thereof have been excluded and others included, nothing is stated.

"Then they say—

In such cases, the date of the commencement of the Act is always printed at the top immediately above the title, for convenience of reference, in the copies of Acts issued by Government.

"I have in my hand a copy of an Act which was published by Government and there is nothing to show the date when the Act was passed. I refer to Act I of 1910.

"What is above the title is 'Received the assent of the Governor General on February 9th, 1910'. Now, these words are to be found in every Act. That does not show the date on which the Act was passed. The Act is passed by the Legislative Council and His Excellency assents to it by virtue of his being the supreme executive authority in the British Indian Empire. The Legislative Council brings the Act into force, and the assent of the executive authority means that the Act is to be enforced and administered with the aid of the administrative machinery. Let us take the example of Act XVIII of 1879. That is the Legal Practitioners Act; it received the assent of the Governor General on 29th October, 1879; but the Act says 'This Act shall be called the Legal Practitioners Act and shall come into force on the first day of January, 1880'. That shows that the Act did not come into force necessarily on the day it received the assent of the Governor General. If we suppose that, then we are driven to the logical consequence that the assent of the Governor General virtually repealed the commencement clause in the Act itself; and certainly nothing would warrant such an interpretation. In some cases the Act distinctly says that it shall come into force on the passing thereof; that is on its being passed in the Legislative Council. In such cases when the Governor General's assent is given after the passing, the assent has a retrospective effect. Act IX of 1910 shows that it received the assent of the Governor General on the 18th March, whereas in the body of the Act the commencement clause says 'that it shall come into force on such date as the Governor General may by notification in the *Gazette of India* direct in this behalf'. The same is to be found in Act X of 1910. Let us take again Act VI of 1879. What does that show? Act VI of 1879 says 'This Act may be called the Elephants Preservation Act; and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area by notification in the local official gazette. So far as regards the power to make declarations and rules it shall come into force on the passing thereof; in other respects it shall come into force on the 1st day of April, 1879'. So, there are, if I may use such an expression, two kinds of vitality given to the Act.

"Then, they say in the Select Committee's Report that they have been following precedent. It has always been the precedent. I submit, My Lord, it is just the reverse. If the precedent were that these words should be removed from all these Acts which are to be found at the bottom of page 5 of the Bill, then these Acts have survived two of these decennial revisions; and the practice therefore would show that these should not be removed, as they have not been removed on two previous occasions. Then we find there is always in every Act a commencement clause; and the General Clauses Act speaks of a commencement clause. The General Clauses Act, section 3, clause 12 says "Commencement' used with reference to an Act or Regulation shall mean the date

[*Mr. Madhu Sudan Das; Sir Ali Imam.*] [17TH MARCH, 1914.]

on which the Act or Regulation comes into force". The very words 'comes into force' are used. Here we have the actual commencement in the body of the Act, the clause showing as to when it should come into force, and then we have the General Clauses Act saying what 'comes into force' means; and, consequently, I submit, My Lord, that it would not do to say that the words printed at the top of the title showing the date on which the Act received the assent of the Governor General should be considered as the date when the Act comes into force.

"Then reference has been made to copies of the Act printed by Government. The Government printer is not authorised by legislation. We all know that printers have attained the sobriquet of angels; but they have not been angels of the most desirable type; and consequently this responsibility should not be delegated to the printer without any authority of any Act or legislative enactment. Supposing that were possible, then what becomes of the Acts which the public have bought, copies of which were not printed by Government? I do not think that any executive authority can, contrary to what has been the practice hitherto, issue an order to the printing department to publish on the top of every Act the date on which it was passed in the Council. Supposing it were possible to do it; what have the public done that they should lose the use of the enactments which they have bought and which were printed by private men? These clauses have been here for 20 or 30 years, and even if they were dead, they were quite innocuous. I suppose they did not take much space in the Statute-book; and the date when an Act comes into force is very often important; because the Act actually extinguishes a right or brings into existence that right, and before we remove it we have to consider whether it is desirable at all in the interests of the public to remove these expressions which have been in the Statute-book for so long a time. I hope the Hon'ble the Law Member will remember that there arise great many difficulties where there was want of precision in any legislative enactment; as a professional lawyer, this he must have experienced; it is highly desirable that there should not be anything which is likely to bring about an anomaly; and the anomaly will be greater here, because while these words are removed from certain Acts, they are allowed to stand in certain other Acts.

"As a matter of fact in the case of some Acts they have been removed and in the case of other Acts they have been allowed to stand. On these grounds, My Lord, I hope sincerely that the Hon'ble Member will see his way to accept the amendment."

The Hon'ble Sir Ali Imam:—"My Lord, I have listened to the speech of the Hon'ble Mr. Das with considerable interest; the interest in the present case was enhanced by the consideration that the Bill that is before the Council happens to be a Bill that is usually handed over to experts. Hon'ble Members who are occupied with more important themes hardly ever care very minutely to look at a Bill of this kind. So, My Lord, I felt that there was at least in this Council one Hon'ble Member who had a disposition to share the interest that I took in this Bill. The second ground for finding myself deeply interested in the speech of the Hon'ble Member was that the keenness displayed by him today was not exhibited during the Committee stages of this Bill. Although we took good care to put the Hon'ble Member on that Committee in the sole hope that in the place where we discuss these things with less restraint we might have benefited by the advice given by him. Of that however I was wholly deprived, as the Hon'ble Member did not favour the Committee with his presence on a single occasion. Now, My Lord, I find that the Hon'ble Member has been good enough to compliment me on the laborious task that lay before me, my able Secretary, and I may also mention my Deputy Secretary Mr. Muddiman and my Legal Assistant. My Hon'ble friend's appreciative reference to our work I accept with gratitude. But although I feel that he has been actuated by a keen desire to see that no wrong is done, it appears to me that the Hon'ble Member is labouring under a misapprehension as regards the criticisms he has offered on the Bill as amended in Select Committee. He has been at pains to quote a large number of instances from various

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[*Sir Ali Imam.*]

enactments showing how these enactments have dealt with what has been for many years called a commencement clause. He has advanced arguments showing that the deletion of the commencement clause in various enactments mentioned in the Schedule of the Bill might result in great disaster. I wholly disagree with him and I should like to say so far as the history of commencement clauses is concerned, that this was very largely affected by what happened in 1897 when the General Clauses Act was passed. Before that we had not so to speak any legal directions as regards commencement clauses. That Act for the first time remedied the defect. It was in this way; prior to that Act it was always necessary to specify the date of the commencement of an Act in the Act itself, as there was no general provision laying the law as to the time when Acts were to come into operation in the absence of a specific date. As I have said before the defect was remedied by the General Clauses Act of 1897. Section 5 of that Act provides that 'when any Act of the Governor General in Council is not expressed to come into operation on a particular day then it shall come into operation on the day on which it received the assent of the Governor General'. That is as soon as it becomes law. For that reason since then we have found that it is no longer necessary to insert a commencement clause when the intention is that the Act shall come into force at once. I invite the Hon'ble Member's attention to section 5. The moment His Excellency the Governor General has given his assent to a Bill it becomes law. It is therefore wholly unnecessary that we should put a commencement clause in this fashion. In this connection I would also like to place before the Hon'ble Member the fact that the Select Committee went into this matter very carefully, the deletion has been with the intention solely to remove language that was no more required. This course adopted by the Select Committee is not one that may be regarded as a departure, for the simple reason that this is the course that was followed when the last Repealing Act was passed through this Council. I may also invite the attention of the Hon'ble Member to the fact that the practice that has been followed by the Committee is one that has received legislative sanction in England, and obviously the matter is not really one of policy but of art and so far as that is concerned perhaps I and the rest of the Members of the Committee have not been quite unwise in following what after mature consideration by experts is considered to be the right thing in England. I would draw attention to the Statute Law and Revision Act of 1898. I could quote Acts that are replete with instances of the same kind as we have attempted here. There is further consideration that might set the apprehensions of the Hon'ble Member at rest.

"Under the provisions of the General Clauses Act the repeal of the words removed by us does not affect the Acts dealt with. I invite the attention of the Hon'ble Member to clause 6 (b) of the General Clauses Act. So as a matter of fact when we are attempting to remove what we have described as dead matter, we are not cutting off any live part from the Statute. The removal first of all is justified on the ground that after the General Clauses Act it is useless to have it. If the Hon'ble Member has any apprehension that the excision of these words would in any way affect the Act, he has, as I have pointed out, again a second protection given to him by clause 6 (b) of the General Clauses Act. Therefore I invite the Hon'ble Member's attention to that Act and I feel persuaded that after he has examined the last section that I have quoted, he will feel more at ease in regard to what is being done.

"The Hon'ble Member has referred to certain other enactments that have not been mentioned in this schedule. Strictly speaking, as a matter of technical construction of the amendment, I would urge that those enactments are not before the Council, and that we are confined to the consideration as to whether the particular enactments mentioned in this schedule have been rightly dealt with by the Committee in determining to excise those words to which the Hon'ble Member attaches importance and which he thinks ought not to be cut out of the various Acts. Therefore it is not my intention to go into this part of his criticism. I do not claim any infallibility on the part of myself

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CRIMINAL LAW AND PROCEDURE (AMENDMENT) BILL;
THE INDIAN COMPANIES (AMENDMENT) BILL.

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President; Sir Reginald Craddock; Mr. Clark;
Mr. Pandit.]

and my Department. It is quite possible that an Act may have escaped our scrutiny, though I do not admit that such is the case, but so far as that goes I should be very grateful to the Hon'ble Member if, during his present stay in Delhi, he could spare a few minutes to come into my room and place before me any suggestions that may strike him in the same connection.

"The Hon'ble Member will also, perhaps, remember that we have a certain amount of difficulty in dealing with Acts that affect the provinces. We have, as a matter of fact, dealt only with those Acts that were passed by us as Government of India Acts and he will also see that in being careful in the selection of such Acts as needed amendment we have had considerations not only of the kind that the Hon'ble Member urged, but various other considerations. It seems to me that after all the excision of these words does not in any way affect either the point as to the coming in force of the Act itself or the duration of the Act. Under these circumstances, perhaps, the Hon'ble Member might reconsider these points and not feel quite disposed to press this amendment. If he presses, I fear that on behalf of the Government of India it would be my duty to oppose it, because I think that these matters are dead, they do not require to be kept on these Acts, and when we make a revision of this kind we are careful to reduce as much as we can our statutes to the necessary limits. In these circumstances I regret that if the Hon'ble Member still presses his amendment I shall have to oppose it."

The amendment was put and negatived.

The Hon'ble Mr. Madhu Sudan Das:—"I do not think, My Lord, that I shall press the alternative amendment."

His Excellency the President:—"The amendment is, by permission, withdrawn."

The Hon'ble Sir Ali Imam:—"My Lord, I now move that the Bill as amended be passed."

The motion was put and agreed to.

**THE INDIAN CRIMINAL LAW AND PROCEDURE
(AMENDMENT) BILL.**

The Hon'ble Sir Reginald Craddock:—"My Lord, I beg to present the Report of the Select Committee on the Bill to amend the Indian Penal Code and the Code of Criminal Procedure, 1898. This is the Bill which deals with the better protection of minors. I do not propose at this stage to make any statement on the Report of the Select Committee, because I propose tomorrow, with Your Excellency's permission, to make a further motion regarding it."

THE INDIAN COMPANIES (AMENDMENT) BILL.

The Hon'ble Mr. Clark:—"My Lord, I move that the Report of the Select Committee on the Bill to amend the Indian Companies Act, 1913, be taken into consideration."

The motion was put and agreed to.

The Hon'ble Mr. Pandit:—"My Lord, I beg to move the first amendment which stands in my name. I beg to move that the words 'registered after the commencement of this Act' may be deleted from clause 83A."

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[*Mr. Pandit.*]

"My Lord, the recent Company legislation was introduced into this Council in March, 1912, and the aim of that legislation was described to be the assimilation of the law with regard to Companies obtaining in this country, as far as possible, to the law of England, because considerable changes had been introduced in English Company Law during the thirty years that had elapsed since the Indian Companies Act of 1852 was passed and it was deemed necessary to revise our legislation on the subject. In doing so the Statement of Objects and Reasons declared that the legislature was not going to follow slavishly the English Companies Law inasmuch as where local circumstances demanded a modification in substance it was necessary to make those modifications for the purposes of Companies in this country. The Hon'ble Mr. Clark, when he introduced that Bill, also pointed out that there were certain matters which were still under consideration and with regard to which some practical suggestions, if they were available, would require to be incorporated in the provisions. These related principally to Banks and to the internal management of companies which were managed by Managing Agents.

"When, after opinions had been collected upon this legislative measure, it was found that there was also a mass of opinion on the latter question which I have mentioned. On the 27th of January last year, the Hon'ble Mr. Clark, in asking that the Bill should be referred to a Select Committee, pointed out the advisability of incorporating the provisions dealing with companies managed by Managing Agents and they were also committed to the Select Committee for consideration. The provisions were forthwith circulated to the country and opinions were called for and when received they were discussed in Select Committee. The Select Committee unanimously agreed as to the utility and the necessity of these most important provisions which were embodied in five clauses and recommended that, as objection was taken in some quarters that they had not been formally circulated to the country, they should be so circulated and should be enacted later on. My Lord, that Select Committee was composed, as Your Lordship knows, of influential representatives of commerce as well as of the various Provincial Governments and the non-official public at large, and this unanimous decision of the Select Committee will have an important bearing upon the question.

"My Lord, the amendment which I move relates to one only of the members of the family of five clauses which was left behind. The Hon'ble Mr. Clark, after embodying these clauses in a Bill which was published on the 15th of April last year, went over to various commercial centres and consulted the various interests concerned, and after obtaining the opinions of various Provincial Governments and other bodies to whom the Bill was circulated, was in a position to remark, when moving this year that the Bill should be referred to a Select Committee, that the Bill had received a very large measure of support.

"My Lord, the Select Committee that dealt with these provisions went into the whole question at a meeting and have come to the conclusion that, with regard to companies that may be registered after the commencement of the Act, there shall be at least two Directors for every Company. I contend, My Lord, that that is an important concession of principle which will have an important bearing upon the amendment that I propose. There are only two ways, My Lord, in which the question can be looked at, one being that the investors and others should be left free to deal as they like, and so long as they enter upon any business knowing full well how that business is being managed, so long as they know full well, for example, that the control of that business is entirely in the hands of one person, there is no need for the Legislature to interfere with their freedom. That is one point of view. The other point of view is that, allowing a certain amount of importance to this principle of freedom of contract, yet as the great bulk of the investing public are not alive to their interests and require protection at the hands of the State, the State should provide by legislation against any management which would be probably or even possibly to the detriment of that great body of investors. This latter is the principle which apparently has been adopted by the Select Committee in

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recommending that with regard to future companies there shall be at least two Directors. Now, My Lord, if that is so in regard to future companies, on what principle can it be contended that the same measure of protection ought not to be afforded to shareholders and investors in companies already in existence?

"I am not oblivious, My Lord, to the enormous importance of the principle of not disturbing vested interests, but, My Lord, the principle of vested interests has already been invaded by the legislation which we passed last year and there are several provisions in that enactment wherein that principle has not been recognized to the full. Moreover, by this amendment, My Lord, it is not sought to disturb any vested interests. I am aware that it is the opinion of many gentlemen who have a large interest in any company either as managing agents or promoters that inasmuch as when they promoted these concerns they laid out a considerable amount of money on the full assurance that their management would continue undisturbed and that their interests would not be prejudiced by reason of any amendment of the Articles of Association, there is no justification for a change in the law which would in any way jeopardise their position. This clause, however, merely asks that there should be at least two Directors; it does not disturb whatever contracts there might have been entered into between the company and any private individual—a shareholder or Managing Agent. Your Excellency no doubt knows that by the Companies Law we have passed, it has not been provided that the Directors shall have absolute control over the management of the concerns of the company. There are only certain duties and rights which have been laid and conferred upon them by the Companies Law, and if this amendment is accepted, it will only relate to them and will not in any way revolutionise the management of those concerns.

"My Lord, when these provisions were circulated to the country, the opinions of all commercial, official and non-official bodies consulted in India were, I may say, unanimously and not merely very generally, as the Hon'ble Member in charge of the Department of Commerce and Industry thought, in favour of them. The Madras Chamber of Commerce had no objection to offer; the Bombay Chamber of Commerce, recognising the importance of having a directorate, concurred in the view as to the necessity of introducing such a provision as this. The Upper India Chamber of Commerce, the Punjab Chamber of Commerce and the various other Chambers of Commerce and Trades and Mercantile Associations as well as business men were all unanimously in favour of it. Even the Bengal Chamber of Commerce, which has more often shown a disposition to hamper this legislation than to assist its passage, was of opinion at first that it was necessary and salutary to provide in the way in which clause 83A of the Bill as it originally stood had provided. Indeed, as the Hon'ble Mr. Clark said last year, this very valuable suggestion was made by that Chamber. Suddenly, however, even after its opinion of September last on these clauses wherein it sought exemption only for companies licensed under section 26 of the Act, that Chamber resiled from its position, and the objection which was put forward was by no means convincing. The Local Government carefully considered the matter and came to the conclusion that it was not necessary to modify the clause. The Hon'ble Mr. Monteath, who has represented that Chamber on this Council, when he delivered his presidential address at the last annual meeting of the Bengal Chamber of Commerce, did not raise any objection to this provision nor had he formally sent in any amendment to it during the Select Committee stage. He confined his criticisms and amendments wholly to clause 83C of the Bill. In this state of things, My Lord, I consider that there is no justification for dropping the original provisions of the Bill as they existed and for excluding from the operation of this clause companies already in existence.

"It is urged that the companies which would be affected by this provision would be small companies whose capital is not more than, let us say, 5 lakhs of rupees and on whom it would be a great burden to have to provide for more Directors than one, because Directors will have to be paid and that will entail

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a heavy cost in the management of the concern and prevent its economical management.

"My Lord, it will be seen that I do not touch that part of clause 83A which exempts private companies from the operation of that clause, and the definition of private companies given is that a company which has not more than 50 persons as its members and which restricts the transfer of its shares and prohibits invitation to the public to subscribe to its shares or debentures is a private company while it continues to fulfil these conditions. If these companies which have a small capital of 5 lakhs of rupees are mainly composed of a small number of persons, not exceeding 50, they will not be touched by the amendment which I move. If, on the other hand, the number of shareholders is much larger, or the shares are transferable and the shareholders are a constantly changing body, I do not see on what principle it can be argued that an extensive number of shareholders or a constantly changing body of proprietors should not receive the protection which is given to shareholders of other companies, even if the company's capital may not be as large as that of other companies. My Lord, the principle of joint stock companies which involves the contribution of capital by a large number of persons necessarily involves and ought to involve the correlated principle of a share being allowed to their representatives in the management and control of the business. It is inconsistent with the management of one single individual; for, however confiding the public may be, it is necessary that they should have some powers of control and check; and it is in furtherance of that principle, My Lord, that I move this amendment.

"In the Companies Act, in the interpretation clause, it is provided in the definition of the term 'Director' that even where there is no director so described any person who manages or holds a position similar to that will for the purposes of the Act be included in the term 'Director'. That will make it obligatory for every individual holding that position to fulfil all the responsibilities of a director, but it will not necessarily make the position of the manager or Managing Agent exactly the same as that of a director. The Hon'ble Mr. Clark, when he moved that these clauses should be introduced, pointedly drew attention to the difference that existed between the position of managing agents and directors and the Hon'ble Member pointed out that although a managing agent by reason of the definition to which I have referred may come within the category of a director, yet his position is not exactly analogous to that of a director as it is understood in England, because in England a director cannot place himself in a position where his interests might be prejudicial to those of his company. Therefore, it is necessary that even where there may be in the position of managers a larger number of persons than one, they should have their position definitely assimilated to that of directors, and there should be at least two directors in a company. It will be seen that the third amendment standing in my name gives existing companies a year's grace to comply with the clause as it would be if amended as I propose.

"My Lord, these are the only observations which I propose to offer at the present stage. It is a very small amendment which I am moving and I feel sure that Hon'ble Members of the Council who have followed the course of this piece of legislation will see the necessity for introducing this amendment and will accept it."

The Hon'ble Sir Ibrahim Rahimtoola:—"My Lord, the amendment which the Hon'ble Member has put before the Council deals with a simple question of principle. The Select Committee recognises that it is essentially necessary to lay down that there shall be directors of joint stock companies. This is one of the recommendations now before the Council for consideration. If it is admitted that directors for joint stock companies are essentially necessary, then there appears to me no reason why existing companies, not having directors, should not be brought under the operation of that law. The question really is whether it is necessary that there should be directors or not. The legislature is going to lay down that there shall be directors. Therefore, it obviously follows that there should be directors for all

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companies including those which are now in existence and have no directors. I can quite understand that, as this law is going to come into operation on the 1st of April next, there may be some difficulty for existing companies to arrange for the appointment of directors within the time available. In the Select Committee I stated that we would be quite willing to allow ample time, even to the extent of three years, to existing companies to fall in line with this provision. It appears to me, My Lord, that when this Legislative Council deliberately lays down that there shall be directors for all joint stock companies, the exemption of existing companies, in perpetuity, can hardly be justifiable. For these reasons, My Lord, though I am perfectly willing to give ample time to existing companies without directors to make arrangements for having a Board of Directors, I think the principle underlying the amendment ought to be accepted by this Council."

The Hon'ble Mr. Clark:—"There seems a tendency to hold that because these clauses were considered in Committee last year, further modifications of any substance should not have been made in spite of their having been circulated in the meantime. I shall have more to say on this point in dealing with the next amendment, but this much I may say at once. Hon'ble Members may quite reasonably argue that in the period last year between the time when these clauses were brought to public notice and the end of the session, there was plenty of scope for a full expression of commercial opinion upon them; but I would submit that, merely because for various reasons we did not then obtain that full expression, we are not entitled now to ignore the considerations which have since been put before Government and the Select Committee by representatives of commerce in India. It has been urged on Government in Committee that considerable expense and hardship would be caused to certain small companies which are already in existence, if they have to provide themselves with directors. The point was not put before the Select Committee last year, and I do not think that Government can be blamed for having overlooked the possibility, since the original recommendation in favour of a compulsory directorate came from the Bengal Chamber of Commerce and that Chamber did not at that time press for the exemption. But it appears now that there are a considerable number of small companies registered in India, whose shares are mainly held at home, to whom the fulfilment of this provision will be a matter of considerable difficulty. Not only would there be the expense involved in a directorate which would fall in a heavy proportion on smaller companies, but in some cases there would even be difficulty about the statutory directors in India acquiring the necessary number of qualifying shares. The case therefore seems one which may fairly be met by an exemption. The argument that what is good for a new company must be good for an existing company can be pushed too far. We have to recognise that certain companies have been formed on the existing system, and at a time when there was no reason to anticipate a change in the law; and those circumstances in fairness deserve to be taken into consideration. This has been done, following the English precedent, in several provisions of the main Companies Act, which are applicable only to companies formed after the Act comes into operation.

"The Hon'ble Mr. Pandit has suggested that such small companies might turn themselves into private companies, and thus get exempted. Private companies, however, may not have more than 50 members, and though these companies are undoubtedly small, we are not in a position to say whether the majority of them would have less than 50 members. But another qualification for private companies is that the shares must not be dealt with in the public market, and it is very doubtful whether these companies would come within this exemption. This is therefore a case which ought to be met by an exemption. The matter was fully discussed by the Select Committee, the majority of whom agreed that it was a fair case to be met. It must be remembered that we are legislating for the future as well as for the present. Company formation in India is increasing by leaps and bounds; a very large number of new companies are formed every year, and these will come under the

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provisions of the Bill, but it is fair that we should avoid placing any undue burden on existing companies. I therefore cannot accept the amendment."

The Hon'ble Mr. Pandit:—"My Lord, I am very much disappointed to find that the Hon'ble Mr. Clark cannot accept this amendment. I do not wish to press too far the argument that these clauses were unanimously recommended by the Select Committee last year, but I must say that I am entitled to submit that the opinions that have been received since their formal circulation are entitled to great weight if they were called for with any object at all. Are we to suppose, My Lord, that all these opinions received from various associations, officers and business men are of no value as compared with the opinion of the Bengal Chamber of Commerce, which alone of the whole lot has come forward now with a belated *grievance* with regard to these small companies? My Lord, it was the Bengal Chamber that came forward to ask that there should be a compulsory directorate for every Company. If the grievance was genuine and widespread, Mr. Monteath, as President, ought surely to have been fully cognisant of the large number of companies which were going to be affected prejudicially by this clause, that, even if not large, at any rate there was a number of such companies and that they would have cause for complaint. No such complaint has ever been put forward by him or any body else; and what is more, if we are to consider the question of these small companies, tea companies and others, are we not entitled to say that these companies themselves are in a better position to say how the clause would prejudicially affect them than the Bengal Chamber of Commerce? Here before me I have the opinions of tea associations and other bodies in Bihar, in Assam, none of whom raise their little finger against this provision of the Bill. How is it that this objection comes only from the Bengal Chamber of Commerce instead of from the places where these associations work and exist?

"My Lord, it is urged that there are companies the bulk of whose capital comes from England and who have very few shareholders in this country, and that it would be a hardship in their case to have such a legislation. Now, with regard to companies that are formed with foreign capital, I can point out that even recently companies have been thus formed and they have not felt any hesitation in having a Board of Directors although their capital was not large. I may instance, My Lord, the case of the Central Provinces Sugar Syndicate Company, which has recently been formed to work the sugar industry in the Chanda district of the Central Provinces. It is financed principally by European capital and yet I find that by its articles of association that company, although there was no compulsion to have a board of directors, has provided for and appointed a board of directors. I cannot understand, My Lord, why the existence of two directors on the board should in any way cripple the resources of these companies. The only objection is on the score of expense and I cannot see why if one director can be entertained the mere addition of another director, possibly with a smaller remuneration, should cripple the resources of the company.

"I am afraid, My Lord, I must request that this amendment may be put to the Council."

The Hon'ble Mr. Clark:—"My Lord, with your permission, I may explain two points the Hon'ble Member has just raised. He complains that the motion to exclude these companies comes only from the Calcutta side and not from Bombay. That is because in Bombay all companies have directors: they have always been formed on that basis as the Hon'ble Member must be aware.

"He also referred to the opinions on this Bill expressed by the Tea Associations in Bihar and Assam; but he forgets that practically all the companies operating in those provinces are registered in Calcutta and therefore are represented not by the Local Associations but by the Indian Tea Association, which is one of the bodies forming part of the Bengal Chamber of Commerce and represented by the Hon'ble Mr. Monteath at the meetings of the Select Committee."

The amendment was put and negatived.

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The Hon'ble Mr. Pandit:—"My Lord, the second amendment which stands in my name asks for the substitution of 'three' in place of 'two.' By reason of the decision of the Council on the first amendment which I moved, this amendment will operate only in regard to future companies. The provision made in the Bill is that there shall be at least two directors in the case of companies registered after the commencement of the Act. The bulk of opinion on this point is that there should be at least three directors. The existence of two directors only will, I venture to submit, prove futile in most cases. We have the provision in the Companies Act that at a meeting of the Directors, there shall be a chairman, and according to the usual practice the chairman will on a division in case of an equality of votes have a casting vote. Where therefore there are only two directors on a board, necessarily one will be the chairman and he will have two votes as against one vote of the other director. Therefore the other director's existence will practically be of no use whatsoever. If we have more than one director, we must have three at least in order that there may be some use in having another director at all.

"For these reasons I move the amendment."

The Hon'ble Mr. Clark:—"My Lord, the object of this clause is to secure that there shall be a plurality of directors. It is not necessary to lay down that there shall be not less than three. Companies can perfectly well provide for themselves in their Articles of Association means of meeting the possible difficulty of their two directors being at variance, if there are only two. It is exceedingly probable that they would in most cases have an uneven number, but in any case it is not for the legislature to lay down the possible number: it is a matter which can be left to the companies. I cannot therefore accept the amendment.

"The amendment was put and negatived."

The Hon'ble Mr. Pandit:—"The third amendment which I wished to move was consequential upon the first amendment, and as the amendment has not been accepted it is unnecessary and I have no desire to move this amendment."

His Excellency the President:—"I agree to the amendment being withdrawn."

The amendment was accordingly withdrawn.

The Hon'ble Sir Ibrahim Rahimtoola:—"My Lord, I beg to move that in clause 2 of the Bill, as amended by the Select Committee, after section 83B, the following section be inserted, namely:—

'83C. When a firm is manager of a company other than a private company, then, notwithstanding anything in the articles of the company, there shall be not less than three directors of the company, and the majority of such directors shall be persons who are not members or employes of such firm.

'Provided that this section shall not apply to a company limited by shares as long as such firm or the members thereof hold as sole absolute beneficial owners and not merely as trustees not less than three-fourths of the total number of the shares in the company which confer on the holder the right to vote at a general meeting of the company.'

"My Lord, the question that I am raising by this amendment is one which will determine whether in the future the interests of the shareholders shall be protected or whether as in the past 30 years, ever since the passing of the Act of 1882, the Managing Agents shall remain predominant. It is really an issue between the large body of men who invest their money in Joint Stock Companies and the class which manages joint stock concerns. There appears to be considerable misapprehension in regard to what the Managing Agents are. The Managing Agents may be the promoters of a company; but the function with which we are dealing now is their employment as Managers of Joint Stock Companies. Managing Agents occupy two distinct positions; firstly, as shareholders to the extent of the number of shares that they may hold from time to time; and, secondly, I would not call them the servants of the company because

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some people take exception to the use of that word—I will call them the officers of the company who are paid for their services and who manage joint stock concerns on behalf of a company on payment in some cases of fixed salaries or fixed remuneration and in the majority of cases by some system of commissions. But I think it must be recognised that their position is that of officers of the company and not, as some of them misconceive, the owners of the company. Now, my Lord, it is a recognised principle governing the whole of the civilised world that there should be effective supervision and control on behalf of the real interest in a concern over the officers of that concern; and it is with a view to secure that control and supervision that we suggest that there shall be an independent board of directors representing the interests of the shareholders. If I were singular in putting forward this view, I could well understand any opposition which may be extended to my amendment, but the principle for which I am fighting here to-day is a principle which has been accepted all over the civilised world, and nothing can be reasonably urged against it. Even Government officers are required to submit to independent audit. A certain amount of control and supervision must be provided over the officers of a company who receive remuneration for rendering service.

“My Lord, before proceeding further I will give a brief history of the question as it stands at present. The Government of India undertook to amend the Company law in order to bring it into line, firstly, with the recent English legislation and, secondly, to meet the demands of the investing public who called for various amendments in view of the experience gained of the working of the Companies Act of 1882. My Lord, on the 27th of January last year the Hon'ble Member in charge dealt with the subject in his speech in the following terms:—‘Circumstances frequently arise in which the interests of the managing agents and some of the businesses that they manage are not necessarily identical. I hope I shall not be misunderstood. I do not mean to suggest that in such a case Managing Agents as a body would be likely to sacrifice the interests of the Company they manage to those of their own firm: I merely cite the fact as indicating how difficult it is to fit them in within the scope of this Bill. In England the Courts have laid down that a *Director should not be placed in a position in which his interests might be prejudicial to those of his Company*; in India, as I have said, it is clear that, *in the case of Managing Agents who are also Directors, such a position might easily arise*.’ It was with a view to provide safeguards against what the Hon'ble Member himself admitted to be such a position as might easily arise that this legislation was put before this Council. The Hon'ble Member went on to say: ‘The general principles that we proposed to follow are these. We propose to adopt a very valuable suggestion made by the Bengal Chamber of Commerce, that it should be compulsory for all Companies to have Directors.’ We have just departed from this wholesome principle by not insisting upon having Directors in regard to those Companies which exist at present without Directors; and we have given them practically a lease of life in perpetuity to do without this salutary supervision. Continuing the Hon'ble Member said: ‘We propose at the same time to provide that if members of the Managing Agents' firm are also Directors of the Company they manage, they shall be in a minority on the Board.’ Instead of being in a minority it is recommended that the very independent Director can now disappear. ‘The effect of these proposals will therefore be that a Company managed by Managing Agents will have an *independent board to whom Managing Agents will be responsible*. I cannot think that any one would dispute the reasonableness of such an arrangement.’ An arrangement, My Lord, which we are quite ready to surrender at the instance of that very Hon'ble Member—wonderful change! ‘In the case of many Companies it exists already. It will at one and the same time safeguard the interests of the company and relieve Managing Agents of a degree of responsibility which should not be placed upon them.’ I venture to inquire what has happened since that the Hon'ble Member feels that the responsibility which is thrown by existing conditions upon Managing Agents should continue to be borne by them, and that it is not desirable that they should be relieved of the same by law. Then, My Lord, on the 5th March, 1913, in his able speech the

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Hon'ble Member said. 'The Committee have unanimously accepted' (I wish to draw the Council's particular attention to the fact that the Committee which included the representatives of the Managing Agents was quite unanimous) 'the principle that there is room for the imposition of certain wholesome restrictions in connection with the management of Companies by Managing Agents in this country; they think on the one hand that the clauses submitted to them provide a reasonable method of disclosure and secure to a reasonable extent the principle that directors of a Company should be independent from the Managing Agents.' This was what the Select Committee last year unanimously agreed to. The same Select Committee, for reasons which I will deal with later on, have now completely changed their front; 'and on the other hand they see no ground to suppose that these provisions would impose any undue restrictions on legitimate transactions. They consider, however, that in view of their intrinsic importance, and as they have not been formally before the country, they should be circulated before taking their place in the Company law of the land. They therefore have not included them now in the Bill, but they have taken the opportunity of recording their view that the ultimate incorporation in the law of such provisions is highly desirable.

"Later on the Hon'ble Member said: 'In the last few days they have been violently attacked in certain quarters and Government have been criticised for venturing to bring them (the amendments) forward in this Committee. I do not complain of that; nor am I concerned now to discuss or to defend the merits of the clauses themselves. It is enough for me that they will be published with the imprimature of an exceptionally strong Committee which is representative of legal experience in different parts of India and of widespread commercial interests both European and Indian.'

"The stamp of approval which the Hon'ble Member described in such glowing terms has completely turned the other way. We are now faced with the position not merely that the Managing Agents may be in a majority on the Board of Directors, but that they may be sole Directors excluding entirely every man who is not a member of the Managing Agents' firm. This is the position to-day, and this is the position against which I rise to protest. The quotations I have read have conclusively shown what the feelings of the Hon'ble Member, the feelings of a strong Select Committee and the consensus of opinion in this Council was so recently as last year. It is perfectly true, as the Hon'ble Member pointed out, that it is open to Government to reconsider the matter in the light of the views and sentiments that may be expressed while legislative measures are under circulation; and if there had been a consensus of public opinion in favour of any modification in this case I would, My Lord, have been the first to recognise the justice of this Council giving way to such public opinion. But what are the facts? I have analysed the opinions that have been elicited on this Bill and I find that if we counted the number of votes of those who have been consulted there is an over-whelming majority in favour of passing this clause. In the summary of opinions which I have prepared, I have left out the names of individuals consulted, almost all of whom are in favour of clause 830. From this summary I find that all Governors in Council, all Lieutenant-Governors and all Chief Commissioners in India, representing as they do the entire Provincial Governments and Administrations, are unanimously in favour of this clause. In the face of this unanimity of opinion amongst the Local Governments and Administrations can it reasonably be said with this Council to say that they shall not accept this clause? I cannot help remarking in this connection that when we non-official Members ask for certain things to be done and a Local Government happens to be against us it is practically hopeless to get the thing carried in this Council. On the present occasion, when we come with the support of all the Provincial Governments, the Hon'ble Member still refuses to accept a clause which is essentially needed for the better administration of Joint Stock Companies. Then, My Lord, I have taken out a list of Chambers of Commerce, Trades Associations and other bodies and

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associations consulted, and I find that a substantial majority is in favour of the clause. In Bombay, the Bhattia Mitra Mandal, the Bombay Trades Association, and the Bombay Native Merchants' Piece-Goods Association are in favour of this clause. The Native Merchants' Piece-Goods Association differ in a matter of detail and prefer that $\frac{3}{4}$ ths should be reduced to $\frac{2}{3}$ rds. In Bengal, the British Indian Association are in favour but suggest a reduction from $\frac{3}{4}$ th to $\frac{1}{2}$. The National Chamber of Commerce is also in favour subject to the same suggestion. The Land Owners' Association approves but wants the clauses to be made more stringent. The Marwari Chamber of Commerce wholly approves. In Madras, the Trades Association, the Southern India Chamber of Commerce, the Indian Banking Association are all in favour, the Godavari Chamber of Commerce approves as it has no remarks to make. The Punjab Chamber of Commerce heartily supports; the Punjab Trades Association is in favour; the Punjab Banking Company is also in favour. The United Provinces Upper India Chamber of Commerce is in favour; the Bihar Land Owners' Association approves. It will be observed that sixteen important bodies and associations are in favour of the clause, twelve of which wholly support it, three suggest some modification in detail and one has no remarks to make. I will now deal with those which do not support. The Mill-owners' Association of Bombay want it to be delayed; the Grain Merchants' Association call for its deletion, the Bengal Chamber of Commerce are strongly opposed; the Coconada Chamber of Commerce says that the clause will prove unworkable; the Madras and Bombay Chambers of Commerce opine that it is easy of evasion. If it is easy of evasion, it could be made more stringent in drafting. Out of six associations which are against the clause, two wholly oppose, two contend that it is easy of evasion, one is in favour of delay and one regards it as unworkable. These are the opinions with which I approach the Council. It will be noted that the opinions of all Local Governments and Local Administrations are in favour; that the bulk of commercial opinion supports the measure, there being sixteen associations in favour, while only six against it.

"A great deal has been made of the opposition of the Bengal Chamber of Commerce and of the Bombay Chamber of Commerce. I will read out portions of the reports that the Local Governments of these two Provinces have sent in forwarding these opinions. In paragraph 2 of his letter the Hon'ble Mr. Donald, on behalf of the Government of Bengal, wrote:—

It will be observed that on the whole there is a general concensus of opinion in regard to the advisability of amending the Companies Act in the direction indicated. The proposed amendments meet the views expressed by this Government in paragraph 4 of Mr. Kerr's letter No. 6647, dated the 25th November, 1912, when this Government recommended that provision might be made to carry out certain suggestions which were put forward by the Bengal Chamber of Commerce.

"I will deal with the Bengal Chamber of Commerce a little later on. 'This Chamber, it will be observed' (this is the part to which I should like particularly to invite the attention of the Council) '*have rested from the position that they took up last year and they now raise several objections to the proposals which they then put forward.* The Governor in Council is not, however, prepared to agree with the views they now submit. The present Bill makes provision to safeguard the interests of that body of shareholders which is generally apathetic in matters relating to the Company, so long as the management is good and adequate dividends are being paid, and in their interests the provisions of the present Bill are essentially necessary.'

"That is the opinion of the Government of Bengal. I now come to the less important Chamber, namely, that of Bombay, and in this connection the less important provincial Government, namely, the Government of Bombay. I use these words advisedly. In the opinion of the Government of India, Bombay holds quite an inferior position to that of Bengal. In regard to clause 83C the Government of Bombay say:—

In the opinion of this Government this clause should stand with the addition of the words 'and whose share qualification is held *bona fide* and has been acquired wholly independently of such firm,' as proposed by the District Judge, Ahmedabad. Even if it is likely

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to be evaded (this is the answer which the Government of Bombay give to the Chamber of Commerce of Bombay and to those who contend that this clause can be evaded), 'as observed by the Chamber of Commerce, Bombay, still its existence will have some deterrent effect. It can hardly be said that it does not give the shareholders some additional power of protecting themselves, and no objection is taken to its being enforced, if it can be enforced.'

"Now, My Lord, I have shown that both the Provincial Governments of those provinces the Chambers of which have raised objections, have effectively disposed of the grounds of opposition advanced by these bodies, and have stated the reasons why, in their opinion, this clause should be enacted at once. Your Lordship will excuse me if I say that it appears to me that this legislation and the amendments that have been introduced have been largely governed by the views and sentiments of the Bengal Chamber. There is no doubt that that Chamber is a very important body of commercial opinion, but at the same time it has to be remembered that in a continent like India the Chamber of Commerce of Bengal, however influential it may be in Calcutta, is not all in all when we are legislating for the whole of India. The two important concessions to their sentiment, one of which was made last year in regard to clause 77 after it had received the careful consideration of, and been unanimously recommended by, the Select Committee and now in regard to section 880, are I think absolutely unjustifiable. My Lord, the Bengal Chamber of Commerce has the privilege of being represented on this Board, and I will read the Hon'ble Mr. Monteath's speech which he read here last year. He said:—

Every clause of this big Bill has been gone through and patiently considered line by line and I can bear testimony not only to the thoroughness with which it has been gone into, but also to the earnest desire of all the official members of the Select Committee to do the right thing. I do not suppose the Bill will prove a perfect Bill (naturally) for what Bill of this magnitude can be altogether perfect; nor can I expect the provisions of the Bill will be found to suit everybody.

"Words of supreme wisdom to which I hope the Hon'ble Member will give unswerving adherence on the present occasion. Such a Bill as the Hon'ble Member rightly pointed out cannot suit everybody; and if it suits the overwhelming bulk of commercial opinion, both Indian and European, but does not suit the Bengal Chamber, surely he cannot reasonably contend that the consensus of official and non-official opinion ought not to prevail but that the legislature should yield to the views of a small minority. The Hon'ble Member further goes on to say, in giving his reasons why such a Bill cannot suit everybody, that this would be against human nature. Absolutely true! It is human nature after all that appears to be governing many parts of this legislation.

"The Hon'ble Mr. Monteath continued—

But I do think that the Bill, as a whole, will suit admirably the purpose for which it is intended, and I consider it to be a fair compromise as between Government and Commerce.

The report of the Select Committee shows that five clauses relating to Directors and Managing Agents referred to by the Hon'ble Member in Council on 27th January have not been included.

These five clauses are probably the most important of the proposed amendments and the Bill without them is, therefore, not complete, and because of their importance, I should like to say a few words in explanation of their exclusion.

These clauses, as amended by the Select Committee had, and still have, my approval, for as far as I can see at present, they constitute a fair settlement of the much-voiced question of Managing Agents and their responsibilities.

"Ofcourse, the Hon'ble Member pressed for recirculation. It was recirculated and the result is that an overwhelming bulk of official and non-official opinion has been found entirely in favour.

"Now, My Lord, I should like to invite the attention of the Council to the result that will actually take place in consequence of the deletion of clause 77 last year under the orders of the Bengal Chamber of Commerce, and the omission of clause 880, now under practically similar instructions. These two clauses are to my mind of the most far-reaching importance in the direction of

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the protection of shareholders, and I should like to explain what will be the actual cumulative effect of their omission. Section 77 of the Act, as it emanated from the Select Committee last year with the unanimous recommendation of that body, which included the representative of the Bengal Chamber, provided that the Managing Agents shall not be permitted to debar the holding of general meeting by laying down in the Articles an impracticable quorum. It was pointed out in Committee that some of the Articles laid down two distinct quorums, the one for the purpose of passing accounts and doing ordinary annual work, and the other for raising important questions in connection with the management of companies. The quorum for doing the former kind of business was usually small, while for the latter unusually high. It was pointed out that because of a prohibitive quorum in the Articles, the shareholders were prevented from raising questions in regard to the management of the Bank of Burma and that in consequence the Bank went on till it failed. My Lord, I am at present explaining the cumulative effect of the omission of these two clauses. The deletion of clause 830, in addition to the omission of clause 77 agreed to last year will I think lead to such serious consequences, that I venture to submit that the present clause should be allowed to stand. I wish to explain that if in addition to the omission of clause 77 the Council omits clause 830, the cumulative effect will, to my mind, be disastrous.

" My Lord, clause 77 dealt with excessive quorum and it was provided thereby that the maximum quorum laid down in the Articles shall not be excessive. After the Companies Bill came before this Council including this clause with the unanimous recommendation of the Select Committee, up comes a telegram from the Bengal Chamber to their representative, who thereupon gives notice of an amendment for the deletion of that clause. The Hon'ble Mr. Pandit and myself as members of the Select Committee opposed that amendment. The Hon'ble Member quietly accepted. The effect of the omission is that Managing Agents can by their Articles prohibit the holding of general meetings by imposing an impracticable quorum. These are the very words used by the Hon'ble Member himself. Therefore under the existing law the shareholders cannot, except for ordinary purposes, get a general meeting if the Articles impose an unworkable quorum. Now if you omit section 830, the result will be that you could not have any meetings of the Directors either. By the deletion of both these clauses you could not have meetings of the shareholders and you could not have meetings of the Directors. It is laid down in all Articles, that the Board of Directors shall fix the time and the dates of their meetings. If the Managing Agents are solely members of the Board of Directors, or if they are in a majority, they need not call any meeting at all and there is no remedy against it. I will, My Lord, mention some Bombay experience on the subject. There is one company, which I know, where the majority of Directors are independent men. The Board meets every month and examines the accounts and does all its work. In another company a meeting does not take place oftener than once a year and that for the purpose of passing the accounts and signing the balance sheet. Does the Hon'ble Member desire that, by doing away with an independent majority on the Board of Directors, these Boards may become absolutely useless? Then why have a Board of Directors at all? Why not say that these Managing Agents are such good people that no control and no supervision is necessary, and let the shareholders be thrown on their tender mercy. The majority of the Select Committee do not seem to have any objection to that course. But surely if the guiding principle is that there shall be three different entities in regard to joint stock concerns, *viz*:—(1) the shareholders, (2) the Board of Directors, and (3) the Managers or Managing Agents, then it is necessary that the Board of Directors should be of such a nature as to be able to exercise efficient control as representing the shareholders upon the Managing Agents. Unless that is done, it appears to me that, with the omission of clause 77 and with the deletion of clause 830, you are perpetuating an evil which has been pointed out to the Hon'ble Member by many commercial bodies and associations and which led, in the first instance, to his introducing these clauses at the meeting of the 27th of January last year.

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“My Lord, I will now examine briefly the reasons which the Select Committee has given in regard to the deletion of this clause. They say:—

We are, however, more influenced by another type of criticism to which the clause has been subjected. It has been pointed out that, where the shareholders in a company choose to exercise their powers, they may, in the case for which clause 53C provides, themselves elect an independent majority on the Board. It is suggested that the recently enacted Indian Companies Act, 1913, provides for the supply to shareholders of such ample information concerning the management of the company that they will have a strong incentive to provide this independent directorate whenever they consider it necessary, and that the working of the Act in this direction might well be tested by experience before providing this form of directorate by law.

“My Lord, I have in my minute, which is before the Council, dealt with these points. It appears to me that the experience which has accumulated over a period of 80 years during which the same conditions prevailed is a sufficient answer to any further delay in passing this law. The very fact that the Directors are elected by the shareholders is in itself sufficient proof that these Directors are their representatives and are appointed for the purpose of exercising control over the officers of the company. I advisedly use the word ‘officers’ in place of ‘Managing Agents’ because to my mind that is their real position. If during the experience of 80 years the shareholders have proved apathetic, if all Local Governments, Administrations and the bulk of commercial opinion want these clauses to be enacted now, a very strong case will have to be made out to justify why their views should not be carried out at present. Such a case, I venture to submit, does not exist. As I pointed out in my dissenting minute the right of appointing auditors is also vested in the shareholders, and still the Legislature feel that the manner in which they discharged that duty in the past justifies the laying down of certain limitations as regards restricting their choice to a class of accountants notified by Government.

“My Lord, I have a great deal more to say, but I will not trouble the Council with many more remarks except a few which I think are of the utmost importance. I do not wish to deal with the question of the responsibilities of the Directors because I can only say this that when the responsibility of Managing Agents is obviously greater, then it is does not matter if a little additional responsibility is thrown upon them as Directors. It appears to me that the principle underlying the question of Managing Agents serving on the Board of Directors is absolutely wrong. May I inquire why in all those public bodies, Legislative Councils, Municipalities, District Boards, disqualifications are deliberately provided against a certain class of people being elected? Take the case of the Legislative Councils. It is laid down that no official shall stand for election. Why are not officials equally capable to represent the interests of the people? If they are, why are they barred? They are barred because it is obvious that in all these matters independence is essentially necessary, independence of those who are in charge. Why are all these disqualifications provided in various statutes? For this obvious reason that the man who is an officer of the company shall not also be the controller of that company. Then there is one thing, My Lord, which has been repeatedly asked, namely, What is the danger of the Managing Agents solely constituting the Board of Directors? There is one thing in this connection to which I should like to invite the attention of this Council. I do not of course wish to cast the smallest reflection upon anybody, and will therefore put my point in the form of a hypothetical case. I should like to ask, in those cases in which the Board of Directors consists entirely of the members of the Managing Agents' firm, whether it is possible or not for these people, by means of the information that they secure of the daily working of a joint stock company, whether it is making or losing money, what is the extent of the profits or losses, as the case may be, whether this information could be or could not be availed of in manipulating the market value of the shares of the company on the stock exchange?

“May I ask again whether it is possible or not, after the result of the working of two or three months is known, to so operate upon the Stock Exchange as to secure an undue advantage over the shareholders? I put this point in such a form, for obvious reasons. If the answer is that such a

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thing is certainly possible, and I do not think any other answer can be given, does it not furnish an unanswerable argument in favour of my amendment. If there were a majority of independent directors on the Board, they could insist upon meeting periodically and looking into the results of the working from time to time. Thus, they would be able also to know, and human nature being what it is, they may also feel inclined to profit. The actual facts would thereby leak out, as several people would be operating on the Stock Exchange at the same time and the shareholders would, to a great extent, be protected. I readily admit that it is not a perfect remedy, but there is under these circumstances a considerable chance of the shareholders getting information as to what is actually going on. If all the directors were members of the managing agent's firm the chance of this information leaking out would be very remote, and in that way the exploitation of the shareholders in the matter of the manipulation of the market value of shares could have free scope. I am merely inquiring whether under the conditions that would exist, if this clause is omitted, there is such a danger or there is not, and if such a danger exists, may I appeal to the Hon'ble Member to reconsider his position ?

" Well, My Lord, there is one thing more I should like to point out, and it is that the managing agents are perfectly free to register private companies, but in case they go to the public and want the capital of the public for promoting joint stock enterprise, is it in any way unreasonable to require them to submit to the control of an independent Board elected by the shareholders ? Is there any thing wrong in asking for such a small measure of protection for the shareholders whose money they require ?

" My Lord, I offer my thanks for the indulgence which you have extended to me in listening to me at considerable length. I cannot, however, conclude my remarks without appealing to Your Excellency to consider whether it is right that on a question of this kind, a question in which a clause in the Bill is admitted by all to be desirable, a clause which some of us regard as of the utmost importance, a clause which has received the unanimous support of Local Administrations, and overwhelming support of public opinion, that the official majority should be availed of ? The issue between the Hon'ble Member and myself is this, he admits that this clause is a very desirable one, but thinks that its enactment should be postponed : my disagreement with him is merely that as it is unanimously admitted to be desirable and as there is an overwhelming public feeling in its favour, that it should be enacted now. When the issue between us is narrowed down to the passing of this clause now or later, may I venture to inquire whether in the consideration of this amendment it is right that the official majority should operate. May I appeal to Your Excellency to lay down on an occasion like this, when the difference of opinion between the Hon'ble Member in charge and myself is narrowed down to such a small point, to leave Hon'ble official members free to speak, to discuss and to vote as they like. It would serve, My Lord, as a great encouragement to us in studying and bringing forward points for the consideration of this Council, if we were assured that on some occasions, at least, official members would be permitted to vote as they liked.

" I am one of those who has always recognised that there should be for certain reasons an official majority in the Legislative Councils. I have publicly stated my views on the subject on various occasions. I cannot help feeling, however, My Lord, that this is one of those occasions when the power of the official majority should not be enforced. My Lord, I can only explain the attitude which the Hon'ble Member has taken up in regard to this amendment, as also in regard to clause 77, by saying that it is due to his chivalrous desire to accept the recommendations of the Bengal Chamber of Commerce. My Lord, we all know that the Bengal Chamber of Commerce appears to be so immensely attached to the Government of India that it cannot brook separation from them (Laughter). I am constrained to compare the Chamber to a lady hopelessly in love with the Government of India (Laughter), feeling very sore at the separation and trying their level best to get back their sweetheart (Laughter). Well, My Lord, they have recently tried to adopt a new role, the role of the champions of the tax-payers.

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The Government of India is squandering away all the tax-payers' money in building the capital."

His Excellency the President:—"Order, order!"

The Hon'ble Sir Ibrahim Rahimtoola:—"I am merely pointing out that the Hon'ble Member in charge may be feeling that the Bengal Chamber on this occasion deserves greater consideration than he would be prepared to extend under ordinary circumstances. However, I do hope that the matter will be looked at from the public point of view, and when there is such a consensus of public opinion, supported by the unanimous recommendations of Local Governments and Local Administrations, official members, if permitted to do so, will vote for my amendment. I trust that my appeal to Your Excellency to allow the official members on this occasion to take part in the debate and vote as they like will be allowed."

The Hon'ble Sir Fazulbhoj Currimbhoj:—"My Lord, I oppose the motion with all the emphasis a strong conviction can give. The motive which prompts the motion is commendable, but with all deference I submit that the re-incorporation of the deleted clause 83 C will be wrong both in principle and fact. The reason which has influenced the decision of the majority of the Hon'ble Members of the Select Committee is sound and cogent enough, but weightier considerations inspire my opposition. The object of the amendment of the Indian Companies Act, we may take it, is not to hamper the growth of industries in India; it is equally certain that the commercial and industrial development of India is a matter of anxious solicitude both to the people and Government. These are fundamental propositions which will command universal acceptance. Now a review of the history of Indian commerce and industry will reveal the fact, alluded to in the Statement of Objects and Reasons accompanying the Bill, that whatever development has been attained in this direction has been due almost exclusively to the efforts, and the association with joint stock concerns, of firms of Managing Agents.

"Whether this system is peculiar to India or not, is a point on which opinion is divided. In one view, as that of the Bengal Chamber of Commerce, the difference between the English system and the Indian system is one of nomenclature and is not material, while Government would seem to hold the opposite view. But the question is not of much moment, and it is unnecessary, for our present purposes especially, to combat the official view. The outstanding feature of the situation is that,—be it in the textile industry, mining industry, tea industry, or miscellaneous industry,—and be it on the Bengal side, Bombay side or in Northern India, at least 80 per cent of the successful and flourishing industrial concerns are in the hands of firms of Managing Agents, and have been so from their inception; and it is demonstrably certain that, without these firms taking the lead both in initiation and management, the progress would have been little. Alongside of this is the fact, established by past history, that failures are more common in concerns managed by individuals nominally working under the control of boards of directors than in those managed by firms of Managing Agents. This does not prove either the unsoundness of the existing arrangement or of any wicked tendency on the part of firms of Managing Agents to take improper advantage of their position. The Indian Merchants' Chamber and Bureau of Bombay rightly point out:—

No examples, worthy of notice, have been adduced of Companies which have gone wrong because of Managing Agents who had majority on the Board of Directors.

"Where then is the necessity of legislative restrictions upon the powers of these firms of Managing Agents of the kind contemplated in clause 83 C? Legislation must stand upon a stable foundation of proved facts, and not upon possible evils which have not happened before and which, unless on the supposition of a serious decline in human nature, will not happen in future.

"My Lord, the restrictions sought to be imposed by the amendment upon firms of Managing Agents are wrong in principle. Were it the case that these joint stock concerns are started and financed by shareholders independently

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and the management is then made over to firms of Managing Agents, the position would be different; but this is seldom, if ever, the case. What usually happens is that a firm conceives the idea, works at it, prepares careful estimates of probable expenditure involved, capital and revenue, and of expected earnings, negotiates with the Government or the local authority or private landlord for concessions or settlement as the case may be, floats a company with limited liability, subscribes a good portion of the capital required, and then places upon the market the undisposed of shares. This is equivalent to the admission of the investing public into partnership in a business the success of which depends mainly upon management by the founder. The British Indian Association of Calcutta hits off the point in the following interesting passage :—

The promoters, who virtually become the managing agents, are the leading spirits in the management of the affairs of a company, and as they generally have the largest stake in it they should have a predominant voice in its management.

“ Directors chosen from among the general body of shareholders, who will be in the majority of cases uninitiated, far from adding to the strength or ensuring the purity of the management, either will play into the hands of the Managing Agents from ignorance or apathy, or will prove obstructive by their obstinacy, or from inexperience jeopardise the interests of the concern. Against unscrupulous and scheming Managing Agents such directors are powerless; to honest Managing Agents they are a perennial source of trouble.

“ My Lord, Indian investors put their money in joint stock concerns from their faith in firms of Managing Agents, and the facility with which the shares are sold in the market varies with the public confidence which the firm enjoys. It all depends upon the reputation for business honesty and business capacity which the particular firm enjoys. A short time ago 5 per cent. preference shares in the Darjeeling-Himalayan Railway Extension Company, Limited, were placed on the market. This was a bold move. Five per cent is too low a dividend for preference shares. And yet the whole stock was taken up by investors in no time; and that was more because of the reputation of the Managing Agents than of anything else. It is thus the reputation of the firm, which is a valuable asset in these matters. Investors are content to leave the whole control in their hands, not so much from apathy as from self-interest. That shareholders even at present are not indifferent to their own interests is evident from the agitation that is started on the least indication of anything going wrong with the management. This is true in Bombay, Calcutta shareholders are equally on the alert if my information be correct. All experience shows that for the success of the concerns Indian shareholders do not look to the Directors so much as to the Managing Agents, where these happen to be firms of established reputation. The reputation of the firm is the best guarantee of success; and it is distinctly to the interests of the firms to maintain a high standard of business honesty and management.

“ My Lord, a few other points need consideration in this connection. The question may well be asked as to how many firms of managing agents there are who would calmly contemplate the disclosure of the secrets of the industry inseparable from the introduction into the directorate of stranger shareholders. Loss of control, again, will result in apathy, and for the keen, jealous, and watchful interest now evinced by these firms of managing agents will be substituted perfunctoriness in management, which will not be conducive to the interests of the shareholders. It may also come about that, in consequence of the meddlesomeness of these independent directors, the firms would clear their share holdings, content with their commission which is earned irrespective of the result of management. This must depress the market. Would that be to the shareholders' interest? It is clear that under clause 830 they cannot have any incentive to start fresh concerns. This involves a serious set-back to Indian industrial enterprise, a contingency opposed alike to the object of the Indian Companies Act and the amending Bill and to the best interests of the country. The following

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observation of the Indian Merchants' Chamber and Bureau of Bombay will enable Hon'ble Members to realise the gravity of the situation :—

It will come in the way of the progress of Joint Stock Companies, as for instance the Mill industry of Bombay, the success of which has been proved to be largely due to the present system of Managing Agents. In fact any interference which a fresh legislation may impose will mean a needless hindrance to the smooth progress of that industry.

" My Lord, so far I have proceeded upon the hypothesis that clause 830 would be effective. In point of fact, however, it will not be so, as pointed out by almost all the Chambers of Commerce. Evasion will be easy, especially as by section 83 of the Act of 1913 the register of shareholders is conclusive on the question of ownership. The object which Government had in view, assuming though not conceding it is desirable, cannot be attained in that way. The Chambers of Commerce are agreed on that point. Sir Henry Seymour King, in the weighty opinion he has sent us through the India Office after '40 years' experience of Indian Company affairs', has exposed the unsoundness of the amendment.

" The Bengal Chamber of Commerce has put the matter in a nutshell :—

In fact, if the managing agents can control a majority of the votes, the section is useless. If they cannot control a majority of votes, it is unnecessary.

" The optimism of the Select Committee in this respect appears unfounded. It may be doubted if skill in drafting would cure a defect inherent in the scheme of legislation. Some credit will perhaps be given for knowledge and experience to expert bodies like the Chambers of Commerce and to merchants like Sir Henry Seymour King. And when we find they are of one mind regarding the unreasonableness and impotence of a legislative provision, it behoves Government to pause and reconsider the position. This is what the Government has done.

" My Lord, as a humble representative of the great commercial and industrial community of India, I congratulate both ourselves and Government upon the sound decision of the Select Committee about clause 830. That decision is in consonance with the consensus of commercial opinion, and should command the assent of the Council. Commercial and industrial expansion is our aim, and the way which past experience shows is the best for such expansion cannot be narrowed and blocked without serious prejudice to the cause. It is not a question of vested interests; it is a question of expediency, commonsense and experience. Doctrinaire generalisations are useless in such controversy. The view favoured by last year's Select Committee has proved inexpedient in the light of the facts elicited on subsequent inquiry. It will not be fair to the members of the Select Committee to seek to estop them by remarks which had only the force of *obiter dicta* and did not affect the revised Bill on which they reported.

" In view of the fact that public opinion was sought on future lines of legislation relating to points not dealt with immediately, any attempt on the part of even any individual member of the Committee to impugn the view then propounded would have been obviously premature. Even a note of dissent on the point would not have been in order. The very fact that the Select Committee decided to refer the question to the country proved incontrovertibly its controversial nature and the absence of unanimity among the members. It was open to the members of the old Select Committee who held the opposite view to press for the deletion of clause 830 afterwards. But by the time the present Bill was ripe for discussion in Committee the undesirability of the clause had been clearly established, and Government naturally responded to commercial opinion by deleting it. There is therefore no point in the complaint that the deletion of clause 830 is subversive of one of the primary objects of the amending legislation undertaken in conformity with the view of last year's Select Committee. It is, again, too late in the day to question the rationale of the Indian Companies Act. A cursory examination will show that the provisions of the Act of 1913 are not intended for the substitution of State control for the nominal control of indifferent

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shareholders, but for strengthening the hands of energetic shareholders and for ensuring to them a reasonable degree of power and oversight. No law, however drastic, can revolutionise the business ideas of a nation, and no amount of legislative stimulus will induce shareholders to forsake a course which has stood the test of time and has proved beneficial to their interests. Further, the question of audit stands upon a wholly different footing, and the analogy of the new provisions relating to it supplies a weak foundation for clause 83C. But, irrespective of the weighty reasons set forth above, the view that some time must be allowed for the results of the working of the Indian Companies Act of 1913 to reveal themselves, is absolutely correct and has much to commend it. New and large powers have been given to shareholders by the Act, and there is nothing to warrant the conclusion that the comprehensive change in the law, with the voluminous English rulings to back it, will fail to effect the improvement in the situation Government desires and seeks to promote. The shareholders are not in the same position under the new Act as they were under the repealed Act. A reference to the shareholders' attitude in the old order of things does not lead force to the plea for the incorporation of clause 83C. I have every hope that Hon'ble Members will reject the amendment in view of the above statement of facts and reasons, as also of its certain deleterious effect upon Indian Commerce and Industry, so accurately described by the British Indian Association of Calcutta: 'It would clog the wheels of progress and considerably hamper industrial enterprise.'

The Council here adjourned for lunch.

TREATMENT OF INDIANS IN SOUTH AFRICA.

His Excellency the President:—"Before resuming the business of Council I am anxious to avail myself of this opportunity to give to Hon'ble Members all the information in my possession on a subject which has recently occupied the very serious attention of the Government of India, that is to say, the troubles that have arisen in South Africa in connection with the treatment of Indians in that country. This Council will recollect that in consequence of the outbreak of passive resistance and of the strikes in Natal in the month of November last, the South African Government appointed a Commission to investigate the causes of the disturbances in Natal and to formulate proposals for dealing with the alleged grievances of the Indian population. That Commission was presided over by a Judge of the Supreme Court assisted by two Members, and a forecast of their conclusions was made public yesterday in the daily press. The Report of the Commission has been laid on the table of the Union Parliament at 2 o'clock today, and I should now like to explain in fuller detail to my Council the significance of the Commission's Report.

"In the first place, the Commission recommend the repeal of section 6 of an Act passed by the Natal Government, No. 17 of 1895, which imposed on indentured Indians who have completed their service of indenture and failed either to re-indenture or to return to India an annual licence tax of £3. I do not desire to weary the Council with a complete history of the negotiations between the Natal Government and the Government of India in 1894 and subsequent years which preceded the imposition and subsequent modification of this tax. Its imposition arose from the fear entertained by the Natal Government that indentured Indians, on completion of their indenture, would settle in that Colony in such numbers as to form an embarrassing problem to those interested in the future of the country. The Government of India at that time desired to secure the continuance of emigration to Natal as forming a valuable outlet for the surplus agricultural population, while maintaining that failure to return to India or to re-indenture at the end of the original indenture period should not entail criminal prosecution and the penalties that are ordinarily attached to breaches of the criminal law. From this point of view, the action subsequently taken by the Natal Government, that is to say, the imposition of a £3 tax on

those who failed to re-indenture or to return to India after the expiry of the period of the original contract, was considered to be the most reasonable solution of a very difficult question. Modifications in the £3 tax have been made from time to time by legislation with the object, amongst others, of exempting such women as were not in a position to pay. But it has been felt for some time that the tax was undesirable and burdensome, and since the complete cessation by order of the Government of India in 1911 of all indentured emigration to Natal, the retention of this tax and its capricious enforcement, even though it is not levied on more than a small number of those liable, has been a constant source of irritation among Indians in Natal. When the Immigration Act of 1913 was passed, it was hoped in many quarters that the occasion might be utilised to repeal this objectionable impost; but this unfortunately was not done.

"The Government of India welcome the recommendation of the Commission for the repeal of this tax, and although they fully realise that the Government of South Africa are not definitely committed to the findings of the Commission, they earnestly hope that the Government of the Union may accept this proposal and give effect to it at the earliest possible date by means of the necessary legislation.

"Next in importance to this question of the repeal of the £3 tax, there is the necessity of providing by some form of legislation for the position of women either in South Africa or desiring to enter South Africa, who are married to Indians by a form of union which is not at present recognised by the laws of that country. The South African legislature has hitherto shown disinclination to give any form of legal recognition to marriages performed according to the rites of any religion which permits the practice of polygamy. This attitude has been necessarily extremely embarrassing to Indians in South Africa whether married to one wife or two wives or more wives, who desired to obtain recognition for at least one wife. The Report of the Commission contains numerous recommendations intended to meet the reasonable requirements of Mahommedans and Hindus in respect of this difficulty. The substance of their recommendations is that a law should be passed providing for the appointment of marriage officers from amongst the Indian priests of different denominations whose duty it would be to solemnise future marriages in accordance with the religion of parties to the transaction and duly to register the same. Only one marriage in each case can be so solemnised and registered, and it will then have the great advantage of ranking entirely with any other marriage contracted under the laws of the Union. Existing actual monogamous marriages are to be similarly recognised by this law, and further provision is to be made for the admission into the Union, along with her minor children, of one wife in the case of any Indian who is married according to the tenets of his religion whether it recognised polygamy or not outside the Union of South Africa, provided that she is the only wife in the country.

"Further—and this I venture to think is a very noteworthy and important proposal—it is recommended that Indians, after registering one wife in the manner to which I have already referred, should not be debarred in any way from contracting other marriages according to their own religious rites, though it will, of course, be impossible to accord to such marriages any form of legal recognition whatsoever.

"Next the Commission have dealt with some minor grievances which formed the subject of protest on the part of the Indian population in South Africa against the recently enacted Immigration Act. They have recommended that a clause in the Act which repeats the provisions of a law of the Orange Free State directed against the immigration of Asiatics should, I understand, be made unobjectionable by the issue of executive orders of a nature calculated to remove all cause for dissatisfaction. Also that certain existing restrictions, with regard to the issue of certificates enabling Indian residents in South Africa to leave the country and to return within stated period, should be modified in a very favourable manner. Measures are also recommended for increasing the facilities for the issue of permits to those Indians who desire to visit the Union for temporary purposes.

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"In these recommendations I find a very complete and satisfactory attempt to arrive at a final solution of the difficulties that have arisen in South Africa, and I should like to take this opportunity of expressing the warm appreciation of the Government of India of the broad and statesmanlike manner in which these difficult questions have been approached and dealt with by the Commission. I believe the presence and active co-operation of Sir Benjamin Robertson, to whom we are indebted for his firm and conciliatory attitude, has very materially contributed to the formulation of these proposals, and I feel confident that if, as I sincerely trust will be the case, they are adopted by the Union Government and combined with sympathetic administration of the existing laws, they should undoubtedly lead to a lasting settlement.

"The Commission of Inquiry regretted very greatly that the Indians, for reasons to which I need not refer, failed to appear before them and to give evidence not only on the questions with which I have dealt, but in connection with the various cases of ill-treatment which were alleged to have occurred at the time the Commission was appointed. I share that regret, and I cannot help thinking that the Indians would have been better advised had they accepted the counsel that I tendered to them in my speech in Calcutta in December last when I strongly urged that they should appear before the Commission and give their evidence on all matters that were referred to that Tribunal for inquiry. The Commission, though labouring under some disadvantage as a result of this abstinence, have framed their recommendations on broad and liberal lines; and should the South African Government give effect to these recommendations by legislation, I sincerely trust that the settlement thus embodied in the law will be accepted in this country by all loyal subjects of His Majesty the King-Emperor."

His Excellency the Viceroy then withdrew and the Hon'ble Sir Harcourt Butler, the Vice-President, took the Chair.

THE INDIAN COMPANIES (AMENDMENT) BILL.

The Hon'ble the Vice-President:—"The Council will now continue the debate on the Companies Bill."

The Hon'ble Mr. Meugens:—"Sir, it seems to me that the Hon'ble Member's amendment for the re-insertion of this clause, requiring, in most cases, a majority of independent Directors, suggests failure to appreciate the real objects of the Bill. Consideration of the Bill as a whole must show that its aim is not entirely to deprive Managing Agents of their power but rather to provide shareholders with the means of ascertaining whether that power is being abused. To appreciate the question one must consider certain essential features of the managing-agent system. Certain factors, such as the high cost of living and the necessity for long leave, combine to render the home system of employing individual whole-time secretaries and managers impossible, but the managing-agent system admits of economical management and continuity of policy and so overcomes these two main difficulties. The success of the scheme is also largely due to the fact that the managing agent, being in charge of many concerns and having wide interests, is able to trade one company with another and so enable them, large and small alike, to earn profits. This very feature of the system, however, involves this difficulty, that, not being whole-time servants of the company, the managing agents have interests which may on occasions conflict with those of their Principal, the company in their charge. From my own experience of the way in which large managing agents' offices are run, I can safely say that what may be called departmental jealousy affords a better safeguard against unfair treatment than could be obtained by any amount of supervision by outside directors. That, however, although well enough in practice, can hardly be said to fulfil the requirements of the law of principal and agent, which are that an agent shall disclose the nature of his interest to his principal, and it is obvious that any prudent agent would welcome the appointment of some person or persons representing his principal, the Company, to whom he could make the required disclosure, if only as a protection to himself. The independent Director is

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the obvious solution, but it by no means follows that he need be in a majority. It is an essential part of the system that the regulations or articles of the company endow the managing agent with very full powers indeed, and it is in the highest degree undesirable that there should be forced upon the company a group of persons, without perhaps knowledge or experience, capable nevertheless of over-ruling the managing agent, who, apart from his special qualifications, has usually the largest stake in the concern. The Bill is not intended to take the control out of the hands of the managing agent. If it were, it would, I think, be the greatest mistake that could be made. It is merely intended that there may be one or more representatives of the shareholders on the Board to see that the company is being fairly treated, and if the managing agents do not permit such representation, they place themselves in an extremely awkward position. The Bill as it stands is little more than an indication of how the difficulties incidental to the system can best be overcome, and it is for managing agents, for their own protection, to accept the principle that shareholders should be independently represented on the Board. It is the business of managing agents to direct as well as manage, and the policy of the company must always be the policy of the managing agents. If the shareholders' representative disapproves that policy or considers that the company is not being fairly treated, he can always communicate with his shareholders and let them take what action they please.

"I am therefore against the re-insertion of section 830, but if later it be found that managing agents do not, for their own protection and for the satisfaction of shareholders, permit independent representation, it may be that this section will have to be enacted; but in that event it is to be hoped that it will be so modified as not to involve placing the managing agents in a minority."

The Hon'ble Rai Sita Nath Ray Bahadur:—"Sir, I regret that I cannot see my way to support the amendment and go against the decision of the Select Committee of which I was a humble member, for in my opinion nothing can be gained by the insertion of the clause in question. Even now, without this clause, the shareholders are absolutely free to elect any one they please as directors, but you cannot make a law that if the majority of the shares are, as is generally the case, in the hands of the managing agents and their friends and relatives, the minority of the shareholders shall dominate over the majority and be placed in a position to thrust their nominees as directors upon the majority. You cannot reverse the natural order of things and place the majority at the mercy of the minority. In every company there is always a discontented minority who act as a clog to the wheel of progress, who always take delight in thwarting the majority and its managing agents. It is not possible to satisfy everybody and there must be a discontented few everywhere. It is always an easy matter to speak disparagingly of managing agents and to decry them and to belittle their efforts, but it may be said of most of the mills and factories in Calcutta and of tea plantations in Assam that they were promoted, developed, floated by managing agents alone, and it was through their exertions alone that sufficient money could be raised for floating these mills and factories, and so far as I know, these managing agents, at least the majority of them, have hitherto acquitted themselves well by their efficient management of their respective companies and by giving satisfactory dividends to the shareholders. The successful working of a company invariably depends on the honesty, tact and skill of the managing agents and they have rarely been false to their trust. Directors as a rule can exercise and generally do exercise very little effective control over the management, and I must say that there is no justification, at least so far as the present is concerned, for the insertion of clause 830, for if the majority of the shares are held by the managing agents it will not be possible to secure a Board of independent directors or a majority of such directors who would be hostile to the managing agents. In such a case the election of a director must necessarily depend on the good grace of the managing agents. Under the circumstances, so long as the managing agents hold a majority of shares it would be a futile attempt to provide that the majority of directors should be independent of the managing agents. The result of such a provision would be that, while we should have a

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seemingly independent Board of directors, virtually and in practice they will be subservient to the will of the managing agents. Under these circumstances I am sorry that I cannot see my way to support the amendment."

The Hon'ble Mr. Monteath:—"Sir, I have listened, and listened with attention, to the various arguments that the Hon'ble Mover of this amendment has put forward, and I am sorry to say that, although he has striven hard to make a good case, I cannot altogether agree with him. In the first place, it appears to me that he starts off on a wrong basis. He assumes that directors have been asked for or are necessary. I can only speak for Bengal; but as far as Bengal is concerned, I do not know that I have ever heard that directors were necessary. There is another thing too, we started off on this legislation with the intention of following the English Act. These five clauses go far beyond the English Act. The English Act allows the shareholders, who in reality are the proprietors of the company, not only to select its own form of management, but also to select its own directors; but if this particular clause was included, it means not only that the form of management must be directorships, but also that the choice of directors is limited. You may know the best man, and yet you are not allowed to elect him.

"There is yet another thing that I should like to draw attention to, and that is that the Hon'ble Member, in moving this amendment, referred to the unanimity of the Report of the Select Committee a year ago, and I should in that connection like to point out that it was unanimous, but on one condition, that these five clauses should be deferred for future consideration."

The Hon'ble Mr. Clark:—"Sir, it has been my lot in past years to listen to a great many debates in the House of Commons and to have watched many forms of pressure or suasion being exercised with varying degrees of ingenuity and subtlety upon the Government of the day. In the course of these sometimes rather weary hours, I have frequently noticed that the type of proposal which it is most difficult for a Government to resist is one which, coming from an official foe or from a candid friend (in which latter category I hope I may include the Hon'ble Member who has moved this amendment), urges that Government should progress further and faster on its road than it considers either desirable or expedient and promises it in so doing a generous measure of support. It cannot but seem churlish to refuse a motion which comes in so enticing a guise. Now, it is precisely in this invidious position that my Hon'ble friend Sir Ibrahim's motion is placing Government. Government, in view of the representations which they have received, consider it desirable for the present to stop short of making independent directorates compulsory by legislation: my Hon'ble friend and those who have supported him would urge us on and persuade us to make them compulsory here and now. I am very loathe to have to refuse the Hon'ble Member's motion, for I am in agreement with much that he says, though I also hold very strongly that he has gravely exaggerated the objections to the course which Government propose to pursue, and I differ altogether from his view that the omission of this clause impairs the permanent value of the legislation proposed in this Bill, or still less, as he would appear to hold, the value of the main Companies Act which we passed last year. I agree with him—to take our points of agreement first—and in this matter I have in no way changed the view I held last year—that a directorate independent of the managing agents is a preferable organization for a company in which the managing agents do not hold the controlling interest. I do not hold that view because I think managing agents cannot ordinarily be trusted to manage a company disinterestedly; and I hope—though I am not sure—that the Hon'ble Member does not either. Were that assumption valid, there would, of course, be an overwhelmingly strong case for enacting this clause. But, equally of course, it is not valid, and Government, when the clause was laid before the Select Committee last year, never put it forward on such grounds. They did not propose, as the Hon'ble Mr. Meugens, I think, has pointed out, that the directorate should entirely supersede the managing agents, which is what, I fancy, the Hon'ble Sir Ibrahim would like to see. But, apart from this, the advantages of a board containing an independent

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majority are obvious. Such a board would protect a managing agent firm from any suspicion of unduly favouring the firm's interests to the detriment of the interests of the managed companies. Or, if a director interested in a contract entered into on behalf of a company, discloses his interests as required under clause 91 (a) of the Bill, the presence of independent directors may often be of great value; and in the case, which of course has to be contemplated, of a company getting into the hands of an untrustworthy agency, the independent directorate would afford them the means of ascertaining whether the powers of the agents are being used to their detriment. Another point on which I am in agreement with the Hon'ble Member is in regard to the criticisms which have been levelled against this clause on the ground that it would have been easy of evasion. These criticisms have indicated that some modifications might have been necessary, but I agree with him that they do not demonstrate that the difficulties of drafting a watertight clause would be insuperable. I have not, as I have said, changed my views on these points, but the whole question turns on whether it is essential now and without any further delay to make such an independent directorate compulsory by law, especially in view of the feeling to the contrary which is held in commercial circles. The Hon'ble Member holds that it is necessary. On the one hand, he takes, as I have already said, a very gloomy view of the commercial morality of managing agents as a class. On the other hand, he despairs of shareholders being educated up to taking an interest in their concerns. He considers that their apathy has been established for all time by the experience of the working of the Company law since 1882, and he holds therefore that the legislature should step in and compel them, if they hold the controlling power in the company, to appoint directors independent of the managing firms. These are the points on which I think the Hon'ble Member has failed to establish his case. I think the further light which has been thrown on this subject by the discussions in the current year have indicated that there are good grounds for at least giving a further trial to the operation of what may be termed natural causes before the State steps in. Every one will agree that it is far preferable, if possible, that such changes should come about without the interference of the legislature, if there is any prospect of their doing so; and what we have to consider is whether there is any reasonable prospect of such a result. Important commercial bodies on both sides of India have urged the desirability of not pressing the enactment of this clause. The Hon'ble Member has hinted that Government are agreeing to drop it because of opposition from Calcutta—well, hinted is perhaps hardly the word—he went a good deal further than that—and he supported his case with every argument he could think of, some serious and some purely frivolous. As to the latter, I will only say that if the Bengal Chamber were really wooing me to return to their bosom, they took a very curious way of doing it last year. At least if that was their real feeling, their attitude towards me last year may best be described in the words of the text 'whom he loveth, he chasteneth'. But to return to the more serious arguments, the Hon'ble Member has been trying to persuade Council that the attitude of Government on this clause now is solely due to the opposition to it which came from the Bengal Chamber. It is quite true that its omission was moved in Select Committee by the Hon'ble Mr. Montearth, who represents the Bengal Chamber of Commerce, but Council should also bear in mind that its exclusion had been advocated by the Bombay Chamber of Commerce, by the Bombay Mill-owners' Association, by the Madras Chamber of Commerce and by an important section of a Chamber which failed somehow to find any mention at all in the Hon'ble Member's speech, the Hon'ble Member's own Chamber, the Indian Merchants' Chamber of Bombay. When I happened to mention that section of his Chamber to him in Select Committee, he rather unkindly disposed of those who were in favour of excluding the clause, by saying that they were far too much interested to give an unbiassed opinion. Well, it is easy for the Hon'ble Member to say that kind of thing, but Government cannot treat representations from accredited commercial bodies in quite so cavalier a fashion. Nor can they take up the attitude which the Hon'ble Mr. Pandit and the Hon'ble Mr. Achariar were inclined to take up in their minute of dissent on this Bill, that in view of the careful consideration given to the Bill by the Committee of last year, no change of any substance

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should have been made in it as compared with its shape when it issued from the Committee of last year. I think Hon'ble Members are inclined to overlook the circumstances which hampered the examination of this clause last year. I thoroughly appreciated, when I brought them forward, that they were on a different footing to other clauses in the Bill because they had not been circulated. Ordinarily, as Hon'ble Members know, an important Bill, or for a matter of that, any Bill, is circulated through Local Governments to commercial bodies, to every body who has an interest in it and to very many people who have no interest in it, in order that we may get their full and detailed views upon it. In this case I was fully conscious that I was bringing forward proposals of great importance to Indian Commerce which had not been treated in that way, and when I moved to set up the Select Committee, after explaining the reasons why we could not embody them in the original Bill, which I need not recapitulate, I called special attention to these clauses. I hoped that by so doing they would get a certain amount of notice in the Press; that they would be seen and studied by commercial people, partly in that way and partly through the representatives of the Chambers of Commerce here; and that we should be able to get a very full expression of opinion on them before the Committee stage of the examination of the Bill was completed; however, those hopes were disappointed. The Committee of the Bengal Chamber of Commerce considered that they could not express an opinion upon them without an examination extending over several months, and, apparently, a sort of referendum to every Member of the Chamber; and they accordingly expressed their inability either to brief their own representative or to discuss the clauses with me while they were still in Committee last year. At the time this seemed to me, shall I say, over-meticulous on their part; and even now, if the Hon'ble Mr. Monteath will forgive my saying so, I have scarcely achieved conviction that it was necessary; but at any rate that was the view they took. At the same time we were deprived of any assistance from the representative of the Bombay Chamber of Commerce, who found himself unable to attend the meetings of the Committee. Government therefore did not obtain the same degree of assistance which they usually receive in such matters from the commercial community. If they had received it, I think the question of this clause, and, of course, of the rest of the Bill, could quite well have been disposed of last year, and the additional labour involved in circulation, and in reconsideration by this year's Committee, would have been avoided. But, though we may regret that this did not happen, that does not discharge Government from its duty of listening to, and very carefully weighing, the considerations which have now been put before them in support of certain modifications in the Bill. What the Bengal Chamber have now advocated, is the postponement of the entire measure until the Companies Act of last year should have been in force for some considerable time. That view has not been supported in other quarters, and it is not one to which Government could agree. But the position is different in regard to this particular clause. As I have said, it is not merely a case of being asked to stay our hand from one quarter only, but the request to leave it out has come from several important centres in India. It has come from Calcutta, Bombay and Madras—in Bombay from more than one section of the community; not only from the British Chamber of Commerce, but also from the Indian Mill-owners' Association and the Indian Merchants' Chamber. Now, Sir, the Hon'ble Member has urged that Local Governments have not agreed with the Chambers of Commerce in the view they have put forward on this question. I think we are only really concerned here with the Local Governments in whose jurisdiction fall the important Chambers. It is very natural that the others should say 'this is a reasonable proposition', just as we feel that it is quite a reasonable proposition, and it is not for them to go into the possible difficulties which may occur in putting a clause of this kind into operation. So I only deal here with the principal Local Governments and in this case, really what it comes to, is the Local Governments of Bengal and Bombay.

"Now, the Hon'ble Member said that we are very fond of quoting Local Governments when they are on our side, to enable us to refuse something which Hon'ble Members opposite are pressing for; but that we are now overruling

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them in a matter in which they are on the same side as the Hon'ble Members themselves. But I think this is a matter in which the Government of India cannot shelter itself behind the Local Governments. The interests of commerce in its larger aspect are in our charge, and this is a question which is only in a very minor degree governed by local conditions. The ultimate responsibility rests and must rest with the Imperial Government in choosing between the views put forward by the Local Governments and by the Chambers of Commerce. We are after all in direct touch with the Chambers of Commerce. In the ordinary way, in the administration of the Government of India, if any person or body of persons in the provinces wishes to bring any matter to the notice of Government, he or they have to come up to the Imperial Government through the Local Government. In some matters Chambers of Commerce do that too, but all the principal Chambers have the right of direct access to the Government of India; and as Hon'ble Members know, it is one of the duties of the Members in charge of the Commercial and Financial Departments, myself and my Hon'ble colleague the Finance Member—when they are on tour—to meet the Chambers direct, to discuss matters with them, and to deal with them without any intermediary. Possibly, it may sometimes occur that on these matters the Chambers are more free in putting their point of view—it is very natural that it should be so—direct to the authorities who have ultimately to decide the matter, and go into these matters more fully with us than with the Local Government. I am not in a position to say whether Local Governments discuss these matters by word of mouth as well as by correspondence. It will be obvious to the Council that the former method is the one by which we very often obtain a greater and more intimate knowledge of a question; it is the method which I have followed in dealing with this Bill, and I take the fullest responsibility for so doing. Now, the point I wish to put to the Council is this. I feel very strongly that the requests of these Chambers cannot be so lightly brushed aside as the Hon'ble Sir Ibrahim would wish us on the mere plea that they are interested and biased parties. It goes a great deal deeper than that. And at this particular moment Government cannot but recognise that those who argue that shareholders are becoming more alive to their own interests, have some reason on their side. There was a good deal in Sir Fazulbhoj Currimbhoj's remarks on this clause with which I do not agree, but the Council will not fail to have been impressed—and Sir Fazulbhoj is a commercial man of great experience—with what he told us about the increased interest which shareholders take in the affairs of companies in Bombay. Then, there is the Act of 1913, which will come into force within a few weeks. That Act contains improved provisions relating to accounts and the authentication of balance sheet; the greatly enlarged balance sheet which has now been prescribed; the powers conferred on Local Governments of appointing Inspectors to investigate the affairs of a company (a provision special to the Indian law, which has not been tested by experience); the greatly improved audit:—all provisions leading to a far greater knowledge of the management of a company than heretofore. Apart too from the information available only to shareholders there will be a much larger measure of publicity and more criticism in the financial and commercial Press, which perhaps has more effect on the generality of shareholders than the contents of a Company's official reports. It cannot be gainsaid that the Act comes into force at a psychological moment, when people's minds have been stirred by the recent financial and industrial failures. I do not say that the investor's education will be completed all at once. I am so far in agreement with the Hon'ble Member that I am not over-sanguine about shareholders as a class. But I submit that it does make a strong additional reason why we should not refuse to listen to the mercantile opinion which asks for the postponement of this clause. We do not after all lose much by delay. If experience shows that shareholders still do not avail themselves of their undoubted powers, further legislation on the lines of this clause is always possible.

“There is one more point on which I do not in the least agree with the Hon'ble Member, namely, that failing the inclusion of this clause, the value of the Bill is so impaired as he would have us believe. This has been especially urged in connection with the clauses relating to contracts. Now,

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for the most important of those clauses is the last clause of the Bill, which deals with contracts made by the agents of a company in which the company is an undisclosed principal, and which prescribes that the memorandum made at the time of entering into the contract shall be filed in the office of the company and laid before the directors at the next directors' meeting. The object of this provision was to secure that managing agents at the time of making such a contract should decide definitely whether it was made on their own behalf or on behalf of one or more managed companies, and should record a memorandum as evidence of their decision. The attainment of this object is not prejudiced by the omission of clause 830. The memorandum will still be filed, and the penalty for failure to comply with the requirement remains. What the Hon'ble Member really wishes is to go very much further than Government ever contemplated. He would like not only to prescribe the independent directorate which we originally had in mind, but also to lay down, as I gathered from his speech, that the directors are to meet at short intervals so as to be supervising the actions of the managing agents at almost every turn. The main ground he urged was this. He brought it forward in a very tentative way, but what he was hinting at was that managing agents sometimes are given, from the inside knowledge they obtain of the working of a company's business, to gamble in the companies' shares. Naturally, as managing officers of the company, they have special knowledge of its affairs: they know beforehand what the report of the company's working for the year is going to be, and they are in a position to buy or sell shares accordingly. Now, I have no knowledge whether this is really a common practice or not; but whether or not the practice is a common one, I do not see how the institution of independent directorates is going to stop it. You cannot prevent the managing agents or the manager of a company from having more inside knowledge of the working of the company than the directors, and if the manager or managers having a holding in the company use that knowledge to gamble in their shares, I must confess that I fail to see how the directors *quod* directors are going to be especially in a position to detect them, particularly in a country where the blank-transfer system facilitates irregular dealings. The question of their detection will depend on how far they can keep their share transactions secret, and that in the long run, if their transactions are on at all a large scale, will not be a very easy matter. At any rate it does not seem to have much bearing on the question we are discussing today, as to whether this clause is or is not to be replaced in the Bill.

"The last point I want to urge on the Council is this. Managing agents cannot have it both ways. The whole trend of company legislation is to place greater responsibility upon the directorate. This Bill—not only the Bill we passed last year, but this Bill also—is going to increase that responsibility. If the managing agents prefer to keep the directorate in their hands, they will have to shoulder the entire responsibility, and the onus will rest on them if things go wrong. That will work in one of two directions. Either they will themselves in their own interests, as the Hon'ble Mr. Meugens suggested, prefer to have a directorate with a strong independent element in it; or they will perform their functions with scrupulous regard to the interests in their charge; and I think it is not unreasonable that we should go so far to meet the wishes of the commercial community in this country as to wait a little longer, to see whether these causes are going to operate in that way.

"These, Sir, are the motives which have swayed Government in deciding to postpone to the present exclusion of this clause. They look on the question as postponed until such time as will enable them to see whether, under the new stimulus that has now been brought to bear upon them by the Act passed last year and by the financial trials through which the country has been passing, shareholders will show a greater tendency to exercise their powers. If they do not do so, it will always be open to Government to have recourse to legislation on these or similar lines. I cannot accept the amendment."

The Hon'ble Mr. Pandit:—"Sir, as one of the members of the Select Committee who dissented from the conclusions arrived at by the majority of my

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colleagues, I feel it necessary, in supporting the amendment, to answer a few points urged by the Hon'ble Mr. Clark. I did not think it necessary at the earlier stage of the debate to offer any argument in addition to what had been put forward so completely and elaborately by the Hon'ble Sir Ibrahim Rahimtoola. The Hon'ble Member in charge has spoken approvingly of many of the arguments that were addressed in pressing this amendment to the acceptance of this Council; and it renders my task the easier, as I need not cover the whole ground which was covered in the speeches of the Hon'ble Sir Fazulbhoj and some other speakers who opposed the amendment.

"Sir, the question really is this. We are attempting by this legislation to provide checks against misuse of the power vested in the managing agents. It is not relevant to ask whether the majority of the managing agents have been managing in their own interests to the detriment of those of the shareholders. In all legislation it is not for honest people that the legislation is needed; but it is for those who are likely to transgress the proprieties and rectitude of conduct that we legislate. Our criminal law, for example, is not needed for good citizens. Even if it be shewn that the great majority of Managing Agents have conducted themselves properly; none the less, if we have examples where mischief has occurred in the present state of this country where the shareholders are not so much alive to their interests as in other commercially and educationally more advanced countries, it becomes necessary for the State to protect their interests in as reasonable a manner as can be expected.

"The provision which was embodied in clause 830 was only with respect to companies where the managing agents do not hold three-fourths of the capital of the company. It was provided, and the amendment also provides, that where the preponderance of the interest of the managing agents is so great as that, we shall not ask for a majority of independent directors; but where it is not so great, it is absolutely necessary that there should be provision for independent directors being in a majority on the Board. It has been urged by my Hon'ble friends who have spoken against this amendment that there is absolutely no reason why this legislation should deprive the shareholders of their right of electing whomsoever they liked as directors; and that would apply only to a case where the managing agents and other shareholders over whom they can exercise influence, are in a majority. But there is no provision even where they are not in a majority for securing the election of a majority of independent directors. The contention has been put forward that if the shareholders who are not members of the firm of the managing agents, are in a majority, they can certainly exercise their right and elect whomsoever they liked by a majority of votes. In the first place, I wish to draw the attention of the Council to the fact that with regard to voting in the articles of association of a company, there is not always the provision which we have introduced in the Companies Act, that if the articles do not provide otherwise every one shall have one vote for the share he holds. Secondly, the Managing Agents although they may not hold a majority of shares, yet because they are one body, can always act with set purpose and they could always secure their preponderance by a solid vote at meetings where the directors are elected. With regard to the other shareholders, even though they may be in a majority, it is next to impossible to get every one of them to attend in person or by proxy where this is permitted, and every one of them to take the same intelligent interest as regards the company's affairs. It is in this way, I think, that even where the Managing Agents do not hold a majority of shares, they have the spurious advantage of securing a majority of directors who are entirely in their hands. This cannot be to the interest of the investing public; nor, I submit, can it conduce to the greater development of the industries of the land.

"Sir, with regard to the contention that myself and my Hon'ble friend Mr. Vijiaraghavaohariar put forward in the minute of dissent which we submitted, that we had not heard any new arguments in support of the deletion of this clause 830 which had not been urged before the Select Committee of last year, the Hon'ble Mr. Clark referring to it urged that that Committee did not settle the question finally because the clause in question had not been formally circulated to the various Local Govern-

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ments and the country generally, and that, consequently, the conclusions of last year cannot be taken as the point from which we should not depart or in any way modify our position, unless new and fresh arguments are brought forward in order to enable us to alter our views. Well, Sir, the arguments that have been brought forward in these various opinions as a result of the formal circulation, as my Hon'ble friend the Mover has pointed out, have been almost all in favour of those clauses. The Chambers of Commerce have in some cases opposed these clauses; but anybody who looks into the manner in which these opinions have come from them, will feel considerable doubt as to whether these opinions are independent or whether they are not more or less engineered opinions. I wish to speak with all consideration and respect to those bodies; but I find from these opinions that some of the Chambers of Commerce who had already pronounced their opinions in favour of this clause even after the formal circulation subsequently modified them, after they had seen the opinions given by other hostile Chambers of Commerce. I would refer particularly to the Cocanada Chamber of Commerce in the Madras Presidency which thus modified its opinion subsequently. Although asked to express their opinions early in June some of them, e.g., the Madras Chamber, deferred their replies until after Bombay and Bengal Chambers had settled their policy.

"With regard to the Bombay Chamber of Commerce and the Mill-owners Association it appears that the opinions expressed on their behalf have been from the pen of one and the same gentleman, who is the Secretary of both these Associations; and the views of the latter are more or less echoes of the opinion given by the Bombay Chamber of Commerce. Other Chambers of Commerce, however, the Punjab Chamber of Commerce and those of Burma and Upper India and several others have been in favour of these clauses. I submit, therefore, Sir, that it cannot be contended that even commercial opinion is all on one side and opposed to the provisions which are sought to be introduced by the amendment.

"I fail to see why the provisions for directors such as are proposed by this amendment should necessarily lead to the ruin of these various concerns which are entrusted to the managing agents. I would ask my Hon'ble friend Sir Fazulbhoy Curreimbhoy, who has spoken of the secrets which managing agents would not be willing to part with in favour of their independent colleagues on the Board, whether, in concerns run by managing agents, there are not already on the Boards of Directors of the various companies persons who do not belong to the firm of managing agents; and if their existence on the Board of Directors is not altogether inconsistent with the keeping of these secrets, then there is no reason why, if a compulsory majority of independent directors is provided, these secrets should leak out more quickly than under the present circumstances.

"The Hon'ble Member in charge of the Bill has pointed to the important clauses with regard to the contract entered into by managing agents which have been inserted in the Bill as sufficiently protecting members; but if the Directors are not independent, the value of these clauses will be lost. The clause provides that the memorandum should be placed before the next meeting of the directors. If the directors or a majority of them are merely the kith and kin or members of the firm of managing agents, there is absolutely no purpose served by placing the memorandum before the directors. In fact there is nothing to prevent a meeting of such Directors not being held for almost a whole year or for any period which the managing agents may deem fit—"

The Hon'ble Mr. Clark :—"The Hon'ble Member is wrong. The memorandum is to be filed in the reference to the company as well as at the meeting of directors. It is laid before the meeting when it is first filed; that is the important matter."

The Hon'ble Mr. Pandit :—"The clause to which I refer runs as follows :—

91-D. (2) Every such manager or other agent shall forthwith deliver the memorandum aforesaid to the company and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

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"So that the filing of the document will be of no importance whatever. The gist of the clause is that it should be placed at the next meeting of the directors and sub-clause (3) provides that if within a reasonable time the directors refuse to accept it."

The Hon'ble Mr. Clark:—I am sorry to interrupt the Hon'ble Member; but the clause makes no such provision. Clause 91 (d) (3) runs as follows:—

If any such manager or other agent shall make default in complying with the requirements of this section—

- (a) the contract shall, at the option of the company, be void as against the company; and
- (b) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.

"That is to say if he does not file it, then he is liable to fine; not if the directors do not accept the contract. The Hon'ble Member has misread the clause."

The Hon'ble Mr. Pandit:—"I accept the correction. I had for the moment not read the clause through. But all the same, my point remains that it has to be placed before the next meeting of the directors and that is intended as a check upon the action of the managing agents. That check will be absolutely non-existent if there is no provision for a majority of independent directors.

"Now, with regard to the mischief in some cases of managing agents being able to work concerns, especially when they are managing agents of several concerns, so that they might ruin one company and at its expense make the fortune of another company in order that their speculations might be carried on successfully, I submit that the opinions which we have received throw a lurid light upon the proceedings of some of them. I would not include the great majority of them in that category. The extent of the mischief is clear from the opinions sent by the Registrars of Joint Stock Companies in various provinces, particularly Bombay and Madras, and has led several business men of wide experience and trading and other associations, such as the Bhatia Mitra Mandal, Bombay Presidency Trades Association, Bengal Mahajan Sabha, Mr. Nussurwanji of Murrée, K. B. D. Patel of Baluchistan and other commercial gentlemen to draw pointed attention to the evil of the system by giving concrete instances.

"It is necessary that these provisions should be enacted. The Hon'ble Member in charge of the Bill said—'I do not see how by having independent directors there can be any less chance of such speculation in the interests of managing agents to the prejudice of shareholders'. I submit that if there were a number of independent directors they would insist on meeting frequently and would certainly come to know how the affairs of the company were going and if profitable they would also naturally like to have a share in the speculations by purchasing the shares or stock and in that way when there is a competition between these directors surely the secret manner in which the investing public is duped by rise and fall in value brought about by agents would not be possible. With a number of directors, and in particular if they are trying to sell or buy shares, the public would certainly be put upon their guard, and that would lead them to inquire into the drift of the transactions. I submit that indirectly there will thus be a certain security to the investing public.

"The Hon'ble Mr. Monteath has spoken against this amendment. In the speech which he delivered at the Annual Meeting of the Bengal Chamber he challenged the world to point to any business man, not being a figure head director, who supported such a provision as is embodied in clause 93C.

"The Hon'ble Mover of this amendment is himself, I believe, a business man. He is a director of several commercial concerns in Bombay, and this amendment at any rate does not come from a person entirely unconnected with business and ignorant of business methods. Sir, I wish to appeal to the Hon'ble Member in charge in connection with this amendment. A great deal of importance has been attached by all the Local Governments, all the Registrars of Joint Stock Companies and the various other bodies and persons that

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have been consulted as to the necessity of a provision such as is embodied in clause 830. The only bodies that are opposed to it, mainly composed of European firms, may be considered as having vested interests with which as was already anticipated they are naturally reluctant to part to the smallest extent. We had, of course, another section which was for the protection of shareholders — that clause 77 to which the Hon'ble Mover referred—dropped in Council by the Hon'ble Mr. Clark last year. The original clause 88A was negatived this morning, and now clause 830 also runs the risk of sharing the same fate. This small Bill which was considered of the greatest importance by the Hon'ble Member consisted of five clauses. One of them had already had its fate sealed by not making it applicable to existing companies, and this clause 830 is also threatened with total rejection. The country at large having expressed an unequivocal opinion on this question will rather be inclined to suppose that we have been in a hurry to overtake the Indian Companies Act of 1913, which is to come into force on 1st April, 1914, and because we wish to make these clauses also come into operation from the same date, the country will suspect that the Legislative Council felt as if it must throw its turnpikes open to let this mutilated Bill run its race with the Act of 1913. And perhaps if we are not very careful in giving our verdict upon this amendment in a proper spirit, the words of the poet,—

'Away went hat and wig.

'He little dreamt when he set out of running such a rig.'

might be applied to, and will not redound to the credit either of the Government or this Council.

"I support the motion."

The Hon'ble Mr. Vijayaraghavachariar:—"Sir, I have a few remarks to make. I rise to support the amendment moved so ably by the Hon'ble Sir Ibrahim Rahimtoola. It strikes me that the question can be discussed independent of any reference to what has been done by the Select Committee last year or the Select Committee this year. The question is whether persons having a personal interest in contracts and other affairs of a company, other than as shareholders, should be allowed to be in the majority on the board of directors. As regards this point, the simple question is this, whether the majority of directors, whenever questions arise in which they have a personal interest, should be called upon to decide as a majority both for themselves as managing agents and also for the shareholders. It seems to me that the question admits of one and only answer. It has been settled long ago in England that it is undesirable to have persons as directors who have such conflicting interests. I shall just quote one or two passages of high authority on the point. James (L. J.) in *Smith vs. Anderson* says: 'The director never enters into a contract for himself but for his principal, the company'. He is thus a sort of trustee.

"Lord Cramworth in the case of *Aberdeen Railway Company* says—

The directors have duties to discharge which are of a fiduciary character towards their principal, the company, and it is a rule of universal application that no one having such duties to discharge shall be allowed to enter into engagements in which he has or can have a personal interest conflicting or which possibly may conflict with the interests of those whom he is bound to protect.

"All that the amendment asks for is to embody this ancient and well-recognised principle in the new Act. Much allusion is made to the English law on the subject. We must remember that in this country enterprise by way of joint stock is in a state of infancy. It is borrowed from England where, I believe, more than in any other country, it was developed and perfected, as also in America since. Therefore shareholders in India need special protection both on their own account and in view of the development of future enterprise of this kind. Its opponents, Sir Fazulbhoj Currimbhoj and also Mr. Sita Nath Roy, both admit that the vast majority of shareholders are ignorant and therefore they say they should not have a predominant voice. It seems to me, taking that admission as a basis, that that is why Government should specially protect them and give a lesser voice to the managing agents who are admittedly more capable. I cannot understand how, being scattered all over the country and having very little knowledge about joint stock

[*Mr. Vijiaraghavachariar; Sir Ali Imam; The Vice-President.*] [17TH MARCH, 1914.]

enterprise, these people can effectively take care of themselves. It is conceded by some speakers who do not agree with the Hon'ble Mover that such a state of things should, if possible, be remedied by the law. But at the same time they ask for postponement of the question till more experience is gained, why they do not satisfactorily explain. I do not wish to make much of the apparently inconsistent attitude of Government, but both sides have made free use of what had been done by the Select Committee before and by the Select Committee now. I very respectfully submit that wherever, whether in Council or in Select Committee, there is a majority of officials, too much importance should not be attached to the decision of the majority. But in this particular case, if any importance is to be attached at all to such decisions, it has to be attached quite the other way. In the last Select Committee there was a remarkable speech made on the side of the official majority in support of the minority—"

The Hon'ble Sir Ali Imam :—" I rise to a point of order, Sir. I claim that the proceedings of the Select Committee are confidential and the Hon'ble Member, remembering that, will not, perhaps, care to divulge to the Council here anything that happened in that Committee, save and except that which appears in the Select Committee's Report."

The Hon'ble Mr Vijiaraghavachariar :—" Sir, I would call attention to a portion of the speech of the Hon'ble Member in charge. As regards the voting in the Select Committee, the Hon'ble Member in charge alluded to two votes. The Hon'ble Member in charge said that the Hon'ble Mr. Pandit and the Hon'ble Mr. Achariar are the only two persons who voted."

The Hon'ble Sir Ali Imam :—" May I rise to a point of order? Supposing a wrong has been committed, is it the Hon'ble Member's claim that because one wrong has been committed that wrong should be perpetuated? I rise to a point of order in regard to what the Hon'ble Member himself is doing. I do not remember what happened before."

The Hon'ble the Vice-President :—" The Hon'ble Member should not refer to the proceedings of a Select Committee, which have not been published. I did not know at the time whether the proceedings had been published or not."

The Hon'ble Mr. Vijiaraghavachariar :—" I quite accept that ruling, except that I was defending myself, and I would only ask that Hon'ble Members in Council shall attach no importance to the fact urged on the other side that those who dissented from the view of the majority of the Select Committee are very few, because, if we are not allowed to explain it now, is it fair to refer to the fact that two or three dissented? We all do not know what passed there; it may be that several others spoke on our side. Therefore, it is extremely unfair to us to allude to the fact that only two or three members of the Select Committee have dissented from the view. In fact, we should not allude to it at all in any way."

"Then there is another aspect of the case. The Hon'ble Member in charge said that in consequence of the opinions received by the Government of India subsequent to the Report of the first Select Committee he had to change his attitude, but in quoting those opinions just now, he has not referred to the opinions of the Bhattia community of Bombay, who are a highly enterprising mercantile community. They say such a provision as this, which has been deleted by the Select Committee, is essentially necessary and they give instances which are a complete answer to the Hon'ble Sir Fazulbhoj Currimbhoj's challenge that no instances have been found that, owing to the company being managed by managing agents, there have been failures. They give five instances of such failures which this community attribute to management by managing agents. Then we have also the statement of the Registrar of Joint Stock Companies of Madras that certain companies and a bank in the Tinnevely District owed their failures to mismanagement by managing agents."

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In these circumstances it is not fair to say that we know no instances showing failure on account of management by managing agents.

"Another phase of the question arises when the Hon'ble Member in charge said that as regards the opinions of the Local Governments on this important question, the Government of India could not accept them because of the fact that this is a commercial matter and therefore the full responsibility must exclusively belong to the Government of India. Let us accept that position for a moment; but I should also like to allude to some important statements made by the Government of India itself, which are quite germane to the question. In the memorable Despatch of the Government of India, dated August, 1911, the following passage appears :—

Public opinion in Calcutta is by no means always the same as that in places elsewhere in India and it is undesirable that the Government of India should be subject exclusively to its influence.

"Then it says the Government of India would be in a better position in Delhi to deal impartially with the railway and commercial interests of the whole of India. Now the Secretary of State in dealing with this question also alludes to this special passage. He says :—

I am not disposed to attach serious importance to the removal of the Department of Commerce and Industry from a busy centre like Calcutta, for any official disadvantage due to this cause should be counterbalanced by the gain of the wider outlook upon the commercial activities of India as a whole.

"I respectfully submit that the present attitude of Government is not quite loyal to these two pronouncements. Whatever may be said about information from various places, the fact remains (I am sorry to have to say it) that this provision was deleted in Select Committee, I believe, at the instance of the Bengal Chamber of Commerce. Now, people are entitled to hold the view that the influence, I should say almost the fascination, of the Bengal Chamber of Commerce continues no matter where the Government of India is, although it has escaped now these two years from its influence at Calcutta.

"When we allude to the attitude of the Government of India or the Hon'ble Member in charge during the last year when the measure was being considered both in the Council and the Select Committee, we do not mean to charge him with wilful inconsistency, but what we do mean is that the experience of previous years and the opinions collected and recorded induced Government to accept the position which we now invite Government to accept again or rather to retain. Now it is not stated on the other side that they made a mistake in taking up that original attitude. The position assumed now is that subsequent inquiries made the altered attitude necessary. What are the subsequent inquiries? And in the subsequent inquiries is there not a conflict of opinions? Therefore a case must be made out, not by us, but by those who, having once rightly assumed a particular attitude, wish to retrace their steps and assume a contrary position. I respectfully submit it is for them to show that they are entitled to this attitude and it is for them to refute our arguments and not for us to make out a case. I trust, Sir, you will excuse me if I relate a little story by way of illustrating the present position of Government. I respectfully submit that the Government, or at all events some of the responsible Members, still continue under the fascination of the Bengal Chamber of Commerce exclusively. A traveller's story runs as follows :—

A snake chased a squirrel. The squirrel escaped and went high up and joined a host of other squirrels in a banyan tree. The snake, not able to climb the tree and follow the squirrel, posted itself at the bottom of the tree and continued ever to turn its head in the direction of the squirrel which it had chased, and wherever it went the snake was directing its eyes hard at the squirrel. That squirrel, unlike the other squirrels about it in the tree, turned to see what was the game of the snake, and the squirrel so often saw the snake and the snake so often saw the squirrel that, after a good deal of screaming, the squirrel eventually descended and allowed itself to be swallowed by the snake. Thus the squirrel was destroyed by the fascination of the snake.

And if the Hon'ble Member in charge will forgive me, I will only say here that, no matter if Government has escaped the influence of Calcutta these two years, yet I am very sorry to say, it has always been thinking of the Bengal Chamber of Commerce in the sense that the squirrel was thinking of the snake, and it was captured by the Bengal Chamber of Commerce on the principle of fascination. And hence we are where we are."

[*Sir Ibrahim Rahimtoola.*]

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The Hon'ble Sir Ibrahim Rahimtoola :—“ Sir, after the able speech which my Hon'ble friend Mr. Achariar has delivered, my task in replying to the debate is greatly simplified. I think, however, that the question at issue is so important that I will be permitted to detain the Council for a few minutes in dealing with the several objections that have been raised.

“ As regards the objections raised by my friend the Hon'ble Sir Fazulbhoy Currimbhoy, I desire to point out that he gave certain statistics, and percentages, without supplying us with actual statements of facts. If those statements had been before us we would have been able to judge how far we might be guided in drawing conclusions from the information he mentioned in his speech. A great deal has been said as regards the honesty of managing agents. I do not think anybody has raised the slightest question as regards the honesty of managing agents as a class, but I cannot help asking, if they are so honest, why do they object to a majority of independent directors? Surely, as the Hon'ble Member said before, and I am thankful to him for having said it again to-day, if they are honest, it would really be to their interests to have independent directors so that they may not be open to that suspicion and criticism which, under present circumstances, they are certainly open to. I feel that representatives of managing agents ought to welcome an innovation like this in order to satisfy the shareholders, whose money they want for the purposes of joint stock enterprise, that their representatives are in a position to exercise some control over the management of the concerns.

“ As regards the bogey of disclosure of trade secrets, I really do not know what is meant by it. I know in Bombay every company in which my Hon'ble friend Sir Fazulbhoy is interested, as a member of the managing agents' firm, has got a minority of independent directors. If they have been able to find a minority of outside directors without the danger of disclosure of trade secrets, I cannot see why there is such a grave difficulty in finding one or two more men of the same qualities and confidence to provide a majority of independent directors, and in that way to ensure their own interests. I do not know whether to regard the Hon'ble Mr. Meugen's speech as opposed to my amendment or as in favour of it. The Hon'ble Member said he was not in favour of my amendment; but his concluding observations, as I understand them, were in favour of providing an independent Board of Directors. Dealing with managing agents, I have taken him down to say that the course I am advocating is 'for their own interest and for the protection of shareholders'. I take it therefore that, though he himself feels that it is desirable to secure independence in the Board of Directors, he is going to vote against my amendment. I do not wish under the circumstances to deal with his speech any further.

“ Well, Sir, I heard the Hon'ble Mr. Monteath say that he is strongly in favour of the deletion of this clause. I had hoped that the Hon'ble Member who was wholly in favour of this clause last year, and against it this year, had again changed his mind in view of the reasons which I had advanced in my opening speech and reverting to his opinions of last year would support my amendment. But it is my misfortune to find that on the present occasion he is unswervingly adhering to his recent convictions. There was one thing which he said in his speech and which I was unable to follow. He said that 'when best men are available, they could not elect them.' Why, I thought the real difficulty was that you could not get best men; but if you have a supply of best men, I do not see what difficulty there can be in getting them elected under the law as it stands at present.

“ Then, Sir, dealing with the Hon'ble Member in charge, I cannot help drawing pointed attention to the fact that he ignored the main position which I adopted in moving my amendment. I asked him whether it was a fact, or whether it was not, that the managing agents were the officers of the company, and that the control of independent directors was necessary over them as such officers. If that was not so, why is it that he is asking the Council to pass a law making it obligatory to have directors? What is the *raison d'être* to provide that there shall be directors and at the same time to leave it to managing agents to constitute the entire Board? The deletion of this clause does not merely mean that there shall not be a majority of independent directors, but that the entire Board may consist of partners of the managing agent's firm. There is

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no prohibition against it. The law merely lays down that there shall be two directors, but provides no bar to the members of the managing agents' firm being such directors. It obviously follows therefore that under the law as we are going to pass it, the entire board may consist of members of the managing agents' firm. If that is conceded, and it must be conceded, then I should like to ask, why do Government propose to make it compulsory to have directors at all?"

The Hon'ble Mr. Clarke:—"I will explain the point now or afterwards, as my Hon'ble friend wishes. Managing agents are in the same position as managers; that is perfectly clear. If, therefore, there are no directors, by the law which we passed last year, they will be for the purposes of the law directors, but they will not be advertised as such. Under the provisions of this Bill, in the case of new companies, if the managing agents' firm have got their own partners appointed as the sole directors, that fact is at once published. They will have to state that the directors of a company are so and so. But for this alteration in the law, the fact would never be advertised at all. That is the whole point. I am sorry that I did not deal with it before."

The Hon'ble Sir Ibrahim Rahimtoola:—"I am much obliged for the explanation given, but my question stands, *viz.*, what benefit does he expect to secure to the shareholders by this publication? If you require three distinct entities in joint-stock concerns, (1) the shareholders, (2) the Board of directors, and (3) the managing agents, then you ought to have all these distinct. Why should you permit by law that the managing agents and the directors could be one and the same? What is then the benefit the shareholders are expected to derive by calling members of the managing agents' firm their representatives on the Board of directors. It appears to me that when you provide that there shall be directors, it necessarily follows that they should be independent of the managing agents."

"Then, Sir, in dealing with the opinions which I cited, the Hon'ble Member raised the question about the Indian Merchants' Chamber. I deliberately omitted reference to it because the summary which I have prepared shews the names of trading and commercial associations which are in favour of this clause, and the names of those bodies which are against it. The Indian Merchants' Chamber is neither for nor against and its name does not therefore find a place in my summary. The Indian Chamber state in their report that they are not unanimous on the point; that one set of opinion is in favour of retention; while the other is against it. In a summary which was merely dealing with commercial opinion in favour and against, I naturally could not include them. As I told the Select Committee, the division at the meeting of the Chamber which I attended was 4 for and 4 against. I am dealing here with the Indian Merchants' Chamber."

The Hon'ble Sir Ali Imam:—"You said the Select Committee."

The Hon'ble Sir Ibrahim Rahimtoola:—"I, of course, meant the Indian Chamber. As the Committee of that Chamber was equally divided, you could not take their opinion into consideration; there were four votes for and four votes against. I do not wish to go any further into that matter, because I feel that when an Association is equally divided, it cannot be considered as either for or against."

"It is contended that the shareholders will now obtain a balance sheet with much more information, and that the accounts will be better audited. Perfectly true; but as I have pointed out in my dissenting minute, you will have to change the nature of the shareholders as a class before you can expect them to exercise that potent voice in the election of directors which unquestionably vests in them. I cannot help repeating that if it is admitted by the Hon'ble Member that it is a very desirable thing to have these independent directorates, then why does he not pass the necessary legislation now instead of waiting for some years to come? I should like to invite the attention of this Council to the Statement of Objects and Reasons in which it is distinctly stated as follows:—

The object of this Bill is to supplement the Indian Companies Act, 1913, in respect of certain matters relating to the internal management of Companies. This supplemental legislation was

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considered desirable by the Select Committee of the latter Bill in view of the system to a large extent peculiar to India by which some Companies are managed by firms of managing agents whose relationship to the Companies they manage is different from that of a director to his Company in England The provisions of this Bill are designed to secure, firstly, that every Company should have directors, secondly, that *the majority of the directors of every Company shall be independent of the managing agents*, exception being made in the case of private companies and of Companies in which the managing agents themselves hold a predominant voting power.

"It will be observed that one of the principal objects for which the present legislation was undertaken was the provision of independent boards of directors. The Bill went to the country on the strength of that Statement of Objects and Reasons. As I have already pointed out all the Local Governments and Administrations and an overwhelming body of commercial opinion are in favour of passing these five clauses together and now. Why is it then that a clause which the Select Committee unanimously recommended last year and still admit to be desirable is going to be postponed and not passed into law now?"

"There is one thing more which I must point out. Under Table A which is attached to the Companies Act, it is provided by section 17 that—

- (1) There may, in the case of a Company limited by shares, and there shall, in the case of a Company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the Company.
- (2) Articles of association may adopt all or any of the regulations contained in Table A in the first schedule.

"Under this and the following section of the Act a joint-stock Company is authorised to adopt any one of the regulations provided in Table A. Table A contains one clause, *viz.*, number 95—to which I should like particularly to invite the attention of the Council in reply to the point made by the Hon'ble Member. It will be open now to any joint-stock Company to have in their articles the following clause, *viz.* (Clause 95 of Table A):—

The Company in general meeting may declare dividends but no dividends shall exceed the amount recommended by the Directors.

"The law lays down that the directors can have by the articles the absolute power of determining the amount of dividends payable to shareholders, and leaves no authority to the shareholders, however large their majority may be, to vary the amount which the directors may choose to recommend. If I understand the clause correctly—and I think my reading of the law is correct—does the Council realize what they are doing by the deletion of this clause and the omission of independent directors? You are handing over the shareholders, even when they are in a majority, to the tender mercy of the managing agents, who will be either the sole directors or in a majority on the Board. The managing agents as directors can withhold or can give the smallest possible dividend they like, and the shareholders will have no remedy! Can there be a stronger argument in favour of requiring an independent board of directors?"

"But there is one other point which to my mind is even stronger, and that is the point referred to by the Hon'ble Member in his remarks in introducing the Bill. It refers to clause 91D. He also said today, in answer to my Hon'ble friend Mr. Pandit, that an independent board of directors is not necessary so far as the operation of section 91D was concerned. How important this provision is may be judged from a brief extract which I will quote from the Hon'ble Member's speech of last year:

As things stand at present it is open to a firm of Managing Agents to deal in the market in some commodity in which their clients are also interested, and to treat the transaction subsequently, according to its success or failure, either as their own or as made on behalf of some business which they manage. It is open to them, for instance, to buy cotton or jute on a given day, and if the price rises, to resell to their own profit, or if it falls to transfer it to some mill they manage at the price at which they bought. I do not say that these things are often done, but no one familiar with business in India will deny that they do occur, and every one I think will agree as to the desirability of making their occurrence as difficult as possible."

"Section 91D, I understand, is provided to meet this contingency. Now let us examine what will be its actual effect? If you pass the clauses as originally

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framed—all five—then it will to some extent be effective; but if you delete section 83C, this clause will hardly be operative at all in the matter of carrying out the intention which the Hon'ble Member put in such excellent words. Section 91D reads as follows:—

“Every Manager or other Agent of a Company other than a private Company who enters into a contract for or on behalf of the Company in which contract the Company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

“Every such Manager or other Agent shall forthwith deliver the memorandum aforesaid to the Company, and such memorandum shall be filed in the office of the Company and laid before the Directors at the next Directors' meeting.

“The safeguards against this evil which the Bill provides are three, as the Hon'ble Member rightly pointed out. The first is that such transactions shall be noted in a memorandum; secondly, that such memoranda shall be kept in the possession of the Company, and thirdly, that they shall be placed before the next meeting of the Board of Directors. Now, as I stated in my opening remarks, I do not wish to cast reflections on anybody, but the interests of a Company require to be safeguarded, and I will therefore assume a case of that kind in order to show how easy it is, by the deletion of clause 83C, to get round clause 91D, and the safeguards which we are now providing by this clause can become absolutely valueless in regard to those firms of Managing Agents who desire to make them wholly inoperative. It is perfectly true that a memorandum will have to be written and then filed with the Company. The Managing Agents are in sole charge of the Company and all its books, vouchers, safes, etc. Each Managing Agent will have, of course, to note such a transaction on a piece of paper. Supposing that he is afterwards inclined to be dishonest and wants to pocket the profits on the sale or purchase of large quantities of cotton or jute on the lines of the Hon'ble Member's remarks, the mere fact that he has noted the details of the transaction on a piece of paper—call it a memorandum if you like—and has handed it over to the Company, that is, to himself, on behalf of the Company, can in no way prevent him from calling the transaction his own afterwards. The third safeguard will be equally inoperative. Under the law as recommended by the Select Committee, there need be no Board meeting for many months—sometimes for a whole year; during which time, if the Managing Agent so desires he can suppress or destroy the memorandum or substitute another for it, and all this can be done without anybody knowing anything about it. If there was an independent Board of Directors, there would be at least one meeting a month and the memorandum would have to be placed before it. When once this memorandum is placed before the Directors and noted on the minutes, then the risk of variation or suppression would be reduced to a minimum.

“Under the existing law section 91D can become absolutely inoperative if Managing Agents are inclined to appropriate the fullest benefit of such transactions.”

The Hon'ble Mr. Clark:—“No Directorate, independent or otherwise, can possibly prevent Managing Agents from committing forgery, if they choose to do so, and that is what the Hon'ble Member appears to contemplate.”

The Hon'ble Sir Ibrahim Rahimtoola:—“No. It is not a question of forgery at all. It is a question of suppressing the memorandum. What is the object of putting this memorandum before the Directors if they can be prevented from meeting oftener than once a year? I am pointing out what will be the effect of this legislation by the deletion of clause 83C, and I am perfectly in order, I think, in pointing out that the safeguards which are intended to be provided will prove quite ineffective in carrying out the object which the Hon'ble Member has at heart, and in which we are absolutely with him. The effect of the deletion of a clause in this way operates in other directions in a markedly serious manner. The omission of clause 77 last year and of clause 83C now, put together, will retard the progress which the present company legislation is intended to make, and I appeal to the Hon'ble Member once again to consider whether it is right, in the circumstances which I have taken some time to explain to this Council, to pass the amending law without section

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830. I earnestly trust that, looking to the interests of the shareholders, as also to the interests of the managing agents themselves as they will be free from distrust and suspicion, it will be recognised that it is essential and necessary that clause 830 should stand part of the Bill."

The motion was put and the Council divided as follows :—

<i>Ayes.—7.</i>	<i>Noes.—44.</i>
The Hon'ble Mr. Vijayaraghavachariar.	His Excellency the Commander-in-Chief
" Khan Bahadur Mir Asad Ali Khan.	The Hon'ble Sir Robert Carlyle.
" Sir Ibrahim Rahimtoola.	" Sir Ali Imam.
" Malik Umar Hyat Khan.	" Mr. Clark.
" Raja Jai Chand.	" Sir Reginald Craddock.
" Rao Bahadur V. R. Pandit.	" Sir William Meyer.
" Pandit M. M. Malaviya.	" Mr. Hailey.
	" Mr. Meugens.
	" Mr. Montearth.
	" Mr. Cobb.
	" Mr. Wood.
	" Mr. Brunyate.
	" Mr. Wheeler.
	" Mr. Enthoven.
	" Mr. Sharp.
	" Mr. Porter.
	" Sir E. D. MacLagan.
	" Major-General Birdwood.
	" Mr. Michael.
	" Surgeon-General Sir C. P. Lukis.
	" Mr. Russell.
	" Mr. Maxwell.
	" Major Robertson.
	" Mr. Kenrick.
	" Mr. Kesteven.
	" Sir William Vincent.
	" Mr. Wynch.
	" Sir F. Currimbhoy Ibrahim.
	" Mr. Donald.
	" Maharaja Banajit Sinha.
	" Maharaja M. C. Nandi.
	" Raja Abu Jafar.
	" Mr. Walsh.
	" Maharaj-Kumar of Tikari.
	" Mr. Arthur.
	" Rai Sitanath Ray Bahadur.
	" Major Brooke Blakeway.
	" Sardar Daljit Singh.
	" Mr. Diack.
	" Mr. Laurie.
	" Sir G. M. Chitnavis.
	" Mr. Arbuthnot.
	" Mr. Rice.
	" Mr. Maung Mye.

The motion was accordingly negatived.

The Hon'ble Mr. Clark moved that the Bill as amended be passed.

The motion was put and agreed to.

The Council adjourned to Wednesday, the 18th March, 1914.

W. H. VINCENT,

*Secretary to the Government of India,
Legislative Department.*

DELHI:

The 26th March, 1914.

APPENDIX A.

(Laid on the table by the Hon'ble Sir William Meyer, vide page 807 ante.)

Statement regarding revision of the Ministerial Establishment of Postal Audit Offices.

Out of the 21 clerks re-appointed in the offices under the Accountant General, Posts and Telegraphs, as supernumeraries in October 1912, one has died, one has been removed from service for absence without leave and four have received appointments in Calcutta, of which three are in the offices in question. The remaining 15 men are still borne as supernumeraries.

Since October 1912, 35 vacancies, have occurred in the offices in Calcutta under the Accountant General, Posts and Telegraphs, of which 11 have been on rates of pay lower than those drawn by any supernumerary. Of the remaining 24 three, as stated above, have been filled by supernumeraries, and the remaining 21 as follows:—

One has been filled by the appointment of an outsider direct to the post, nine by promotion within the office, outsiders being brought in as apprentices, and 11 by the transfer of men from other Postal Audit Offices. Moreover, 16 of the 21 vacancies just mentioned have occurred in the Accountant General's Office and in the Telegraph Audit Office. The work in these offices requires for most of the posts, qualifications of a higher type than are possessed by the supernumeraries. The remaining five have occurred in the Postal Audit Office, and four posts of them have been filled by the retransfer to Calcutta of men whose transfer to Madras in 1918 had involved them in special hardship.

Several vacancies which have occurred in Postal offices outside Calcutta have been offered to supernumeraries, but have been refused by them. Instructions have now been issued to the Accountant General with a view to the acceleration of the absorption of these supernumeraries in suitable vacancies; but the Government cannot undertake to retain in service indefinitely a supernumerary who refuses to accept an appointment offered in a Postal or Postal Audit Office outside Calcutta.

APPENDIX B.

(Referred to in the Answer to Question 8.)

Statement showing (1) the number of Municipalities in Bengal, Bihar and Orissa, the United Provinces, the Punjab, the Central Provinces, Bombay and Madras. (2) The number of Municipalities in each of these Provinces where the Chairmen are elected and where they are nominated by Government.

Province.	Total number of Municipalities.	Number of Municipalities having elected Chairmen.	Number of Municipalities having nominated Chairmen.
Bengal	111	91	20
Bihar and Orissa	55	13	42 (a)
United Provinces	84	56	28
Punjab	103	92	11
Central Provinces [including Berar].	56	48	8
Bombay	154	86	68 (b)
Madras	63	42	21

(a) Out of these, 11 Municipalities have power to elect their own Chairman but instead of exercising the power they requested Government to appoint a Chairman.

(b) Out of these, 3 Municipalities have power to elect their own Chairman but as they failed to do so Government appointed their Chairman.