

LEAVE OF ABSENCE TO SHRI M. H. SAMUEL

MR. CHAIRMAN: I have to inform Members that the following letter dated the 5th December, 1960, written from New York has been received from Shri M. H. Samuel:—

“As I am attending the Fifteenth Session of the United Nations General Assembly I will not be able to attend the current session of the Rajya Sabha and I request leave of the House for my absence.”

Is it the pleasure of the House that leave be granted to Shri M. H. Samuel for remaining absent from all meetings of the House during the current session?

(No hon. Member dissented)

MR. CHAIRMAN: Permission to remain absent is granted.

RESULT OF ELECTION TO THE COUNCIL OF THE INDIAN INSTITUTE OF SCIENCE

MR. CHAIRMAN: Shri M. Govinda Reedy being the only candidate nominated for election to the Council of the Indian Institute of Science, Bangalore, I hereby declare him to be duly elected to be a member of the said Council to be reconstituted for the period of four years 1961—64.

ALLOTMENT OF TIME FOR CONSIDERATION OF THE INDIAN TARIFF (AMENDMENT) BILL, 1960

MR. CHAIRMAN: I have to inform Members that under rule 162(2) of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I have allotted one hour for the completion of all stages involved in the consideration and return of the Indian Tariff (Amendment) Bill, 1960, by the Rajya Sabha, including the consideration and passing of amendments, if any, to the Bill.

THE DELHI SHOPS AND ESTABLISHMENTS (AMENDMENT) BILL, 1960

THE DEPUTY MINISTER OF LABOUR (SHRI ABID ALI): Sir, I beg to move for leave to introduce a Bill further to amend the Delhi Shops and Establishments Act, 1954.

The question was put and the motion was adopted.

SHRI ABID ALI: Sir, I introduce the Bill.

THE FORWARD CONTRACTS (REGULATION) AMENDMENT BILL, 1960

THE MINISTER OF COMMERCE (SHRI N. KANUNGO): Sir, with your permission, I beg to move:

“That the Bill further to amend the Forward Contracts (Regulation) Act, 1952, as passed by the Lok Sabha, be taken into consideration.”

The main purpose of the amending Bill is to make provision in the Forward Contracts (Regulation) Act so as to render regulation of forward contracts more effective. These amendments are being made in the light of experience of regulation of forward contracts gained by the Forward Markets Commission and the Central Government in the working of the principal Act.

The Bill was introduced in the Lok Sabha on the 18th November, 1960 and has been before the public for a month. Since October, 1960, there has been speculative pressure in commodity markets particularly in jute and jute goods and oilseeds, which is likely to affect the export trade by pushing up prices. The supply position in these commodities may be a little short, but the situation seems to have attracted

speculative elements into the trade. Even non-transferable specific delivery contracts have been used for purposes of speculation and the provisions of the law as it exists at present do not enable Government to collect information in regard to such transactions. The regulatory powers available under the Act have also been found insufficient to curb speculative tendencies and unless deterrent punishment is provided under the law, it would be difficult to keep these tendencies under check. It has, therefore, been deemed necessary to strengthen the provisions of the law urgently so that there could be more effective control and regulation of forward trading.

Since the Commission was set up in 1953, definite progress has been made in several directions. Recognition has been granted on the recommendation of the Forward Markets Commission to 26 associations all over the country covering 15 commodities and spread over 44 markets. The recognised forward markets are in respect of a fair cross-section of the country's agricultural economy, viz, jute, cotton, groundnut, castor seed, cotton seed, linseed, rape and mustard seeds, groundnut oil, coconut oil, pepper, turmeric and gur. Forward trading in respect of commodities like shellac, foodgrains, etc has been banned in the public interest. Besides regulating trading in recognised associations, the Commission has also kept other forward markets under its close observation and drawn the attention of the Central Government to important developments wherever necessary. It is one of the conditions of recognition of an association engaged in forward trading that its activity should be not only in the interest of the trade but also in the public interest. Government have, therefore, been assisting the recognised forward markets in fulfilling their duty to the trade and in the process, guidance has been given by the Commission in matters which have a direct bearing on efficient functioning such as having

proper constitution and trading bye-laws. The constitution is generally drafted with a view to obtaining a broad based and representative character of the associations, with adequate representation and checks for interests like growers, processors, dealers, exporters, consumers and brokers. The trading bye-laws are designed to ensure that the prices of the commodities are stable as far as possible and no one section of the commercial community is able to acquire a dominant character in the day to day operations.

Broadly speaking, regulation under the present Act is only in respect of "hedge" contracts, while non-transferable specific delivery contracts in respect of such commodities are permitted freely and the associations conducting them are also immune under section 18(1) of the Act. The principal objectives of our regulation are to prevent excessive speculation in forward markets and to introduce a measure of check off wild and unhealthy fluctuations in futures prices when they ignore the requirements in the matter of long-term stability of prices. The prices registered in forward markets are taken to be a guide to price levels and they are also taken to be a true reflection of the supply and demand conditions in so far as they can be visualised at a point of time. In practice, however, it often happens that futures prices are influenced by factors other than the supply and demand, such as sentiment, speculative psychology and the size of speculative operations. During periods of shortage, the prices in the forward markets are apt to be pushed up by large-scale operations of speculators and result in a bullish psychology all around, with repercussions also on the spot prices, which strictly speaking, should reflect the reason between the supply and demand only. The shortage may be sometimes only relative and yet the operations of speculators set up a chain reaction process with far-reaching effects on the eco-

[Shri N. Kanungo.]

nomy as a whole. The forward markets sometimes tend to function as a residuary investment channel for funds which cannot be put to use elsewhere.

Various measures are adopted by recognised associations to curb excessive speculation. The most important of these measures is the imposition of special margins. When prices are high, buyers are prevented from buying more, unless they pay a special deposit. The bye-laws of the associations confer powers on the Boards to impose this special margin, while the Commission also has concurrent powers. In fact, there have been occasions when the Boards of directors, composed as they are of different interests having a vital stake in the market, have found it difficult to take appropriate action to curb the abnormal price trends. The Commission has, therefore, been compelled to impose special margins under its own powers and from time to time effect adjustments according to the market situation. Special margins are imposed as a temporary check to halt the rising spiral of prices and were enforced in almost all the major commodities in which recognised markets are functioning. Although it is aimed at the big speculator, who accumulates large open positions which may result in a squeeze, the special margin system is adapted to afford relief to the small traders and to exporters. These two classes of traders are permitted free limits for trading corresponding to a certain maximum, or to their export commitments. As a result of these measures of amelioration, the majority of the small members of associations of forward markets have obtained relief from the payment of special margins, as also many exporters.

The other measures adopted by the Commission to curb excessive speculation are fixation of a maximum

limit on the open position of a member of a recognised association, withholding permission to start trading in a new contract when short supply conditions render it difficult for a running contract to be traded upon and conditions are not likely to improve in the near future, closing out contracts under the Forward Contracts (Regulation) Act. These measures have also met with a degree of success.

Experience in the regulation of forward markets has shown that certain loopholes in the existing Act have been exploited by the trading community to circumvent its provisions. It would be obvious that if special margins are imposed and a particular trader does not disclose his real position and deposits the actual amount of money that is due from him, his mischief is not entirely stopped. Thus, it has happened in many associations where stiff special margins have been imposed that members have had resort to trading outside the associations, thereby escaping the rigour of the special margins. In that process, regulation has naturally been less effective. Further, a part of the trading is generally in the guise of non-transferable specific delivery contracts, which are outside the association and are not at present regulated at all, but which really are converted into transferable specific delivery contracts and which virtually are hedge contracts in practice. In respect of illegal trading, the present provisions of the Act do not go far enough to enable the mischievous elements to be hauled up and properly tried in a court of law.

I would now explain briefly some of the important provisions of the Bill which are designed to curb illegal trading. 1. Clause 14 of the amending Bill provides for compulsory registration of all associations, other than recognised associations, who may be conducting forward trading in commodities. In order to enable the Forward Markets Commission to keep a

watch over the activities of these associations for any violation of the Forward Contracts (Regulation) Act, it is proposed to take powers to require such associations to get themselves registered with the Commission and to furnish periodically the minimum necessary data concerning their activities. The idea is that their registration will enable the Commission to have a census of all bodies conducting trading in transferable specific delivery contracts in free commodities as well as in non-transferable specific delivery contracts in regulated or banned commodities. 2. As the existing punishment for detected cases of illegal trading is not severe enough, clauses 17, 18 and 19 provide for tightening of the penal provisions of the Act. Besides enhancing the amount of fine and fixing a minimum therefor, it has also now been proposed to make recurrent offences under these clauses punishable by compulsory imprisonment. Further, the burden of proof would also rest on the accused in any trial for the said offences. These provisions will, it is hoped, check the misuse of non-transferable specific delivery contracts, trading in commodities in which forward contracts are banned and trading in options. 3. Under clause 6, it is proposed to vest the Commission with powers to enforce attendance of persons and examine them on oath. It is necessary that the Commission should be given some legal powers, as it has to enquire into complaints received and take suitable action. Persons or parties concerned are usually reluctant to furnish information or are prone to furnish incorrect information. 4. Clauses 11 and 15 are intended to enable the recognised associations to make bye-laws, transactions done in contravention of which would be illegal. Under the existing Act, contracts entered into in contravention of the provision of certain bye-laws of a recognised association are void and for such contravention, the member is liable to disciplinary action only. The present provision in the Act, has, however, not been found to be sufficiently

deterrent when international contravention of the bye-laws motivated by profit consideration takes place. It is now proposed to make all contracts entered into, otherwise than in accordance with the specified bye-laws, illegal, instead of merely void as at present. 5. An important punitive power is proposed to be taken in clause 13 under which the Commission may suspend operators whose operations are to the detriment of public interest. At present disciplinary action can be taken against a member or broker only by the Board of Directors of the individual exchanges in which he operates, and the exchanges are, as a rule, unwilling to exercise their powers in this regard. Most members belong to more than one exchange and there are a few who trade in practically all the exchanges in the country. If a check is to be put on their activities, separate action would be called for on the part of each individual exchange, which is hardly feasible in practice. Such a provision is in line with the regulation in U.S.A.

A few amendments to the Bill were moved by me and adopted in the other House. These were principally of a drafting nature and designed to make the intentions clearer. One of these amendments was aimed at limiting the scope of cognisable offences to those which are cognisable in the parent Act, the other offences being non-cognisable.

I now commend the motion for the acceptance of the House.

The question was proposed.

MR. CHAIRMAN: Shri Himatsingka, you have an amendment. You need not speak on it, but just move your amendment.

SHRI P. D. HIMATSINGKA (West Bengal): Sir, I move:

"That the Bill further to amend the Forward Contracts (Regulation) Act, 1952, as passed by the Lok

[Shri P. D. Himatsingka.]

Sabha, be referred to a Select Committee of the Rajya Sabha consisting of the following members:—

1. Shri Rajendra Pratap Sinha
2. Shri Dahyabhai V. Patel
3. Shri T. S. Avinashilingam Chettiar
4. Dr. W. S. Barlingay
5. Shri Babubhai Chinai
6. Shri Biswanath Das
7. Diwan Chaman Lall
8. Shri Vijay Singh
9. Shri Jaspat Roy Kapoor
10. Shri M. P. Bhargava
11. Shri Sudhir Ghosh and
12. The Mover (Shri P. D. Himatsingka)

with instructions to report by the 15th March, 1961."

The question was proposed.

SHRI SURESH J. DESAI (Gujarat): Mr. Chairman, the Forward Contracts (Regulation) Amendment Bill, 1960, which is before the House, is a very timely measure. It is a very important and an all-embracing measure also. Personally I wish that it would have been better if it were referred to the Select Committee. But as it has already been passed by the Lok Sabha, perhaps it may not be referred to the Select Committee. In that case there are certain observations which I would like to make on the Bill.

[MR. DEPUTY CHAIRMAN in the Chair.]

The Bill is practically the result of the experience which has been gained out of the last seven years' working of the Forward Markets Commission. The Forward Markets Commission on the whole has done its work very creditably. There have been instances in the last seven years of prices going very high, and on account of the operations of the Forward Markets Commission and the restrictions which they have imposed, the prices have often been checked. There have been various methods by which the Forward Markets Commission has operated: for instance, the imposition of special margins, the fixation of ceilings and the permitting of trading in distant delivery contracts also. On the whole the Forward Markets Commission has worked quite creditably in the last seven years, and out of the experience which it has gained this Bill has been drafted and is now before the House.

Sir, in a socialist economy as such forward trading and forward markets and hedge contracts will not be necessary at all. In a socialist economy at every stage of delivery, whether it is from the grower or the producer to the processor or the dealer or ultimately to the consumer, at every stage the prices will be fixed, and the actual amount of delivery will also be fixed. In a socialist economy forward markets and hedge contracts are not necessary at all. But on account of the present stage of our development and on account of the peculiar condition of our agricultural development at this stage, hedge contracts are a necessity and forward markets are also a necessity. Hedge contracts or forward markets usually check the price line. Holding the price line is a very great necessity, it is absolutely essential if our Third Five Year Plan is to succeed. If we go on allowing the price line to go up and up, then it will greatly endanger the success of our Third Plan. Practically there are 15 commodities in which forward markets are functioning in something like 44 markets in the country. These are jute, cotton,

oilseeds, groundnut oil, coconut oil, and so on, which are the main agricultural commodities in the country. In all these 15 commodities it is very necessary to hold the price line if we are to see that the industrialist or the manufacturer gets these commodities at a regulated or reasonable price.

In the last few years, Sir, we have seen that there have been various abuses of speculation. Prices have gone up very high. There are mainly two methods by which speculation is indulged in. There are recognized associations which are about 26 in number, but very often the members of these associations carry on trading outside the associations—that is one method—because the transactions indulged in outside the associations are not registered or are not known by the Forward Markets Commission. The second method of speculation is very often the use of non-transferable specific delivery contracts for speculative purposes. This is an evil which has got to be checked. The Bill, therefore, as I said, is a timely measure. It gives wide powers to the Forward Markets Commission. For instance information in transferable specific delivery contracts in the free commodities will have to be furnished as also information about non-transferable specific delivery contracts in regulated and banned commodities. Then there are various provisions calling for information not only from the recognized associations but also from the members of these associations. Then there are other provisions about recognition and registration of associations.

The powers which have been given to the Forward Markets Commission under the proposed Bill are very wide, and while I welcome the Bill as a timely measure, I would suggest that the Forward Markets Commission should use these powers with discretion. For instance, when information about non-transferable specific delivery contracts in regulated and banned commodities is given, then the burden of proof that these contracts

purposes but are *bona fide* contracts is on the member concerned. This is in a way against our legal system. In our legal system usually when a person is charged under the Penal Code, the burden of proof is not on the man to prove that he is innocent, but the burden of proof is always on the Government or on the prosecution to prove that the man is guilty. The burden of proof is not on the person accused. That is the very fundamental principle of our legal system. That is not followed here. Here the burden of proof will be on the person concerned, the member concerned to prove that the non-transferable specific delivery contracts have not been used for speculative purposes but are *bona fide* contracts. I also appreciate the difficulty of the hon. Minister. Suppose the burden of proof is on the Forward Markets Commission. The Forward Markets Commission will never be able to prove that these particular contracts were meant for speculative purposes and were not *bona fide* contracts. The Forward Markets Commission will never be able to prove any malpractice. That is why the Bill seeks to give these powers to the Commission and to impose the burden of proof on the member concerned to prove that the non-transferable specific delivery contracts in regulated and banned commodities entered into by him are not speculative transactions but are *bona fide* transactions. While appreciating this difficulty and while even appreciating the provisions which have been made in the Bill, I would suggest at the same time that it is very necessary that the powers should be carefully used, should be used with discretion. There are other powers also, penal powers and very wide powers, which have been given. My only suggestion to the hon. Minister is that while the measure is a very timely measure—it is very necessary to check speculation in commodities if we are to make the Third Plan a success—and I welcome the measure, the very wide powers which have been given to the Forward Markets Commission, in order to make it effective in checking

[Shri Suresh J. Desai.]

the evils of speculation, should be used with discretion, care and caution.

SHRI P. D. HIMATSINGKA: Mr. Deputy Chairman, I have moved an amendment and while doing so, I have noted that the Bill has been passed by the other House. I have got to make out a very good case for referring the Bill to a Select Committee.

As has been mentioned by the hon. Minister and hon. Member Shri Suresh Desai, the Forward Markets Regulation Act, 1952, has been in operation for a number of years and controls have been imposed on a number of commodities through a number of recognised associations. The powers that are now proposed to be vested in the Commission are very very drastic, and it is for the House to decide whether such wide powers are at all necessary. The main ground on which these powers are sought to be taken for which the Act is to be amended is to curb speculation. No one will object to this laudable object that mere speculation which forces prices up should be checked. But the question is whether that object can be served without the other factors which can control the price line. As you know, prices cannot be forced up merely by speculation. If the supply is more than the demand or if the supply is sufficient, whatever may be the speculation, it may be possible within a few days to reduce the prices. But prices cannot go up beyond a reasonable limit. The powers that are now proposed to be given are very very drastic. In the Forward Contracts (Regulation) Act, ready delivery contract is defined as a contract which provides for delivery of goods within eleven days. I do not know the sanctity of eleven days. But if somebody delivers the goods even within twelve days, only a day late, it becomes bad. Even by the mutual consent of the parties also, the eleven days cannot be extended even by a single hour and the contract would become illegal, it cannot be performed. Similarly, a non-transferable spe-

cific delivery contract is a contract where it cannot be transferred. But a transferable specific delivery contract is a contract which is not a non-transferable specific contract and it can be transferred from person to person. In the case of the transferable specific delivery contract also, the Commission wants to take power to limit the number of transfers. That is to say, a transferable contract also cannot be transferred if the Commission so directs. Similarly, a number of other powers have been taken by the Commission. If a bye-law is amended and if contracts have been entered into prior to the amendment of the bye-law and if the contracts are still outstanding and have not been fulfilled or performed, the new bye-law that will be framed by the association will be applicable to these contracts also. You cannot imagine a more drastic step. Where parties have already entered into certain contracts, certain new additional conditions are imposed after they have entered into them and before there is time for those contracts to be completed or performed. Similarly, the Commission has also been given the power that they can close, if somebody has violated some of the provisions, the contracts that the party has entered into.

The commodities over which they exercise control are mostly commodities that are intended for export, for instance, jute and jute goods. Jute goods are manufactured mainly for export. The mills manufacture the goods, sell them to the dealers and the dealers generally sell them to the shippers and others. If a dealer has done something which is hit by any of the bye-laws, the contract that he has entered into with the mills or some other dealer will be closed. What happens then to the shipper who has entered into a contract for supply to foreign markets? He cannot get the goods and therefore he has to get them from somewhere else at a very high price and the result will be that our export trade will be affected very much. In this connection, I would mention that I have got here copies of

telegrams sent by the chambers of commerce in the United States of America, the United Kingdom and Australia, etc., the countries which generally purchase these goods. They are very much apprehensive that the whole trade will be affected. Recently an order was passed by the Forward Markets Commission directing that a certain amount, a very high amount, should be deposited in cash in respect of contracts called 'long' positions by the purchasers. The amount is so heavy that very few persons can deposit it unless they are very big people. Also they fix up the price of jute at a certain amount. The result is that the price of jute in Pakistan where it is produced much more than in India, is about Rs. 10 to Rs. 12 more than the price in India, and as a result, the extraordinary phenomenon has happened this year that about fifty thousand bales or so have been smuggled into Pakistan from India. Previously, some quantities of jute used to be smuggled out of Pakistan into India. This year on account of the directions given by the Forward Markets Commission, about fifty thousand bales have been smuggled into Pakistan out of India because the prices are more favourable there and they are very much higher than those prevailing in India. Sir, jute is grown in Pakistan in a larger quantity than in India, the quality there is also much better, and yet prices are about Rs. 10 to Rs. 12 higher than those in India. Prior to this year, prices of jute in Pakistan used to be Rs. 2 to Rs. 3 less than those in India but on account of the fact that there was a very poor crop of jute both in India and Pakistan, prices went on rising. You cannot hold the prices in a position when there is such a short supply in both the countries and no amount of directions or fixation of rates can hold the price line, unless, as I said, the other factor is also there, that is to say, the necessary supply should be there. By this kind of remedy that we are trying to provide, the remedy will perhaps be worse than the disease itself. There was a remark some time ago in one of the

important newspapers that the Forward Markets Commission sometimes acts when perhaps it should not and that it does not act when it should. For instance, it allows the Bullion Forwards Association to continue. I do not know how dealing with gold can be of help to the country. It interferes in commodities like jute and jute goods. This question of the Forward Markets Commission controlling the prices of the various agricultural commodities was one of the points raised by Shri Ajit Prasad Jain when he was the Minister of Agriculture. We know that in the Lok Sabha, even he wanted this Bill to be sent to a Select Committee. It is a very very serious measure providing for very drastic steps. As I said in the beginning, certainly no one will object to giving the powers that are regarded as necessary. Let those powers be considered carefully and a Bill like this should not be rushed through when perhaps most of us do not understand the implications of the Forward Markets Commission or even the definitions that are there or the way in which the Commission acts. Therefore, I would appeal to the hon. Minister to accept my amendments. Heavens will not fall if there is a delay of a few days or months. The powers that are there are sufficient, I mean very heavy penalty is already provided. That in itself has stopped dealing in the commodities that they want to stop, and therefore the very drastic powers that are being now proposed should not be too lightly passed by this House, and the Bill should be very thoroughly examined, and if a case is made out for giving more powers, certainly the House will not object to them but, as I said, the measure is being rushed through in a hurry without proper thought being given to the necessities, or whether or not these powers should be given. Certain powers were of a drastic nature, and as was mentioned by my hon. friend Mr. Suresh Desai, the burden of proof is being shifted on to the accused, and there are a number of other things. Even we cannot trust

[Shri P. D. Himatsingka.]

our own judiciary; I mean the Bill provides that, for the second offence, the court must punish the man, that the court must impose a penalty of not less than one thousand rupees and must imprison the accused for not less than one month unless it decides, for reasons to be recorded, to reduce the penalty. The result will be that if the magistrate feels that there is not sufficient ground, he will acquit the accused. But I do not see why we cannot trust our judiciary and why we should provide in the law itself how the magistrate is to act, how much penalty the court is to impose, for what period imprisonment should be awarded. We are going too far in a measure like this and I would certainly suggest that measures like this should be a little more carefully looked into. As I said, a mere rise in prices does not in itself prove that there is any speculation, and as I also said, the price in Pakistan of jute and jute goods is much higher than in India, and if the conditions that can be imposed by this Forward Markets Commission in the case of any violation of any of the rules and the contracts entered into by the dealers with the mills or with the shippers be cancelled, the result will be that they, the shoppers, will not be able to supply . . .

SHRI H. P. SAKSENA (Uttar Pradesh): May I request the hon. speaker to let me know what the reason of that export of jute from India to Pakistan, of which he made a mention just now, is?

SHRI P. D. HIMATSINGKA: It is not export of jute from India to Pakistan, but jute has been smuggled out of India into Pakistan because of the higher price that persons can get from there. There is an extensive border between India and Pakistan and it may be very difficult even for the authorities to control this smuggling. There is no export but there is this smuggling that is going on because of the higher price that is available in Pakistan—not

that there has been any export. Sir, as regards the new regulations this is what has been mentioned by some of the foreign buyers of our goods:

"The changed methods of operation are certainly not a normal feature of the jute goods trade, are in fact in restraint of trade to some extent, and are therefore potentially injurious to the long-term interests of the jute goods trade. Some relaxation of the stringent rules governing the payment of special margins is necessary if the legitimate business of genuine shippers is not to be hamstrung to the detriment of the export trade and the country's foreign exchange earnings."

Similarly they pointed out a number of other difficulties that are likely to be created unless the powers that are needed to be given are very much curbed and they are in any event used very carefully. Therefore I would again appeal to the Minister-in-charge to see to it that the Bill is referred to a Select Committee where the matter can be considered carefully.

SHRI P. RAMAMURTI (Madras): Sir, after hearing the speech of the hon. Mr. Himatsingka I would request the hon. Minister to consider very carefully whether the purpose which he has in view is at all going to be served by the measure that he is now bringing forward. Mr. Himatsingka pointed out, for example, that the way to avoid this speculation, the way to stabilise prices, is not this kind of measure. After all, when a commodity is in short supply—he said—speculators act in that particular atmosphere. Therefore the way in which you can stabilise the prices is not by trying to curb the activities of these speculators, as you are now seeking to do, but by increasing the production of that commodity and seeing to it that even those speculators try to act in that atmosphere where the over-abundance of that

commodity acts as a pressure and inevitably the price will come down

SHRI P D HIMATSINGKA How is my friend distorting my statements?

SHRI P RAMAMURTI Anyway that is my understanding and the exact words that he used I have taken down "Speculation by itself cannot push up prices unless the commodities are in short supply" This is the exact sentence that he said. The speculators got an opportunity to act precisely because the commodities are in short supply, and he is not absolutely certain whether at all these powers are absolutely necessary or not. Now Sir, a point is made out that after all we are now in a mixed economy, it is not a socialist economy we are living in, if we were living in a socialist economy, in that case, the prices of the commodities at various stages would be controlled and no question of speculation would arise, but now, since we are living in a free economy, in a sort of mixed economy where private enterprise is allowed, trading in futures should also be allowed. After all we know that in the case of a number of commodities futures trading has been banned, for example futures trading in foodgrains has been banned and also in a number of other commodities, such as coffee and tea in respect of which there is no futures trading. Nonetheless the economy does not cease to be capitalist economy simply because trading in futures has been banned in some of these commodities. We are dealing with futures commodities market, market in future contracts. It is not as if the commodities actually pass from the hands of one purchaser into the hands of another purchaser. No such thing actually takes place. As a matter of fact somebody holds a contract for delivery of some commodities in the month of February. That contract goes on transferring to somebody else. I sell it whether it is a transferable contract or a non-transferable contract. The hon. Minister has now pointed out that there is

enough scope for evasion of these laws. Therefore my right to purchase something or to get delivery of something in the month of February, will go on being transferred and I shall show the extent of the speculation that is taking place in the market. In the reports given by the Commission themselves you will find that in the year 1959—I have got the latest figures for the year 1959—the total production of cotton in this country was about 40 lakh bales whereas the transactions in the future commodities market alone amounted to about 450 lakh bales. A part of production alone comes into this market. As to the rest of it there is direct sale to the mills, a number of mills also purchase directly from the producer; therefore only a part of the product that is purchased has come into this future market, part of it is accounted for, part of it is not accounted, because outside the association also trading in futures takes place. Even within that restricted scope you find that for a total production of just 40 lakhs of bales of cotton, the total quantity transacted through these recognised associations has come to 450 lakh bales. That means to say that even in this sphere alone it has changed hands at least about ten to fifteen times. Why should it be at all necessary for such kinds of transactions to take place? If these kinds of transfers do not take place, is our economy going to fall to pieces? I do not understand it at all. Despite all the measures that you might bring in, for example the bringing forward of this Bill to curb trading—forward trading is sought to be banned, very good—how are you going to actually ban it? There is that proverb which says that even thieves have their code of honour. But, unfortunately, for us the code of honour among these people is much higher than among the thieves. I know, for example, the term "curb trading" has no meaning today. Curb trading had a meaning at one time when these people were transacting business outside the halls in verandahs of buildings where trading was taking place. Today that trading takes place over the tele-

[Shri P. Ramamurti.]
phone. From Madras somebody phones to some one in Bombay and the whole transaction takes place by means of telephonic conversation. Therefore, what is happening today is not curb trading but trunk telephone trading. How are you going to prevent it? They do not have to enter any building.

The code of honour among these people is such that they honour their very word without entering into any written transaction. No agreement, nothing. No such thing takes place. That is why I say unless we take upon ourselves the task of banning this kind of trade, as we have banned this kind of trade in ever so many other commodities, I do not see how we are at all going to stop this kind of speculation.

As far as the Bill goes, it seeks to give a number of new powers to the Commission. All very good. Certainly, I would welcome these powers. In fact, I would even like to enhance their powers. Mr. Himatsingka was saying that the burden of proof, in case it is suspected that the person holds non-transferable contracts for speculation should not be on the person who holds them, but it should be for the Commission to prove that. I cannot understand this thing. It is not a case like theft. It is not a criminal offence that we are dealing with. We have stated that certain things should not be held for speculative purposes; there should be no speculation in certain commodities. If I am holding a non-transferable future contract, it would be easiest for me to prove that I am not holding it for purposes of speculation. It would be easiest for me to come and give absolute proof and say, "Look here. I have got some hedge contracts. I am not holding them for the purpose of speculation. I am entering into a *bona fide* transaction". It is the easiest thing for me to prove. Whereas it will be very, very difficult for somebody else to prove that I am holding it, not for *bona fide* purposes,

but for speculative purposes. It will be very difficult for him to prove. On the other hand, it is the easiest thing for the man—who has nothing to fear, who actually does a *bona fide* trade—to come and prove that it is a *bona fide* transaction.

SHRI P. D. HIMATSINGKA: On what basis is the man prosecuted by the Commission?

SHRI P. RAMAMURTI: Prosecution will not be on absolute proof. It may not be a fool-proof thing. Sufficient ground should exist for *bona fide* suspicion that the man is holding that contract, not for *bona fide* purposes, but for purposes of speculation. Therefore, all these things the Commission comes and places before the court. Then it is for him to prove if certain *bona fide* grounds exist for suspecting that the person is holding it, not for *bona fide* purposes, but for speculative purposes. Then the burden of proving that it is for *bona fide* purposes and not for speculative purposes is cast upon the accused. Why should it at all be on the Commission? Why should we be afraid of that position? It is the easiest thing for him to prove. Why then cast the burden of complete proof on the Commission? It will defeat the very purpose of the Act. I would once again ask the Minister to think seriously whether these measures would serve the purpose intended. To say that these future markets today help the producer in this country is a meaningless thing for the simple reason that as far as the producers are concerned, they are tiny people. For example, take the jute growers. They are small people. They do not know anything of the curb rates on the market. The small industrialist also does not take advantage of the hedge contracts. He does not know all this. He does not understand these things at all. The result of these operations is what they call bulls and bears in the market, and the ordinary producer is subjected to their pressure. He is at the total mercy of these bulls

and bears in this future contract market. That is why let us abolish these bulls and bears, as is being done in the case of some other commodities. That would be a far better thing. But if the Minister wants to give a trial—I know my words are not going to have much weight—he should consider my suggestion. Have you a trial? I do not mind. But ultimately you will find that despite all these measures these speculations will continue. As a matter of fact, the very fact that you have been forced to come forward asking for more powers for the Commission shows that evil breeds evil. The whole thing is evil and these speculators, through some means or the other, will try to circumvent the law. They would always circumvent the law. Let us take drastic steps against them. But meanwhile give more powers for the Commission and for the Government with the hope that the Government and the Commission will not be afraid of utilising these powers.

Sir, the Commission's report is very clear as far as these people are concerned. During all these years they have been advising but the advice was not heeded. Therefore, I would ask the Government not to be afraid of anybody and to utilise these powers fully and to the utmost extent possible.

SHRI M. GOVINDA REDDY (Mysore). Mr Deputy Chairman, I am very glad to lend my support to this Bill. The first thing that should be said is that the provisions of this Bill are extended to the State of Jammu and Kashmir and I am glad about it. This is a healthy line and I hope the Government will follow the practice of extending all the Bills to the State of Jammu and Kashmir.

Sir, the Act has been in operation for six years. The hon Minister was saying that the Forward Markets Commission had found it impossible to check some transactions which were contrary to the provisions of the

Act. Considering the interests that are involved in trading in futures and its influence on the commodity market, it can very well be imagined what difficulties the Forward Markets Commission would have faced in implementing the provisions of the Act. However, for the information of this House I think it would have been better if the hon. Minister had outlined in what ways there were evasions of the provisions of the Act, particularly in what commodities, this evasion was more. I do not mean to say that there has been no evasion, but all that I wanted to say was that we would be very much interested to know the pattern of evasion that was being pursued and the particular commodities that lent themselves to evasion of law.

Sir, although forward markets transactions are not gambling at all, they have all the consequence of gambling transactions. I know some individuals who have been in this business and who have lost their fortunes in making these contracts. Apart from what happens to the individual, inasmuch as the forward trading contracts determine the futures of several commodities, they are bound to create upheavals in the commodity market. Although, as hon Mr Ramamurti was saying, the grower does not stand to gain in forward transactions that take place in commodity markets, still the futures of his produce are affected. Both the grower as well as the stockists are affected by these transactions. Some commodities lend themselves to high speculation. The hon Minister mentioned that jute and jute goods and oil seeds and such other things have come in very heavily for speculative transactions. So, it is in the interest of the market, the commodities and market economy that the Government should arm itself with more and more powers so that the provisions of the Forward Markets Act should be very strictly enforced. They have very salutary provisions in this Bill. The Forward Markets Commission needed some

[Shri M Govinda Reddy] powers in this connection Regarding the burden of proof which was thrown on the Forward Markets Commission before one can see as to how difficult it is for the Forward Markets Commission to bear the burden of proof. It has been very elaborately explained by the various hon. Members who spoke before Therefore I am not going into it I feel that the Forward Markets Commission should have the power to call the people before them or summon them and to take evidence from such people It is also necessary for them to control these transactions in order to see that these transactions are regulated according to the provisions of the law

MR DEPUTY CHAIRMAN Mr. Govinda Reddy, we have to finish the business today We have to finish all the Bills set out on the agenda paper.

Shall we go on till 1-30 P.M. and meet at 2-30 P.M. or shall we meet at 2-00?

AN HON MEMBER We shall meet at two

MR DEPUTY CHAIRMAN Then, Mr Govinda Reddy, you can continue at 2 00.

The House stands adjourned till two

The House then adjourned for lunch at two minutes past one of the clock

The House reassembled after lunch at two of the clock, MR DEPUTY CHAIRMAN in the Chair

SHRI M GOVINDA REDDY Mr. Deputy Chairman, when we rose for lunch, I was saying that this Bill had punitive provisions and I was referring to the provision which empowered the Commission—The Forward Markets Commission—with certain powers of a civil court, in clause 6. A new section has been introduced i.e. section 4A which gives these powers to the Commission. Such powers

have been conferred on the Tariff Commission and similar powers are being conferred on this Commission also and I hope these powers will, to a large extent, strengthen the hands of the Commission in finding out unauthorised operations and in summoning people and examining them

A new section is being substituted for section 20 of the principal Act and according to this new section any contravention of the provisions of this measure will be punishable with fine of Rs. 1,000 for the first offence and with imprisonment for the second offence. I am glad these penal provisions have been made My difficulty, however, is whether the Commission will have sufficient and adequate machinery in order to spot out the people who carry on unauthorised transactions in violation of the provisions of the Forward Contracts Act. If there is policing, it will be easy to spot out the culprits and then of course, they will be punished But we can imagine the working of the forward markets where people who are in the Association themselves will often carry on unauthorised operations They have their own brokers to carry on both inside and outside the market, unauthorised operations and if the Commission has to route their enquiries and investigations through the Markets Association, I am afraid they will not be able to get at the truth. So I would like to know, when the hon Minister replies, what machinery they have in view in order to find out who is carrying on such unauthorised operations and to what extent This is very necessary. Inasmuch as the Commission will be deeply involved in each area in all these unauthorised operations I might throw out a suggestion that it would be worthwhile for the Government to appoint for every Association a Government official as Secretary. In most of the regulated markets we have Government officers as secretaries. If a Government officer is secretary of the Forward Markets Association, then surely, unauthorised transactions cannot take place with the

connivance of the Managing Committee of these Associations and so to a very large extent the operations of the market will be regulated and they will conform to the provisions of this measure

There is also another suggestion which I would like to make and it is this. Some of these speculative commodities can be taken out of the purview of the market and then dealt with separately. Some organisation like the Coffee Board can be created. For instance in the case of jute, we can have a Jute Board, taking jute out of the purview of the forward market transactions, and out of the purview of speculation. In that case you will be able not only to keep up the level of that commodity in the market, but also avoid cornering by the rich, by people who are powerful in the market, the cornering of certain commodities for the future and thereby creating upheavals in the price levels. I do not know how far this idea of creating a board like the Coffee Board is feasible for I am not a man in the line and therefore, I can only just throw out a suggestion and I would like to know the reactions of the Marketing Commission and of the hon Minister in this regard.

There is a new chapter introduced which, to a large extent, will standardise the operations of associations and all associations now will have to be registered with the Forward Markets Commission for transferring specific deliveries in regulated and also prohibited commodities as well as in free commodities.

There is only one other provision to which I would like to refer and that is a very healthy and salutary provision, that the courts will have the power to forfeit the property or the illegal gains that have been made by an illegal operator in contravention of the provisions of this Bill. Certainly, if there is any temptation for people to go outside the purview of these provisions of this Bill and trade with the motive of gaining and

making illicit gains, they will have this fear now that in case they make such illicit gains and they are found out, then the entire profit or gain acquired in that manner will be forfeited by the court. This will certainly have a salutary effect on people who operate in contravention of these provisions. I have nothing more to add, Sir

Although I consider that the Forward Markets Commission, in spite of its very diligent and efficient work, has more difficulties to face in implementing the provisions of this Act, and although I also consider this forward marketing itself is quite contrary to socialist pattern of society, still we cannot but have it as things are today. In most other countries also we have this, but there certain standard regulations and standard behaviour and code of conduct of the operators do not give rise to illegal, illicit and unlawful activities outside the market operations. I am very glad to extend my support to this Bill.

Thank you

SHRI DAHYABHAI V. PATEL (Gujarat): Mr. Deputy Chairman, while I fully support the Government's intention to intervene and stop speculations and gambling and to stop the evasion of tax, I am afraid I am not fully satisfied that a measure of this type is necessary at this juncture and in such haste as the Government is proposing to enact it. Sir, our hon. friend Shri Himatsingka has proposed an amendment to say that this measure should be referred to a Select Committee and I think that would be a better way of going about it. I do not know whether the heavens are going to fall if this measure is enacted at the next session of Parliament instead of today. I am sure it is possible to have a Select Committee of both the Houses and to have consultations with the interests concerned.

MR. DEPUTY CHAIRMAN: But the other House has already passed the Bill.

SHRI DAHYABHAI V. PATEL: That does not matter. You can always take it back. Where is the harm in that? What is the purpose of having this House?

MR. DEPUTY CHAIRMAN: That House has already passed the Bill.

SHRI DAHYABHAI V. PATEL: This House can always revise it. The function of this House is to revise certain things that the other House might have been hurried into doing or might have passed for certain reasons.

MR. DEPUTY CHAIRMAN: What I was saying was that this cannot go to a Joint Committee.

SHRI P. D. HIMATSINGKA: That is why I want the Bill to be referred to a Select Committee of this House.

SHRI M. GOVINDA REDDY: The same question was raised in the other House and the Minister gave a reply that this was an urgent matter and that it could not wait.

SHRI DAHYABHAI V. PATEL: What is the urgency? Since we have waited all these years, another two or three months would not matter. If the hon. Minister wants to do it, he has simply to withdraw this Bill, bring in another Bill before the next session and have a Joint Committee. There is nothing to prevent this measure going to a Joint Committee if the Minister is in a mood to listen. If he does not want, he has got a huge majority and he can go on with this matter but I do not see anything urgent about this matter which necessitates its being rushed through Parliament in this way.

Sir, Government have already taken certain steps. They have appointed the Forward Markets Commission. I am not sure that the Commission has acted fully and utilised its powers. It is the same thing over and over again. The Government of India appointed a Superintendent of Insurance to supervise the insurance companies. Because of the

neglect of the Superintendent of Insurance, certain companies went wrong but you branded all companies, good, bad and indifferent, tarred them with the same brush and nationalised insurance business. That was a mistake. I repeated the same thing about the Company Law and I repeat the same thing here. What is necessary for Government to do is to strengthen the managing committees and these associations, put greater responsibilities on the directors and those who manage these boards and prevent their conniving at this sort of thing. That is what is necessary. I am not for speculation; I am not for gambling but hedging and forward trading have certain useful purposes which cannot be overlooked, and I would request the hon. Minister to look at it from that point of view.

Sir, my second objection about this Bill is that this Bill has not been circulated for eliciting opinion. Opinions of persons concerned with this measure and of several trading associations have not been invited by Government. This is a most extraordinary thing to do. You pass legislation of a certain type but you do not ask the people whom it concerns. What are the powers that you want to take? I would like to point out here that speculation of this type has shown a marked tendency to decline. That is a healthy tendency. If Government and the Forward Markets Commission want to take credit for this, I am quite willing to give it to them. Give them a little more power but I am against giving them blanket powers of this type. This is a type of regimentation which is offensive to normal human standards of life and human liberties. That is my principal objection to this measure.

Sir, these powers should normally be used with great care. Where is the guarantee that they are going to use these powers with care? The tendency for any bureaucracy, for any Government, is to take more powers and to use more powers arbitrarily. Are we not being driven to that to-

day? In this connection, Sir, I would like to draw attention to the way in which cotton control is being manipulated. I want to ask has ever cotton control been manipulated in the interests of the grower? The control on cotton, whenever it had been imposed, has always helped the bigger merchants, never the growers. It is essentially because Government machinery is of this type, I am not blaming any individual, X, Y or Z. I am not insinuating that anybody did that with any ulterior motives or motives to benefit himself but the machinery of Government is essentially such that powers of this type will not yield any better results.

Sir, something fundamentally wrong is proposed in section 4A. This gives the Commission police powers. No authority except the police and the courts have powers to summon anyone, to examine a man on oath, require anyone to produce documents or to give affidavits. These are very very drastic powers and it is a sad day that Government should suggest a measure of this type and not allow it to go before a Select Committee or even circulate it for eliciting public opinion. This shows that there is a lacuna which Government wants to cover up. Government wants to cover up its intention as far as this measure is concerned and this is most objectionable. Sir, Are we making this legislation for people who offend against the law? Are we legislating for criminals? You have got the criminal law and there is enough provision in the Penal Code to be used against criminals and for unsocial people. Why do you mix up business with your ideas of this type? The Commission is to act as a civil court. It has the authority to forward cases to the Magistrates for trial. Sir, I am surprised that such powers are suggested, that such a Bill is suggested. I think Government is represented on the Boards of Directors of most of these associations. What are the representatives of Government doing there that it should be necessary for Government to have these additional powers? As

I said before, the failure of Government officers to use their powers is being used repeatedly, again and again, to get more powers for the executive. It is making a negation of our democracy and it is becoming a bureaucratic state with more and more powers. That is the part of it which I object to. Summary powers are being given to anyone to take over documents.

SHRI N. KANUNGO: There is no summary power.

SHRI DAHYABHAI V. PATEL: You have got the power to seize documents. Is it not summary? You can seize documents without notice. What do you call this? Is it not summary? You cannot seize them through a telephone wire, that is the only thing you cannot do. If this is not summary, what is summary power? I would like to understand it from the hon. Minister. I am not a lawyer but in plain English, I think this is a summary procedure. You go to any man's house, seize his office and seize all his documents without giving the grounds why you are doing it.

SHRI N. KANUNGO: With a valid warrant.

SHRI DAHYABHAI V. PATEL: Warrant? Do you think that a warrant makes any difference or does it make the power not summary?

SHRI AKBAR ALI KHAN (Andhra Pradesh): I think the Minister is thinking in legal terms and my learned friend is thinking in general terms.

SHRI DAHYABHAI V. PATEL: Practical terms, that is right. Similarly they may require the presence of any person at any place with books and documents. All these powers are given. The basic principles of criminal jurisprudence are not being applied. The onus of proof—this is the most objectionable feature—is being shifted, it is not on the person who accuses but on the person who is accused already. You begin by saying "You are a criminal, prove that

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you are not". This is fundamentally objectionable; this is against all canons of justice, against civil liberty and therefore I object to it.

Lastly, we have just had a long debate on the Company Law (Amendment) Bill, and in the Select Committee also we had the same differences. The most contentious clause there was contributions to political parties. Here is one more example of the power that Government wants to have to extort donations.

SHRI M. GOVINDA REDDY: Ingenious imagination.

SHRI DAHYABHAI V. PATEL: It is not a question of ingenuity. If you live in Bombay, you will know how these things are done. It is very easy. Things have been managed in the past and they will be managed and here is more power for people who want to do such things. Sir, you may even disregard that point about contributions but still in my mind this is a very very serious affair. The principles underlying the Bill—the very wide powers that are being sought without having to go through courts—are very objectionable and therefore I oppose this. I would support the motion that the Bill be referred to a Select Committee which can examine this in detail.

SHRI N. KANUNGO: Sir, you will have noticed from the speeches made this morning and this afternoon in the House that everyone is agreed that not only proper but strict regulation of forward markets is necessary except my esteemed friend who spoke last.

SHRI DAHYABHAI V. PATEL: Sir, I never said it is not necessary. My difference is about the manner in which it is sought to be done.

SHRI N. KANUNGO: I am sorry.

SHRI DAHYABHAI V. PATEL: I began by saying that I was against speculation. That is how I began. I am sorry I have been misunderstood.

SHRI N. KANUNGO: That is another way. Speculation is an integral part of forward trading. It is only excessive speculation which is sought to be restrained.

Sir, I owe an explanation to you as to why this Bill could not be placed before a Select Committee as normally it ought to have been. Normally it is not our intention to do so but as I said in my opening speech, this Bill has been under discussion for quite a long time but within the last three months excessive speculative pressures in certain of the vital commodity markets like oilseeds, jute and jute goods have definitely damaged our foreign trade and distorted internal prices. Therefore if we have to have some sort of a balance, the urgent writing of this Bill on the Statute Book is necessary so that further deterioration can be stopped in time.

Now, the provisions which have been incorporated in the Bill and to which mild or severe objection has been voiced in this House and in the other House are such that to my mind they are the minimum that could be conceived at the present moment. Considering the urgency of the matter I therefore very regretfully have to submit to you that I cannot delay the consideration of this Bill by referring it to a Select Committee. The basic provisions which are an integral part of the Bill cannot be modified. I would just give you an example. All these years it is known that trade in raw jute or jute goods is in Calcutta because that is the region where the commodity is grown, marketed and manufactured. But during the course of the last one month—in November—the police had to round up and prosecute people as far off as at Kanpur, Bombay and elsewhere for dealing in these commodities in an unauthorised manner. That is just one example of the speculative fever which has taken hold of some of the market speculators.

Everyone is agreed that regulation is necessary—as Mr. Desai has mentioned—regulation of the type envisaged barring the provisions relating

*o punishment Whether they could be less severe or more severe, opinions can differ on that but regulation on the lines envisaged in the Bill is necessary Sir, when the Bill was originally enacted—and this was after a period when all forward trading had been banned under the Defence of India Act—it was envisaged that the Commission's function would be that of holding a watching brief and advising the boards of management of the different recognised markets It was anticipated that the trade will evolve its own code of conduct and that there would be self-regulation, regulation by the Associations themselves so that interference by any outside authority like the Commission or the Government may not be necessary Unfortunately, experience has proved that the Associations as such have been reluctant—in fact, very reluctant—to use their judgment and the powers which they undoubtedly possess under the bye-laws in any single case

Sir, Mr Patel referred to the Forward Markets Commission or rather the Government having their nominees on the Board of Directors They are not officials except occasionally and that too not more than one usually

SHRI DAHYABHAI V PATEL Have not the Government thought that they should put in the right type of people?

SHRI N KANUNGO It is within my knowledge that the directors nominated by the Government to the various associations who are usually drawn from academic circles—like professors of Economics etc—or from the banking circles or from public life have argued, and argued with vigour, in the boards for taking certain regulatory steps but they have failed and obviously Government do not want to pack these associations with their nominees thereby making self-regulation nugatory

Sir, the main provisions of the Bill are that a new Chapter has been added—Chapter IIIA—where it is propos-

ed to have a new category of associations other than the recognised associations These will be known as registered associations and normally they are functioning all over the country They deal with transferable delivery contracts which are exempt under the Act But we have no means of knowing what is happening there, what are the transactions going on there, whether under the guise of transferable delivery contracts futures and option trading are not going on We have information that it has gone on in several cases By this provision it will be possible for bona fide traders in that type of contracts to function legitimately, which is permitted under the law under their own rules All that is provided in the clause is that they have to submit statements and information about the transactions that go on This will provide data by which the Government will be able to keep a watch over the transactions and how they affect price. There is no regulation here it is merely a device to obtain data for purposes of analysis and study

The other main provision, which is made in the Bill, is that the Commission can summon parties, associations and individuals to furnish information Under the law, they are permitted to do so even now, not all but only in the case of a limited number of persons Now, those from whom information is sought, it is their option to give it or not By this provision the Commission is being equipped with the powers of a Court and the powers are limited to eliciting information. That is all They can call individuals or associations to give them information as required and where there is no sanction of law for compelling people to give that information, the sanction is being merely provided for

Then, the other main provision is the new section 21A Now, you seize the books in places, because books are largely the only type of evidence which will prove the legality or illegality of a particular transaction This

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provision is there in the other Acts, for example, in the Banking Companies Act, where the books need not be proved according to the Evidence Act. Normally when a document has to be proved, a certain type of evidence has got to be introduced. By whom it is written and all that has got to be proved. It has provision to do so because the persons keeping those books are not likely to co-operate. Therefore, all that is being done is that such books and documents can go on evidence on the analogy of similar provisions in the Banking Companies Act.

The other provision, which may have caused a little misgiving and which Mr. Himatsingka mentioned, is about the power given to the Commission to close down individual contracts and settle them on a certain basis. Now, this power was not there on the assumption that the associations, in their bye-laws, will provide for this power. I understand that some of the associations have got the power, but they have been reluctant to use it. I need not go into the reasons why they have not used it but the fact remains that these powers written in the bye-laws have not been used and it has resulted in members of a recognised association going on merrily with creating pressures where it could not be checked even by means of margins. Again, Sir, the basic idea as I said in the original Act and in which we still persist is this. In spite of all the powers which are being proposed in the Bill, the basic idea remains that the associations will regulate themselves. They are entirely free to regulate themselves. It is only when they fail to do so these powers will come into play. Of course, there is a provision whereby contracts, which are unconscionable or are in the whole law void are being made illegal.

Now, Sir, the most contentious part, I submit, is about the punishments which have been provided. It has been decided that the Courts should be left to prescribe whatever punishment they see fit in a given set of circumstances.

I would submit very humbly that all the penal laws in our country provide for minimum punishments for certain offences. For example, in the case of homicide, the minimum punishment is prescribed for that. The Courts cannot do otherwise. Similarly, in regard to various other offences, the minimum sentence is prescribed. Now, it is argued—fortunately it has not been argued by many Members here—that these offences are not of a type which would call for such deterrent punishment. I humbly submit that the Penal Code provides for offences against persons or individual property, where a person or a group of persons are affected. But here the operations of speculators can hurt the community as such. Instead of hurting one individual or a group of individuals, it hurts the community at large. Therefore, a deterrent punishment has got to be provided for and I hope that the very presence of this provision in the Bill, as in the other penal Acts, will act as a deterrent, so that people will not venture to go in for anti-social acts, which will cause ruin to the community at large. Sir, in this context I beg to mention that though the powers have been recorded in the Bill I gave an assurance in the other House, for which there has been a lot of criticism elsewhere, outside the House. But I still maintain and I am prepared to assure you that all these powers which are there even today are merely reserve powers. The Commission and the Government hope that the associations by themselves will regulate their affairs. Only in extreme cases, where the associations fail to do so in spite of the law as being provided, the Commission will come in.

An hon. Member mentioned that there must be adequate provision for the Commission to be kept themselves informed of the developments as they happen. I am glad that the House has expressed this opinion and the Commission, which has always been asking for strengthening its machinery for keeping a watch, will have a stronger case for having adequate personnel, which they require. Even now

they have got some inspectors in different parts of the country, who keep watch over things, but the prosecuting part of it is directly under the normal legal procedure and judicial procedure. The prosecuting agency is the State police and we want to maintain that aspect. We want to maintain that the State police must be made responsible for watching the situation and for prosecuting people who contravene the law. In other words, people who try to trade outside the provisions of the regulating Act have got to be prosecuted by the State police and I am glad to say that at least in some of the States particularly in Bombay, the police have been quite alert to their work.

Sir I commend the Bill for the acceptance of the House

MR. DEPUTY CHAIRMAN You are not accepting the amendment?

SHRI N KANUNGO No, Sir

SHRI P D HIMATSINGKA Sir, I beg leave to withdraw my amendment

The amendment was, by leave withdrawn.*

MR. DEPUTY CHAIRMAN The question is

"That the Bill further to amend the Forward Contracts (Regulation) Act, 1952, as passed by the Lok Sabha, be taken into consideration"

The motion was adopted.

MR. DEPUTY CHAIRMAN We shall now take up the clause by clause consideration of the Bill

Clauses 2 to 23 were added to the Bill.

Clause 1 the Enacting Formula and the Title were added to the Bill.

*For text of amendment see col 2479 *supra*.

SHRI N KANUNGO Sir, I move.

"That the Bill be passed

The question was proposed

SHRI P D HIMATSINGKA Sir, the hon Mr Ramamurti criticised my statement that it was not mere speculation that pushed up the price but that the main ground was the shortage of supply. As you know, Sir, there are no forward markets in a large number of commodities, specially the foodgrains. There is no forward market in rice or wheat or any other thing and yet you find the prices soaring high. There is no speculation there, no dealing in forward markets, and still you find the spectacle of prices going up. The reason is obvious. There is no full supply. There is shortage. I only hope that the powers that have been given will be very carefully exercised and that such exercise will not stifle the actual, real business in a way which will affect the foreign exchange. As you remember Sir, some time ago the price of hessian 40" x 10 ounce was fixed at Rs 55 for hundred yards, whereas America was buying it at Rs 100. What happened was that the mills sold it at Rs 55 whereas the buyers, the actual consumers in America had to pay the full price. The difference was kept by the importer in America or the manufacturer of bags somewhere. I hope the same thing will not be repeated.

SHRI P RAMAMURTI Sir, I would not have intervened but for the remarks of my friend. I never stated that in the other markets, for example the markets of foodgrains, there is no speculation whatsoever. There is speculation also in the other markets. But I do maintain that this trading in futures is a market for speculation. It is nothing else but speculation. Therefore, let us not legalise it. That was the point I was making. Therefore, my friend did not try to make much of the point.

SHRI N KANUNGO I suppose that the fact that the Act was passed by Parliament shows that we still feel the

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necessity of a regulated market as against an unregulated market, and we are not going to have total control and distribution as is the practice in some other countries. Sir, I have no hesitation in repeating my assurance that the powers under the Act will be utilised with judicious patience. I am glad to submit that some of the leading markets in India, particularly the Bombay Oilseeds and Oil Exchange Market, have said that in spite of the rigours of the Bill they are in complete agreement with the principles of the Bill, and they have promised their co-operation in the working of this Bill after it is passed into law.

Mr. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE PREFERENCE SHARES (REGULATION OF DIVIDENDS) BILL, 1960

THE MINISTER OF REVENUE AND CIVIL EXPENDITURE (DR. B. GOPALA REDDI): Sir, I beg to move:

"That the Bill to regulate dividends on preference shares of certain companies, as passed by the Lok Sabha, be taken into consideration."

Sir, the Bill was referred by the Lok Sabha on the 15th November, 1960 to a Select Committee of 15 Members of that House. The Select Committee scrutinised the provisions of the Bill with reference to the views expressed in various memoranda and representations in the matter from diverse sections of the public, and submitted a unanimous report before the Lok Sabha on the 5th December. In the Bill as reported by the Committee, two sets of amendments have been made in clause 3 thereof and the substantive provisions of clause 4 have been modified, which I shall refer to later. The

amended Bill, as reported by the Committee was passed by the Lok Sabha, without any further amendments, on the 14th December.

Sir, I shall now proceed to explain, in brief, the purpose of the Bill, the salient features of the main provisions and the amendments made by the Select Committee.

As the House is aware, the Finance Acts of 1959 and 1960 have effected a change in the previous system of taxation of profits of companies and the dividends distributed by them. Previously, shareholders were given credit in their assessments on their dividend income for income-tax at the rate applicable to companies, as it was deemed that the income-tax paid by the company on the profits distributed by it was a payment on behalf of the shareholder. Under the revised scheme of taxation, this legal fiction has been abolished and therefore shareholders are no more entitled to receive credit for the income-tax paid by the company in respect of the profits distributed by it. Simultaneously, the rate of the tax payable by Indian companies and other companies who have made arrangements for the declaration of dividends in India has been reduced. Further, the tax based on excess dividends and wealth tax on companies have been abolished. It was expected that with the reduction in taxes and the consequent increase in the distributable funds of companies, they would be declaring higher dividends both on their preference and ordinary shares. The Government's intention in this behalf was clarified in the Finance Minister's speech in the Lok Sabha on the 20th April, 1960. However, in the case of preference shareholders, who according to their contracts are entitled to dividend at fixed rates, this expectation did not materialise. Some companies expressed their willingness to increase the preferential dividends, but they indicated that the practical difficulties in the way of declaring higher dividends on preference shares could only be removed by