LOK SABHA DEBATES
(Part II—Proceedings other than Questions and Answers)

LOK SABHA

Wednesday, 24th August, 1955

The Lok Sabha met at Eleven of the Clock

[MR. SPEAKAR *in the Chair*]

QUESTIONS AND ANSWERS

(*See* Part I)

12 NOON

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

THIRTY-FIFTH REPORT

Shri Altekar (North Satara): I beg to present the Thirty-fifth Report of the Committee on Private Members' Bills and Resolutions.

COMPANIES BILL—*Contd.*

Clauses 2 to 10

Mr. Speaker: The House will now resume further consideration of clauses 2 to 10 of the Companies Bill. Out of the five hours allocated to these clauses, about 1½ hours have already been availed of and 3½ hours now remain.

Some Hon. Members: Not 1½ hours, but less than that.

Mr. Speaker: It is recorded here on the basis of the time at which it began and the time at which it ended but this can be checked up.

Shri Ramchandra Reddi (Nellore): There were certain preliminary observations before the discussion on the clauses started.

Mr. Speaker: The preliminary observations started after the clauses were taken up for discussion. When the allotment of time is made, it is always assumed that all incidental discussions, points of orders and points of enquiry and points for clarification take up time and it is not that the time is calculated by excluding all these things, because these are all incidental.

Shri Ramachandra Reddi: The procedural details were discussed for about half an hour.

Mr. Speaker: This would mean that these clauses will be put to vote at about 3-30 P.M. If we, however, wish to continue for half an hour more after seeing the progress, the position may be taken stock of then, but it will be a wrong argument to say that the time taken up in this preliminary issue should be excluded from the calculation of time.

Shri K. K. Basu (Diamond Harbour): The time taken up by the Chair should be left out.

Mr. Speaker: The House may adjust the time if it so likes. Shri Chettiar, who was on his legs when the House adjourned yesterday, may continue his speech.

Shri T. S. A. Chettiar (Tiruppur): I was referring yesterday to the amendments relating to associates and managing agents. A big cry has been raised against an amendment that was proposed. I was hearing with great attention the speech of my friend, Shri Tulsidas Kilachand, and his arguments. The question here is as to how these amendments affect the working of companies. These amendments refer to certain clauses.

[Shri T. S. A. Chettiar]

[MR. DEPUTY-SPEAKER *in the Chair*]

Clauses 356, 358, 359, 360, 369 and 370 are the clauses which affect the associates. If we go into these clauses, we will see that the abuses which are mentioned therein are those which have been obtaining in the administration of the companies all these years. The Company Law Committee as well as the Committee which went before them, and also the public agitation on them have pointed out that such abuses have been there. Let me refer to certain of these abuses.

Clause 356 refers to the appointment of selling agents. It has been proved times out of number that people connected with the managing agents of companies and their partners have taken up selling agencies so that the companies have suffered, the shareholders have suffered and the Government Income-tax Department have suffered.

Let me go to the next clause 358—appointment of managing agent or associate as buying agent for company. This also has been a matter of abuse and we know only too well that this has been the source by which many abuses have taken place.

So also in regard to 360—contracts between managing agent or associate and company for the sale or purchase of goods or the supply of services, etc. Such contracts have been given in favour of people who have been related to the managing agents and others, and these have been on a basis of nepotism and these also have been the reason for misdoings. So also in the matter of loans, in the matter of guarantees etc. A case has been established by the Company Law Committee as well as others that this clause about associates should be strengthened so that there should not be loopholes in the future.

To me there is one amendment proposed by the hon. Finance Minister, about which I would like to give a warning and that is amendment No. 260. Not only would you like to rope in the relatives of the managing agents and partners and the firms in which they are partners, but you would also like to rope in the relatives of the manager of the firm. To my mind—I do not know the circumstances in Ahmedabad and Bombay, but certainly I know the circumstances obtaining in South India—in many companies the managers are paid employees, not necessarily relatives, and in some cases they are relatives also of the managing agents. Wherever they are relatives of the managing agents, I accept there is a case for this amendment, but wherever these managers are paid employees—qualified technical men are sometimes employed as managers—I have not come across abuses of this nature. Therefore, I would like the Government to consider and see whether it is not too much to include the relatives of the managers also. I have also consulted some managing agents, who have been quite frank enough to talk over this matter with me. They have told me that till you ban the appointment of relatives of managing agents, these loopholes cannot be effectively stopped. I do think we should support the Government amendment in this matter.

Now I shall refer to another matter in clause 2, sub-clause 2(d). While I am on the matter dealing with relatives, I would like to refer to the fact that the relatives as paid employees of the company are not barred. We can appoint relatives of a managing agent, of a manager, of a director or anybody as a paid employee, but only subject to schedule VII, as found in clauses 368 and 379, and that schedule says:

> "The managing agent shall not exercise any of the following powers.....Power to appoint any person as manager of the company who is a relative of the managing agent or where the managing agent is a firm...."

But there is no bar for the appointment of relatives as paid officers in a company with the consent of the Directors. The only restriction is that

the relatives should not be utilised as selling agents or buying agents, that loans for them should not be given, that guarantees on them should not be given. That, I think, is a very necessary amendment if we are to plug the loopholes which have led to abuses in the past.

I would like to go to another aspect and that is this. In clause 2, sub-clause (3), where the managing agency can be a company, it states "in addition to the persons mentioned in sub-clause (c), any member of the private company." It has been pointed out to us, and my hon. friend to my right has tabled an amendment to say, that instead of the words "private company", it must be a company with less than 50 members. The reason is that we can have private companies upto 49 and we can have a public company over seven, and this will mean that any private company with 49 members will be scot-free; the relatives will not be affected by this; whereas a public company, which has only seven or eight members, will be affected. The amendment that has been tabled by my hon. friend to the right is quite in order and I think it should be accepted if we are to plug the loopholes in that direction.

Shri C. C. Shah (Gohilwad-Sorath): I should like in the first instance to explain very briefly my amendments. My amendments, though they are six in number are in effect only two amendments to sub-clause (3) (c) and (d) and corresponding amendments to sub-clauses (4) (b) and (c). My amendment No. 325 to sub-clause (3) (b) is only an amplification and clarification of the Government amendment No 260. By the amendment No. 260 in the first part of sub-clause (3) (c) certain persons like partners, managers, relatives etc.—all those people have been added. My amendment seeks only to add this in the second part of the definition where we refer to any other body corporate controlled by those people mentioned in the first part of the amendment should be deemed to be an associate of the managing agent. The effect of it is that if a director or a manager or his relatives or partners in the managing agency company control fifty per cent of the voting power in any other body corporate, the second body corporate will be deemed to be an associate of the managing agent. That amendment is entirely in line with sub-clause (3) (b) where the managing agency is a firm and therefore, I submit that amendment No. 325 is only carrying into effect the principle which the Government has already accepted in their amendment No 260.

My next amendments Nos 327 and 329 deal with sub-clause (3) (d). Sub-clause (3) (d) says that where the managing agent is a private company, every member of that private company shall be deemed to be an associate of the managing agent. Now, a private company is one whose membership is not more than 50. But we know of many public companies whose membership is less than 50. The result will be an anomaly in this way that if there is a private company with a membership of 49 and a public company with a membership of 20, because it is called a public company, it will escape the effect of 3 (d) whereas a private company with a membership of 49 will be covered by 3 (d). Therefore, my amendment is only to put those public companies which have a membership of less than 50 on the same basis as a private company. The effect of it will be that such a company with a membership of less than 51 will be deemed to be a private company and every member thereof shall be deemed to be an associate of the managing agent.

Shri Tulsidas (Mehsana West): I would like to have a clarification from him. The definition of private company in this Bill is being changed on account of this amendment. Is that so?

Shri C. C. Shah: We are not changing any definition at all. If my hon. friend reads my amendment he will find this, I say, when the managing agent is a private company or a body corporate which has a membership of not more than 50, this should be done. The definition remains the same. In every body corporate which has a membership of not more than 50, every member thereof shall be deemed to be an associate.

Shri U. M. Trivedi (Chittor): Even if it were a public limited company?

Shri C. C. Shah: We are dealing only with managing agency firms. There are many managing agency firms which are, though nominally public, in effect private companies having a membership of 15 or 20—being members of the same family. It is not intended that the members of the same family, though they call themselves a public company, should be freely given buying and selling agencies—I mean to the members of that company. In fact, I should say that every person who becomes a member of a private company or a public company which is a managing agency firm becomes a member of that company in order to share in the remuneration payable to the managing agent. Now, if he becomes a member to share that remuneration, it is fair and proper that he should not expect any other remuneration to be paid to him or any other benefit to be conferred upon him. In fact I would submit that every member of the managing agency firm—private or public—should impose upon himself a sort of self-denying ordinance: 'I become a member of the managing agency firm to derive a certain benefit which should be the remuneration payable to that firm and I do not want to derive any other benefit, direct or indirect out of my being a member of the managing agency firm.' I submit that it is a wholesome principle which must be observed by all managing agents.

Shri Tulsidas: May I again point out this fact? By this definition, if one out of the 49 members in one company is a member of another company, the other company becomes the associate of the managing agency firm. All the directors and manager and others of that firm will become an associate.

Shri C. C. Shah: I doubt if that is the correct effect. The real intention of this is that those who are members of a private managing agency company should not derive benefits by being buying or selling agents.

Shri Tulsidas: The other members who are not connected with the managing agency firm become associates in view of this definition. That is what I say. Because one member is a partner in the managing agency firm, the other company and these people there are automatically subjected to certain disabilities.

Shri C. C. Shah: I am sure there is some confusion of thought. Only I referred to a member of the private company and not his relatives.

An Hon Member: He has not read the amendment properly.

Shri C. C. Shah: I will leave it to my learned friend; he has many legal advisers to advise him including, if he wishes, myself.

Shri S. S. More (Sholapur): May I also seek some clarification? According to amendment No 327, Shri C. C. Shah wants to introduce "or a body corporate having not more than fifty members". I find under sub-clause (c) where the managing agent is a body corporate, there is no limitation about the number of members. Will it not also cover the cases which Shri C. C. Shah is contemplat-

ing? I seek clarification because the whole thing is likely to be much more confused.

Shri C. C. Shah: I appreciate the question put by my hon. friend Shri S. S. More. The body corporate mentioned in sub-clause (c) is a body corporate which may be private or public and a body corporate which may have a membership of more than 50 or less than 50 members. But, when we go to sub-clause (d) it specifies one class out of the general class and it is only to that specific class mentioned in (d) that the limitation of membership applies.

Shri S. S. More: My submission is that sub-clauses (a), (b), (c) and (d) refer to the different categories which are likely to come into the field and what is covered by sub-clause (d) is not covered by sub-clause (c) and what is covered by sub-clause (e) is not covered by sub-clause (b). So, every category is exclusive. My submission is that the category under sub-clause (e) which does not put any restriction on the number of membership is comprehensive enough to include the cases which Shri C. C. Shah has in his contemplation; otherwise, I fear that if we again introduce here a body corporate with restricted membership, then it limits the implications of sub-clause (c) and it will only be applicable to body corporates having more than 50 members. That is likely to be the result as far as the interpretation of this statute is concerned. Therefore, in order to see that the same ground is not covered by two amendments of the same nature I want to seek clarification and I want to request Shri C. C. Shah to apply his brilliant mind to this particular proposition.

Shri K K. Basu: It is an additional disqualification.

Shri C. C. Shah: I would request Shri S. S. More to apply his very brilliant mind to the scrutiny of the amendments and then he will find that the difficulty he raises does not arise. If he refers to sub-clause (c) he will find that it does not mention the member of the body corporate and it only refers to managers, directors, relatives and partners. If my hon. friend will look at sub-clause (d) he will find that it only adds to sub-clause (c) any member of the private company. It only adds to the associate mentioned in sub-clause (c) and that addition is only for private companies or a body corporate having a membership of not more than 50 members. I think it is clear to my friend now.

Having explained my amendments I will briefly deal with the objections which have been raised to this clause, particularly, by my hon. friend Shri Tulsidas. He spoke at great length but in effect the issue which he raised is a very narrow one, I submit. He did not object that there should be no definition of 'associate.' He objected to the inclusion of 'relatives' and did not object to the other parts of the definition. That is the only point to which he objected. Now, I will put it in this way. Assuming that we accept the objection of Shri Tulsidas, the result will be that while a partner of a director is an associate and therefore cannot become a buying or selling agent, the son of a director who is a relative and whom he wants to exclude as an associate can be appointed a buying and selling agent. Does my hon. friend wish that—I will put it very clearly—though a partner of a director is not to be appointed a buying and selling agent, a son of a director should be appointed a buying and selling agent? If that is his wish, then surely, we, with respect, do not agree with that wish.

Shri K. K. Basu: The director will have no financial relationship with his son.

Shri Tulsidas: If the son is interested in the company then automatically he gets debarred. As long as he is not interested and he is separate from the father, what is the objection?

Shri C. C. Shah: Which company you mean?

Shri Tulsidas: In any company.

Shri C. C. Shah: It is no use arguing on that.

Shri K. K. Basu: He only wants that financial relationship should not be there. In the case of sons there is no financial relationship.

Shri C. C. Shah: We will have to find out sons who have financial relationship with the father and those who have not. I have known many cases in which the financial relationship has been severed for income-tax purposes and they live in the same house as members of the same joint family. There are even private accounts kept although on paper they are shown as separate.

Shri K. K. Basu: Was it under your advice?

Shri C. C. Shah: I could not catch the hon. Member's interruption.

Shri Asoka Mehta (Bhandara): He wants to know whether it was done under your advice?

Shri S. S. More: Sir, will not the bar of Evidence Act come in?

Mr. Deputy-Speaker: That will come when we consider the Evidence Act.

Shri C. C. Shah: Therefore, the simple issue which my hon. friend Shri Tulsidas has raised is that he wants to allow the managing agents to derive the same benefits in the name of relatives. If that were the proposition then I submit that we need not have a definition of 'associate' at all because that will be defeating the very purpose for which we have defined these things.

He also argued that if you include the word 'relative', it will result in certain difficulties in business. I do not know what difficulties it can lead to. You know who your relatives are and the only thing to be done is not to make them the buying and selling agents. He mentioned another argument. He said: "I know my relatives and I can trust them. Therefore. I entrust the work to them. But I do not know strangers and, therefore, I cannot trust them."

This is a strange argument to advance because, I am quite sure that as a businessman he enters into business transactions with hundreds of strangers and I believe at least some of them he will trust more than some of his relatives. I have no doubt about that. Therefore, to say that a businessman trusts only his relatives and can enter into business dealings only with them is an argument which makes business impossible.

An Hon. Member: That is not what he meant.

Shri C. C. Shah: That is the way I understood his argument.

If that is not so, then I do not know what it means.

Shri Tulsidas: You have understood it that way; but it is not so.

Shri C. C. Shah: I am glad you have said so. But, then that argument has no validity.

Then he referred to clauses 238 to 242 to show the difficulties arising out of this definition. I have carefully scrutinised clauses 238 to 242. They only relate to investigation of the affairs of a company. It only says that if in that investigation the inspector is satisfied that it is necessary to investigate the affairs of any associate of managing agent for the purpose of that investigation, he may do so. But, a very wholesome check is put upon it and that is sub-clause (2) of clause 238 to which my hon. friend

did not refer. Before an inspector appointed to investigate can inspect into the affairs of an associate of a managing agent he has to take the special permission of the Central Government and the Central Government must be satisfied that it has become necessary for the purpose of that investigation to permit the inspector to do so. The Joint Committee was fully aware of these difficulties which my learned friend has pointed out and this sub-clause (2) has been added by the Joint Committee, It was not there in the original Bill and it has been added only to avoid any hardship which may possibly arise to the associates of managing agents by any abuse of the powers to be granted to inspectors. I, therefore, submit that there is no real hardship by the reference to clause 238, and the rest of the clauses are merely consequential.

Then objection was taken that manager and his relatives are being included. With respect, I submit that there is some confusion about the word 'manager'. This is a word which is loosely used and we call anybody and everybody a manager. By 'manager' we mean the manager defined in this Bill and I wish to draw the special attention of hon. Members to the definition of 'manager' which means a person who has the management of the whole, or substantially the whole, of the affairs of a company and not anybody who is entrusted with the management of a unit of a company or even some parts of it. The man who is really in the position of a managing director and who has the management of the whole, or substantially the whole, of the affairs of the company is the 'manager' for our purpose. The importance which we attach to the position of manager is heightened by this fact that we allow in the Bill to pay him as much as 5 per cent of net profits which is half as much as we pay to managing agents. If a man occupies a position of that character, namely, who can be paid half of the total remuneration payable to managing agents, a man who is in charge of the whole management of the whole company, surely he occupies a position of very great influence. In fact, in some cases it may be that the manager is more influential than even the managing director or the managing agent. Therefore, I say, it is imperative, if you are not to defeat the provisions of this Bill that the manager and relatives should be included.

Shri Tulsidas: May I ask the hon. Member whether the manager of insurance companies or of banks will not be included as managers in this category?

Shri C. C. Shah: They are governed by their respective Acts.

Shri Tulsidas: This will apply.

Shri C. C. Shah: To the extent that it is not inconsistent with the provisions under the respective special Acts, it will apply. Therefore, I submit that the manager has to be included for this reason. I would say, —and I am quite sure—that the inclusion of the word 'relative' is a good thing, though, as my hon. friend, Shri Tulsidas, has pointed out that in some cases there may be genuine difficulties, but I am quite sure that when he makes the sweeping generalisation that 'relative' should not be included at all, he may be representing his own views and his own convictions. I do hope that he does not represent the views of his class as a whole, because I am quite sure that there are enlightened managing agents who believe that the provisions of this clause should not be permitted to be defeated in the name of relatives. At least I know several of them who strongly feel that unless the word 'relative' is included in this clause, we will be defeating the provisions. Shri Tulsidas was saying that there will be difficulties in management and that, therefore, the mercantile community or class feels that way.

[Shri C. C. Shah]

We must also apply our minds to this aspect: why has it become necessary for us to define the word 'associate' in this manner and in that respect. I wish to draw the attention of the House to some of the observations made by the Bhabha Committee at page 103 of the report. I also wish to say that we have a definition of an 'associate' introduced in the present Act, the Act as amended in 1951. That definition, by our experience, has proved to be inadequate and what the Bhabha Committee has said is this, namely, that there are only six activities of the managing agents which are likely to be controlled by the definition of 'associate', and they are: loans to managing agents, contacts with managing agents, buying agencies, selling agencies, offices and places of profit and the appointment of directors. These are the six items in which the managing agents have exercised a degree of power, and the abuse of those powers has become a subject of great comment and it has thus necessitated this definition. We have, at present, in the existing Bill, corresponding provisions, but those provisions have been ineffective, and this is what the Bhabha Committee says:

> "Sections 87-D, 87-E, 87-F and 87-H which are corresponding provisions of the present Act deal with some of the most important activities of managing agents. They have been the subject of widespread comment, and in view of the abuses to which they have led, they have done more to discredit the managing agency system than any other default or misdeeds on their part. We have, therefore, taken some pains to re-examine the provisions of this section in the light of the comments which we have received. We consider it necessary to recommend that this section should be re-drafted so that the existing loopholes in them may be closed and the possibility of their abuse may be reduced to a minimum."

And then, they add:

> "The provisions of section 87-D have been widely abused by the grant of loans or giving of guarantee to parties other than those mentioned in sub-section (1) of the existing section and our redraft merely attempts to bring in the other possible parties through whom loans may be indirectly made available to the managing agent of the lending company."

I hope that my friend Shri Tulsidas does not wish that a loan which cannot be granted to a managing agent should be granted to his son and that a buying agency which cannot be granted to a managing agent should be granted to his son or a contract for the supply of goods and services which cannot be made in the name of the managing agent should be made in the name of his son. Probably that is not his intention either.

I was only saying this: that even as the definition stands at present, it will be possible for some people to evade it to a certain extent. There are amendments from other Members of the Opposition to tighten it still. For example, we have said that where 50 per cent of the voting power is controlled by those people, this definition could come in. There is an amendment by Shri K. K. Basu who wants it to be 33 per cent or 25 per cent in some cases and it is not untrue that even when a person has a voting strength of 25 per cent or 30 per cent, he, in effect, controls the company, but the Government has been liberal in this respect and it has limited it only to 50 per cent.

Shri A. M. Thomas (Ernakulam): The Bhabha Committee recommends one-quarter.

Shri C. C. Shah: Yes; there are also other amendments which seek to define the relatives of the persons but

the Government has not gone to that length, because the Government wants that the business should not be made impossible either.

I do wish to add one thing. As we know very well, the fundamental principle underlying this provision is that no managing agent should attempt, directly or indirectly, to seek benefits out of his position except what is openly and legitimately permitted to him by the Act. We have allowed 11 per cent to the managing agents, and that is, for all practical purposes, a generous allowance. All the hue and cry raised against this definition is nothing but an attempt to get the benefit, directly or indirectly, in one name or another. I do submit that while we are putting the managing agency system on trial that trial will continue for a period of five years and that period will show that these provisions, where there are still loopholes, will not be abused and that the trial will be good. I support all the amendments.

Shri N. P. Nathwani (Sorath): I want to speak a few words on the definition of the term 'debenture.' My friend Shri Tulsidas has criticised the definition of the term 'debenture.' He criticised particularly that portion of the definition which seeks to include the words "any other securities." He has said that it will create difficulties in the working of the companies and particularly those companies which seek to raise short-term loans, because, according to him, such a transaction would amount to a debenture within the definition of this Bill. He has also suggested that it might lead to difficulties in the way of insurance companies which are required to invest their controlled funds in particular approved investments only. Now, I want to show that his fears or apprehensions are totally misplaced and they proceed on an erroneous assumption of the legal nature of the definition given in this Bill.

At the outset, it must be remembered that the word 'debenture' is incapable of any accurate definition. Even Their Lordships of the Privy Council have professed their ignorance as to the exact meaning or definition of the term 'debenture.' Nevertheless, there are certain attributes, certain common salient features by which one can easily distinguish a debenture from any other instrument. Palmer has pointed out what those common attributes are, according to the conventional meaning or usage. I am reading a passage from Palmer's Company Precedents, Part III, page 3:

> "Taking the test of a conventional or commercial usage, a debenture may be roughly described as an instrument under the seal of a company providing for the payment of a principal sum and interest at a specified rate and being usually...."

I emphasise the word 'usually'—

> "One of a series of like debentures ranking *pari passu*, and carrying a charge or secured on the company's undertaking. In 99 cases out of a 100 this description of a debenture will be found fairly accurate, but the description cannot be treated as an exhaustive definition."

Therefore, the common characteristics of a debenture are well known and according to these attributes, these tests, which have been laid down, a short-term loan, a single transaction—may be a pledge, hypothecation or a mortgage—for a short term, will not fall within the definition of the term 'debenture.'

I am fortified in my opinion by what Mr. Gower, an eminent authority on company law has said in his book, at page 343. I shall presently read that paragraph which should allay my friend Shri Tulsidas's apprehensions about the short-term loans being treated as debentures.

He says:

> "A debenture is a name applied to certain types of documents evidencing an indebtedness which is normally, but not necessarily, secured by a charge over property."

[Shri N. P. Nathwani]

Then he says:

> "Not every type of indebtedness can properly be described as a debenture. It is here that the imprecision of the term becomes apparent. In practice it is restricted to loans of some permanence."

Then he goes on to say that if the term "any other securities" is construed *ejusdem generis* with the term "debenture-stock" and "bonds" other transactions like pledge of goods—irrespective of the duration—can also be excluded. This would become obvious if one one reads the foot-note 23 given on page 344.

The next objection raised by Shri Tulsidas was about the investment by the insurance companies. In this connection he referred to section 27A which says that "one of the approved investments would be first debentures secured by a floating charge on all its assets of any company." My reply is three-fold. In the first instance, the definition of the word "debenture" which is given in this Bill will apply only to the sections in this Act and the connotation of the word "debenture" in another Act cannot be restricted or limited by the definition which we have given. That is on the footing that the definition which we have now introduced in this Bill is wider than the one which had been there so far. Even if we were to read the definition of the word 'debenture' in a wide sense as to include short-term loans, I submit that the context of this section, namely, section 27A suggests or requires a contrary interpretation. If you carefully go through the provisions of the various sub-clauses, you will find that the term used is 'debentures' and not the singular word 'debenture'. Therefore, by implication it excludes a single deed or a single instrument, but you have to come to debentures which are issued in series. The last thing I want to say is about sub-clause (h). It says that one of the approved investments would be first debentures secured by a floating charge. Even if you have a hyphothecation, if it is not a debenture secured by a floating charge, it is of no relevance.

Therefore, both the objections of my friend are not well-founded. There should be no apprehension about this and we should adopt the definition of the term 'debenture' as it is given, because it brings our definition in line with that of the British Act which has been so well understood and which has not worked any hardship to anybody.

Shri Tulsidas: May I know whether my hon. friend has found any difficulty in the present definition at any time?

Shri N. P. Nathwani: We are clarifying the position by enlarging its scope. It might be otherwise suggested that a mortgage deed under which mortgage money is payable in 80 instalments, which is substantially in the nature of a debenture, may not be covered. This will be covered by the definition that we are giving in this Act.

Shri N. C. Chatterjee (Hooghly): I heard the speech of Mr. Tulsidas Kilachand with great interest yesterday and I am happy to find that the private sector is realising its responsibilities. It is marching ahead and I simply wish that it would march ahead a little further. Why are we enacting this company law? It is not simply for the purpose of consolidating the statute and making it the biggest company code in the world. You know it has over 600 sections and 12 schedules. Our main object is really to put the private sector on a proper basis. The Bhabha Committee was appointed because anyone, either a lawyer or businessman who has anything to do with the administration of the company law as it exists, must realise and must admit that there have been lacunae, serious loopholes and they have got to be plugged. That is the most important purpose behind this Bill. The Bhabha Committee recommended that there must be a definition of an asso-

ciate of a managing agent. Sir, have you got page 25 of the report in front of you? Would you kindly look at the top? You find,

> "We have already commented on the definition of a managing director."

If you see the next....

Mr. Deputy-Speaker: Other hon. Members will be having it.

Shri N. C. Chatterjee: There it is said:

> "The need for the definition of 'associate of a managing agent' arises from the fact that experience has shown that if the provisions of the Indian Companies Act relating to managing agents are to be adequately enforced, it is necessary to close the loophole, now provided by this category of persons."

Mr. Tulsidas read out the next sentence and I take it that he accepts the main thesis of the Bhabha Committee:

> "For, it is obvious that it is no use laying down restrictions on some particular activities of managing agents, if they can be legally carried on through the agency of their associates."

That is why the Bhabha Committee said, "What is the good of framing a company law and putting restrictions, unless you make it effective?" Do you make it effective by simply saying that partners are associates? You allow the son to come in and only exclude partners. Look at the absurdity of the whole thing. I am not mentioning the name of Mr. Kilachand; let us take Mr. X, an individual who is the managing agent of a company. He may be a partner in ten other firms and those ten firms may have 60 partners altogether. Hereby you are excluding all the 59 others from participating in certain benefits. Is it right that you include only the son, father or grandson....

Shri A. M. Thomas: Mr. Tulsidas takes advantage of the omission of the word 'relative'.

Mr. Deputy-Speaker: Does 'son-in-law' come under 'relative'?

Shri N. C. Chatterjee: What I am pointing out is this. If we accept the main thesis propounded by the Bhabha Committee that you must plug the loopholes, if you accept the main suggestion of the Bhabha Committee that there are certain defects in the company law, you have got to remove them and certain restrictions have got to be put in. We, as Members of Parliament, while enacting this legislation must make these restrictions really effective. All that Mr. Deshmukh suggests is this, namely, that you have put in a clause defining the relatives. You know that we have got a new clause...Clause 6 has been put in there. I am afraid that the draftsman is to some extent responsible for not making the definition comprehensive in this clause as well as in clauses 2 and 3. I am not blaming the draftsman of this Bill who, I say as a member of the Joint Committee, did a stupendous and collosal task and did good work in drafting the statute. But I think that we were also to some extent at fault in not making it comprehensive. What is the good of defining 'relative' like this? You say:

> "Two persons shall be deemed to be 'relatives' if, and only if, they are husband and wife, or the one or the spouse of the one is related to the other or the spouse of the other, whether by legitimate or illegitimate descent or by adoption, and whether by full blood or half blood, in any of the following ways, namely,
>
> (i) as parent and child" and so on.

Mr. Tulsidas Kilachand may legitimately complain that the meaning of the term 'relative' has been cast too wide.

Some categories may be taken away. I can appreciate that standpoint. But, if you look at the Bhabha Committee's report, page 226, the recommendations

[Shri N. C. Chatterjee]

are given and it is said; that a new clause should be introduced:

"'associate of a managing agent' shall mean and include the following....

(a) any firm of which the managing agent is partner;

(b) any partner of the managing agent;

(c) any private company of which the managing agent or any partner of the managing agent or any officer of the managing agent where the managing agent is a company, is a member, director, managing agent or manager;

(d) in the case of a managing agent which is a body corporate, any subsidiary company of the managing agent and any director, managing agent or manager of the managing agent or of any subsidiary company of the managing agent;

(e) where the managing agent is a private company, any member or director thereof; and

(f) any company at any general meeting of which the managing agent either alone or together with any partner of the managing agent and (where the managing agent is a company) any director of the managing agent, is entitled to exercise or control the exercise of one quarter or more of the voting power."

They are putting in this clause, why? Because, experience has shown administration of the company law as enacted has shown, especially due to the activities of the private sector during the second world war and in the immediate aftermath thereof, that unless the provisions are radically altered, and they are enforced strictly, the malpractices which have unfortunately come to the surface, will never be rectified. Otherwise, there is no use of enacting this company law of 600 and odd sections and 12 schedules. Take this Companies Act as you are going to enact and look at two clauses.

Look at clause 356 which you have drafted. This is one of the cardinal things which you are recommending this Parliament to accept:

"356. *Appointment of managing agent or associate as selling agent or goods produced by the company.*—(1) No managing agent and no associate of a managing agent, shall receive any commission or other remuneration from the company, in respect of sales of goods produced by the managed company, if the sales are made from the premises at which they are produced or from the head office of the managing agent or from any other place in India."

You know most of the malpractices have cropped up because certain persons have been appointed by the managing agents as selling agents. There have been a lot of complaints on that score. I do not categorise. I do not generalise. I do not say that all managing agents are sharks. You know there are companies where there have been undesirable elements and this power has been abused. Therefore, we are going to tighten it. We say, no managing agent and no associate shall receive any remuneration or any commission if the sales are effected in India. If you go outside India, in certain conditions you can do it. Look at clause 358.

"358. *Appointment of managing agent or associate as buying agent for company.*—(1) No managing agent....."

There are concerns in my part of India, that is, in Bengal, where there have been very loud complaints that this power has been exercised in a most undesirable manner, and sons, nephews, sons-in-law and so on have been appointed buying agents. This has led to terrible complaints from the shareholders. They are saying that moneys have been pinched and honest accounts are not kept. If you honestly feel that such a provision like this should be adopted in the

company law that no managing agent or associate shall be appointed as a buying agent or selling agent for a company, will it be fair to say that partners will not be allowed, members of the company with whom you are associated will not be allowed, but your son, your nephew, or your relatives will be allowed? The fundamental thesis of the Bhabha Committee, Shri Tulsidas has accepted. He has accepted the main recommendation. That is, you want to plug the loophole. Then, you must enact suitable provisions whereby these malpractices can be effectively checked. What I am saying is, that you cannot check this unless you put in the relative.

Otherwise, be bold. I can understand the very important constitutional point raised by Shri Tulsidas. I am not pronouncing any opinion on that.

I have not considered these aspects, whether this is unconstitutional or illegal. I hope Shri C. D. Deshmukh will consult the Law Minister and the new Minister of Legal Affairs (*An Hon. Member*: Not illegal affairs, and make up his mind. But, if that it is so, Shri Tulsidas should ask the Finance Minister to scrap this thing altogether. He has been kind enough to give me a very terrifying genealogical table. This is a very serious matter. I have not been given one page, but three pages. I hope he has presented it to the Finance Minister. Shri C. D. Deshmukh's 'relatives' are all in red squares and they have been interdicted and thrown out. If you put in all the partners of the firm with which you are associated as thoroughly incompetent to be buying agents or selling agents, it is only fair that you should have all these red squares also put in, so as to make it really effective. Experience has shown it and the Bhabha Committee has unanimously recommended this. You know the Bhabha Committee was constituted on a proper basis. Its main dictum is this: the private sector must realise its responsibilities. The private sector must march with the spirit of the times. The private sector must reorganise itself. We are not saying that all of them have behaved badly. Some of them did behaved badly. If some of them behave badly, it is reflected on the private sector. They have to put their house in order. If in the legal profession some people misbehave, it reflects on the entire profession. This has happened here. They therefore say that we must plug the loopholes and plug them effectively. Although I have heard Shri Tulsidas and he has my sympathy, he cannot have my judgment or vote because I am convinced that the relatives should be put in. It is only a drafting omission which the Finance Minister is really rectifying. There was no point in having clause 6, meaning of 'relative'. What is the function of having a definition of 'relative' in the company law? It is not the Hindu Law or a Muslim law or any personal law Bill we are thinking of. All this comes in because we wanted to penalise a relative being made a buying or selling agent or being given special facilities for earning money *aliunde*. If the Parliament feels that associates of managing agents must be defined so as to make it impossible for certain partners or certain people, closely interested in the affairs of a managing agent from becoming buying and selling agents or getting undue advantages, having regard to the experience of the past, it is also necessary that the relatives must also be roped in and they must be put under the same disqualifications. I hope you are not casting the net too wide. I have all along felt that it is very easy to enact a legislation, very easy sitting in the Select Committee or sitting in the placid atmosphere of the Parliamentary or legislative chamber, to tighten the screw. But, we should not tighten it so hard as to make it impossible for the private sector to work. I hope we are no making it impossible. Simply because you rope in the relatives, I do not think that it will be impossible really for efficient honest businessmen to work on pro-

[Shri N. C. Chatterjee]

1 P.M.

per lines. I know that in some cases there may be hardships. But, those hardships are really due to the fact that the private sector could not put its own cause in order. If they could possibly eliminate and check all the malpractices that have cropped up, if they are capable of putting their house in order thoroughly, if they can develop traditions and norms so that people who had no standard of business honour or morality do not play with the shareholders' money, in a fashion in which they did, this Bill would not have been necessary. Now that it is necessary, I am afraid, there is no way out. If you have got to have clauses 356 or 358 on the statute-book, you cannot but include the relatives, as suggested by Shri C. D. Deshmukh, with certain modifications if that is posible, so as not to cast the net too wide. I am supporting Shri Tulsidas on one point. You know, Sir, there is a clause here where you have put in "wilfully"—clause No. 5: "Meaning of 'officer who is in default'." I have got the English Act here, but I do not want to take up your time. There, if an officer is in default whose lapse or omission or commission leads to any prosecution or imposition of fine, the section says that a person who knowingly and wilfully does anything or authorises or permits any default becomes an officer who is in default. That is, wilfully and knowingly are the prerequisites in every case where you indict a man who is in default under this section. I am asking the hon. Finance Minister to accept the English definition. Really, we are copying the English Act and it is no good simply having "knowingly and wilfully" in the latter part, omitting it in the earlier part. If you look at clause 5, there is an anomaly here. In the first part you say:

> "....'officer who is in default' means any officer of the company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention...."

And in the second part you say:

> "....or who knowingly and wilfully authorises or permits such default, non-compliance, failure, refusal or contravention"

In section 440 in the English Act—in the English Act the definition clause is the last—they have made both "willingly" and "knowingly" pre-requisites by this kind of definition, and I am suggesting that that is the correct thing to do.

There are two cases—I have not brought the cases—one reported in 1911, I Chancery, 425 and one in 1925, I Chancery 407. In both the cases the Chancery courts who have great experience of company law say that it is a safeguard, a great safeguard especially for honest servants. Sometimes the servants have got to act under the directions of the directors, or the directions of the managing agents. Now, it will be very improper to penalise them unless and until they act both knowingly and wilfully.

Shri C. C. Shah: May I point out to the hon. Member that this matter was fully discussed in the Joint Committee and while the word "wilfully" has been introduced in the second part of it, it has not been deliberately introduced in the first part? Because, the first part deals with the act of the officer himself, when an officer is knowingly guilty of this, that and the other. There, it is intended to punish even his negligence, because a man may be knowingly guilty and yet may not have anything to do with the act actually. The second part refers to acts which are done by others but which are authorised or permitted by him, and there we do not want to punish any negligence or omission on his part but a wilful act, and therefore the Joint Committee deliberately introduced the word "wilfully" in the second part and not in the first part of it.

Shri U. M. Trivedi: On a point of order. Both these Members were in the Joint Committee. Is this a private

matter between the Members and does he want us to be in the dark as to what discussion took place there? Should they decide among themselves....

Shri C. C. Shah: I am only explaining.

Shri U. M. Trivedi: ....or should we decide why they have introduced it at one place and not at the other place?

Shri C. C. Shah: There is nothing private about it.

Mr. Deputy-Speaker: How is it a point of order? I am not able to follow. There is no disclosure of what happened in the Joint Committee. The hon. Member only means to show the difference between the one portion and the other portion. If he is directly responsible, if the act is his own, then "knowingly" is enough, "wilfully" is not necessary; whereas if he authorises some other person knowingly, then there should be "wilfully" also. This was deliberately put in there. That is what the hon. Member says. It is not a private conversation between the two. All of us are hearing both of them.

Shri S. S. More: Both are speaking for all of us.

Shri U. M. Trivedi: My point of order was this, that both of them happened to be in the Joint Committee. They might have had a discussion, but that does not mean that Shri Chatterjee should be prevented from placing his point of view before the House.

Mr. Deputy-Speaker: I am only saying that the hon. Member knows it too well. Anyhow, knowingly or wilfuly or unknowingly or unwilfully he unfortunately raised this objection.

Shri S. S. More: Unknowingly.

Shri N. C. Chatterjee: I think Shri Shah and myself had discussed it, but we need not disclose what happened in the Joint Committee.

What I am pointing out is this, that the United Kingdom Act has defined "officer in default." May I read out to you the definition? Section 440, sub-section (2) reads:

> "For the purposes of any enactment under this Act, an officer of a company who is in default shall be liable to fine or penalty. The expression 'officer who is in default' means any officer who knowingly and wilfully authorises...."

And I am suggesting that that definition is quite enough, and it has been found to be quite enough, and the English Judges have said that this kind of definition is a safeguard in some cases where some safeguard is necessary. Therefore, what I am submitting is this, that this definition should be quite enough. Also, in our Act, in the process of tightening, plugging the loopholes, in the process of penalising any possible lapses on the part of the private sector, we have put in so many penal provisions here that I would rather be cautious in enlarging the ambit of the definition of "officer in default", and I am suggesting the English definition is quite enough.

There is one point with regard to Shri C. C. Shah's amendment. I would like a little more clarification. Would you look at amendment No. 327 of Shri C.C. Shah. In page 3, lines 2 and 3 he is suggesting some amendment. If you look at page 3, you will find that clause 2, sub-clause 3 (d) reads:

> "(d) where the managing agent is a private company:
>
> in addition to the persons mentioned in sub-clause (c), any member of the private company;"

You knew there may be 49 or 50 members in a private company. All the 49 are becoming associates and they are therefore under the handicap or under the fetters imposed by the company law. Shri C. C. Shah is there adding something:

> add "or a body corporate having not more than fifty members"

[Shri N. C. Chatterjee]

Therefore, public companies are also now being roped in. That was not the intention of the Joint Committee, and I am suggesting that is not necessary.

The Minister of Revenue and Civil Expenditure (Shri M. C. Shah): Public company with 50 members.

Shri N. C. Chatterjee: I know. What I am pointing out is there may be public companies with 5,000 members, may be even 40,000 members, but why should you include all of them simply because they are less than 50? You know, that the main distinction between a private company and a public company is not the number of members. The main distinction is the restriction on the right of transfer of the shares. Therefore, so long as that restriction is not there, it is a public company. So long as that particular aspect is there, it is a public company.

Mr. Deputy-Speaker: The right to sell may be there, but they have so cornered the shares that they will not sell. It is a little bit of a private company.

Shri N. C. Chatterjee: You can make it 50, but tomorrow it will be a dead letter. Supposing I have got 40 and you are passing this law, I will make it 60 tomorrow. That means only passing a few scrips. I will make it 51. I have only to add 11. Therefore, I can nullify the whole thing tomorrow. But what I am suggesting is that the main distinctive feature which distinguishes a private company from a public company is not the number of shareholders, but really the other thing, the question of restriction on the transfer, and so long as that distinctive feature is there, I am submitting that number is not enough. I had the privilege of discussing the matter with Mr. Shah. Of course, this thing never came up, so far as I know, before the Joint Committee, but I know that under the Finance Act of 1949 or 1950 with regard to the Income-tax Act, especially with reference to super-tax, there have been some provisions made like this. You know, Sir, that certain companies do have certain special privileges. With respect to public companies, a provision was made, if I remember aright, —in the Finance Act of 1949 and the Finance Act of 1950 to the effect that where the majority of the shares are being held by only half a dozen people, there it can be treated as a private company. Therefore, this Parliament has enacted, and has repeated it also, that for the purpose of the Income-tax Act, a public company can be deemed to be practically a private company, when only six people have got, say, 75 per cent of the shareholding. I can understand that. But simply because the number is less than 50, I do not think, it would be right to make this change. Anyhow, I would ask the Finance Minister to consider the matter carefully.

I hope that it is not merely a question of these small criticisms. The whole point is that we are legislating with a purpose. I am one of those who have got much faith in ensuring honest administration of company law by merely passing this Companies Bill. I am also one of those who think that business can be conducted in an efficient and honest manner, provided the shareholders are vigilant, and the public mind has expanded properly and is vigilant. But still we hope that when we are keeping the private sector and giving it fairly full play even under the Second Five Year Plan, it is only right that the private sector should not be oblivious of the main objectives of a welfare State, but should be in a position to work in full co-operation with the objectives, and be fully guided by the sense of new responsibilities sown in because of the change in the ideals of the times.

Shri Asoka Mehta: I would like to make a few brief observations on clauses 2, 3 and 5.

A considerable amount of discussion has taken place on clause 2, and brilliant speeches have been made. My hon. friend on the other side, Shri C. C. Shah, tried to put forward in a very able way the reasons that have led us not only to bring in the provisions that are there in the Bill but to modify them also. But I believe the most able speech in favour of the amendments that have been sponsored by the Finance Minister was made by Shri Tulsidas himself. It was when I was listening to his speech that I was convinced that the amendments that have been suggested are absolutely necessary. I shall explain that a little later.

A suggestion was made by my hon. friend Shri N. C. Chatterjee—we are very happy to have him here now at this late stage in the deliberations on this Bill—that there was some omission in drafting and that omission is sought to be made good. I do not think so. Originally, the definition of 'relatives', if I remember aright, was incorporated in schedule VII. From schedule VII it has now been shifted to clause 2. Previously, the word 'relatives' was tagged on as a kind of addendum, but now it is sought to be made an integral part of the definitions.

There has been a progressive realisation of the role that the relatives are playing or are likely to play in business associations, and it is this growing recognition that is reflected in the changes that have been made in the drafting. Why is that so? There again, Shri Tulsidas has given us the necessary answer. He has been good enough, at my request, to give me a copy of what Shri N. C. Chatterjee has called the genealogical tables. He has told us that under the definition of associations of individual managing agents, as it has been given in the Bill, seven categories have been included; now, four more are going to be added by the amendments that have been suggested by the Finance Minister. So, the seven categories are raised to eleven categories of associates.

When we move on to association of managing agency firms, we find that under the original definition, there were eight categories. Now, that has been raised to twelve. But when we come to consider associations of managing agency body-corporate—and you know that the overwhelming majority of managing agents in the country are body-corporates. I do not want to take up your time by giving you the number of managing agents that are today body-corporate, and all that material is available in that report—we find that under the definition as given in the Bill, 14 categories were covered, but under the definition as sought to be amended or modified by the amendments given by the Finance Minister, 29 new categories are added. So, the fear that Shri N. C. Chatterjee has that the net is being cast wide is true. But I am anxious that the net should be cast wide.

There are 43 categories of associates, as far as managing agents who happen to be body-corporates are concerned, according to the genealogical tables, so kindly and with his characteristic courtesy, provided by Shri Tulsidas. Now, if these amendments were not introduced, and if the relatives were not included as an integral part of the definitions, the result would have been that at least 29 categories where managing agents happen to be body-corporates would have escaped the net. It means that the fishes would not have been caught by the net. Either you want to catch the fish, big or small, good or evil, or you do not want to catch them. If you want to catch them..

Mr. Deputy-Speaker: 'Fish' is always singular, and therefore the hon. Member can say, 'if you want to catch it.'

Shri Asoka Mehta: If you want to catch them, you have got to see that..

The Minister of Finance (Shri C. D. Deshmukh): It is plural in 'loaves and fishes.'

Shri Asoka Mehta: So, it is necessary not only to cast the net wide, but to see that the net is capable of holding what comes in and does not allow it to escape.

Shri N. C. Chatterjee has already drawn your attention to pages 25 and 227 of the Bhabha Committee's report and he has pointed out—and I support him when he says—that the whole idea of bringing in the associates was to plug the loopholes. I would have been happy if the chart had been given to us by the Finance Minister, but my hon. friend Shri Tulsidas himself has helped me to understand what loopholes were left unplugged.

Shri Tulsidas, in the course of his very able speech, said that if these amendments are accepted, there is the danger of the principle of equality of opportunity being violated, and that the freedom of trade and occupation would also be interfered with. I believe he referred to articles 16 and 19 of the Constitution.

Shri Tulsidas: I referred to article 19, and only incidentally to article 16.

Shri Asoka Mehta: Anyway, I believe he referred to two articles of the Constitution, namely, articles 16 and 19.

I am not a constitutional lawyer. My hon. friend Shri N. C. Chatterjee, a very able lawyer, characteristically has said that he is not able to make up his mind. But as far as I am concerned, I do not know the legal aspect of it. But the interpretation that Shri Tulsidas has tried to put upon it goes counter completely to the very ethos of our Constitution.

Shri S. S. More: Ethos or pathos?

Shri Asoka Mehta: Ethos. Our Constitution has no pathos. It is a grand document.

As far as the ethos of our Constitution is concerned, it says that it wants to provide equality of opportunity to those who have no opportunities. Shri Tulsidas wants that the opportunity should remain with the charmed circle. He says, after all, I must deal with my relatives, I know them well. If I remember aright, he said yesterday, buying and selling, if it is entrusted to outsiders, will not be in the interests of the company. Not only does he argue that he should be permitted to do this buying and selling through his relatives because he knows them well, but he believes also that it is in the interests of the company that buying and selling should be carried on by his relatives and through his relatives.

Shri Tulsidas: I did not say that as a generalisation, but I said, provided they qualify.

Shri Asoka Mehta: It means that he is interested in creating vertical combinations. He tells me 'provided they are qualified.' Even if they are qualified, the whole idea behind the Constitution, the very basic concept of our Constitution, is the diffusion of wealth and distribution of opportunities. There must be no concentration; I agree with him where he is warning the Finance Minister about the possibility of political tyranny, but I do not agree with him when he says that the tyranny of bank balances is better than the tyranny of power. I think any kind of concentration, whether it be of wealth or it be of power or it be of opportunities, is dangerous. It was Vinoba Bhave who said that whenever you have a heap anywhere, there is always a hollow nearby. That is why I am a confirmed opponent of heaping up things, whether it be heaping of power, heaping of wealth or heaping of opportunities. Shri Tulsidas, however, wants these opportunities to be available only to the charmed circle.

Shri Tulsidas: Not 'only'.

Shri Asoka Mehta: He said that.

Shri Tulsidas: No, no. They are debarred. That is the point.

Shri V. G. Deshpande (Guna): On account of birth.

Shri Asoka Mehta: They are to be debarred because exeprience in the past has shown, and it has been proved, that the vested interests use the influence they possess because of wealth and influence that they command is utilised for the purposes of bolstering up their friends, relatives and associates, and denying opportunities to other people who are not within the charmed circle from growing up at all. As a matter of fact, in this country linguistic tensions have grown up because the Gujeratis and the Marwaris have created a charmed circle of the language groups around them. It is that charmed circle that has also got to be broken. That is the reason why I would have appreciated it if Shri Tulsidas had not brought in these arguments. By bringing in these arguments, he shows —and there I completely differ from Shri N. C. Chatterjee—that he still belongs to the *ancien regime;* he still wants to be a diehard. If he wants to be a diehard, I have got to support the Finance Minister to see that diehardism is not permitted to create the difficulties from which we have suffered in the past. His speech yesterday, to my mind, was a complete vindication of the necessity of bringing in the amendments that have been brought in by the Finance Minister and by Shri C. C. Shah.

The definition of associates and relatives will apply to 18 clauses, and about that, Shri C. C. Shah has already explained how in some cases the Government's previous permission will be necessary; in other cases, excepting a few prohibitions, by special resolution of the general body of the company, it can be done. All that is sought to be done is that the shareholders should be aware of what is being done. Shri Tulsidas drew pointed attention to other clauses regarding inspection, where of course, Government's permission will be necessary—and I hope Government will not do these things in a cavalier manner. But as far as buying, selling and other things are concerned, all that is asked for and is sought to be achieved is that the shareholders should know, through a special resolution, as to what is sought to be done. The Board of directors should know what is being done.

Shri Tulsidas: Not for buying and selling.

Shri Asoka Mehta: Then the question comes about buying and selling. If you are a managing agent, your job is to manage everything. I do not understand why you break up the responsibility of management into segments and for every segment, you want some kind of a consideration and commission. Management is a composite responsibility. Anyone who comes forward to manage, must be prepared to take over and shoulder the whole responsibility.

I would like, as my friend, Shri Shah has anticipated, to support amendments Nos. 322 and 324 moved by Shri K. K. Basu. The reason is this. I find in this written evidence submitted by the biggest, premier managing agency company in the country, the Tata Industries Limited to the Bhabha Committee, they have this to say:

> "*Safeguards against managing agency transfers:* In case of managing agency or other management transfers coupled with a sale of shares, where such sale represents not less than 30 per cent of the issued share capital of the company or not less than 15 per cent where the holdings of the transferee on the completion of such transfer would exceed 30 per cent of the share capital of the company, it should be obligatory...."

This shows that so experienced a management as the Tata Industries Limited feel that anyone who controls 30 per cent of the shares would be able to control the company as a whole. So it is not enough to say 50 per cent. I think my friend, Shri K. K. Basu, has come nearer the line that has to be drawn in this matter; 33 per cent would be more in conformity with what really happens in practice. Fiftyone per cent is an arithmetical line, but 33 per cent appears to be a practical line, the pragmatic approach about which my

[Shri Asoka Mehta]

hon. friend, the Finance Minister, is so enamoured. So I would suggest that the Finance Minister might look up what the Tata Industries have to say on the subject, and if he really wants to see that the problem is approached from the practical angle and not from any kind of theoretical or arithmetical angle, he might accept the amendments moved by Shri K. K. Basu.

I would also like to support another amendment moved by Shri K. K. Basu, No. 344, and that is for this reason. As the Finance Minister explained to us, the secretaries and treasurers are to be appointed in order that able young people trained in the schools of business management, and engineers and technicians, might come together and they might get an opportunity to manage the business. Now, if this kind of correlationship is to be established between ability on the one hand and the shareholders and their financiers on the other, it is necessary that this kind of management should be confined to, or composed of, a firm. In a body corporate, as was very ably pointed out by Shri N. C. Chatterjee, just now, naturally it will be possible for shares to be transferred. I know there are certain safeguards suggested in clause 345 of the Bill, but they are not adequate, and it will not be possible to make them adequate. Therefore, if the concept of secretaries and treasurers is to be accepted in the form in which it has been offered to us, it is necessary to remove from the definition the particular words which Shri K. K. Basu has suggested should be deleted by his amendment No. 344.

I would like to invite your attention to clause 3, where definition of a 'company' is given. I find that the Bhabha Committee in its report, on page 25, had left one question unanswered, and it had hoped that the Government would ultimately fill up that particular lacuna. The Committee says:

> "We have left the definition of the company in the present Indian Act unaltered, but we consider it necessary to draw the attention of the Government to the definition of this term in the company law legislation of some other countries, where one of the legal requirements of a company is that one or more directors should be persons of the nationality of the country in which the company is formed and registered."

Then, of course, certain illustrations are given from the General Corporation Law in the State of New York and also from Swiss laws. Then the Committee says:

> "We refrain from making any specific recommendation on this subject, as it is closely linked with the question of foreign capital, and Government policy towards foreign investments in general. we have not had any opportunity of discussing the implications of this policy with representatives of the Government of India who could speak with authority on this matter...".

Now, the representatives of the Government of India are present here and I would like them to speak with authority on this subject. What is going to be our definition of a company as far as foreign companies operating here are concerned? I find that that aspect has not been covered at all. I do not know whether it was discussed in the Joint Committee and if it was discussed, why it was not looked into.

The last point I would like to make is about the criticism made about persons actually guilty and those that are not. The task has been made easy by the intervention of my hon. friend Shri C. C. Shah. Undoubtedly, the distinction that is sought to be made is between those guilty of default, non-compliance, failure, refusal or contravention as against those who authorise or permit. There are two categories and, naturally, in the case of the two categories the approach will have to be different.

That point has been ably explained by my friend Shri C. C. Shah. Therefore, I feel that on none of the points on which my friend, Shri Tulsidas has spoken he has been able to carry conviction with me and I would, therefore, like to support the amendments that have been moved by the Finance Minister as well as by Shri C. C. Shah; and, I would appeal to the Finance Minister to consider the acceptance of the amendments Nos. 322, 324 and 344 moved by my friend Shri K. K. Basu.

Shri Tulsidas: What about Gurupadaswamy's?

Mr. Deputy-Speaker: Shri Basu.

Shri U. M. Trivedi: May I make one request. Looking into this report, it is found that all those gentlemen who were members of the Joint Committee are taking part in this debate. I do not grumble their taking part; they are Members of this House. What happened in the beginning was this: When this House was discussing the consideration motion and when it was referring the Bill to the Joint Committee, then also these gentlemen had taken part.

Shri K. K. Basu: I have given a minute of dissent.

Shri U. M. Trivedi: I agree you have given a note of dissent. There is some reason for you to have a say. But we must have a chance also.

Mr. Deputy-Speaker: I will first call those hon. Members who did not take part in the Joint Committee; then call the others to explain their position. It would be better for hon. Members who have been parties to the Joint Committee Report to answer any of the objections raised by others who were not there instead of their supporting what is already there, unless some objection is raised in which case their assistance will be called to the aid of the hon. Finance Minister. If they themselves table certain amendments, I would certainly urge that they must explain why this matter was not introduced by way of a dissenting note in the report. They ought to have given something there. Suddenly bringing up here an amendment and then saying, 'after second thought I find that body corporate must be acceptable not only to a private company but to a public company also', seems to be interesting but it does not appear to be proper that persons who went through this matter for a whole year should keep quiet and then suddenly bring up something here by way of amendment and speak to the detriment of others who never took part in any of the proceedings. Therefore, I appeal to hon. Members to give opportunities to others who have not taken part, except of course, the hon. Finance Minister who is in charge of the Bill. The others would try to adjust their opportunities between those, firstly, who were not parties and then between those who were parties and who have tabled amendments, in which case they must explain to the House why they did not make it known in the Joint Committee report and then those who were present in the Committee and who stand up to support the report of the Select Committee, if their turn comes, to state why the amendment ought not to be accepted.

I have already called Mr. Basu, all the same.

Shri S. S. More: You are going against what you have stated now.

Mr. Deputy-Speaker: I have already called him.

Shri S. S. More: Five hours are allotted to this important group and if the Members of the Joint Committee take an inordinately long time and there is no time-limit, the other Members will be at a disadvantage.

Mr. Deputy-Speaker: I agree. After Shri Basu, I will call others.

Shri K. K. Basu: With due deference to the wishes of Shri More, I will not take much time. Most of the points which I wanted to say have already been covered by previous speakers.

[Shri K. K. Basu]

The amendments I have moved mainly relate to the question of bringing in 'relative'. I find that to a large extent the Finance Minister has himself accepted the proposition in his own amendments. As has already been said, regarding roping in of relatives, if you go through the voluminous report of the Bhabha Committee or even the different memoranda submitted to the Select Committee, it will be known to what extent the relatives play mischief, especially in our country where you know the benami transactions are so common and are legally valid. So, relatives, have to be brought in. This is very much proved in the amendments that have been moved by the hon. Finance Minister, which more or less reflect the point of view that I wanted in my amendments to bring forth.

I would wish him to go further to include it in regard to the managing agency for a private company. I fully endorse the view brought out in the amendment of Shri C. C. Shah that any body corporate having a membership of not more than 50 members should also be included in the list of associates. In this connection I want that along with members relatives should also be added. We know in the case of managing agency firm, in private companies these are also more or less of the same category, apart from limited liability; in real functioning it is the same as a partnership firm. Therefore it is but rational to ask: when we are bringing in relative in public companies why should we not extend the same provision to members of a private limited company? Theoretically, there may be limited liability; but we know fully well that usually the private limited company is restricted to one or two families or their friends in the same family. Therefore, I have moved amendment No. 326 by which I want to add that in the case of the private company it should not be restricted to any member of the private company but the relative of those members should also be added. It is more or less the same as that of a relative of any partner of a managing agency firm or associate in which any of the members are connected. Theoretically they may have different rights but for all practical purposes, in our country, private limited companies and ordinary partnership companies stand almost on the same footing.

In this connection I fully endorse the amendments of Shri C. C. Shah about body corporate having not more than 50 members. He has rightly put it, though Shri Chatterjee wanted to emphasise the legal right. We know that in the ordinary working there is not much of differentiation between the two types of companies. We have to see what is the position of the companies in our country. We know that two or three families of a managing agency firm want to change it into a private limited company and then convert it into a public limited company. All the same so far as membership is concerned, it is restricted to the two or three families, or the groups of persons who came together and originally formed that particular managing agency firm. Therefore, it is necessary to bring in such a type of public limited company which stands more or less on the same footing as a private limited company. If we take the practical point of view, we know there are quite a number of public limited companies who are managing agents, whose membership does not exceed 30 or 25 or even less.

Therefore, I fully support Mr. Shah's amendment and I would also urge upon the Government to accept my amendment in the case of these private limited companies not only to include members but relatives also.

Shri C. D. Deshmukh: Public or private?

Shri K. K. Basu: Private.

Shri C. D. Deshmukh: Are you not having in view amendment No. 326?

Shri K. K. Basu: I am referring to that.

Shri C. D. Deshmukh: 326 refers to body corporate.

Shri K. K. Basu: I am sorry; it is 328.

Shri C. D. Deshmukh: I have been looking to the wrong amendment.

Shri K. K. Basu: In the case of a private company, the relative of the member should also be included. In my amendment 328 I have tried to add in the case of managing agency firms when they are body corporates, but even in the case those body corporates where the managing agency firms or anybody connected with them is a member on the board of directors, they should also be brought in. We know sometimes they may not be related, but in big managing agency companies, there may be accountants or some influential persons who may wield influence on the managing agency company. Such a person may be appointed as a director in another company with which this particular managing agency company has some dealings. I urge that such cases should be brought in. There is no point in saying that there will be hardship, because the reports that have been given by the Bhabha Committee enumerate the cases of misdeeds of the managing agency firms and they fully justify this plugging. Apart from putting forward a point of view regarding the doings of the managing agency firms, it remains the duty of Government to see that all their methods of misdeeds and corruption now a days are plugged in. In my amendment No. 326 I have suggested that where the person connected with the managing agency firm or body corporate has a right to nominate a director should also be considered as an associate. This is mainly my point of view with regard to associates.

Even in the case of secretaries and treasurers I have moved similar amendments for clause (c) and the arguments are more or less the same. I need not repeat them. In this connection I do not want to oppose Shri Tulsidas Kilachand, for he has already been replied to by quite a number of persons. But he has raised an objection that this is contrary to article 19(1)(g) of the Constitution. In that event, the whole of the Companies Act will have to go as it puts some restrictions on the *laissez faire* principle in which he wishes the companies of our country to be run.

There is another basic amendment which I have moved and which I am glad to say Shri Asoka Mehta has just supported, and that is in the case of "any body corporate, at any general meeting of which not less than one-half of the voting power in regard to any matter may be exercised or controlled by any one or more of the following". In this connection, I have tried to reduce the figure one-half to one-fourth. The Bhabha Committee recommended not more than one-fourth. But knowing the present managing agents, you are quite aware with your long experience that a group of the people who have 30 or 33 per cent shares can easily control the whole organisation. The Bhabha Committee was presided by a gentleman who is himself connected with business and they have recommended that it should be 25 per cent.

Shri C. D. Deshmukh: Exercised only by the director. One-fourth is in respect of one of the categories.

Shri K. K. Basu: Yes. Here we have put it as 50 per cent. and I wish that it should be reduced to 33 per cent.

Shri C. D. Deshmukh: Any director is entitled to exercise one-fourth, whereas today the persons who exercise these percentages are very many more categories.

Shri K. K. Basu: That is there. The basic idea is that the particular body corporates should have such power as to control the other organisation. We know full well that in the present context, and organisation or a body corporate which has a block share of 30 or 33 per cent., might very well control the business of that body cor-

[Shri K. K. Basu]

porate or institution. Therefore, I urge that instead of putting it as one-half, it should be reduced to one-third. Similarly also in the case of secretaries and treasurers.

The hon. Finance Minister in his reply to the general discussion said that he visualised that the organisations would have the services of experienced experts, who have actual experience of the working in that particular organisation and who have much less financial interests than the present managing agents have. In their case, instead of one-half, I want the figure to be one-fourth or twenty five per cent., because that is more than sufficient so far as the secretaries and treasurers are concerned. The arguments advanced in the earlier case remain more or less the same.

One basic point which has also been supported in my amendments Nos. 344 and 343 is this. I have tried to put in that the secretaries and treasurers should only be firms, because my idea is that if you accept the proposition and the point of view stated earlier that in furture the hon. Minister expects that these secretaries and treasurers would be young people who have the experience of working in the particular institution or similar types of institutions, then the difficulty would be this if it is made a body corporate. Suppose a person who has a large share in a body corporate dies and the body corporate continues to be under the secretaries and treasurers, then his heirs by virtue of the fact of holding dominating shares of the body corporate, can appoint any other representative who is not qualified enough to be a member of the secretaries and treasurers in that particular body corporate.

Shri C. D. Deshmukh: Not without the approval of Government.

Shri K. K. Basu: In the case of body corporate, the continuity remains. It is not a firm. In a body corporate the death of a person does not dissolve the body corporate. The position in respect of solicitor firms or auditor firms or surveyor firms is that on the death of an individual, the whole partnership is dissolved, but in the case of the body corporate, even if three of them die, the body corporate continues, and you cannot say that there is any change of secretaries and treasurers. The continuity remains. Therefore, if we accept the proposition of secretaries and treasurers—but I have my own views on this and I shall take the opportunity of expressing my views at the proper time later—then, it should be a firm on the same principle as the firm of experts, or accountants, or valuers, etc.

I am glad Shri Asoka Mehta also referred to this point that even in the case of a foreign firm, there should be an Indian national or representative on its board of directors. Such a statutory provision should have been included in the Company Law and it should have been provided for in the definitions...

Mr. Deputy-Speaker: That is one of the observations; it is not a recommendation.

Shri K. K. Basu: Even in a country like the United States, which is industrially well advanced, they have guarded against such things. In our country, we may wish that under certain circumstances foreign capital may come, but we must see that they are not put in such a dominating position that the Indian companies cannot possibly come up. Therefore, we should have provided such a thing in the difinition of 'companies'.

I will close after mentioning one or two small points. I have moved an amendment No. 350 to clause 4. In this case also I would like to say "has a right to nominate or elect one-third of the membership" instead of "controls the composition". If a particular group has a right *prima facie* to nominate one-third, they can manipulate by means of one or two

directors the control of the company. By this particular amendment I wish to restrict it only to those cases where they have the right to nominate one-third of the board of directors.

The last point that I wish to touch upon is in regard to clause 5—meaning of "officer who is in default". Shri Shah has already put forward his points of view in the discussion at the Select Committee and we do not agree even though certain improvements have been made according to Shri Chatterjee and others. We feel that in our country, as the companies are composed today, it is the duty of the officer to at least exercise that amount of ordinary diligence which is expected of persons occupying that position. I have moved an amendment which says that he must excerise the necesssary diligence that is expected of him to see that such things are prevented. From our experience we have seen how things are done and in order to plug this loophole, the word "wilfully" in the latter half should be done away with, and in the earlier part I have added a clause "or made no diligent efforts for the prevention of such acts".

Lastly I oppose the hon. Finance Minister's amendment concerning first cousins. In the case of first cousins, they do not form the joint family and we have some experience of this in our parts. In the case of income-tax, the Finance Minister has good knowledge and he knows how big partitions in the joint family properties are made. If this provision is made, they will show that they are all separate outwardly, but so far as their financial dealings are concerned, they have a sort of close connection. I do not want that the Finance Minister should bring in his amendment at this stage. If in the course of a year or two of the working of this Act it is found necessary that the private sector want this genuinely, we may bring this amendment then. I do not say that we would rather circumvent the provisions of the law. But if there are difficulties in working the provisions of this statute, then we might move an amendment at that stage, that is, after a year or two. At this stage, I do not like the Finance Minister's amendment.

Shri U. M. Trivedi: Some justification has been made out for prohibiting relatives and the so called associates from following the vocations which they will ordinarily be entitled to do. These suspicions are the results of trickery and dishonesty which always beget from working with the Income-tax Department. Both the hon. friends who spoke about it have only referred to the Income-tax Department. We know that all sorts of chicanery is practised in the Income-tax Department and is taught by those who practise thereat. No thought is given in this respect to the ordinary conceptions of honesty of an ordinary man. We always think, as I said before, our conception is that every businessman is dishonest and we must plug the loopholes as they have been put, so as to prevent them from acting in that manner. The definition of relative, as it has been put down, conceives only of a stationary position and not of a dynamic position that may arise by subsequent events and no penalty is provided for those events which may take place subsequently.

Shri S. V. Ramaswamy (Salem): Is it not a variable position where it will be increased by births and decreased by deaths?

Shri U. M. Trivedi: That is only one natural aspect which my hon. friend Shri S. V. Ramaswamy referred to; then there is another aspect which is an artificial aspect namely, that of marriage.

Shri S. S. More: Why is it artificial, Sir? Marriage is not artificial it is a matter of heart!

Mr. Deputy-Speaker: Animals do not marry. All that the hon. Member meant was in natural life animals do not marry.

Shri Kamath (Hoshangabad): In a state of Nature.

Shri S. S. More: That means it is a human institution.

Shri Kamath: A social institution.

Shri U. M. Trivedi: When marriage takes place, as this definition goes, the moment a girl marries a man who has got some business relations in a managing agency or who is a secretary or treasurer or anything of that kind, all the various relatives belonging to the various business communities might be in some way or the other having some dealing with the managing agency.

Shri S. S. More: What happens if the girl marries from a business point of view?

Mr. Deputy-Speaker: Let us get to business.

Shri U. M. Trivedi: It is this aspect which has to be looked into before we make our law water-tight. I for one do not believe for a moment that everyone is dishonest and this conception in India which is the creation of the British must end somewhere. We cannot always have this feeling in our mind that every man in our country is dishonest. We are now building up a casteless society. We say that we do not want any caste. Naturally, as my friend Shri Gadgil was arguing, the son of a lawyer need not be a lawyer; the son of a doctor need not be a doctor; the son of a businessman need not be a businessman. A man may rise from the bottom and become somebody in business. Because he rises from the bottom in business we cannot put him down; we cannot put a prohibition against his doing something which under the ordinary, natural course, he is bound to do. Shri Asoka Mehta has held out an argument that Shri Tulsidas has let the cat out of the bag by saying that he is bound to trust his relatives more than he will trust a stranger. But that is an ordinary, natural thing. I trust a man whom I know; he may be or may not be a relative. I may be in contact with certain persons and when I have to repose some confidence on account of certain business transactions, I repose my confidence in the man whom I know and not in the person whom I do not know. What is wrong there? What Shri Tulsidas meant to suggest was only this aspect: why put an embargo upon a person by virtue of his descent? It is quite true and here is nothing to be laughed at or ridiculed as Shri Asoka Mehta was trying to do.

Shri Tulsidas referred to article 16 of the Constitution of India. The appointment in the Government is rather more important and more responsible than an ordinary appointment in a business concern. Is an inhibition put on it?

2 P.M.

Certain Fundamental Rights are conferred by the provisions of article 16. No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for or discriminated against in respect of any employment or office under the State. If such a right could be conferred that a man shall not be denied these things merely by virtue of descent, why is this denial practised in giving him an appointment of allowing him to earn his livelihood by ordinary business? Simply because he happens to be a relative of somebody you say: "No you shall not get it. Somebody else will get it". To put it down in that language would only mean that we accept this proposition that nepotism and favouritism can be tolerated if practised by Government and State employees, but nepotism will be taboo so far as the business community is concerned. That, I submit, is putting too high a value upon the code of honour that we expect from businessmen. We should raise the code of honour of State employees rather than of those who take risks; who venture into things unknown and take a good deal of risks in running a business. It is for them that we want to lay down a

particular code of honour which we are not prepared to lay down for ourselves as State employees. That is why I have given an amendment. It may be that there are some people who think: "If I am there, why not my wife also get something". Generally, people employed in insurance business do it this way. As soon as a man becomes somebody in the insurance company, he says that his wife is also an insurance agent and gets some more money on that account. Such things must be stopped; because, after all, a public limited concern is not a philanthropic society and the persons concerned should not be allowed to derive benefits of this dubious nature. But, to pin down every relative and to define 'relative' as given in clause 6 will be doing too much and more than we bargain for.

Then there is another thing to which I will draw the pertinent attention of this House and that is with reference to this peculiar provision which has been made in clause 5 giving the meaning of 'officer who is in default'. The explanation that was given by Shri C. C. Shah and by Shri N. C. Chatterjee when they were speaking on this could not go home to me. Unless there is some hidden reason for dropping this word 'wilfully' in line 14, one cannot legally see any reason why the word 'wilfully' should not remain there. If we read this we will find that an 'officer of the company who is in default means any officer of the company who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision, or who knowingly and wilfully authorises or permits'. Now, a man may knowingly permit or knowingly he may authorise. It would have been better if the word 'wilfully' were omitted from the latter clause and added to the previous one. There is always the question of *mens rea* in all such acts and it is only to impute this *mens rea* that the language is used in this manner. Therefore, if we want that the *mens rea* must exist before a man can be found to be guilty of a particular conduct then the words 'knowingly' and 'wilfully' ought to be essential features of any definition. Mere 'knowingly' does not make anything of *mens rea*. We know the fundamentals of law say that nobody knows the mind of man. "The devil knoweth not the mind of man."

Shri Kamath: But God knows.

Shri U. M. Trivedi: But God never comes into the picture. We become satanic when.....

Mr. Deputy-Speaker: Evidently they want to punish negligence in one case and dishonesty coupled with negligence in the other.

Shri U. M. Trivedi: This definition is in clause 5 wherein it is said:

> ".....whether by way of imprisonment, fine or otherwise, the expression 'officer who is in default' means any officer of the company who is knowingly guilty of the default....."

Mr. Deputy-Speaker: Therefore, there 'wilfully' is absent. It may be out of negligence.

Shri U. M. Trivedi: With great respect to your knowledge of law, I will submit that the word is used in an adverbial form and the action must be knowingly guilty; that is to say, he must have done the act knowingly. Once the word 'knowingly' is used, 'wilfully' follows. If a man does a thing knowingly then it means he has done it wilfully also.

Mr. Deputy-Speaker: It may not be wilfully.

Shri U. M. Trivedi: That is why I say, it is an idiom which has grown in law and which we call *abundant cautela*, once we use the word 'knowingly', 'wilfully' follows. When you make a difference between the two in some cases, then the difference will be argued by the lawyers that the one is mere absolute liability and the other is liability attached by the use of the word 'wilfully'. If you say: "You know a thing and you do it",

[Shri U. M. Trivedi]

that is entirely different. If you say: "knowingly does it" and use the word in an adverbial form it will only show that the man must have knowledge of it and with that knowledge he must have done it.

Mr. Deputy-Speaker: He may be indifferent about the result. To know the result it requires a greater kind of attention than mere knowing. It may be a passive, reckless act. But, even when he is reckless, because he does it, he is guilty.

Shri U. M. Trivedi: It is not negligently doing it. When they say: 'knowingly' it means recklessly and without looking at the consequences or without caring for the consequences. But, here the words are "knowingly guilty of the default" and that means that he has knowingly done the wrong.

Mr. Deputy-Speaker: The only point is: does the hon. Member take exception to making a difference of liability in one case as against the other case? The object of the amendment is to make a difference between the two cases. One case requires greater care and attention while in the other case an act is committed without waiting for the result. Unless in addition to that there is *mens rea* he need not be guilty. That is the impression I gather. The hon. Member may take exception to that and say that both may be treated on the same footing. That is another matter.

Shri U. M. Trivedi: That is what I submit. I say that both must be treated on the same footing. If you want to hold a man guilty of default, non-compliance, failure, refusal or contravention where he knowingly contravenes any provision, then the word 'wilfully' also must be there because if the word 'knowingly' only is to be there then his knowledge may not go to the extent of imputing any *mens rea* to him. It may be that something has been done but he may not have done it wilfully. But, if you want to attach absolute liability then take out the word 'knowingly' also. We have a provision under the Defence of India Rules. Once anybody contravenes a provision he would be liable for punishment and there is absolute liability. If you do not want that absolute liability, then the word 'knowingly' is not enough to attach the *mens rea*. This is my submission and therefore, when *mens rea* is to be attached the word 'wilfully' ought to be there.

Then, there is one amendment moved by the hon. Finance Minister. It is amendment No. 286 seeking to add a new sub-clause (6). This only shows some solicitude for the foreign companies. Why should he be so solicitous for the foreign companies? Why should our law not govern the foreign companies incorporated in other countries? At one place we have got the recommendations of the Bhabha Committee to do something in the nature of putting some obstacles in the way of foreigners running a concern in our country. We have overlooked that provision for certain reasons probably, but I submit that it is high time for us to put that provision of law which the Bhabha Committee has suggested on the analogy of the law in the United States and various other places namely, that one of the directors must always be a national of that State. I should say that we must have a provision of a similar nature if we want that our own industries should grow. We must have this provision that so far as the question of managing directors is concerned, one-third of the members on the directorate must be citizens of India. Some such provision would have been more welcome than this provision of relatives and associates. Regarding the question of relatives and associates, it will be well worth recapitulating that it is only a reflection upon ourselves. We are not able to decide for ourselves that a time will be reached when we may be able to do away with this question of secretaries and treasurers and managing agents and so on and so forth. We may evolve a system of running our concerns entirely under

the Company Law and the Company Law should be devoid of this managing agency system, but a separate law will have to be provided for the management of companies. Some sort of law will have to be framed whereby the management of a company must not be left in the hands of the managing agents. I can foresee that time and I would like to have that provision of law, but I do not want this provision of law which says that "we want managing agencies, we want secretaries and treasurers" and at the same time you want to tell those people, "All right, do this and not that. You carry on this work in this manner and not in that manner." If we can trust those people to do a particular thing, we cannot tell them that "you need not do this in this particular manner and that too in a very legitimate manner". Therefore, I have moved my amendments No. 13 and 14 to these definitions, "associate" and "relative".

I now come to my amendment to clause 8. This is entirely a new clause, prescribing the power of the Central Government to declare an establishment not to be a branch office. I seek to amend this clause this way:

> "Provided that the company is given seven days' notice to show cause against such declaration being made and no such declaration shall be made till the company has been heard."

By this amendment, I only want to lay down a fundamental principle of natural justice. As it is, the Government decides for itself. The clause says:

> "The Central Government may, by order, declare that in the case of any company, not being a banking or an insurance company, any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company, or any production or manufacture, shall not be treated as a branch office of the company for all or any of the purposes of this Act."

This is an absolute power that has been given to the Central Government. When a particular type of business is being carried on at a particular place, without giving an opportunity to the person to be heard in the matter or without giving him an opportunity to give valid excuses for doing a particular thing at a particular place in a particular manner, the Government decides for itself and says: "Here, we have decided, and there is an end of the matter". I say that such a decision offends against the principle of natural justice which requires that a man must be heard before he is condemned. Before a particular decision is reached there would be nothing wrong in giving the company the notice to show cause against such a declaration being made, and no such declaration shall be made till the company has been heard. Why it has become necessary to vest such high powers in the hands of the Government without any recourse to any appellate authority passes my comprehension.

Shri K. K. Basu: You want an appellate authority or prior notice?

Shri U. M. Trivedi: At least some notice must be provided for here. Why should that man be condemned without giving him an opportunity?

Shri K. K. Basu: Cannot that be provided by rules? Is it necessary to put it in the statute that prior notice should be given?

Shri C. D. Deshmukh: It will usually be on the initiative of the company itself and there it will be quite easy to have administrative instructions to ensure that the company is heard before a decision is taken.

Shri U. M. Trivedi: Do I understand the Finance Minister to say that the power of the Central Government to establish a branch office, or rather, to declare an establishment not to be a branch office will be on the initiative of the company itself?

Shri C. D. Deshmukh: We expect action to be taken on the initiative of the company.

Shri U. M. Trivedi: Then I think some change in the language would be called for.

Shri K. K. Basu: As he says, by administrative process, he can provide for this.

Shri U. M. Trivedi: There is one thing to which I want to draw attention as a lawyer. The question is that of jurisdiction of courts.

Shri K. K. Basu: Do not create unemployment for lawyers.

Shri U. M. Trivedi: The lawyers are fully employed. We have got a provision in clause 10. Clause 10 gives jurisdiction to the High Court and the district courts. Now, where the jurisdiction is vested in the High Court, there is no difficulty. But in cases where the jurisdiction has been vested in the district court, what happens is that under the Civil Courts Act of the various States, the district court can transfer the cases to be heard by its subordinate courts. Provision must be made that the hearing of applications arising under this Act.....

Shri C. D. Deshmukh: Is the hon. Member speaking on an amendment of his?

Shri U. M. Trivedi: Yes; amendment No. 16 which seeks to add a new provision after line 24. My suggestion, through this amendment, is this:

> "Provided however that the District Court shall not transfer such cases to any court subordinate thereto notwithstanding any provisions of any law authorising such transfer."

Mr. Deputy-Speaker. Even without this amendment, when a particular jurisdiction is conferred upon the district court, say, for instance, in the matter of guardianship, testament, succession certificates, probate or even in cases where it acts as an election tribunal, is it open to them to give that special jurisdiction?

Shri U. M. Trivedi: It has been held that it is open to them. But there, difference has been drawn by the various High Courts in this matter, namely, if the provision is that of what you call *persona designata* then the transfer shall not take place. If it is merely that of a court, then it can be transferred by virtue of the provisions in the Civil Courts Acts themselves. Such transfers have taken place. I had an occasion of arguing a case of that kind. In the case referred to by you, as Mr. Basu pointed out, the term used is 'District Court' and not 'District Judge'. The District Judge becomes *persona designata*.

Mr. Deputy-Speaker: What about the Guardians and Wards Act?

Shri U. M. Trivedi: There also the term used is 'District Judge'.

Shri K. K. Basu: It can be transferred to the subordinate court.

Shri U. M. Trivedi: If the power is vested in the court, then the transfers take place under the Civil Courts Act. But if the power is vested in the District Judge, such transfers cannot take place. Similarly, if the power is vested in the Chief Judge of the Presidency Small Causes Court, such transfers cannot be made.

Coming to clause 10, I for one do not see the propriety of sub-clause (4) of clause 10:

> "Nothing in this section shall invalidate any proceeding by reason only of its having been taken in a wrong Court."

This is a question of jurisdiction and jurisdiction is a very important matter. So, if it is an order passed by a wrong court, a court having no jurisdiction whatsoever, I see no reason why such an order should not be treated as an invalid order. This unnecessarily tries to validate orders of a court which can have no jurisdiction to pass such an order. I will therefore submit that the hon. Finance Minister may look into this provision, because under this provision any wrong order will be a valid order, and that will be too much to give.

Mr. Deputy-Speaker: This is meant for territorial jurisdiction—a local court or a court with higher jurisdiction.

Shri U. M. Trivedi: But this is the language of the sub-clause·

> "Nothing in this section shall invalidate any proceeding by reason only of its having been taken in a wrong Court."

It may be territorial or otherwise, but I submit that this should be considered in its proper perspective.

Shri S. S. More: I speak with extreme hesitation, because not having practised in company law courts and not having been able to grasp the whole scheme of this legislation, I am likely to make some mis-statements. As a lawyer reacting to the provisions of this Bill, I want to express some points on which there is ample room for doubt. I do welcome the amendments which have been suggested by the Finance Minister and Mr. C. C. Shah who has been speaking in a deputising manner for the Finance Minister.

Dr. Krishnaswami (Kancheepuram): M. C. Shah?

Shri S. S. More: No, no.

Shri C. D. Deshmukh: He means Shri C. C. Shah; a subtle sarcasm.

Shri S. S. More: My submission is that a large number of relatives ought to be roped in. 'Relative' has been defined in sub-clause (41) of clause 2, but the restriction which has been put in by the interpreting clause 6 is not justified. Mr. Tulsidas wanted to eliminate some of the items included in that particular clause, but I would rather like to add more to that clause. I too come from Bombay State and I find that there are some companies which are entirely companies of Parsis; there are some companies which are entirely companies of Gujaratis and there are some companies which are entirely companies of Marwaris. But we Maharashtrians have a company for the purpose of cleansing utensils and for spreading beds for somebody else. I feel that this is an attempt to expand such companies. I see the Finance Minister appreciating my statement, showing approval of what I say.

An Hon. Member: He is not appreciating.

Mr. Deputy-Speaker: Even though the hon. Member may belong to that very important community, I do not think he is competent to speak on behalf of all of them. There are very able men who have done a lot of good.

Shri S. S. More: I do not want to enter into that controversy. But the difficulty of Maharashtrians has been this. Our talent is appreciated only when the war is on and not otherwise. (*Interruptions*). My friends are dragging me to regions which I do not want to explore on the present occasion.

My submission is that the definition of relative ought to be extended, so that we can have a casteless company before we can have a castless society. I want to be very brief in spite of the encouragement that I am getting from my friends. My another difficulty is this. Take for instance the Control and Regulation of Industries Act coupled with Article 31 as amended. What is likely to happen to a company which is not properly carrying on its function? Government may take over the function and appoint A, B, C or D as the administrator of this company. He becomes the boss. Will the definition of 'associate' given in this Bill be applicable in his case? I have got many doubts. I have an example of a textile company which was taken over by the Government for the purpose of management. Certain persons were appointed as representatives of Government to manage that company. I have also in mind a case where a relation was appointed as the agent for the purpose of purchasing cotton in spite of the fact that he had very little experience about purchasing cotton, because some of these administrators were proclaiming to the world that they were serving Government

[Shri S. S. More]

without any honorarium or without any fees or commission. But the relations were introduced for the purpose of making profits which were many times more than what it would have been if they had set aside a definite percentage. I have so many doubts and I would request the Finance Minister and the Minister of Legal Affairs to find out whether this definition of 'associate' will be applicable to a case which I have described.

As far as Mr. Shah's amendments Nos. 327 and 335 are concerned, they seek to qualify of sub-clause (3) (d) of clause 2, dealing with associates. He has specified that a body corporate not having more than fifty members shall be an associate. Does it not mean that a body corporate having more than 50 members cannot be treated as an associate under this clause? I am raising this question in order to seek a clarification from him. I refer him to sub-clause (c) of the same clause. I say that sub-clause (c) is sufficiently comprehensive to cover that case. He was pleased to explain that in this sub-clause (c) some office-holders like managers, or managing agents were mentioned, but members were excluded from the operation of this clause. That is how I understood him: he will no doubt correct me if I have misunderstood him. In order to get over that exclusion, he wanted to amend the words so that the members of a public company may also come under the handicap. Will that not mean, Sir, that only when a public company has a membership not exceeding 50, will the members be disqualified; if it is does not exceed that limit, it will not come under sub-clause (c), it will not come under sub-clause (d), and therefore, the larger companies will be at a more advantageous position than the so-called smaller companies? It would be sacrificing a lean lamb instead of a fat goat. I would therefore, emphasise that this matter will have to be explored further.

Mr. Deputy-Speaker: The only point is that in a large body of persons the responsibility is diffused; if it is a small body everbody is presumed to take interest.

Shri S. S. More: May I reply to that by saying that the number of shareholders may be large, but the holding of the shares may be concentrated in the hands of a few. The numerical strength of the share-holders may be more than fifty, but as far as concentrated interest is concerned, they may be less than fifty. So, if we are out to plug the loopholes—I am only pointing out a possible loophole—it is for the Finance Minister to plug it with the help of Shri C. C. Shah, if he can.

I now come to clause 5. Shri Chatterjee brought his legal acumen to bear on this clause. He said that we ought to have the word "wilfully" inserted and to that extent he supported Shri Tulsidas Kilachand. I know Shri Chatterjee is a very soft-hearted person. He attacked Shri Tulsidas Kilachand in the earlier part of his speech, but by way of appeasement he applied some soft ointment and supported Tulsidasji on this clause. Shri Chatterjee ignored the very purpose of this clause. I know that the English law applies only to that category of persons who wilfully and knowingly commit a default. But our Finance Minister and the Joint Committee proposed to spread their net wider. The difference contemplated here is indentical with that between connivance and consent. Take, for instance, a concrete case. Under the different provisions an officer in charge will have to submit certain statements. A man who knows his responsibilities may be negligent. It may not be innocent neglience; but he knowlingly avoids that part of his duties. If Government is expected or authorised or enabled to exercise supervision and control as effectively as possible, even this has to be made punishable.

In England the shareholders are more competent; in other countries the shareholders are more competent.

In our country, unfortunately, the shareholders are not yet alive to their responsibilities and Government will have to act as a sort of trustee on behalf of these beneficiaries who are not vigilant about their rights. Therefore, I feel that the amendment of the clause proposed by the Joint Committee is perfectly right. It covers a larger field than is supposed to be covered by section 440 of the English Act and to that extent I say the Joint Committee has acted very wisely. It is no use quibbling over words, "Wilfully" means a more definite state of knowledge and purpose of having to do a thing. In England even lesser aspects of this matter are taken into consideration and made penal.

Then I would like to say a few words about the amendments which have been proposed by my hon. friend Shri Basu.

Shri U. M. Trivedi: Does "knowingly" mean "intentionally"?

Shri S. S. More: It all depends upon the surrounding circumstances. I cannot reply to hypothetical questions. The facts of a particular case will give us the foothold for interpretation.

Mr. Deputy-Speaker: Knowingly need not be intentionally.

Shri S. S. More: May not be.

Mr. Deputy-Speaker: Even less than intention is enough to make him guilty.

Shri S. S. More: We have got similar expressions even in the Penal Code. It will be for the courts to interpret if the facts come within the category of knowingly, or within the category of "wilfully" or within the category of dishonesty. These are not matters which can be replied to in a vague manner on the floor of the House, but my hon. friend Shri Trivedi will have to wait for some concrete case to come up in which he will get all the material for the purpose of seeing what the limits of the word "knowingly" and what the limits of the word "intentionally" are.

My hon. friend Shri Basu has moved two amendments, Nos. 324 and 330, which contradict each other. I cannot understand why he should make a distinction between the managing agents on the one hand and the Secretaries and Treasurers on the other. I would rather support him as far as one-fourth percentage is concerned. But this should be made equally applicable to the Secretaries and Treasurers and the Managing Agents.

Regarding the composition of a company, my hon. friends Shri Asoka Mehta and Basu raised the question of nationalising of the directors of the companies. I mentioned this point when I spoke during the discussion at the consideration stage. Of course, the Finance Minister was not pleased to reply to that part of the debate. We cannot expect him to reply to every part of the debate. We are not very particular about his reply in words. If he introduces some amendment by which he will be giving concrete effect to our suggestion—in fact it is not our suggestion, it is the demand of the public—we would be satisfied. The Bhabha Committee was much more dominated by the capitalistic interests than by persons who believe in socialistic approach. They were particular to draw the attention of Government to this particular matter. If they have done that necessary duty of drawing the attention of the Government, it is for the Government to see how they react to that suggestion, I think a necessary amendment to that effect will be heartening. Everybody stands here for a socialistic pattern on this particular Bill and on every measure which is of social importance, which takes the country towards some further stage in progress. We are not split up here as Government on the one side and Opposition on the other. These barriers become thin and are eventually removed. We are here as exploiting capitalists on the one side and those who want to save the country from the clutches of the capitalists on the other. It is not Government on the one side and the Opposition on the other, but those who stand for capitalism like Shri Tulsidas.....

Mr. Deputy-Speaker: He sits for capitalism.

Shri S. S. More: He looks like sitting, virtually he stands for capitalism. My submission is this. I make an earnest request to the Finance Minister to take that matter also into consideration. When a highly industrialised country like America and a country like Switzerland, which is in a more advanced stage of development than India, have done it, it is time for us to do something of that sort. I have no quarrel with foreign capital. Let it come. But, let it come under some effective strings of our Government and of the people.

Mr. Deputy-Speaker: Shri Jhunjhunwala. How long would the hon. Minister like to take?

Shri C. D. Deshmukh: About half an hour.

Mr. Deputy-Speaker: This group will be finished by 3-30.

Shri K. K. Basu: There is no need to extend the time.

Mr. Deputy-Speaker: There is no need to extend the time.

Shri Jhunjhunwala (Bhagalpur Central): On the first reading of the amendments moved by the Finance Minister and my hon. friend Shri C. C. Shah, it may appear that it is somewhat harsh to the private sector if there is such a definition of associate, relative, etc. But, no further defence is required for these definitions, after I heard Shri Tulsidas say that he can give selling agency to his son if he is financially separate. This shows how the private sector has been working in the past. I do not know what other methods they will find out in order to get over this definition also. I do not want to say anything further in defence of the Finance Minister's amendment and that of Shri C. C. Shah. Really it is the background of the private sector which has compelled the Finance Minister to bring in such an amendment, and if it works any hardship in any way, it is not the Finance Minister who is to be blamed, but it is the private sector. I shall only appeal to the private sector, as Shri N. C. Chatterjee said, to have some honourable traditions in their sector and put their house in order before they find fault with the Government.

So far as clause 5 is concerned, there has been so much of legal discussion about the word 'wilfully' not occurring so far as an officer is concerned and its occurring so far as those who authorise or permit such default. I do not know who is supposed to authorise or permit such a default. My hon. friend Shri S. S. More said that it is the shareholders who authorise or permit such a default. It is true that so far as the shareholders as a body are concerned, they, by their resolution, appoint the managing agent. If my supposition is right, it is the managing agent who wilfully authorises or permits such a default, non-compliance, failure, refusal or contravention and the officer who is in default is subordinate to that authority, I mean, the managing agent. On that supposition I say that the word 'wilfully' should be there in the previous instance. Because, I know of cases where the officers who are working under managing agents are compelled to do particular acts in a particular way though they do not want to do like that. Under such circumstances I would suggest that the word 'wilfully' should be there.

So far as the amendment of my hon. friend Shri K. K. Basu, No. 351 is concerned, he wants to put in those words in connection with officers. If it is to be put in at all, it should be in line 16. The only plea for such a change is that, as I have said, it is not that the officers who are working under the managing agents, do anything wilfully. They may be doing that; there are many who are doing that. But, then, there are certain officers who helplessly have to do so under direction or authorisation or permission of their managing agents. As such, I would suggest that the word 'wilfully' should occur so far as the first portion is concerned, while it

should be removed from the second portion.

Shri Morarka (Ganganagar-Jhunjhunu): I want to speak only on one clause, namely clause 7 of this Bill. The heading of that clause is, Interpretation of person in accordance with whose directions or instructions directors are accustomed to act. The hon. Member who spoke yesterday at great length objected to this clause. He advocated that this clause should be removed altogether from this Bill. If this clause is removed from the Bill, what would be the effect of that? Let me consider that first. If this clause is removed, the effect would be, if some professional persons render their advice to the company for doing certain things in the company, and if the directors act according to that advice, those professional persons would also be roped in. In order to give exemption to these professional people, this clause 7 is put in here. From the arguments of the hon. Member, I find that his objection is a little more substantial than this. He says that if this clause exists, in practice, it would be very difficult to find out the persons according to whose instructions the directors are supposed to act. He says that it may be very difficult in actual practice for anybody to ascertain whether a particular board of directors in a particular company are or are not acting according to the directions of a particular person or whether the board of directors is or is not accustomed to act according to the direction of somebody else. This matter was discussed at great length even in England. This provision which we have made is a copy of sub-section 2 of section 455 as it stands in England. There, the necessity for this provision arose on account of two reasons. Firstly, they say that there are directors who are not shareholders themselves. The real shareholders are outsiders. They merely nominate the directors. The real seat of power is somewhere else. The directors are only the nominees of the shareholders and they act only according to the wishes of the shareholders who do not come on the board of the company, but who remain outside. These directors who are only the creatures of such shareholders, carry out the wishes of the shareholders, in which case, where a liability arises, the shareholders where the power really resides, escapes and the directors who are creatures are roped in. In order that this may not happen, it was the recommendation of the Cohen Committee which was followed there, and again it was the recommendation of the Bhabha Committee—which we have followed here—that these people should also be roped in. Secondly this may also happen because of the nominee shareholding.

Another thing is when the directors of a company act even under somebody else's direction or instructions, then, in all these cases they do not become responsible merely because they are acting on somebody else's advice. Our Bill has laid down that it is only in six cases that they would be answerable. If you kindly see the clauses you will find that there is ample justification for including this provision there. The clauses are: 161, 294, 302, 306, 369 and 535.

Clause 161 deals with the penalty for failure to submit their annual returns. If the directors fail to submit the annual returns under the instructions of somebody else, then it is natural that that somebody else should be held responsible and not these people.

Clause 294 is one which prohibits the giving of loans to a director. If the loan is prohibited, but if the directors are only the creatures of others and the real holders or the real owners of the company are given loan, the purpose of the section would be defeated. Therefore, it is felt that those people should also be prohibited from getting a loan from the company, because in fact they are the *de facto* directors, though the *de jure* directors are different. It is thought that these *de facto* directors should not get the loan.

[Shri Morarka]

Clause 302—disclosure to be made in the register of directors, managers, managing agents etc., particularly of the persons who are the directors, their residence, profession and so on and so forth. In such cases also if the real seat of control is somewhere else, with somebody else, then the address of the person who is the real owner of the company should also be disclosed.

Clause 306 requires the disclosure of the shareholdings of the directors. The shareholdings of directors who are only the creatures of others, will be very nominal. Therefore, the holdings of those persons who have the power to enter into the contracts and to control the company, must be disclosed so that Government may know who are the real owners or proprietors of the company.

Clause 369 is again the same thing as 302, that is, loans to managing agents. Here also the same principle applies.

Clause 505 deals only with offences committed by the officers in a company which is in liquidation.

These are the only six clauses where the expression "person in accordance with whose direction or instructions directors are accustomed to act" occurs in the company law. Therefore, the objection which the hon. Member raised yesterday stating that this is a vague provision and would not work and would create practical difficulties, does not stand to very sound reasoning, more so because out of the six clauses, in three clauses Government itself would say: this is the person under whose instructions you are working. In other cases, it may be difficult for the outsider to know under whose instructions a particular director is working, but the directors themselves would know. What the practical difficulty is I cannot understand. Therefore, I recommend that this clause should be retained as it is. There is no case at all for removing this provision from the Bill.

Shri C. D. Deshmukh: Many of the arguments which have been raised against my amendments have been dealt with ably by hon. Members not only on this side of the House, but also on the other, and I shall only try to reinforce them in dealing with them. I particularly like the observation of Shri Asoka Mehta that it was the speech of Shri Tulsidas itself which convinced him that the amendments that I had proposed were right, because it threw a flood of light on the attitude of the business community in general towards this matter.

Shri Trivedi has talked of the conception of honesty of the ordinary man. Well, my only answer is: we are not dealing here with ordinary men. They are men who are extraordinary in their talents as well as in the mode of life which they have adopted, and in many cases we have proof of a very large incidence of malpractices in this particular respect. And therefore it is not right that we should turn a blind eye to them and have a pitiful kind of faith in the honesty of the ordinary man. As another speaker said, what we are dealing with here is the ubiquitous *benamidar*. Whenever you prohibit anything, then there are smart people who try to do that prohibited thing in the name of somebody else. We meet the *benamidar* almost everywhere, and we certainly meet him in the business world, and it is against him that all this widening network is cast.

Mr. Deputy-Speaker: Why not adopt one argument that all these gentlemen are dealing with public money?

Shri C. D. Deshmukh: I was coming to that.

I looked up the definition of "nepotism" in the Concise Oxford Dictionary. It means, no doubt favour from holder of patronage to relatives. Then there is a little note in the bracket: originally from—I will not name, he was a high dignitary—whose illegitimate sons were called

nephews. That is the origin of this, and all that seems to be based on a man's affectionate nature towards his relatives.

Shri C. D. Pande (Naini Tal Distt. *cum* Almora Distt.—South West *cum* Bareilly Distt.—North): Whether they are legitimate or not.

Shri C. D. Deshmukh: We feel there is likely to be a conflict of loyalties. I would go to some length in agreeing with Shri Trivedi that we should not suspect the honesty of the common man including all men in business, but we should certainly recognise the frailty of human nature. The frailty that led originally to nepotism also shows itself in other directions, and one is apt to judge somewhat indulgently one's own relatives. There is a saying in Marathi:

आपल्या तो सोन्या दूसरा ते कारट

Which means: "This is my golden darling, and that is somebody's brat". And it is this extreme faith in one's golden darling that we are trying to protect companies from. In other words, it might be a very good business proposition, but we say we will not put that burden of judgment on that managing agent, because we do not know whether he will be able to judge rightly as to whether that contract should be given to that son. He may be entirely independent. As Shri Tulsidas said, he may not have any connection at all financially. He may have quarrelled with his father and partitioned his estate. Nevertheless, there are circumstances in which men in public affairs, as you said, or men in business affairs should not be called upon to judge these things. It was on this ground that one Secretary in a very important country in the world resigned the other day, because he had certain shares which he had to transfer before he assumed charge of his high office, and soon after that it was discovered that some of his shares he had transferred to his son; and when it was discovered, it was regarded as a scandal and he had to resign. And I think it is a very good reason. And for the same reason, whether it is Government or whether it is members constituting the Government, it is a very good rule that one should not try to judge either one's own relatives or, what is commoner in the case of Government servants, people who are round us. Indeed, the hon. Member ought to be happy that we have not cast the net as wide as Shri More advises, because in the case of members of Government we do not trust them to make appointments. We have constituted a separate body called the Public Service Commission, because the natural tendency is, say for a Minister, only to know of the worth and merit of the people who surround him. I have no doubt that in many cases they are very good people,—they certainly are,—but it is somewhat unjust to the rest of the community because there may be as good fish in the sea as have been taken out of it. And therefore it is that one ought to cast the net wide and try to find out the person who will have the best bargain from the point of view of the company. That is why I think it is important to have this restriction. Now, one has to stop somewhere. And that is why we want to be fair. In other words, we do not want to be doctrinaire or dogmatic in this matter. It is possible that—may be—where there is some evidence that in a joint family, the first cousins have separated, then that earlier presumption of an indulgent judgment might not hold. That is why we have suggested in all conscience that they might be excluded.

3 P.M.

Mr. Deputy-Speaker: The word 'cousin' is there, in the general rule.

Shri C. D. Deshmukh: There is an amendment to that. Hon. Members spoke about the amendment. It is only a sort of evidence that we are trying to be fair in this matter and not wish to clutter up business too much, because undoubtedly Shri S. S. More wanted us to go too far. He obviously is a person with whom वसुधैव कुटुम्बकं the whole world must be his family. He is a very cheerful person

Shri S. S. More: That is the soul of our philosophy.

Shri C. D. Deshmukh: He is reflecting his general amity and importing that into the discussion of this Bill. But he has not shown that kind of amity towards his own community. In other words, he is thinking of their potentialities in a static kind of way. I say that in future one expects that all kinds of communities and all kinds of States in this country will be able to enter in more and more these arcana of business, and that it will not be confined to certain traditional classes. And we shall feel very happy if in some measure, this Bill enables other people to enter into business. Therefore, I say one need not consider the provisions of this Bill only in the light of which communities are taking part in which business. One ought to regard the possibility of the sphere widening over the rest of the community. That is all I should like to add to what I have said and to what other Members have said in regard to this, except the constitutional point.

I really cannot see where the Constitution comes in, because all reasonable restrictions can be put, whether on public servants or whether on activities which we might regard now as activities of great public significance. In both these cases, I think it is open to the House to provide for reasonable restrictions; and that is what we think we are doing. Therefore, I do not believe that we are violating either the spirit or the letter of the Constitution.

So far as that particular explanation is concerned, it has been there from the original Bill. It does look odd, but it does extend the net a little wider. That is to say, where a person is an associate, he may be an associate by virtue of a certain voting strength, but the other person reciprocally is an associate, and that condition may not obtain. Some of these anomalies are unavoidable, but we do not wish to take any chances with this reciprocal brother-in-lawship so to speak. If I say somebody is my brother-in-law, he is my sister's husband; the other way round, it is his wife's brother; but it comes to pretty much the same thing. Therefore, we thought that that explanation is necessary.

Now, I come to the amendments suggested by Shri K. K. Basu. I think there is some force in what he says. If our objective is to see that neither the managing agent nor anybody who is able to influence the affairs of another company gets a contract, then we must ensure that we do stop a person who really has control. That is to say, it begins at a stage where control becomes a practicable proposition. If we put it at 75 per cent, you would say, the ceiling is so high that almost anyone will escape under it. You may as well have fifty other definitions, but all possible associates and all possible relatives will get under that umbrella of 75. It is true that 51 per cent is an absolute majority. But we know from our own experience here as well as experience elsewhere that things are not decided by that absolute majority. When we say that things are decided by majority, statistically, we might ourselves be deciding things by 33 per cent. majority, or if we decide things today, it might be even ten per cent—I do not know, what it will be—or very much less. Therefore, I consider that what he has suggested—I would like to add one remark before I complete this sentence. As I said, we did not stray so far knowingly and wilfully from the original suggestion of the Bhabha Committee, because that only applied to a director. Now, we have enlarged that sector to director and his partner and various other people. Therefore, we thought that instead of one-fourth, they could muster 51 per cent. But what we are concerned with is the exercise of effective power, and therefore, I am prepared to accept the compromise which Shri K. K. Basu has suggested. And I would accept his amendments Nos. 322 and 324. I

do not wish to accept his amendment No. 330 as it stands. If he is agreeable to one-third there also for the sake of symmetry, then we might, if you would kindly permit him to change.....

Shri K. K. Basu: That is a compromise formula.

Shri C. D. Deshmukh: In amendment No. 330, with your permission, he can amend it from one-fourth to one-third. Then, I am prepared to accept amendments Nos. 322 and 324 as they stand, and amendment No. 330 as amended. That, I think, will help me also incidentally to dispose of the charge that Shri C. C. Shah is deputising for me. I can now probably say that Shri K. K. Basu is also deputising for me.

Shri S. S. More: Then you will have to devise not only socialistic pattern but also communist pattern.

Shri C. D. Deshmukh: That is right.

Shri K. K. Basu: Do not do that. If I have to deputise, that will be against me.

Shri C. D. Deshmukh: What happens is that we put forward certain amendments. Sometimes, hon. Members discuss them on the floor of the House. Certain other hon. Members come to me and say, are you sure that this particular thing has been included.

Shri K. K. Basu: You can accept amendment No. 334 also. There also, it is the same thing. It applies to secretary and manager.

Shri C. D. Deshmukh: Wherever this one-fourth has been mentioned, I am prepared to accept one-third. As I was explaining, it is open to any Member to come and say to me, instead of taking up the time of the House, well, I think, this particular thing has been missed out in your amendment. If I have already shot my bolt, I say to him, all right, you go ahead and give notice of that amendment. Therefore, Shri S. S. More need not draw any profound inferences from this.

Shri S. S. More: I shall request the Finance Minister not to take this particular remark too seriously.

Shri C. D. Deshmukh: I am not taking it too seriously.

Shri K. K. Basu: They are coming from the same State; so, it is a family quarrel.

Shri C. D. Deshmukh: It is not a quarrel.

I only added another deputy. That is all.

As regards clause, 2, there was some discussion about sub-clause (b), and body-corporate and so on. Whichever way you do it, there is some slight anomaly. If we made it a body-corporate with less than 50 members, then the position was that in a private limited company of, say, 49 members, that clause applied. Then, the next thing for that private limited company might have been to turn itself into a public limited company and escape that. On the other hand, I do recognise that if someone wants to escape the mischief of that particular provision, then all that he has to do is to raise the number, and add on a few members, and then escape the clutches. Either way, there is a little loophole.

But I feel that this is meant for managing agencies which are body-corporates. We are not here dealing with all kinds of companies. We are dealing with managing agencies which are body-corporates. Managing agencies with thousands of members—I believe the one has about 2,000—are not unknown. Statistically I should imagine the large majority of managing agencies would be small well-knit body-corporates of 50 members or under. That is why we are providing for the case of these private limited companies and also body-corporates of less than 50. I think I have now dealt with most of the points.

Mr. Deputy-Speaker: What are the amendments that the hon. Minister is accepting?

Shri C. D. Deshmukh: I am not accepting any other amendment except amendments Nos. 322....

An Hon. Member: What about Shri C. C. Shah's amendments?

Shri C. D. Deshmukh: I am accepting all the amendments of Shri C. C. Shah.

Shri C. C. Shah: They are amendments Nos. 325, 327, 329, 333, 335 and 337.

Shri C. D. Deshmukh: I gave them all in my speech yesterday.

Shri Bansal (Jhajjar-Rewari): They are all odd numbers.

Mr. Deputy-Speaker: It is only for the purpose of putting them to vote, that I wanted to know the numbers.

Shri C. D. Deshmukh: In my speech yesterday, I gave the numbers.....

Mr. Deputy-Speaker: I have noted them.

Shri C. D. Deshmukh: ..and today I accept amendments Nos. 322 and 324, and 330 and 334, subject to the change from 'one-fourth' to 'one-third'.

Shri K. K. Basu: If Shri C. C. Shah's amendments are accepted, my amendments also should be related to that.

Shri C. D. Deshmukh: That is right. The numbers will have to be altered in Shri C. C. Shah's amendments. It requires tidying up in a consequential manner.

That is all that is necessary for me to say on this subject. I am quite sure that the general spirit of it is acceptable to the House, that we should try, as far as possible, to see that no loopholes are left in regard to the observance of these five or six important sections which have been named.

Now, we come to this question of "knowingly and wilfully".....

Shri Asoka Mehta: What about Indian directors in foreign companies?

Shri C. D. Deshmukh: Yes. There it is a matter of policy. It is a policy which is connected with our whole policy of foreign investment. It is a matter on which we have had differences of opinion with Members opposite on many an occasion, and I have suggested that really the whole subject ought to be considered sometime or the other, so that Government can announce their policy afresh.

Mr. Deputy-Speaker: Is it considered that not even a single director of such a company is an Indian?

Shri C. D. Deshmukh: I am not giving my opinion. As a matter of fact, if one studies the statistics, one would probably find that almost every company of note has already got an Indian director. In other words, there are certain changes which are coming about without our legislating for them. Take the case of Indianisation. There are certain countries where there are laws to the effect that a certain proportion of nationals should be recruited by foreign companies there. We do not have laws of that nature. There is no reason why we should have all that here. Similarly in the case of control, in certain countries no foreign companies are allowed to have more than 49 per cent. in any corporation. We take, as hon. Members opposite have said, a more pragmatic view. In the case of the oil refineries, we had to be content with less than that—about 15 or 20 per cent. to our nationals or ourselves. In each case, we consider what the demands of the situation are and then take steps accordingly either of admonition or a certain amount of pressure or tendering of advice. And we can see that these changes are coming about, and they are coming about in a way which does not frighten or scare away foreign investors. It is only a reflection of the general policy of non-vio-

lence, so to speak, to which I referred the other day, which Government are following, and I feel that we shall be justified in the end by the results of this policy. So if hon. Members will be patient, I think they will find that the changes that they wish to bring about by legislation today will be coming about without inhibiting the entry of foreign investment to the extent to which we consider it desirable to have that particular foreign investment.

Shri S. S. More: Does that mean that it is a policy of non-violence in regard to foreigners and violence in regard to Indian companies, because the whole Bill is nothing but violence?

Shri C. D. Deshmukh: That may be the hon. Member's opinion, because he is of a violent nature. But when I made my statement, I said that non-violence informed the whole of this Bill. He might disagree with me; I cannot carry on the argument further with him.

Shri S. S. More: Shri Tulsidas does not agree with him.

Shri C. D. Deshmukh: As regards 'knowingly and wilfully', I have notes here which seem to indicate that it is not a phrase which is used very frequently. So far as our legal advisers are aware, it perhaps occurs only here and also in English Acts, perhaps in one or two places, and no more. It is possible to hold that 'knowingly' includes almost all the elements of 'wilfully'. On the other hand, it is also possible to hold that 'wilfully' has a certain element which is lacking in 'knowingly'. Now, we are proceeding on the latter interpretation, that 'knowingly and wilfully' has something more. In other words, 'wilfully' imports a different sense. I would give an illustration. Suppose there is a board on Kingsway saying that speed should not exceed 30 miles an hour. There is a driver who goes at more than 30 miles an hour. May be, he cannot stop his car, may be the brakes are not working. He knows he is breaking the law. Therefore, he is knowingly doing it; he is going at more than 30 miles an hour. On the other hand, there may be another dashing driver who may say, 'I will see what the police can do at this point. I am..... .....(may be an important person) and I will see how they stop my car'. I should say that he is breaking that particular rule knowingly and wilfully, whereas the first person would be breaking it only knowingly. Indeed, there is a third category, where you are not expected to know even whether you are breaking the law or not. As soon as you break the law, you are punished. For instance, if you happen to put your foot on the fire, it is bound to get burnt. There is no question of saying, 'I did not know it was fire'. You do not have to say, anyone who puts his foot knowingly on the fire will have his foot burnt. Therefore, there are these fine distinctions, and as I say, we are proceeding on this, and there is some support for this, that 'knowingly and wilfully' means a little more than 'knowingly'.

Now, Shri N. C. Chatterjee, who was here, made the point that if we were following the English law, why didn't we follow it fully? The answer is very clear. In the English law, there is only one category of persons: 'whoever does or authorises or permits..... and so on—knowingly and wilfully.....', whereas we have a distinction: 'a man who does an act, the man who authorises'—there is verbiage there, authorises, permits etc. But essentially, that is different. In the case a man who commits an act, we say it is sufficient if he knows that he is committing it; there should be no further burden of proof cast on us not only to show *mens rea* but to show evil intention, that is to say, *mala fide*. You know that you want to do something wrong. Not only do you know that you are doing something wrong, but you want to do something wrong. We do not wish to cast the burden in this case on ourselves. Therefore, so far as the man who is doing an act is concerned, an

[Shri C. D. Deshmukh]

officer in default who commits an act, it is sufficient for our purpose if he knowingly does it. Then we come to the man, a director who has numerous companies on his hand—shall we say?—and someone has come to him for signature. He says, 'will you kindly sign this? This is all right'. Then the director says, 'I sign this'. He certainly signs his name knowingly, but does he know the nature of the transaction which he is authorised to put through? Therefore, we have been a little generous to him. We say that it should be necessary for us to prove not only that he authorises knowingly but he authorises wilfully also. Now, the hon. Member wants 'wilfully' to be added to the first thing. On the other hand, other hon. Members who say there is no distinction would want us perhaps to drop 'wilfully' in both cases. If we were to follow Shri N. C. Chatterjee, I should be quite content to drop 'wilfully' from the second, so that it would only be 'knowingly'. In that case, I say that it will be a little hardar on the man who authorises, and therefore, I would recommend that we retain the clause as it is.

Then there is the point of debentures which has been answered, I think, very clearly by Shri N. P. Nathwani. It is not a question of trying to include every single transaction for short term loan. A debenture is certainly that, a loan on floating assets and so on, but there is a little more in it and that little more is that it is one of a series of transactions. I do not think of just a debenture with one person; it is just like a public issue of small transactions and that I think is the difference. Therefore, if there is any different category as bonds etc., so long as they have the same characteristics as a debenture they will be treated as such. I do not think there is any particular kind of threat which is feared by Shri Tulsidas.

There is a small point about my amendment, No. 286. When I explained it I said that we do not desire that a company which is a subsidiary by all manifestations escapes being regarded as a subsidiary merely because certain technical conditions are not fulfilled because the law of voting there in the parent company is something different. Therefore our intention was not to confer an advantage but to include in the definition of "subsidiary" even companies which did not satisfy our definition so long as they satisfied the definition under their law. That company would also be regarded as subsidiary; that was the object of amendment No. 286.

I come lastly to the amendment of Shri Trivedi; the only one which, I think, in fairness, I should accept is amendment No. 17. Our only justification for having that sub-clause is that it was in the old Act. I am surprised that it has found a place in the old Act since 1936. It seems odd that after having taken care to specify the courts in which all these matters may be tried you neutralise that by saying now that it does not matter even if it goes to the wrong court. It seems an odd kind of provision. I believe there was some kind of qualification implicit in it that it is the same kind of court, like the High Court or the District court but at a different location.

Mr. Deputy-Speaker: I think it was of a different locality.

Shri C. D. Deshmukh: It may mean that instead of the Delhi District Court some other District Court like the Aligarh District Court or something. But, that has not been made clear in it. There is no amendment of that nature. It has been suggested that we should say that this applies only where no objection has been raised as to wrong jurisdiction; but, I do not see why we should put that burden on a party. If we say that we should have a thing tried before a particular forum, then there is no reason why we should overlook that if it has gone to the wrong forum and I do accept the amendment, No. 17, of Shri Trivedi, which results in the

omission of sub-clause (4) of clause 10.

There was only one last point which has been dealt with by Shri Morarka. I have nothing more to add to it. He has explained very clearly why this should be added.

Shri C. C. Shah: Only one word; you wanted to say about the amendment regarding secretaries and treasurers.

Shri C. D. Deshmukh: I think I ought to answer that. I thank the hon. Member. I did say that I anticipated that a new form of secretaries and treasurers will come into being. Shri Basu bases his argument on that. Since we have our young men why not they form themselves into a body like that. I also said in my speech in answer to a question put by an hon. Member, "Do you want the managing agents to be turned into secretaries and treasurers," "Yes, in that case we should have got rid of our cough without medicine." Instead of being managing agents they are willing to accept lowering the remuneration from 10 to 7½ per cent. and they forego even the right to nominate two directors on the board of directors. I do not see why you should want to interfere with a system of management which is not found to be dishonest or prejudicial to the interests of the company. There may be many managing agents, small men who may be doing very well by their companies but they say the future is uncertain, we are quite content with 7½ per cent. and we wish to turn ourselves into secretaries and treasurers. I wish to give them the opportunity to do so. Therefore, my object in importing it into this chapter was only to encourage, as I said earlier in my speech, all sections of the community to an increasing extent to take part in the industrial and commercial sphere. That is my reason for not accepting his amendment in this particular connection.

Mr Deputy-Speaker: I will put first of all, the amendments of the hon. Finance Minister, all except the one relating to cousin because it has to be amended.

Shri S. S. More: It is No. 287.

Mr. Deputy-Speaker: There must be some further amendment to this amendment.

Shri C. D. Deshmukh: My amendment is No. 287.

Mr. Deputy-Speaker: Is there any amendment to that amendment? It was said that cousins there may refer to cousins germane and not to any degree. Is that the intention of the hon. Minister? Cousins may refer to cousins of the first degree or of the second degree.

Shri S. S. More: There is no amendment to that.

Shri C. D. Deshmukh: We are talking of first cousins.

Mr. Deputy-Speaker: It is not said here.

Shri C. D. Deshmukh: In clause 6, it is first cousins. I am referring to clause 6(v). We have defined first cousins.

Mr. Deputy-Speaker: The question is:

Page 1, sub-clause (3),

In line 29, *after* the word "partner" *insert* the words "or relative"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 1, sub-clause (3),

In line 30, *after* the words "such individual" *insert* the words ", partner or relative".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 1, sub-clause (3),

In line 33, *after* the words "any such partner" *insert* the word ", relative".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 3, *after* the word "manager;" *insert* the word "and".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 10, *omit* the words "any such".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 10, *after* the words "partner or partners" *insert* "relative or relatives".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In lines 10 and 11, *omit* the words "and any such".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 11, *after* "firm or firms;" *insert* "and private company or companies;"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In lines 11 and 12, *omit* the words "and any relative of such individual;"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 16, *after* the word "partner" *insert* the words "or relative".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In lines 17 and 18, *after* the words "any such member" *insert* the words ", partner or relative".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 21, *after* the word "partner" *insert* the word, ", relative".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 32, *after* the words "partner or partners" *insert* the words "relative or relatives".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 33, *for* the words "and other firm or firms" *substitute* the words "other firm or firms and private company or companies;"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In lines 33 and 34, *omit* the words "and any relative of any such member".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, sub-clause (3),

In line 44, *after* the word "thereof;" *insert* the words "any partner or relative of any such director or manager; any firm in which such director, manager, partner or relative, is a partner;".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3, sub-clause (4),

In line 16, *after* the word "partner" *insert* the words "or relative".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3, sub-clause (4),

In line 18, *after* the words "any such member" *insert* the words "partner or relative".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3, sub-clause (4),

In line 21, *after* the word "partner" *insert* the word "relative".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3, sub-clause (4),

In line 31, *after* the words "partner" or partners" *insert* the words "relative or relatives;"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3, sub-clause (4),

In lines 31 and 32, *for* the words "and other firm or firms" *substitute* the words "other firm or firms, and private company or companies;"

The motion was adopted

Mr. Deputy-Speaker: The question is:

Page 3, sub-clause (4),

In lines 32 and 33, *omit* the words "and any relative of any such member".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3, sub-clause (4),

In line 42, *after* the words "holding company thereof;" *insert* the words "any partner or relative of any such director or manager; any firm in which such director or manager, partner or relative, is a partner;"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 4, sub-clause (15),

(i) In line 36, *after* the word "notice" *insert* the word "requisition," and *omit* the word "and".

(ii) In line 37, *after* the words "and registers", *insert* the words "whether issued, sent or kept in pursuance of this or any other Act, or otherwise;"

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 6, sub-clause (30),

In line 6, *omit* the figures "616, 617, 618".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 6, lines 41 and 42,

In sub-clause (40), *for* the words, "or an Assistant Registrar", *substitute* the words "an Additional, a Joint, a Deputy or an Assistant Registrar."

The motion was adopted.

Mr. Deputy-Speaker: I will dispose of clause 2. There are no other amendments of the Finance Minister to clause 2. Mr. Trivedi is not present here.

Shri S. S. More: Mr. Shah's amendments and Mr. Basu's amendments may be taken together.

Shri C. D. Deshmukh: These are complicated. It is the number concerned wherever necessary.

Mr. Deputy-Speaker: I will put Mr. Basu's amendments first.

The question is:

Page 2, line 5,

for "one-half" *substitute* "one-third".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2, line 26,

for "one-half" *substitute* "one-third".

The motion was adopted.

Shri K. K. Basu: Regarding my amendments Nos. 330 and 334, instead of one-fourth, it should be one-third.

Mr. Deputy-Speaker: All right. Shri Basu's amendments Nos. 330 and 334 will have this further modification that the figure one-fourth will be converted to one-third. I am putting these two amendments to the vote, with this conversion.

The question is:

In page 3, line 26, *for* "one-half" *substitute* "one-third".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 3, lines 44 and 45, *for* "one-half" *substitute* "one-third".

The motion was adopted.

Mr. Deputy-Speaker: I am now putting to vote amendments Nos. 325, 327, 329, 333, 335 and 337, with the consequential amendments arising out of Shri Basu's amendments, carried just now. Also, parts (ii) of amendments Nos. 325 and 333 of Shri C. C. Shah are the same as Government amendments Nos. 260 and 267 respectively, already adopted, I will put to vote only parts (i) and (iii) of those amendments.

The question is:

In page 2,

(i) line 38, *before* "any subsidiary" *add* "(i)" and;

(ii) for lines 45 to 54, *substitute*: "(ii) any other body corporate at any general meeting of which not less than one-third of the total voting power in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate and the companies and other persons specified in paragraph (i) above; and."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 3, lines 2 and 3, *after* "private company" *add* "or a body corporate having not more than fifty members".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 3, line 6, *add* at the end "or body corporate".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 3,

(i) line 37, *before* "any subsidiary" *add* "(i)" and;

(ii) line 42, *before* "any" insert "(ii)" and *for* lines 43 to 51, *substitute*:

"other body corporate at any general meeting of which not less than one-third of the total voting power

in regard to any matter may be exercised or controlled by any one or more of the following, namely, the body corporate and the companies and other persons specified in paragraph (i) above; and."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 4, line 3, *add* at the end "or a body corporate having not more than fifty members".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

In page 4, line 6, *add* at the end "or body corporate".

The motion was adopted.

Shri K. K. Basu: Then I want amendments Nos. 322 and 336, which are basically the same, and 343 and 344, to be put together.

Shri M. C. Shah: No. 322 is carried already. He is referring to No. 323 obviously.

Shri K. K. Basu: I am sorry; it is 328 and not 322. Let 328 and 336 be put together.

Mr. Deputy-Speaker: It is not 323.

Shri K. K. Basu: I am not pressing 323 as that is covered by the Finance Minister's other amendments. Please put amendments Nos. 328 and 336 together.

Mr. Deputy-Speaker: The question is:

In page 3, line 6, *add* at the end "or any relative of the member".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, line 6 *add* at the end "or any relative of the member".

The motion was negatived.

Shri K. K. Basu: Let amendments Nos. 343 and 344 be put together which relate to the deletion of the words "body corporate".

Shri C. C. Shah: There is a substantive amendment on clause 378, that is amendment No. 236. Mr. Basu's amendments are merely consequential. As we were discussing clause 7, so here, if that substantive amendment is carried, the amendment here will be consequential. For the present, let them stand as they are. It will depend upon the decision on amendment No. 236, just as we did in the case of clause 7.

Shri K. K. Basu: I have no objection if that be your ruling.

Shri C. D. Deshmukh: We should deal with the substantive clause. Amendments 343 and 344 may stand over until then.

Mr. Deputy-Speaker: Therefore, we cannot put clause 2 to the vote of the House.

Shri C. C. Shah: All sub-clauses of clause 2, except sub-clause (44) may be put to vote.

Mr. Deputy-Speaker: Clause 2 will stand over. After disposing of clause 7, I will come back to clause 2.

Shri C. C. Shah: That amendment is to clause 378. I suggest that clause 2 may be passed except sub-clause (44).

Mr. Deputy-Speaker: I am not going to do that.

Shri S. S. More: It is a very long journey!

Mr. Deputy-Speaker: I shall now put all the other amendments, excepting No. 323 of Shri Basu not pressed and Nos. 343 and 344 by the same Member held over till we come to clause 378.

The question is:

Page 1,

for line 14, *substitute*:

"additions, omissions and modifications".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Pages 1, 2 and 3,

omit lines 24 to 33, lines 1 to 54 and lines 1 to 10 respectively.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

(i) Pages 1 and 2, lines 31 to 33 and lines 1 to 12 respectively,

omit all the words *after* the word "partner";

(ii) Page 2,

omit lines 13 to 34;

(iii) Page 2,

omit lines 35 to 54;

(iv) Page 3,

omit lines 1 to 10; and

(v) Pages 3 and 4,

omit lines 11 to 51 and lines 1 to 9 respectively.

The motion was negatived.

Mr. Deputy-Speaker: Amendment No. 147 is the same as No. 253 and No. 148 is the same as 259, both already adopted. So they need not be put.

Now, 326: The question is:

Page 2, line 54,

add at the end "/or any body corporate in which any member of, or any person connected with the Managing Agents is a director and"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3,

omit lines 7 to 10.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 3, lines 30 and 31,

after "members" *insert*:

"and/or any relatives thereof"

The motion was negatived.

Mr. Deputy-Speaker: Amendment No. 150 is the same as No. 266 already adopted. So it need not be put. Now No. 332.

The question is:

Pages 3 and 4,

omit lines 34 to 51 and 1 to 6 respectively.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 4,

omit lines 1 to 6.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 4,

omit lines 7 to 9.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 4,

(i) line 28,

after "debenture stock" *insert* "and"

(ii) lines 28 to 30,

omit "and any other securities of a company, whether constituting a charge on the assets of the company or not;"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 4, line 31,

after "person" *insert* "substantially"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 5,

omit lines 1 to 6.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Pages 5 and 6,

for lines 46 and 47 and lines 1 to 7 respectively, *substitute*:

'(30) "officer" includes any director, manager or secretary;'

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 6, line 6,

omit "536"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 6, line 8, and wherever they occur in the Bill,

for "officer who is in default"

substitute "delinquent officer"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 6,

omit lines 43 to 45.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 6, lines 43 to 45,

for "any one who is related to such person in any of the ways specified in section 6, and no others" *substitute*:

"any one who is a spouse or is related in the first degree and no others"

The motion was negatived.

Mr. Deputy-Speaker: We shall follow the suggestion of Shri C. C. Shah. Sub-clause (44) will stand over until we go to clause 378. All the other sub-clauses will be put to the vote of the House now.

The question is:

"That sub-clauses (3), (4), (15), (30) and (40), as amended, and sub-clauses (1) and (2), sub-clauses (5) to (14), sub-clauses (16) to (29), sub-clauses (31) to (39), sub-clauses (41) to (43) and sub-clauses (45) to (50) of clause 2 stand part of the Bill."

The motion was adopted.

Sub-clauses (3), (4), (15), (30) and 40, as amended, and sub-clauses (1) and (2), sub-clauses (5) to (14), sub-clauses (16) to (29), sub-clauses (31) to (39), sub-clauses (41) to (43) and sub-clauses (45) to (50) of clause 2 were added to the Bill.

Mr. Deputy-Speaker: We will come back later on to sub-clause (44) and then put the clause as a whole to the vote of the House. The amendments Nos. 343 and 344 also will stand over. All the other parts of clause 2 have been adopted. There is now an amendment to clause 3—No. 285, moved by the Government. I shall put it to the vote of the House.

The question is:

Page 8, sub-clause (1)(ii)(f), lines 2 and 3,

for the words and figures "in a Part B State at any time before the first day of April 1951", *substitute* the words and figures "in the merged territories or in a Part B State or any Part thereof, before the extension thereto of the Indian Companies Act, 1913 (VII of 1913)".

The motion was adopted.

Mr. Deputy-Speaker: I shall now put the other amendments to clause 3. Amendment No. 30.

The question is:

Page 8, *omit* lines 31 to 34.

The motion was negatived.

Mr. Deputy-Speaker: Amendment No. 94 is the same as No. 30 negatived just now. So that is also deemed to be negatived.

The question is:

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Mr. Deputy-Speaker: There is one amendment to clause 4 by the Finance Minister—No. 286.

The question is:

Page 10, new sub-section (6),

After line 8, *add* the following subclause:

"(6) In the case of a body corporate which is incorporated in a country outside India, a subsidiary or holding company of the body corporate under the law of such country shall be deemed to be a subsidiary of holding company of the body corporate within the meaning and for the purposes of this Act also, whether the requirements of this section are fulfilled or not".

The motion was adopted.

Mr. Deputy-Speaker: I shall now put the other amendments.

The question is:

Page 8, line 39,

for "controls the composition" *substitute*:

"has a right to nominate or elect one-third of the membership"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 9, line 25,

omit "or by a subsidiary of it"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Mr. Deputy-Speaker: Are there any amendments to clause 5 which any hon. Member wants to press?

Shri Tulsidas: I want to press 154.

Mr. Deputy-Speaker: The question is:

Page 10, line 14,

after "knowingly" *insert* "and wilfully".

The motion was negatived.

Shri K. K. Basu: I want to press 352; I do not press 351.

Mr. Deputy-Speaker: I think it is only to counter-balance it; is it not? And make them both guilty.

The question is:

Page 10, lines 15 and 16, *omit* "and wilfully"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Mr. Deputy-Speaker: To clause 6, there is an amendment by Government—No. 287.

The question is:

Page 10,

in line 29, *after* the word "grandparent", *insert* the words "provided the cousins are members of a Hindu Joint family whether governed by the Mitakshara, the Dayabhaga, the Marumakhathayam, the Aliyasanthana or any other system of law."

The motion was adopted.

Mr. Deputy-Speaker: I shall now put the other amendments to this clause.

The question is:

Page 10,

after line 26, *insert*:

"(iiia) as sons-in-law or daughters-in-law or as brothers-in-law or sisters-in-law"

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 10,

omit lines 28 and 29.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Mr. Deputy-Speaker: There is an amendment of Shri Trivedi to clause 8—No. 15.

The question is:

Page 10,

after line 44, *add*:

"Provided that the company is given seven days notice to show cause against such declaration being made and no such declaration shall be made till the company has been heard."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Mr. Deputy-Speaker: We now come to clause 9. There is one amendment to it.

The question is:

Page 11, line 3,

after "shall" *insert*:

"at once come into operation and"

The motion was negatived.

Mr. Deputy-Speaker: Hereafter, I think it is necessary for me to develop a convention. A number of amendments are tabled in the House. It is also indicated that they are moved but later on hon. Members are not here. It is unnecessary for me to ask for the leave of the House to withdraw them; the hon. Members are not also present even for withdrawing and I cannot move for leave. Therefore, I may have to put it to the vote of the House and waste the time. Therefore, all the other amendments if they are not put to the vote of the House and if the hon. Member concerned is not here—I will take it for granted that he has asked for the leave and he has got the leave of the House to withdraw those amendments. We will establish that convention.

The question is:

"That clause 9 stand part of the Bill."

The motion was adopted.

Clause 9 was added to the Bill.

Mr. Deputy-Speaker: We now come to clause 10.

Shri U. M. Trivedi: Amendment No. 16.

Mr. Deputy-Speaker: Does he want me to put his amendment No. 16 first? I think the hon. Minister has accepted 17 and not 16.

Shri C. D. Deshmukh: Only 17.

Mr. Deputy-Speaker: The question is:

Page 11,

after line 24, *add:*

"Provided however that the District Court shall not transfer such cases to any court subordinate thereto notwithstanding any provisions of any law authorising such transfer."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

Page 11,

omit lines 40 and 41.

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 11,

for lines 21 to 24, *substitute:*

"(b) the District Court, in respect of companies having their registered offices in the district or elsewhere, if empowered by the Central Government under sub-clause 2 of this section or the High Court under any provisions of this Act."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

"That clause 10, as amended, stand part of the Bill."

The motion was adopted.

Clause 10, *as amended, was added to the Bill.*

Clauses 11 to 67

Mr. Deputy-Speaker: The House will now take up clauses 11 to 67 for which 2½ hours have been allocated. Hon. Members who wish to move their amendments to these clauses will kindly hand over the number of their amendments specifying the clauses to which they relate to the Secretary at the Table within fifteen minutes and they will be treated as having been moved subject to their being otherwise admissible.

Shri C. D. Deshmukh: I would like to move the amendments standing in my name—namely 288 to clause 22, 289 to new clause 23A, 290 to clause 43, 291 to clause 48, 292 to clause 50, 314 to clause 15....

Mr. Deputy-Speaker: Is the hon. Minister going back?

Shri C. D. Deshmukh: Serial numbers 288 and onwards. I have been following the number of the amendments.

Mr. Deputy-Speaker : I have to follow the clauses. It does not matter.

Shri C. D. Deshmukh: I thought it was convenient to follow the serial number of the amendments as given here because they are all in one place—288 to 292, 314 to clause 15 and 315 to clause 29.

Mr. Deputy-Speaker: These are all the Government amendments. In the meanwhile, hon. Members will kindly send their chits to the Table indicating the numbers of the amendments which they want to have moved.

Shri C. D. Deshmukh: In regard to amendment No. 288, we have said 'the company and every officer'. The default may be that of an officer of the company and not of the company at all. It is necessary to provide for the punishment of the officer also in such a case as has been done in various places in the Bill.

In regard to amendment No. 289, clause 13 as amended by the Joint Committee provides that a private limited company should include the words 'private limited' in its name and not merely the word 'limited'. It has been suggested that provisions should be made for the existing private companies amending their names by including the word 'private' therein without going into the procedure laid down in clause 22. Government considers this suggestion to be a reasonable one and the new clause 23A accordingly seeks to implement it. It

provides that in the case of private limited companies existing at the commencement of the Bill, the Registrar himself should alter the name of the companies by adding the word 'private' before 'limited'. A similar provision will be found in clause 24 (7) for adding 'limited' or 'private limited' to the names of companies which have ceased to be charitable companies.

Then I come to my amendment No. 290 to clause 43. The fine of Rs. 500 provided for seems to be inadequate on reflection. In England a daily fine of £50 is provided—see sections 30 and 440 of the English Act. The amendment brings the sub-clause into line with the English Act. In the present Indian Act only a fine of Rs. 500 is provided but this seems to be an inadvertent error.

Then there is my amendment No. 291 to clause 48 which is only a drafting amendment. The words "shares or securities" occur in a number of other places in the clause as for instance, lines 23, 26, 30, 35 and 39. It is, therefore, desirable to say "shares or securities" in line 20 instead of "shares or other securities". The amendment accordingly omits the word "other".

[SHRI BARMAN *in the Chair*]

I now come to my amendment No. 292 which seeks to amend clause 50. The registrar has to serve notices on directors and other officers of a company in certain cases; for instance, before launching a prosecution. Some registrars want that clause 50 should be extended so as to cover the service of notices on officers of the company. The amendment gives effect to this.

Then there are two amendments 314 and 315. Amendment No. 314 seeks to amend clause 15. The object of this amendment is to make it possible to get at the identifying witness if any necessity arises for that. The amendment has been suggested by one of our registrars and we think it will improve matters.

Amendment No. 315 is an amendment to clause 29. The object of this amendment is to make it possible to get at the identifying witness if any necessity arises. This again has been suggested by one of our registrars as in the case of amendment No. 314.

These are all the amendments that I have tabled to the clauses now being taken up.

Shri Tulsidas: My amendments to the clauses under consideration are: 157, 158, 159, 160, 161, 163, 164 and 165—that is up to clause 70. I do not want to move my amendment No. 156 because the hon. Minister has brought his amendment No. 289 which is more or less in conformity with my amendment. My amendment seeks to provide for procedural regulation and I am glad the hon. Minister has also brought up this amendment No. 289 which does serve the purpose. I want that the change of "private limited" should not be brought in all the time.

Now, I would like the Finance Minister to consider some of the amendments which stand in my name, and which are substantial. Anyway, I would now refer to my amendment No. 157 to clause 32. Clause 32 requires the registration of the proposed managing agency agreement along with the memorandum and articles of association with a registrar. The provision regarding the filing of the proposed managing agency agreement is not to be found in the present Act, and though the Bhabha Committee had in paragraph 35 of their report recommended the inclusion of such a provision the original Bill did not contain such a provision. It was only at the Joint Committee stage that this provision was included in the Bill. This is an example, in my opinion of undue interference in the use of discretion of a company's promoters. The filing of the memorandum and articles of association constitutes the first stage in the formation of a company when all details about managing agency may not have been worked out. It is at a later stage, that is when the prospectus is issued, that invitation is

[Shri Tulsidas]

extended to the public to subscribe for shares. Under Schedule II to the Bill the prospectus is required to give all details about the managing agency agreement. It is only at the stage of invitation of subscription to shares that the information is of real value to the subscribing public. For this adequate provision for supply of information is made in the clauses and schedules dealing with the prospectus and its contents. Further, such proposed agreements have no legal validity nor are the parties bound by their terms. Therefore, such a practice may cause misunderstanding in case it becomes necessary to alter the terms when a final agreement is made and signed. Negotiations by a company to appoint a managing agent and provisional agreements which may be entered into are confidential matters which are to be carried on in private. Their premature disclosure may lead to unhealthy pressure from competitors and perhaps may harm the interests of the company, itself. The right given to members to approve the appointment of a managing agent is sufficient safeguard against managing agency contracts being unfavourable to members. I, therefore, suggest that the provision regarding registration and disclosure of proposed managing agency agreements be deleted.

Sir, you will observe that it is only at the stage when an agreement has been entered into that it is a proper document. It is no use providing for something which has not even been entered into or the terms of which have not been agreed to, and that document may at several times create unnecessary misunderstanding. That document has no bearing or commitment on either side. I believe that since this particular clause was not included both in the 1913 Act and the 1951 amending Act, nor even in the original Bill, it is not necessary to include it here also. I do not understand how it will be possible for members to understand from the tentative agreement, which has not been really entered into, the correct position. I see that the Bhabha Committee has made certain recommendations and, though these recommendations were made, when the Bill brought in the Government must have felt that there was no necessity of including this provision. Of course, the Joint Committee has made this change, but even then I feel that this is not proper and this is going to create more difficulties unnecessarily. I only hope that the hon. Minister will be able to accept my amendment to drop this particular provision.

Then my amendments Nos. 158 and 159 are consequential amendments arising out of the amendment moved for the modification of clause 32.

4 P.M.

It would be sufficient if the copy of the managing agency agreement is kept applicable only in cases where an agreement has been entered into, or rather actually entered into, and not in cases where they are proposed to be entered into. I hope that if my amendment No. 157 is accepted, then, these would also require to be accepted because they are consequential.

Then I come to my amendment No. 160 which is to clause 43. This amendment is identical with my amendment No. 161 to clause 64 and amendment No. 165 to clause 69. I would also like to point out to the hon. Minister that the Company Law Committee made extensive recommendations for the full disclosure, in the prospectus, of all facts and circumstances relating to the formation of the company and the manner in which the company is to be worked. It is admitted by the Committee that in several material particulars, their recommendations go much beyond the English Act of the recommendations contained in the Cohen Committee's report at page 41. I shall take the opportunity to discuss the elaborate details which have been prescribed in Schedule II in connection with clause 43, when the schedule comes up for discussion. What I now wish to point out is that

after having made positive provisions for inclusion of the elaborate details in the prospectus, there is hardly any scope to conceive of omissions which can be construed to mislead. Sub-clauses (2)(a) and (2)(b) provide that the prospectus or statement in lieu of prospectus shall be in the prescribed form. Thus, provision in respect of omission of any matter is, in my opinion, redundant. The U.K. Act makes no provision of this nature. Section 46 of the U. K. Act provides as under:

> "A statement included in the prospectus shall be deemed to be untrue if it is misleading in the form and context in which it is included."

A similar provision is made in sub-clause (5)(a) of clause 43 of this Bill. There is no justification for sub-clause (5)(b). It stands to reason that a person is likely to act on the basis of the positive assertion of a fact rather than of an omission. This provision is redundant and it many scare away the new entrepreneurs. It is suggested that a correct sense of proportion is brought to bear on this point and the clause is kept in line with the U. K. Act by omitting sub-clause (5)(b). The fact is, as I have pointed out, we have got a schedule in which there is a form prescribed and having filled up that form according to that schedule, what is it that is omitted? It might unnecessarily create trouble. There is no Act, either in this country or in any other country, suggesting a provision for omission, and once this particular clause is passed, then it is bound to create a lot of unnecessary difficulties. When the whole schedule has got all the items in which every part of the information required has to be provided, I do not understand how the omission would occur. It might unnecessarily create a lot of difficulties for the new companies. The prospectus is, after all, mean to invite the public to subscribe to the shares.

Now, I would like to make a point which the hon. Finance Minister would appreciate, but he would not be able to appreciate it unless he is present here. I know of a particular case.

Shri M. C. Shah: Are you speaking on amendment No. 160?

Shri Tulsidas: Yes; and on the similar amendments 161 and 165. They are practically of the same type.

Shri M. C. Shah: Then you take them as redundant.

Shri Tulsidas: My point is that, when a new company has been formed, it may later on, in view of certain circumstances, have to change a certain amount of things, and then, acts of such a nature might be considered as an omission under this provision. I do not know how this provision will affect them. I will give an example of a company in which I am the Chairman of the board of directors. I am sure that that company would have suffered the penalties or a lot of difficulties if this provision was already in the Act. This provision has not been there at all in any Act. For example, when a company is formed, one takes into consideration so many things for the formation of that company. When actually the operation of the company begins, things may change and one does not know whether by doing a certain thing that act would be considered as an omission. After all, there is a prospectus. All information is available in the schedule and the prospectus is to be framed on that basis. Then why should sub-clause (5)(b) be added to this clause? It is a very serious thing and I do not think this should be allowed to remain in this particular clause.

I will now come to amendments 163 and 164 to clause 68. It is considered to be a very minor matter, but the question is whether the period prescribed in the Bill is enough for the purposes of receiving the minimum subscriptions. Up till now, we have had 180 days. That is the maximum period that is allowed when a company

[Shri Tulsidas]

is formed. In the U.K. Act, the maximum number of days is about 90. The Bhabha Committee has suggested 90 days and the original Bill also fixes it at 90 days. The Joint Committee has made it 120 days. I know the Joint Committee has adopted a middle course, but I would like to point out, particularly in the present context of the situation, that when a company has to be formed especially in the rural area, it can never come into being, because it has to collect subscriptions from the rural areas and it is not possible for the company to collect the minimum subscriptions within the period now envisaged, that is, four months. In fact, I am citing the same example where I had pointed out that if this provision was there in the original Act, the company could not have been formed in the rural area. A company requires a certain amount of capital and that company—I am now giving an illustration—required a large amount. A cement factory requires a crore of rupees, and the person who was the promoter and the entrepreneur was a small man, but he had tried to collect this money from the area in which he was putting up the cement factory. He was not able to put up that factory even within six months. It was very difficult to do so. He had to go to the Bombay Government to get the amount subscribed and keep that company going. It is with very great difficulty that the company had been able to put up the factory. Such things happen because, after all, in our country we are now having a broad-based society in which the whole saving is in a very diffused manner and therefore we have got to collect the subscriptions from the small persons. It is very difficult. Therefore, why not keep the period as 180 days as it is now in the present Act? It is not possible for us to try to act up within 120 days which is a shorter period.

That finishes all my amendments to these clauses. These are all procedural matters mostly, and as I have already pointed out earlier, in procedural matters, the matter should not be made more difficult. The procedure should be of such a manner that it will create a healthy growth and not try to create unnecessary difficulties for the new companies.

Shri U. M. Trivedi: I have suggested certain amendments to the various clauses and I will deal with each one of them in turn.

My first important amendment is to clause 11. There is a negative provision of law in clause 11 which says:

> "No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law."

Then again in sub-clause (2) it says:

> "No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law."

Shri M. C. Shah: What is the number of your amendment?

Shri U. M. Trivedi: I am speaking on my amendment No. 18.

In sub-clause (5) of clause (11), there is a provision which says:

> "Every person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine which may extend to one thousand rupees."

I say that this is not enough, because the prosecution in this case will lie at the suggestion of the Government only. What I want to suggest is that whenever a company which is not a legal one and which is an unlawful one wants to get money from other people, then there must be some check upon such a company. Take, for example, the Indian Partnership Act. If a partnership is not registered as required under section 69 of that Act, then such a company or firm shall not be allowed to use. I want to incorporate a similar provision in this clause also, namely, that a suit by a company, association or partnership of this type shall not be maintained in any court of law if filed by it in its name or in the name of its members. This will save people who are entering into contracts with such companies. It so happens that sometimes people are cheated by the words 'limited concern' mentioned on the board and they enter into contracts with such companies. When we as a policy lay down that such companies shall not be considered as lawful companies and when a provision is already there that we can fine such people and they may be treated as delinquents or offenders under the Act, such people should not be encouraged in getting their dues from others. Therefore, there should be a provision saying that they shall not be allowed to sue for the recovery of monies that may be due to them by others.

Then, there is my amendment No 19 to clause 13, seeking to add after the word 'registered' in line 20, "such capital being in no case less than Rs. 25,000." As it is, sub-clause (4) (a) of clause 13 says:

> "Unless the company is unlimited company, the memorandum shall also state the amount of share capital with which the company is to be registered," etc.

I say that there should be a limitation put upon the formation of such limited concerns. We know that one High Commissioner in England was swindled down right, if I may use the language. What happened was this: A company was floated with hardly a capital of £1,000 and with a total contributed capital of £2. But perhaps because it had a big name and it was a limited concern, the High Commissioner was not able to find out the solvency of that concern. When the word "limited' is added to the name of a company, the effect produced on the minds of the ordinary public is that it is a big concern, a concern bigger than the firms run by ordinary individuals. Therefore, it is essential that some safeguard should be there to save the people from being cheated and swindled. It is necessary that some limitation must be put upon the minimum capital that may be required for a company to be registered. My amendment No. 19 seeks to fix a minimum upon the capital. It is with that same argument that I want to add in line 21 the words "which shall not be less than ten rupees." When the division of the capital into shares of a fixed amount is made, these shares must not be merely of one rupee each. In the illustration I have given, that gentleman, with a contributed capital of £2, held himself out to be a director and was able to negotiate for contracts worth thousands of pounds; he was given an advance of £17,000 on the basis of his being a director of a limited concern. Therefore I say that in our country, though it may be poor, we must have a certain limitation on the issue of these shares. The vaule of one rupee is nothing; the value of each share must not be less than ten rupees.

My amendment No. 20 is also to clause 13. If the share is of value of one rupee, a man who wants to float a company gives merely one rupee and becomes a subscriber. It is more ridiculous that five men can join together, give Rs. 5, float a company, register it and give it a big name with the words 'limited concern' added to it. Five shares of Rs. 10 each will give Rs. 50, whereas five shares of one rupee each will give only Rs. 5 The difference is ten times. If you want to raise it still further, say Rs. 100, I welcome it.

[Shri U. M. Trivedi]

My only point is that this will protect people from being cheated; if you put a minimum on the share capital; I suggest Rs. 25,000 as the minimum. Also, this should be divided into shares of not less than Rs. 10 each, so that if a man takes even 5 shares, there is some stake; but if the value of each share is Re. 1, it is nothing; it is a laughable amount.

Then, I refer, in principle to my amendment No. 21, which is to clause 20. To this amendment I wish to draw the pertinent attention of the hon. Minister. The clause says:

> "No company shall be registered by a name which, in the opinion of the Central Government, is undesirable."

This word 'undesirable' is very wide. We know in the operation of the Preventive Detention Act, if any activity of person offended the district magistrate as such or the party in power as such or some relative or other of the Congress Party, he became an undesirable person and he could be put behind the bars because he was undesirable. This word 'undesirable' is so wide that it can cover anything from good to bad. It will become a machinery for oppression for those who are to decide the question of undesirability. I therefore submit that we must be very specific where these powers are to be given to the Government. The word 'undesirable' itself does not put in any limitation upon such powers as may be exercised by the Government. If we look into the old law, we find certain expressions which were the only expressions which were barred; such expressions like the Emperor, Empress, etc. could not be used for the name of a company. Now, we are using this word 'undesirable'. Naturally we are not concerned with Emperors or Empresses or His Highnesses. They have all gone by the border. Still, to protect our people from the idiosyncracies of the executive, in the way in which they have operated the laws wherever the word 'undesirable' is used, we must be cautious and require that some specifiction should be given as to what would be and what would not be undesirable. Either the word 'undesirable' should be defined or my suggestion is that instead of the word 'undesirable', we may substitute, that such a name "implies that the company has got any relation with any political party of India or with the Government of the day, unless the company is floated by the Government itself under any provisions of law." It should not indicate that it is a Government company or it is in any manner associated with the party in power or something of that nature. If that is so, we can put a stop to the using of such a name. Otherwise, we should not go to the extent of providing for wielding power for ourselves and restraining people from using proper names.

Then, I draw the attention of the hon. Minister to my amendment No. 22. It is more or less of a precautionary nature.

Shri M. C. Shah: Lines 39 and 40 are quite sufficient.

Shri U. M. Trivedi: I am dealing with my own amendment, not any other. There is a provision in this clause which says:

> "A company may, by special resolution and with the approval of the Central Government signified in writing, change its name."

As long as a company does not change its name, it must adhere to the old name. That is a cardinal principle. It is only in that name that it should carry on trade. My amendment seeks to emphasise this position by saying that such a change of name shall be duly registered by the Registrar and unless so registered, the company shall not be entitled to the use thereof; merely making application, by passing a resolution, a company shall not be allowed to change the name. We have put in that with the approval of the Central Government signified in writing, a company can change its name. I say, unless and until that name has been so changed and the Registrar has

registered the change, nobody shall be allowed to change the name or carry on trade in the changed name. This is merely provision of a precautionary type to be made more specific, which I have suggested by my amendment.

Then, I come to amendment No. 23 to clause 24. That is :

Page 18, *after* line 36, *add*:

"(11) The association so registered under this section shall not be subject to all or any obligations that have been or may be imposed by any act of any legislature of any State in India."

I want to add this as a new sub-clause after sub-clause 10, which says:

"If the body makes default in complying with the requirements of sub-section (9), it shall be punishable with fine which may extend to 500 rupees for every day during which the default continues."

I want to add this new sub-clause. At present, in many parts of India, laws exist whereby interference with charitable trusts and religious trusts is increasing. In Bombay, in Madras, in Orissa, we have got Acts whereby every pin prick is being practised on charitable trusts. Once this law recognises the existence of charitable trusts, when the word 'limited' is only omitted, by virtue of this provision, if there is a charitable trust, properly registered under the company law, amenable to all the provisions of the company law, where there are directors under the company law, where there is proper auditing under the company law, where everything is controlled by the Government after the coming into force of this law, it shall not be further necessary that the State laws which cause pin pricks on religious and charitable trusts, should also be there. Therefore, I urge upon the hon. Minister who is present now, the Deputy Minister....

Shri K. K. Basu: Since when is he a Deputy Minister? He is a Minister.

Shri U. M. Trivedi: He is deputising; I am sorry.

Shri M. C. Shah: I am not deputising; I am here in my own right.

Shri U. M. Trivedi: I accept that. My suggestion is this. A new sub-clause may be added saying that the Association so registered under this section shall not be subject to all or any obligations that have been or may be imposed by any Act of any legislature of any State in India. That is to say, we should not allow the State legislatures to impose any further restrictions over the functioning of chritable institutions which are properly registered under the company law. Once they are registered under the company law, all that is necessary to check their activity is already there. No further check on their activity and taking money from them will be necessary. For example, the Bombay State has provided that for rendering some service—God knows what imaginary service they will render—they will take 5 per cent from the total charities collected. People will go and collect funds from the public and the public will contribute. The Bombay Government sitting tight in one corner will say, 5 per cent for us. I do not want that such a state of things should remain after this provision in the company law has been made.

Shri S. S. More: I have to say two things. I will be very brief. Regarding clause 32(1) (c)...

Shri M. C. Shah: Which amendment?

Shri S. S. More: I can refer to it and say that I oppose it.

"the agreement, if any, which the company proposes to enter into with any individual, firm or body corporate to be appointed as its managing agent, or with any firm or body corporate to be appointed as its secretaries and treasurers."

This has to be presented for registration to the Registrar along with the memorandum and articles of associa-

[Shri S. S. More]

tion. My submission is that at this particular stage the agreement between the managing agents and so-called promoters of the company will not be in a complete form. It will be in the stage of negotiation and it is quite possible that it may be changed later after the company is registered, after which only clause 33 says the company will begin to operate as a corporate body. My submission is that asking the promoters of the company to file the agreement for registration which is not a completed document at the time of registration of the company will not be proper. On the contrary, it would be much more desirable to have the document in a completed, final form.

My friend, Shri Tulsidas, has proposed an amendment, No. 157, by which he proposes to omit the whole of sub-clause (c). I do not agree with him. Mere omission is not enough. Of course, I do concede that it is desirable to omit it from here but we must have also a suitable provision by which we can insist that after this document is finalised and completed, a copy of the same should be filed for registration.

Some Hon. Members: It is there.

Shri S. S. More: It may be there. Anything can be said to be there, because the Bill is so voluminous that you can find any authority for it. My submission is that this particular sub-clause here is not necessary. It is a sort of unnecessary restriction on the promoters, and though I have very little sympathy for the unscrupulous promoters, at least in the case of *bona fide*, honest promoters, it is not desirable that we should fetter their venture with all these initial restrictions. It is quite possible that when the company begins to function as a corporate body, the corporate body may change the terms of the initial agreement which may be in a draft form.

An Hon. Member: Not likely.

Shri S. S. More: All the subsequent changes will be incorporated after the final document is finalised, completed, signed and sealed. So, it is much better to have the final document on our record instead of having unfinished documents as it is desired by this sub-clause.

Mr. Chairman: The following are the numbers of the amendments to clause 11 to 67 of the Companies Bill, which the hon. Members have indicated to be moved, subject to their being otherwise admissible:

Clause No.	*No. of amendments*
11	18
13	19, 20
15	314 (Govt.)
20	21
21	22
22	288 (Govt.)
New Clause 23A	289 (Govt.)
24	23
29	315 (Govt.)
32	157
38	158, 159
39	70
43	290 (Govt.) 71, 160
44	72
45	372
46	73
48	291 (Govt.)
50	292 (Govt.)
52	373, 374
64	161

Clause 11.—(*Prohibition of associating and partnerships exceeding certain number.*)

Shri U. M. Trivedi: I beg to move:

Page 12, line 17,

add at the end:

"and a suit by such company, association or partnership shall not be maintained in any court of law if filed by it in its name or in the names of its members."

Clause 13.—(*Requirements with respect to memorandum.*)

Shri U. M. Trivedi: I beg to move:

(1) Page 13,

(i) line 20,

after "registered" *insert*:

"such capital being in no case less than twenty-five thousand rupees"; and

(ii) line 21,

add at the end:

"which shall not be less than ten rupees".

(2) Page 13, lines 22 and 23,

for "take less than one share" *substitute*:

"take shares less than five in number or a value less than one hundred rupees"

Clause 15.—(*Printing and Signature of memorandum.*)

Shri C. D. Deshmukh: I beg to move:

Page 13,

In line 36, *after* the words "shall attest the signature", *insert* the words "and shall likewise add his address, description and occupation, if any".

Clause 20.—(*Prohibition of registration of Companies by undesirable names.*)

Shri U. M. Trivedi: I beg to move:

Page 16, line 4,

for "is undesirable" *substitute*:

"implies that the company has got any relation with any Political party of India or with the Government of the day, unless the company is floated by the Government itself under any provisions of law"

Clause 21.—(*Change of name by Company.*)

Shri U. M. Trivedi: I beg to move

Page 16, line 12,

add at the end:

"and that such change of name shall be duly registered by the Registrar and unless so registered the company shall not be entitled to the use thereof."

Clause 22.—(*Rectification of name of company.*)

Shri C. D. Deshmukh: I beg to move:

Page 16,

In line 32, *for* the words "it shall be punishable" *substitute* the words "the company and every officer, who is in default, shall be punishable".

New Clause 23A

Shri C. D. Deshmukh: I beg to move:

Page 16, after line 47, *after* clause 23, *insert* the following new clause as clause 23A:

"23A *Change of name of existing private limited companies.*—(1) In the case of a company which was a private limited company immediately before the commencement of this Act, the Registrar shall enter the word 'Private' before the word 'Limited' in the name of the company upon the register and shall also make the necessary alternations in the certificate of incorporation issued to the company and in its memorandum of association.

(2) Sub-section (3) of section 23 shall apply to a change of name under sub-section (1), as it applies to a change of name under section 21."

Clause 24.—(*Power to dispense with "Limited" etc.*)

Shri U. M. Trivedi: I beg to move:

Page 18,

after line 36, *add*:

"(11) The association so registered under this section shall not be sub-

[Shri U. M. Trivedi]

ject to all or any obligations that have been or may be imposed by any act of any legislature of any State in India."

Clause 29.—(*Form and Signature of articles.*)

Shri C. D. Deshmukh: I beg to move:

Page 19,

In lines 34 and 35, *after* the words "shall attest the signature", *insert* the words "and shall likewise add his address, description and occupation, if any".

Clause 32.—(*Registration of memorandum and articles.*)

Shri Tulsidas: I beg to move:

Page 20,

omit lines 29 to 32.

Clause 38.—(*Copies of memorandum etc.*)

Shri Tulsidas: I beg to move:

(1) Page 22, lines 13 and 14,

omit "or proposed to be entered into".

(2) Page 22, lines 14 and 15,

omit "or to be appointed".

Clause 39.—(*Alteration of memorandum etc.*)

Shri U. M. Trivedi: I beg to move:

Page 22, line 36,

add at the end:

"provided that if such default is wilful the fine shall be rupees five hundred for each copy so issued."

Clause 43.—(*Prospectus or Statement in lieu of prospectus etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 24, sub-section (3),

in lines 25 and 26, *after* the words "five hundred rupees" *insert* the words "for every day during which the default continues."

Shri U. M. Trivedi: I beg to move:

Page 24, line 27,

omit "or statement in lieu of prospectus".

Shri Tulsidas: I beg to move:

Page 24,

omit lines 41 to 47.

Clause 44.—(*Members severally liable for debts etc.*)

Shri U. M. Trivedi: I beg to move:

Page 25, line 15,

add at the end:

"and shall not be entitled to sue for any debt due to the company".

Clause 45.—(*Form of contracts*)

Shri K. K. Basu: I beg to move:

Page 25, *after* line 28, *add*:

"Provided that the Central authority may, by notification, limit the amount of such contracts which a particular class of companies may enter into."

Clause 46.—(*Bills of exchange etc.*)

Shri U. M. Trivedi: I beg to move:

Page 25, lines 35 and 36,

for "acting under its authority, express or implied" *substitute* "duly so authorised to act".

Clause 48.—(*Investments of company etc.*)

Shri C. D. Deshmukh: I beg to move:

Page 26, sub-clause (4),

in line 20, *omit* the word "other" before the word "securities".

Clause 50.—(*Service of documents on company.*)

Shri C. D. Deshmukh: I beg to move:

Page 27, line 34,

(i) *after* the words "on a company" *insert* the words "or an officer thereof"; and

(ii) *for* the words "sending it to its registered office", *substitute* the words "sending it to the company or officer at the registered office of the company".

Clause 52.—(*Service of notice on members by company.*)

Shri K. K. Basu: I beg to move:

Page 27,

after line 45, *add*:

"Provided that the notice shall be served by registered post to those members who previously intimated to the company to the effect."

Shri Jhunjhunwala: I beg to move:

Page 27, line 48,

after "preparing" *insert* "under a certificate of posting, or by registered or registered acknowledgement due letter if so desired by any shareholder at his expense"

Clause 64.—(*Interpretation of provisions relating to prospectuses.*)

Shri Tulsidas: I beg to move:

Page 35, *omit* lines 19 to 22.

Mr. Chairman: All these amendments are before the House for discussion.

I may at the same time say one thing to the Members, that on the first group that is clauses 2 to 10, we have taken 20 minutes more.

Shri U. M. Trivedi: That was allowed. That was agreed to.

Shri K. K. Basu: Ultimately we will have to see.

Mr. Chairman: So, we have got 2½ hours for this group. I think we can adjust so that we can be within time when we finish this group. Otherwise, we may sit 20 minutes more.

Shri K. K. Basu: Let us see what happens at the end. It will depend on the speakers.

Mr. Chairman: We can sit up to 5-20.

Shri K. K. Basu: Not today. What I suggest is, tomorrow we shall be in a position to know what happens.

Shri Tulsidas: The Minister is not here.

Shri Jhunjhunwala: My amendment is 374. It is very innocent and one may ask where the necessity has arisen for moving such an amendment, when notices are being sent by ordinary post why should there be an amendment that it should be sent by registered post. My hon. friend Shri Basu has moved an amendment:

Page 27, *after* line 45, *add*:

"Provided that the notice shall be served by registered post to those members who previously intimated to the company to the effect".

My amendment is slightly milder, and that is why I say:

after "pre-paying" *insert* "under a certificate of posting, or by registered acknowledgement due letter if so desired by any shareholder at his expense"

I do not want the company to bear this expense. I had occasion to move this amendment because various cases have come to my notice. Shareholders write to the managing agents or the company stating that they are not receiving the notices nor the dividend warrants. The dividend warrants are also being sent by ordinary post and the complaint to the company is that they have not received the dividend warrants and the notices of the meetings, nor the balance sheets. And they send Rs. 5 or Rs. 2 or something requesting them that their notices, dividend warrants and the balance sheets should be sent by registered acknowledgement due post so that they can get them and if convenient they can attend the meeting. In spite of repeated requests, these requests are not attended to. The only reply they got was that all these things had been sent in the usual

[Shri Jhunjhunwala]

way, by ordinary post and they cannot do anything better. When the dividend warrants were not received, they said that they would send a duplicate dividend warrant and the shareholder will have to issue an indemnity bond for the same. The shareholder had to do it, to give the indemnity bond. I do not think there may be many instances of this type, but there are certain companies which are indulging even in these things. I have heard from many share brokers that they are indulging in these things, and it is painful that they should take to such small things. And so I have to move this amendment.

I do not want to put the company to any inconvenience or to any expense. The only innocent amendment I am moving is that it should be sent by registered or registered acknowledgement due letter if so desired by any shareholder at his expense.

Shri K. K. Basu: I have moved two amendments to this group of clauses. One is amendment No. 372 to clause 45, and the other is amendment No. 373 to clause 52. Now, amendment No. 373 has already been referred to by my hon. friend Shri Jhunjhunwala. As for amendment No. 372 it deals with the provision regarding the form of contracts. Sub-clause 1. (b) of clause 45 reads:

> "a contract which, if made between private persons, would by law be valid although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.".

I want to add to this one proviso which says:

> "Provided that the Central authority may by notification, limit the amount of such contracts which a particular class of companies may enter into."

For, I fully realise that in the present state of affairs in our country, it will be necessary for any company to enter into contracts which may not be reduced into writing. But in view of the reports that we have heard, the evidence that was given before us, and also the evidence that was given before the Bhabha Committee, and also from what we have read in the economic journals and others, we find that there are cases where taking advantage of this provision, companies that are not honest behave badly with the shareholders' money. Therefore, while I do not want to rule out the possibility of having contracts which cannot be reduced into writing, I would like power to be given to the Central authority to say that particular classes of companies, say, sugar mills or some such companies which have to deal with forward contracts very much, can enter into such types of contracts upto a particular value, or to say that a company having a share capital—both working and block capital—upto a particular value, can enter into such forms of contracts upto a particular value and so on. What I say is that power should be given to the Central authority to determine, if it so chooses, whether a particular class of companies working in a particular sphere of trade or commerce or manufacture can enter into such forms of contracts, and if it decides to permit that, then it may prescribe the limit also.

The other amendment which I have moved is regarding the service of notice on the shareholders. I, of course, do not have personal experience in regard to dividend warrants, which my hon. friend Shri Jhunjhunwala just now referred to. He said that shareholders have often complained that they have not received the dividend warrants. I have suggested in my amendment that if a shareholder previously intimates the company that the notice or the share warrants are to be served on him by registered post, it is the duty of the company to do so. Sometimes, it may

happen that the notices or the share warrants may not be served at all. Actually, the directors of the company may not be responsible for it; the clerk in charge or the officer who might deal with this matter might commit some mistake or if they want to shut out certain types of shareholders they may not serve the notice, at all on them, and if the shareholders come and challenge, they may say, we have posted it. There is no record to verify whether they have actually posted it. If you see the books of the company, it may be entered there as having been despatched.

That is why I have suggested that for such shareholders as have previously intimated to the company, the notices etc. may be sent by registered post.

If I am not disclosing any secrets of the Joint Committee, I might say that this point was discussed by the Joint Committee. It was felt that we cannot make a positive rule saying that all such notices have to be served under certificate of posting or by registered post, because that might prove very costly. But my amendment restricts it only to those shareholders who previously intimate the company that they want the documents to be sent to them by registered post. I think in such cases it is but fair that the company should do it. I have provided in my amendment that the cost will be borne by the company. But my hon. friend Shri Jhunjhunwala has suggested that the expense must be borne by the shareholder himself. If Government are prepared to accept this amendment, I have no objection, and such a provision might be made. Our whole attitude is only this, namely that the shareholders, who rightly or wrongly have doubts in regard to the *bona fides* of the management so far as the serving of the notices or dividend warrants etc. is concerned, should be served in a way which will have the least chance of being tampered with. This is so far as my amendments are concerned.

Now, I would like to say a few words on amendment No. 21—to clause 20—moved by Shri U. M. Trivedi. Clause 20 deals with the prohibition of registration of companies by undesirable names. My hon. friend Shri U. M. Trivedi wants to restrict the term 'undesirable' to the following, namely:

> "That the company has got any relation with any political party of India or with the Government of the day, unless the company is floated by the Government itself under any provisions of law."

I do not fully accept the amendment as drafted by my hon. friend. I want that there should be some indications given in this regard, and that there should be some limitation to the powers of Government to refuse registration. The powers now given seem to be much too wide. I do not know whether by rules or by some other means something could not be laid down saying that Government considers that such and such names are undesirable, and therefore nobody can register in that case, under particular names. If some such thing could be provided, then this can be done. My hon. friend Shri U. M. Trivedi has restricted it only to political parties and the Government of the day. But what I want to emphasise is that some definite indication should be given by administrative orders or otherwise as to what are undesirable names. If that can be done, I have no objection. Otherwise, some provision should be made to see that absolute and wide powers are not left to Government to determine which name is undesirable. In the earlier Act, the power was vested in the King and Emperor or somebody like that. Here possibly, a particular officer might think that a particular name is undesirable and therefore rule out registration under that name. I would request Government to consider the spirit of my hon. friend's amendment to see if something can be done which will indicate the sort of restrictions, so that the preson who promotes a company may

[Shri K. K. Basu]

know that such and such names will be considered undesirable by Government.

My hon. friend Shri S. S. More has opposed clause 32 (1) (c).

Shri A. M. Thomas: Shri S. S. More has just come. He has got a long life.

Shri K. K. Basu: I do not know whether that is good or bad for the country.

Clause 32(1)(c) reads:

> "There should be presented for registration, to the Registrar of the State in which the registered office of the company is stated by the memorandum to be situate—
>
> (c) the agreement, if any, which the company proposes to enter into with any individual, firm or body corporate to be appointed as its managing agent, or with any firm or body corporate to be appointed as its secretaries and treasurers.".

I do not see what objection my hon. friend can have to this provision, because by and large we know that the role of the managing agents has not been on the whole very clean and above board. Some of my friends here are also connected with managing agency firms. There may be concerns which are quite honest, and which have been trying to build up the industry in an honest and legal way. But so far as the average man is concerned, when he comes forward to subscribe in any particular industrial undertaking—because other forms of investment are possibly going away—he must be enabled to know the real state of affairs in regard to that undertaking. Of course, we know fully well that the memoranda or articles of association etc. which are circulated to the subscribers are not read by them in many cases; they rely very often on the person who comes and sells the shares or on the names of one or two directors. But if these things are circulated to prospective subscribers, then the promoters also will have the right to say that they have laid before them the whole position. It will also give an opportunity to see what memoranda were there, what articles were there, what agreements were there, and how far they have succeeded. Government also will be in a position to see before a company is registered what are the agreements etc. It will help also to a great extent even these managing agents, I suppose.

Shri Tulsidas: It is only proposed agreement; it has nothing to do with definite agreement.

Shri K. K. Basu: That is true. But if these are available before registration, we shall be in a position to know that Shri Tulsidas, for instance, is going to be there in the company which is to be floated.

Shri S. S. More: Will this agreement, which is in an incomplete form, be binding on the company after it is floated, unless it is ratified or adopted by the company as incorporated?

Shri K. K. Basu: That may be quite true. The company may in a general meeting revise the whole thing. But the whole proposition is that the subscribers must know what is the state of affairs.

Shri S. S. More: I can understand the Government insisting that before the prospectus is issued, the agreement should be forwarded to Government or the proper authority. Then it will be in final form and the proper authority will be able to form some impression about that particular document. But when the agreement is in an incomplete form, a mere draft, which is likely to be changed materially when the company comes into being, it has no meaning, unless you want to load the office with such useless papers.

Shri K. K. Basu: There is one aspect to it. The Registrar, before he issues certificate of registration should know what is the state of affairs, who

the managing agents will be, who will bear the main burden of promoting the company. It is true the shareholders, the majority of them, have at any time the theoretical right to always amend it, but they know fully who....

Shri S. S. More: Whom do you mean?

Shri K. K. Basu: Shri More has not understood things going round.

Mr. Chairman: I understand he means the subscribers.

Shri S. S. More: At that stage, the subscribers do not come in.

Shri K. K. Basu: They will know.

Shri S. S. More: When the prospectus is issued, then the subscribers get an inkling into the affairs. The prospectus is a sort of invitation to the people and they will be asked to make up their mind. And what are the documents? Articles, memorandum and agreement in a final form. These are the three basic documents.

Shri Kamath: On a point of order. My friend Shri More should not speak when there is no quorum in the House, because his speech is so interesting.

Shri T. B. Vittal Rao (Khammam): What is this affair daily repeating? There is something wrong with the time.

Shri Kamath: According to my eye estimate, the number present in the House is 35. Till there is quorum, proceedings should not be recorded.

Shri S. S. More: Once a point about quorum is raised, it should be settled.

Pandit Thakur Das Bhargava (Gurgaon): There are only ten minutes to five.

Shri S. S. More: But there should be a full House. (*Interruptions*).

An Hon. Member: Where are the whips?

Shri Kamath: 'Whip' them all into the House properly.

Pandit Thakur Das Bhargava: Within ten minutes, people will not be able to come.

Shri S. S. More: Then let us adjourn; it is only seven minutes.

Pandit Thakur Das Bhargava: Let it go on.

Shri S. S. More: By the time Members come, the time will be up.

Shri Tulsidas: I think we might adjourn.

Shri S. S. More: Even in the Central Hall, there is no quorum.

Mr. Chairman: The bell is being rung. Now there is quorum. The hon. Member, Shri K. K. Basu, may continue.

Shri S. S. More: We can walk away.

Shri K. K. Basu: The point is that the Registrar, at the time of registration, must know what is the state of affairs, where the company is going to be registered and so on. It is true that theoretically the shareholders at any time may amend the agreement. But before the Registrar issues the certificate, he has a right to go through the prospectus, the articles, the memorandum—all these things. We know that the agreement which is there at the time of promotion is very unlikely to be amended in the near future, because naturally the managing agents who promote the concern will be there.

Shri Tulsidas: May I point out to the hon. Member that now managing agency agreements are subject to the approval of Government. Government have not approved it. Why does he want that agreement which has got no validity to be registered? It is not approved by Government, it is not even entered into by the company, and still he wants that to be registered. It is a useless document.

Shri K. K. Basu: What is the position? Suppose a company is floated, where they say that these managing

[Shri K. K. Basu]

agents under these conditions are appointed. Is it not open to the Registrar or anybody else to know what is the agreement on which the managing agents are going to be appointed?

An Hon Member: Quite right.

Shri K. K. Basu: They must know it. Before the company is registered, there must be a managing agency agreement, unless you say that managing agency is appointed after the company is floated and that the promoters are not managing agents. In some cases, it may not be necessary; ultimately, the agreement may be amended. But there is no harm in following this course. We must take the average condition, the average interest that shareholders take today. Therefore, I do not see why Shri S. S. More is so insistent that this should be left out. I would rather wish that this should be done, because then the Registrar knows what is the exact state of affairs, before he issues the registration certificate. That is the short point I wanted to make.

Pandit Thakur Das Bhargava: First of all, I will deal with the question of service of notice etc. In the clause that we have got, clause 52, you will be pleased to find that it is not obligatory upon any company to send any intimation by post. On the contrary, I find that in sub-clause (3) it is said:

> "A notice advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given on the day on which the advertisement appears to every member of the company who has no registered address in India and has not supplied to the company an address within India for the giving of notices to him".

Now, there is absolutely no compulsion on the company even to send a notice by post. Even if there is advertisement, we know how advertisements are made, what is the language used etc. If it is in English, it is not likely to reach those persons who are interested—all of them.

Shri M. C. Shah: Kindly refer to clause 52 (1). The reference to 'post' is there.

Pandit Thakur Das Bhargava: I know clause 52 (1) is there, but where is the obligation. The words are:

> "A notice may be given by the company to any member either personally or by sending it by post to him to his registered address, or if he has no registered address in India, to the address, if any, within India supplied by him to the company for the giving of notices to him".

Then where a notice is sent by post, certain consequences follow—the clauses are there. Suppose none of these things is there and only advertisement is made. Where is the obligation that the notice must be sent by post? At the same time, even if that is taken into account—because there are two conditions given; either it may be given personally or sent by post—the implication that may be raised, does not follow. First of all, I will submit that it is not a necessary implication. Anyhow, taking it as it is, if a notice is sent by post to any one person, the presumption is not strong that it has reached him. On the contrary, what do we find? In the case of notices sent by courts, there is no such presumption. In the rules made by High Courts and the Code there is no such presumption.

Shri M. S. Gurupadaswamy (Mysore): I point out that clause 52(1) refers to notice being sent either personally or by post? There are two alternatives provided.

Pandit Thakur Das Bhargava: I have already said that there are two alternatives provided. It is not a necessary implication that the third method adopted in sub-clause (3) is not open.

Now, so far as the question of post is concerned, do we not know that many dishonest people, many plaintiffs, see that the postman does not deliver the paper, and returns saying

'refused' even in the case of registered notices? If a notice is sent by post, it may never reach. If it is by design, the notice may be sent to a wrong address or it may not be posted. The usual complaint is that if the company people, if the managing director decides to keep out certain information from a particular person, he may not send it to the right address. They may perhaps say that so many postcards or letters have been sent by post; but they may not have been sent to the right address or not sent at all. It is but right that those persons who want to secure their interests should have access to all the information. The amendment proposed by Shri K. K. Basu and as amended by Shri Jhunjhunwala is very good. It ensures that if a person is anxious that he should receive the papers, he can write to the company, and the company is bound to give the notice. The question of cost does not arise. It is the company's duty to send it by registered post in time.

Shri M. C. Shah: As regards Shri Jhunjhunwala's amendment, in principle we accept it. Only the language has to be recast.

Pandit Thakur Das Bhargava: If it is accepted, it is all very well.

As regards the second question that was raised, as to whether the agreement with the managing agents should be registered along with the memorandum—that was the point raised by Shri Tulsidas.

Shri Tulsidas: Draft agreement.

Pandit Thakur Das Bhargava: I know—the agreement, if any. I know the present position of the agreement is zero. First of all, the agreement has not been signed by that time. Even according to the clause itself, it is 'agreement, if any'. It is a proposed agreement and even if the agreement were made, my humble submission is that there should be no obligation that it should be got registered at that time. Now, we know that the agreement with the managing agents is a proposed one and has got no value. Even if the agreement is registered, even if the agreement is reached between the parties, unless the general meeting of shareholders approves of the appointment, it is useless. Even if it is accepted by the general meeting, Government have got the last say and unless they approve, it is of no use. In regard to clause 325, we have got a further condition. Government can impose their own conditions; they can impose any conditions which they like. So what is the value of that agreement? If you look at clause 35 you will see what is the effect of this registration. It is, the memorandum is binding, the articles are binding on the parties, but the agreement is not binding.

5 P.M.

Moreover, the argument raised by Shri Tulsidas has not been answered. He submitted for the consideration of the House that if there is an agreement, it is not binding upon any person and if the agreement is known by the rivals they may come forward and give different terms to the company and there may be a scramble which is not desirable at all. After the prospectus is put up they say only that so and so are the managing agents. The full details cannot be given even at this stage because the Joint Committee has not insisted that before the prospectus is issued the agreement should be registered. In the prospectus the name is given but the terms are not disclosed. I can understand this that the terms may ultimately ripen into an agreement. But, if at that stage, the details are also given many people will come forward and say we are giving you better terms with the result that the agreement will have no effect at all and it shall have to be changed. My humble submission is this. I can understand it if it is made a condition that before the prospectus is issued the agreement must be known so that people may know what are the emoluments of the managing agent etc. All these things have lost their effect now. We know what the total remuneration of the managing agent can

[Pandit Thakur Das Bhargava]

be. According to our Finance Minister, it will be 8 per cent. normally speaking and in no case more than ten per cent., and this is a fair thing. I can understand that the people should know who is the managing agent; his reputation would matter. The terms of appointment have practically been settled by this law. We know what his powers are. Then why do you attach any importance to this kind of agreement which is incohate, which may mislead people, which may give rise to scramble amongst people and which has no binding effect at all? Under these circumstances, I think the amendment is very good and ought to be accepted.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, the 25th August, 1955.