[Mr. Chairman.]

1953 has been fixed as the last date for receiving nominations and the 21st December 1953, for holding election, if necessary, to the Central Silk Board.

The nominations will be received in the Council Notice Office up to 3 P.M. on the 17th. The election, which will be conducted in accordance with the system of proportional representation by means of the single transferable vote, will be held in Secretary's room (Room No. 29), Ground Floor, Parliament House, between the hours of 3 P.M. and 6 P.M. on the date fixed.

THE BANKING COMPANIES (AMENDMENT) BILL, 1953

MR. CHAIRMAN: We have to take up today the Banking Companies (Amendment) Bill, as Maulana Azad is engaged in the other House.

SHRI B. C. GHOSE (West Bengal): That is unfair.

MR. CHAIRMAN: I know it, but the Prime Minister is not here; Maulana Azad has to make some references and therefore he is held up in the House of the People for unavoidable reasons

THE DEPUTY MINISTER FOR FINANCE (SHRI A. C. GUHA): Sir, I beg to move:

> "That the Bill further to amend the Banking Companies Act, 1949, as passed by the House of the People, be taken into consideration."

Sir, I should like to give something like a background about the Banking Companies Act and the necessity that has arisen for the amendment which we are going to introduce Sir, there was no separate law for banking companies. The banking companies were regulated and controlled under the general Company Law as other commercial companies were controlled under that law. But later on, as the banking activities developed in this country, it was found that banking companies had got some particular features due to which they could not be controlled and regulated under the general Company Law as other commercial companies. So, in 1949 a separate Banking Companies Act was passed. But still the liquidation proceedings of banking companies were being conducted according to the Companies Act just as the liquidation proceedings of other commercial companies were conducted. But the problem of liquidation of banking companies also, appeared to be of a different nature and it appeared that it was not possible to have the same set of laws for conducting the liquidation proceedings of banks as of other companies. Firstly, Sir, the banking companies had got a large number of creditors as well as debtors, and so in the liquidation proceedings we had a multiplicity of cases as well as a multiplicity of courts. Due to these two reasons the liquidation proceedings of banks became a costly affair and also it made very slow progress.

Then due to partition and post-war economic conditions suddenly there was something like a crisis amongst the banking companies, particularly in Bengal, Punjab, Bombay and also to some extent in Travancore-Cochin. The problem being more acute in Bengal than in other parts of the country, the West Bengal Government instituted an enquiry into the liquidation proceedings, and then an Ordinance was promulgated in 1949. Subsequently there was an amendment of the Banking Companies Act in 1950 to remove these two difficulties. But this amendment removed only one of the two difficulties, namely, the multiplicity of courts. But the difficulty of multiplicity of cases still continued. The Government in the meantime had been receiving quite a large number of representations from the depositors of the closed banks; and it became apparent to the Government that a large number of people, running into several thousands, were practically ruined because of the collapse of these

banks, and further their misfortune was enhanced due to the costly and dilatory liquidation proceedings of these banks. In Bengal, Sir, about 80 banks were in liquidation and there was practically no payment to the depositors from any of these banks except one. Then in July 1952, the Central Government set up an Enquiry Committee to go into the liquidation proceedings of banking companies under the chairmanship of Sir D. N. Mitra, and the Enquiry Committee published its report in January 1953. *This enquiry revealed rather a shame*ful state of affairs. If you kindly permit me, Sir, I would like to read out a few passages from that Report:

> "The total cost of such managements of the liquidation banks amounts to about Rs. 15 lakhs. In addition, the total legal expenses incurred by the liquidators amount to Rs. 10 lakhs. A further item of expense is the Commission payable to the Official Liquidator. This commission is generally sanctioned at the flat rate of 5 per cent. of realisation."

And the Enquiry Committee found that most of the money realised by the liquidators had been spent on the administrative and legal charges, house-rent and the commission of the liquidator and that practically nothing had been given to the depositors. Every liquidator employs a separate staff and maintains separate office premises. The salary paid by all the liquidators to their staff totals about Rs. 21,000 per month and the total office rent paid per month amounts to about Rs. 6,000. This Committee therefore came to the conclusion that "it would clearly be to the advantage of the conduct of liquidation if the staff and the premises be concentrated in one office under one liquidator. The information available to us discloses that only one bank, out of the 78 banks in liquidation in Calcutta, has declared a dividend". I think I should explain the term 'dividend' used here. It should not be taken in the usual sense of ordinary dividend paid to the shareholders. Here 'dividend' means anything paid to the depositors.

The Committee then compares the position in Calcutta and Bombay. In Bombay there is a Court Liquidator. It says:

> "A glaring example of the wide divergence in the costs of liquidation between Calcutta and Bombay is the case of one bank in Calcutta where the liquidators realised about Rs. 85 lakhs and earned a commission of about Rs. 2·57 lakhs, whereas on the same amount of recoveries by the liquidator the commission under the Bombay rates would not have exceeded Rs. 86,000."

Thus we see that the cost of liquidation was very high in Calcutta, audit was very much to the disadvantage of the depositors. So, Government, on the receipt of this report, made a thorough study of the whole report and after consulting all the relevant authorities, the Government has come before this House with this amending Bill. There were 41 recommendations in the Committee's Report some of which would not require any legislative measures. They can be implemented by administrative action only. But some require legislative measures which we are trying to incorporate now in this amending Bill. The main recommendations of the Committee may be summarised as follows:

(a) Avoiding multiplicity of proceedings in different courts.

(b) A summary procedure for the realisation of the outstanding debts of a banking company.

(c) Rigorous and expeditious enforcement of the liability of the directors by providing for a compulsory public examination of their conduct in relation to the affairs of the banking company.

(d) Vesting the court with power to prohibit any incompetent director from being a director of any company and prescribing a special period

[Shri A. C. Guha.]

of limitation in respect of the claims of a banking company against its directors arising ex-contract;

(e) A special provision that in all proceedings under section 235 of the Indian Companies Act against directors, the burden of proving their non-liability will be on the directors, once a *prima facie* case is made out against them by the liquidator.

(f) The appointment of Court Liquidators in all States wherever possible, particularly in the States of West Bengal and Travancore-Cochin.

Sir, though the appointment of a Court Liquidator would not necessarily require any new legislation, there are certain difficulties over the transfer of pending cases to the Court Liquidators. It was pointed out by the Chief Justice of the Calcutta High Court that under the present provisions, no case could be transferred from the private liquidator to the Court Liquidator unless 'on due cause shown'. Any lawyer would understand what this 'due cause shown' means. It would mean that all the 78 or 80 cases will have to be reviewed and it would take a number of years for Company Judge, even if he can be persuaded or convinced of the utility of transferring these cases to the Court Liquidator. So, at the suggestion of the Chief Justice of the Calcutta High Court, we have provided in this Bill that automatically all the cases would be transferred to the Court Liquidator, unless the Company Judge could show, for specified reasons, that such a transfer would be prejudicial to the interests of the depositors. Under the present arrangement every case is to be retained unless the Company Judge orders the case to be transferred. We are providing in the Bill that every case has to be automatically transferred to the Court Liquidator unless in any particular case, the Judge considers that such a transfer would be prejudicial to the interests of the depositors. I think that every High Court Judge will use this discretion with care and I should like to assure this House that there is hardly any chance of this provision being misused.

Then, I think I should come to the several provisions of this Bill. First we have provided in this Bill for a Special Officer to take charge of all the papers and take into his custody or under his control all the assets, books and documents of a banking company which has applied for suspension of business and thus to prevent any tampering with the accounts or any other misuse of the records of the bank. Immediately the Special Officer will take charge of everything, so that the interests of the depositors as well as the shareholders will be safeguarded.

I have already referred to the Court Liquidator and I have also quoted from the Enquiry Committee's Report that under the Court Liquidator all the liquidation proceedings of all banks will be conducted in one administrative office. So, there would not be any duplication of office or duplication of staff, and we expect that there will also be a reduction in the legal charges, and the commission also will go down. He will be a paid officer of the State. So, there is no question of a five per cent. commission. I think some Members know the case of one particular bank where three liquidators have been functioning, each getting a provisional salary of Rs. 2,000 per month. Thus bringing the total provisional salary to Rs. 6,000 per month, in addition to which they will be getting something more after calculating their commission. This is the state of affairs now. This Court Liquidator will be a paid officer and so there is no question of any commission being given.

Then, we have also provided for preferential treatment of an amount not exceeding Rs. 100 to savings bank account holders. This, Sir, is to give some relief to the more or less poor depositors. Savings accounts are mostly by middle class and poor

depositors and a sum up to Rs. 100 will be paid immediately to them if the assets of the bank permit.

Then, there is another important thing. We are trying to remove through this Bill the evil of multiplicity of cases. As I have already stated, the two great difficulties in the liquidation of banking companies were multiplicity of courts and multiplicity of cases. By the earlier amendment we removed the evil of multiplicity of courts. All the cases are now being tried by the High Courts, but the multiplicity of cases is still there and so we have tried here to provide for a simpler arrangement for the settlement of cases. I shall quote here from a letter from the Chief Justice of Calcutta which has been circulated to Members:

> "If investigation of claims and collection of debts be left to the ordinary law, as it is now, delay ruinous to the creditors and contributories is inevitable."

Then we have provided for an easier and swifter method of settlement of the list of debtors and realisation of debts. We have provided for the debts to be realised as arrears of land revenue. Another thing in this connection is that entries in the books of account should be taken as *prima facie* evidence. Under the present provision such entries are not taken as evidence unless some officers of the bank are available to attest those entries. After the bank is closed, it is not always easy to get any of its officers to come before the court and to attest entries in the books of the bank. Sometimes such officers are not available; even if they are available they would not be obliging enough to come before the court and give attestation about the correctness of the entries in the books. We have therefore provided that the entries in the books of account should be taken as evidence ordinarily and in the case of directors as *prima facie* evidence.

We have put certain other obligations and responsibilities on the directors of closed banks because the directors of banks have different responsibilities from those of the directors of ordinary commercial companies. In the case of ordinary commercial companies, they are elected by the shareholders and they handle the shareholders' money, but in the case of banking companies, they are not elected by the depositors, but they are elected by the shareholders and they handle really not so much the shareholders' money as the depositors' money. So in the case of banking companies, the responsibilities of the directors are of a more serious nature and if there is any mismanagement either deliberate or due to inefficiency these directors should be held responsible for having wasted the money of the depositors who had no voice in their election, just as in insurance companies the directors are held responsible for the money of the policyholders. Here it is the interests of the depositors that should be safeguarded and if the directors have not taken sufficient care to safeguard the interests of the depositors, they should be held responsible and should be made good as much as possible.

We have provided also that the directors should be liable for public examination. Even now in the Indian Companies Act there is such a provision in sections 195 and 196, but the provision there is so worded that it is very difficult to take advantage of these two sections. So the principle is already conceded that when a director is guilty of mismanagement, he is liable to public examination. We have only provided in this Bill that the directors of banking companies might be easily made to come to the court for public examination in case the court thinks that there are sufficient reasons for subjecting them to public examination. Sir, we also moved an amendment in the Lower House whereby we have provided that the directors before being called upon for public examination would be given an opportunity to explain why they should not be called upon for public examination.

[Shri A. C. Guha.]

So it would not be just a summary manner. The court is always there to safeguard the primary rights of the directors, as of any other individuals. Moreover, we have provided that they will be given an opportunity to come before the court and explain why they should not be subjected to public examination

Then we have provided that *benami* property should also be attached. It is not a question of just seizing and putting it to auction. The liquidator with the help of the court should have the right to attach a *benami* property. There is a similar provision in the Indian Companies Act in section 235 and we are providing here the same thing, so that it may be easily available to the liquidators. Very recently a Court Receiver of the Calcutta High Court who is in charge of liquidation proceedings of some of the non-scheduled banks had got a decree against the Managing Director of a closed bank, I think, to the tune of Rs. 20 lakhs. But that Managing Director has got no property of his own. But it is suspected that he has got property in the name of his wife, children, relatives and friends. Under the present provisions, it is not possible for the Court Receiver to attach any of this property. So we are providing here that any property suspected to be *benami* might be attached by the liquidator and then it will be the responsibility of the director to go before the court and prove that it is not a *benami* property, and that the property really belongs to the person in whose name it stands.

Then we have another provision about limitation. Here also we have provided that in the case of other debtors of the bank the limitation would extend up to 12 years but in the case of directors, if there is any *ex-contractual* liability, there will be no limitation at all. Any contractual liability of the director will not have any limitation. Here again I would like to stress the special responsibilities of the directors of banking companies and if they have misused the funds of the depositors, I do not think that they have any right to claim immunity under the plea of 'barred by limitation'. A gentleman's obligation is an obligation for ever; he cannot plead that his obligation has been barred by limitation. So we are providing that in the case of contractual liabilities of directors, there should be no limitation at all.

Then we have provided that directors and officers should help the liquidator in realising the debts. Sometimes it is not possible for the liquidator to get a clue as to how to realise the debts. Officers or the directors of the bank might be able to give the necessary information to the liquidators, but they are not always obliging. They generally do not come forward and render such help to the liquidator. So we are providing here that the directors and officers of the bank in liquidation should be compulsorily amenable to rendering any help that the liquidator may ask them to render. Again we have provided through an amendment in the other House that the Court Liquidators should make only reasonable demands and I do not think that there is any chance of this power being misused.

Then there is also a provision for summary trial. It is there also in the Companies Act, section 45J. We have only stated the same thing here more clearly. In certain cases it is necessary that the directors and officers of the bank should be liable to summary trial, and I can only say that the Chief Justice of Calcutta has always pleaded that there should be some speedy way of dealing with these cases.

3 P.M.

In one of his letters to me he has written:

> "It is true that such a provision will to a certain extent be contrary to the provisions of the Evidence Act which provides that mere book entries shall not be sufficient to charge any person with liability, but in my view, sufficient reason exists

to make a special provision in the case of debts due to banks in liquidation."

So I think all that we have provided in this Bill has more or less been supported by the Chief Justice of the Calcutta High Court. I cannot say that every detail has been endorsed by him.

Then besides the banks under liquidation there is another category of banks under some schemes of rearrangement. Mostly these banks are functioning in Punjab and I think the amount involved in such banks would be near about Rs. 90 crores. I am not quite sure about the figures but the amount is very big and our report is that those banks—at least in Punjab—have been doing tolerably well but as far Bengal is concerned, I cannot say that all the banks are doing anything tolerably well. But the position is almost the same as in the banks in liquidation There are some other provisions concerned with allied matters which are also applicable to the banks under schemes of rearrangement. The courts are empowered to exercise supervision over banks working under schemes of arrangement and to order winding up when the schemes are found unworkable This class of banks is separate from banks under liquidation The provisions relating to public examination of directors and auditors and simple procedure for the settlement of debts are also to be made applicable to banks under schemes of arrangement.

Then we have provided some more power for the Reserve Bank for the supervision of the liquidation proceedings of banks. We have provided that the High Court may ask the Reserve Bank and also the Central Government may ask the Reserve Bank to enquire into liquidation proceedings of any particular bank and on such request, after inspection, the Reserve Bank will submit a report both to the High Court and to the Central Government and the Central Government, if necessary, would place before the High Court such report with necessary comments and ask for the particular comments of the High Court. Very often it has been found that the Central Government has practically no means of getting the information about the liquidation proceedings in banks because the liquidators function under the High Courts and there is no obligation for the liquidator to supply the necessary information to the Central Government or even to the Reserve Bank. I think it is somewhat like a lacuna in the liquidation proceedings because the Reserve Bank is after all the expert body in banking matters whether the bank is functioning or whether a bank is in liquidation So the Reserve Bank should have some opportunity to look into the working of the liquidation proceedings and the Central Government also should have some opportunity to get the necessary information about the liquidation proceedings.

Sir, we have tried to steer clear of the two extremes Our purpose is not to cripple the banking industry. We know how important banking business is for the economic and industrial development of the country but at the same time we know that so long some of the banks have been working in a reprehensible manner and quite a large amount of poor depositors' money is being wasted. So it is necessary to take certain precautionary measures That is why we are providing all these clauses I may add that something like an emergency has been created in some of the States, particularly in Bengal and Punjab and to a certain extent in Travancore-Cochin and Bombay also but in other States the liquidators have been working. Travancore-Cochin has recently appointed Court Liquidators, Bombay also has for many years and in Bengal the liquidation proceedings are being conducted by several private liquidators and the costs and delay have been enormous and ruinous to the interests of the depositors. That is why it has been necessary for Government to come to the Council with this Bill The

[Shri A. C. Guha.]

Government is quite aware of the fact that quite a large number of banks have been working in a satisfactory manner. I don't think any honest director has anything to fear from the provisions of this Bill. It will not affect them in any way and it will be to the interests of the Government as well as of the Reserve Bank to see that proper facilities are given to our banks to function in a healthy manner, but only to those banks which have not been working properly in the past or those banks which in future may not be working properly these provisions will be applied. But I can also add that we expect in future there will not be any considerable number of banks going into liquidation. The Reserve Bank has already taken certain steps and it will surely take such effective steps as will prevent banks going into liquidation provided the directors function properly and are ready to safeguard the interests of the depositors. Thank you, Sir.

MR. CHAIRMAN: Motion moved:

> 'That the Bill further to amend the Banking Companies Act, 1949, as passed by the House of the People, be taken into consideration."

SHRI B. C. GHOSE: Sir, this Bill seeks to replace the Ordinance that was promulgated on the 24th October last. You may have noticed that the procedure of promulgating Ordinances when Parliament meets so often was subjected to very severe criticism in the other House but it may be conceded that emergencies may arise when it is necessary and also desirable that Ordinances should be promulgated. As a matter of fact there is a provision in the Constitution that if the President feels that circumstances exist which render it necessary for him to take immediate action, he may promulgate an Ordinance. It is reasonable therefore to ask as to what was the urgency for which immediate action was necessary and what has been done about that. The Ordinance was promulgated on October 24th. The hon. Deputy Minister has stated that the problem has been most severe and serious in West Bengal. Today is the 14th December. Has the Court Liquidator in Bengal been appointed? If not, what was the purpose in having promulgated the Ordinance. Because as the Bill itself is going to be passed, if the Ordinance was promulgated, action should have been taken, otherwise there was no reason as to why the President should have taken recourse to this measure. I don't know what is the position, whether the Government had any say in the matter, in the matter of appointment of the Liquidator or whether it was left entirely to the discretion of the High Court of Calcutta and Government could not do anything? I would also like to know from the hon. Deputy Minister as to what action the Government had taken in this matter *viz.*, that of appointment of a Court Liquidator in West Bengal.

Coming to the question of the banks themselves, you have, Sir, heard the history given by the hon. Deputy Minister with regard to these liquidations proceedings of the banks which had suspended business. Even since 1947—and that is the time we got our independence—more than 350 banks have suspended payment. These facts are well known and they are given in the Banks Liquidation Proceedings Committee's Report. I shall not tire your patience by referring to the statements and figures that are easily available from that report. But let us, for the moment, think about the history of what has happened. There was the Banking Companies Act of 1949, for by that time a large number of banks had already failed. It appears Government could not devise measures, when they were enacting the Banking Companies Act, to adequately protect the depositors' interests. Then what does the Government do? In July 1952 they appoint a committee. What does this committee do? The committee in December 1952 submits a report. Then what does the Government do? In

October 1953 they promulgate an Ordinance and in December 1953 they bring in a Bill. All along, from 1947 to 1953, banks have failed and liquidators have been appointed and as is common knowledge, the proceedings have been going on Expenditure has been incurred, there have been payments of commissions to the liquidators, expenses incurred for legal cases and so on and so forth But there is very little likelihood now of the depositors getting much money back as a result of the measure that we are now going to enact I believe the hon. the Deputy Minister himself stated in the other House that he was very doubtful if it would at all be possible to salvage to any large extent, or to any extent, the depositors' money now in the hands of the liquidators So this is a sort of a *post mortem* examination The problem has really resolved itself by taking its course and the depositors have not been assisted. The Deputy Minister referred to an emergency Yes, an emergency there was, but that emergency has gone and the depositors have suffered and the Government have let that situation pass by. When it was necessary to take timely action, they have not been able to do so So I believe, although we may take pride, and the Government may take pride on the fact that they are going to enact a measure now, let us be quite honest and say that this measure will not give much benefit to the depositors Their moneys have been wasted Their moneys have gone into the liquidators' hand during all these years Therefore, the main problem that I want to place before the House is this Today the problem is not so much the liquidation of the banks that have failed The problem is to prevent banks from failing in future That is the main problem

Sir, there is another aspect of this question We have been tackling this problem from the point of view of the depositors Whether it is the Banks Liquidation Proceedings committee or the Reserve Bank or the Government, all the time, the emphasis has been on the depositors But as everybody knows, banks have two principal functions. One is to obtain deposits from the public and the other to invest them in various assets There are the borrowers. The depositors are there on one side and there are the borrowers on the other. The position of the borrowers is also very important because the borrower is operating our trade and industry It is the finance obtained from the banks that sustains trade and industry This Bill, we must remember, affects not only the depositors but also the borrowers and therefore trade and industry are also affected. That aspect of the problem appears to have been neglected throughout these discussions on this Bill The hon. Deputy Minister should know, as he comes from Bengal, that a number of banks have failed there and the banks that have failed are mostly the smaller banks And the smaller banks were meeting the needs of the smaller businessmen Now that these small banks have failed, the small man in industry and commerce finds himself in difficulty, and he has no financial agency to fall back upon in case of need So many business and industrial concerns have suffered because of the many bank failures But there is something more As soon as a bank fails, what happens is, the liquidators come up and they are only anxious to realise the assets, because on the assets that they realise, they get commission The liquidator does not look into the position of the business If a business is in difficulty, a bank may give it some more time, or probably try to come to a compromise, because if a compromise is reached, it is to the interest of the depositor and also the borrower The depositor gets some money and the borrower also can carry on his business But the liquidator is only interested in getting the money back He will not probably compound the loan for a smaller amount even though that could be easily done Rather he would go to the court and incur a lot of expenditure and probably get nothing back I am afraid the Government have not given

[Shri B. C. Ghosh.]

any attention to this very important problem. The question is very acute in Bengal and I do hope that the Committee that the Reserve Bank has recently set up will consider these matters and find some remedial measure which might help the smaller people in Bengal who are in trade and industry. Therefore, as I was suggesting to you, the main problem today is really not of liquidation but of rehabilitation of banks and that should have been the problem all along. It is very unfortunate that the Reserve Bank has not been able to do anything in the matter. I think the Reserve Bank deserves to be criticised on that ground that although in 1949 the Banking Companies Act was passed and the banks came under the control of the Reserve Bank, yet the Reserve Bank has not been able to salvage any of the banks when they failed. The Reserve Bank did not take any step which could have at least made many banks do better or at least enabled them to carry on their business. Or they might have set up an institution which might have taken over the good assets of the banks that had failed.

[MR. DEPUTY CHAIRMAN in the Chair.]

Sir, this is the problem that we have to consider. We have to consider measures which will rehabilitate the banks that have failed and which have some assets still left, and also measures which will prevent the failure of banks in the future. We should not be satisfied when we have laid down measures so that when a bank fails the depositors may get back their money. When a bank fails the depositors do not get all their money and the people in trade and industry also suffer. Therefore measures which may be devised should be such as will resuscitate the banks or prevent them from failing.

I may here refer to the experience in the United States of America and try to gain some lesson from that. We are told that banks have failed in our country and we condemn our bankers for that. But America is a very progressive country and it may be of interest to hon. Members to know that between 1921 and 1933, as many as 16,000 banks in America failed, involving a deposit liability of 9 billion dollars or about Rs. 450 crores. That is what happened between 1921 and 1933.

SHRI B. K. P. SINHA (Bihar): That was the period of depression.

SHRI B. C. GHOSE: Yes, that was the period of depression. But even in a period of depression banks did not fail in Great Britain. When the banks failed in America, what did they do? They instituted measures for the rehabilitation of these banks. There were certain measures taken and there was also the Rehabilitation Finance Administration which helped banks that had suspended business.

Another institution that they had set up which deserves the close attention of the Government here is the Federal Deposit Insurance Corporation for insuring the deposits of the commercial banks. I believe that the time has now come when the Government should give serious attention to this problem for various reasons. For one thing, the number of banks has been reduced considerably. The smaller and the weaker banks have already failed and gone out of existence. It has, therefore, become absolutely necessary that the banks which still remain and which are larger banks should not be allowed to fail because of possible serious consequences to the economy of the country. I may, in this context, refer Sir, to the recommendation that was made by the Rural Banking Enquiry Committee. The Report was published, I believe, in 1949 or 1950 and there was a recommendation that the Government should consider a scheme for the establishment of an institution like the Deposit Insurance Corporation. It stated that after the Reserve Bank had acquired certain experience of banks under the Banking Companies Act, efforts should be made for the establishment of such

an institution at least in regard to banks which were scheduled to the Reserve Bank. It is extremely unfortunate that the Government have taken no action in that regard so far and the only measure that they have brought forward before this House is to simplify liquidation proceedings. That is, Sir, not tackling the problem that is before us today. That is all that I want to say, Sir, about the general problem.

So far as this Bill is concerned, I should like the hon. Minister to consider the provisions in regard to the directors of banks, particularly, I believe 45G and 45-Q(2). I quite agree with the proposition made by the hon. Deputy Minister that the bankers who have been guilty of misconduct or fraud should not be allowed to go scot-free. At the same time with a view to remove one difficulty we should not create a situation that may adversely affect the interest of banking companies. I have a feeling, Sir, that if these provisions are incorporated in this Act no reasonable man would like to be a director of a bank for although the hon. Deputy Minister may be quite correct in saying that if he performs his duties honestly he need not be afraid yet one never knows as to what will be done in a meeting of the Board of Directors and as to how far the long arm of the law may stretch towards him. Why should a person want to be a director of a bank where he gets only a fee for attending the directors' meeting, Rs. 25 or Rs. 50 or Rs. 100 and why, in consideration of that should he be willing to undertake that risk? I am afraid, Sir, therefore, that although the intentions of the Government are quite correct and laudable, these provisions will have an adverse effect. I wish I could have drafted an amendment which would have carried out the purposes which I have in view but I found out that I was incompetent to do that and, therefore, I would request the Government to draft a measure or an amendment which will, on the one hand, see to it that directors who may have been guilty of actions which have led to the failure of these banks do not go unpunished—any punishment may be provided for them, so far as I am concerned—and on the other hand also see to it that there are no provisions which will deter honest persons whose experience would be valuable to the banks from agreeing to be directors of the banks. I have grave doubts, if this Bill is enacted whether, as I was saying, honest and reasonable persons would be at all agreeable to serve as directors of banks. Only such men as can hope to derive some benefit from the bank will probably be forthcoming to serve as directors.

I do hope, Sir, that the Minister will give his consideration to this question and try to devise some remedial measure.

SHRI AKHTAR HUSAIN (Uttar Pradesh): Mr. Deputy Chairman, the hon. Deputy Minister and the hon. Member leading the Opposition both come from a State where a large number of banks have failed and are certainly in a very much better position to discuss this Bill. Of course, the hon. Deputy Minister has also all the information in his official capacity. Thus the two hon. Members are in an advantageous position to understand the difficulties which led to the failure of banks and to the difficulties connected with liquidation and the disposal of the business assets of the banks concerned. I happen to come from a State in which so many banks have not failed and which does not contain the registered offices of a large number of banks, and I have no interests in any banks as a shareholder and would like to place a few facts in a detached way before this House. As I view the problem, what this Bill seeks to do is to provide a speedy procedure for determination and realisation of the assets of a bank and for the completion of the liquidation proceedings. This is all that this Bill aims at doing.

It has been stated that there was a committee appointed in the month of

[Shri Akhtar Husain.]

July and on the 24th October an Ordinance was issued which is now being replaced by the Bill before us My hon colleague who led the Opposition was pleased to find fault with Government and to criticise Government for the practice of promulgating Ordinances and not having recourse to the ordinary process of legislation. The explanation has been given in the Statement of Objects and Reasons and that is that because a large number of urgent legislative measures were pending and, for a long time to come.....

SHRI B C GHOSE Sir, if I may interrupt him, he is not interpreting me correctly I said that there may be reasons for promulgating an Ordinance. My criticism was directed to this only that no action has been taken under the Ordinance

SHRI AKHTAR HUSAIN However, Sir, the practice of promulgating Ordinances was, as I understood my hon colleague, condemned The delay in legislation was due to the fact that there were other urgent legislative measures pending before Parliament for a long time and so this Bill could not be introduced earlier This Bill is now before the Council and the question for consideration is whether it meets the requirements The hon. Deputy Minister has been pleased to explain in a very detailed manner and, if I may say so with respect, very exhaustively the work of the committee appointed for the purpose, the recommendations of the committee and how these recommendations were supported by the authorities concerned; the highest judicial officers were consulted and they have broadly given their approval to the measures that are embodied in the Bill.

One of the main objects the Bill seeks to achieve is to provide for a summary and expeditious determination of the claims by and against a bank in liquidation, the liabilities created against the bank and the activities of the directors and other persons associated with the management of the bank whose actions led to the failure of the bank

The determination of the assets and liabilities of a bank is a lengthy process according to normal procedure and sometimes legal difficulties and procedural difficulties made it difficult to ascertain what was the amount due without a very lengthy litigation This Bill seeks to make the bank's books of accounts evidence without any further corroborating evidence for the determination of the amount due to the bank and to ascertain from whom the moneys have got to be realised by the bank This will effect a good deal of saving of time and it would be easy for the official liquidator to determine what is the amount due to the bank and by summary procedure that amount can be recovered according to the provisions that are embodied in the Bill This should be a very welcome thing for this reason that the costs of determining the amount that is payable by each person would be greatly diminished It would also diminish the time that is taken in long drawn out proceedings which necessitate the summoning of witnesses, the examining of documents the production of various kinds of evidence and the determination of questions of fact and law in courts of first instance and in the courts of appeal and further appeal and so on and so forth, the result of which has been that, as is stated, some 321 liquidation proceedings have been going on since the year 1926 Now there is a very large number of liquidation proceedings of banks to go on for over 27 years and it is certainly high time that the Government took upon themselves the desirability of considering how the procedure should be simplified for the attainment of the object of having speedy trials and evolving expeditious and simplified procedure for the purposes of adjudicating upon the rights of the parties concerned Some apprehensions have been expressed that the summary procedure providing for the punishment and for the determination

of the liabilities of directors who were responsible for mismanagement may deter persons of respectability and responsibility from acting as directors of banks. Those apprehensions do not seem to be well-founded, but what I would like to assure the Council is that the Bill makes adequate provision for the right to have a public examination of a director determined by the court, that is, the High Court Judge exercising company jurisdiction in the High Court concerned would have to exercise judicial discretion to allow an application whether a director should or should not be subjected to public examination and further the liability of the director would not be determined only on the statement or on the claim of the liquidator The High Court Judge exercising company jurisdiction will have to determine whether a *prima facie* case has been made out against the director who is accused of having mismanaged the affairs of the bank in such a manner as to cause loss to the bank concerned. Now, Sir, if the judicial officer in whose jurisdiction such cases fall has got to act according to technical rules of procedure and technical rules of evidence, sometimes technicalities hamper a fair trial, on other occasions it is not possible on account of these technicalities, to do substantial justice and at other times such prolonged proceedings have got to be taken that it becomes impossible within a measurable distance of time to determine what the liability of a person is Therefore in order to simplify the procedure, in order to get over all these difficulties and these procedural defects the right has been conferred on the judge to determine in a summary manner what the rights and liabilities of the directors accused of mismanagement are and I am of the opinion that these are salutary provisions The summary procedure authorized by the Bill would lead to expeditious determination of the liabilities of the director and I do not know if it is necessary to give any assurance to the Council that an Hon'ble Judge of a High Court exercising powers, the very high and responsible powers conferred on him by the Constitution, would be the last person who would act in a manner which would not do substantial justice to a director It is very much better that this power of summary trial and summary decision should be given to a Judge of the High Court rather than allow that procedure to remain operative under which a director by sharp practices can cause loss to a large number of depositors—innocent members of the public—and under which directors can carry on the work and prolong the proceedings in such a way that either the bar of limitation may save them or by the time the proceedings come to an end the persons responsible for the failure of the bank may have succeeded in disposing of all available property to others and nothing may remain from which an official liquidator may be able to recover an amount that may be found to be legally recoverable from the persons accused of mismanagement Some directors by their mismanagement or sometimes sharp practices cause enormous loss to people who have placed their trust and confidence in them and deposited their lives' savings with them with a view to make provision for the rainy day or to be of use to them in their old age When all these moneys are squandered and wasted by people who are placed in these positions of trust and confidence it certainly shocks public conscience and I take it that public conscience and the conscience of the Government was affected when the Government in the year 1949 passed the Banking Act Now the working of this Act during these four years has led to the conclusion that the object that the Government had in making due provision for the expeditious disposal of these cases has not been attained, and in order to provide a more expeditious remedy this Bill is being brought forward I have no doubt that this House would accord its approval to the measure and pass it There are some doubts entertained about the advisability of making the directors criminally liable I submit that persons who are entrusted with the savings of

[Shri Akhtar Husain.]

the common men who are mostly people of the lower middle-class or other people—people who do not wish to keep their money at home and who are content with the modest profit obtained by depositing it in some bank—when they misappropriate that money or by some acts of misfeasance that money is utilised by the directors for their own personal enrichment, that should certainly call for a criminal trial and punishment to the criminal because some of these directors who are connected with these banks are enormously rich people and of course they are very shrewd and calculating businessmen. They do not keep much of their property in their own names. They buy properties in the names of their friends and relations and most of the properties are *benami* especially those acquired out of the funds which are misappropriated and which belonged to the unwary depositors Most of these people who commit these acts are typical members of the anti-social elements of society. And, it would not serve any purpose to impose a mere pecuniary liability on them. It would not be a sufficient deterrent, as was recently held by the Hon'ble High Court of Bombay, where a rich personage was sentenced to pay a fine of a sum of Rs. 67,000 .....

SHRI K S HEGDE (Madras): It was not a banking case at all

SHRI AKHTAR HUSAIN: No, it wasn't. I am referring to this case for the purpose of showing I shall complete my sentence before my hon friend can anticipate about what I am intending to say This example is being mentioned simply because the Hon'ble High Court of Bombay enhanced a sentence and a mere sentence of fine was not considered adequate and a sentence of imprisonment imposed. The Hon'ble High Court observed that it was not at all right to merely impose a fine on these people The fine only imposed a pecuniary liability and such a fine would not be a deterrent punishment In order to make the punishment deterrent, the sentence of imprisonment was imposed My hon. friend from Madras was pleased to point out that it is not a banking case. What I wanted to point out was that the High Court in the State of Bombay were pleased to remark that the imposition of a mere pecuniary liability would not constitute a deterrent punishment and the other thing was that if the rich people are allowed to get off lightly by paying a fine, this small portion of their enormous riches would not make any difference to them They would not be effectively penalised for the act. The punishment will not have the desired effect of preventing them from repeating that offence They will think. I have paid the penalty, next time it be a similar amount or something more So, I would emphasise that the civil liability or the payment of a sum of money should not be enough and I hope that the House would give its cordial approval to the provisions relating to the imposition of the criminal liability on these anti-social elements

Next, there is the question that the banks have been carrying on their business and liquidators have been carrying on this work for such a long time and if changes were called for there was no special reason why all this time should have been taken by the Government to take appropriate action which should have been taken earlier Why was no action taken till now? The answer is this There are the official liquidators and there are some voluntary liquidators With some of them, it is just a question of disposing of the business of liquidation at an early date With others, if the liquidation proceedings are completed, what will they do with themselves? It is to the interests of the average liquidator to prolong the liquidation proceedings as long as he can so that he may have a permanent source of income which will last as long as the liquidation proceedings last; and therefore he would either have proceedings initiated himself or he would encourage others to initiate proceedings

which will have the effect of prolonging the liquidation proceedings Therefore, it is a very good thing indeed that provision is being made for the appointment of official liquidators who will be subject to the superintendence, control and authority of the High Court I trust rules would be framed which would make it difficult for persons to be appointed official liquidators about whom any apprehension may be entertained that they would prolong the liquidation proceedings for the purpose of providing a permanent source of livelihood for themselves

SHRI H P SAKSENA (Uttar Pradesh) If I may respectfully submit, we have had official liquidators and their record too has, in no respect, been better than that of the other type of liquidators

SHRI A C GUHA There may be some confusion about the term "official liquidator" Any private person appointed by the court is also called an official liquidator Here, under the Bill there will be an officer appointed by the Central Government, and he will be a paid official

MR DEPUTY CHAIRMAN He will be a salaried man

SHRI H P SAKSENA The difference is not yet clear to me Could you give me some illustration?

SHRI A C GUHA Sir in Bengal, there are so many official liquidators, though some of them are lawyers, etc, though they are private persons, they are called official liquidators Here, we are providing for the appointment of a Court Liquidator, he will be a paid officer of the Government, supervising the liquidation proceedings of all the Banking Companies

SHRI AKHTAR HUSAIN May I supplement the hon Deputy Minister's observation by saying that under the Indian Companies Act, there are two kinds of liquidators, voluntary and official liquidators In voluntary liquidation, it is the private individual who is appointed as the voluntary liquidator, he has been described as the private liquidator in the Statement of Objects and Reasons of the Bill But when the proceedings are taken by a court of law and a company is ordered to be wound up by an order of the court, then, an official liquidator is appointed by the High Court The question is, who will be that official liquidator? My hon friend Mr Saksena, has been pleased to express his dissatisfaction with the work of certain official liquidators He may have good reasons for his views Everybody does not admire the expeditious way in which the official liquidator is proceeding with the work or saving the cost of liquidation Dissatisfaction with the work of the official liquidators has been expressed and to remove this defect this Bill makes provisions for the appointment of a certain class of persons as official liquidators who I trust, would be persons who would have experience of accounting and who would have experience of banking business and who would also have experience of the dubious ways of some of these persons whose activities led to the failure of the banks in liquidation Unless a person is well-acquainted with the working of the dubious minds of these business people who make free use of the deposits of other persons, it would not be possible for the average liquidator with his ordinary education to be able to probe sufficiently deep into the activities of these rich bankers to ascertain what were the causes which led to the failure of these banks It would be desirable to appoint liquidators on the recommendation of the Reserve Bank and I would welcome the association of the Reserve Bank authorities with the appointment of official liquidators

SHRI K S HEGDE They are not associated with the appointment of the official liquidators except in cases when they are themselves appointed as official liquidators

SHRI AKHTAR HUSAIN: I never said that the Reserve Bank will have the full authority in making the recommendation for persons to be appointed as official liquidators.

MR. DEPUTY CHAIRMAN: Here the liquidators are appointed by the Central Government. So that is very definite.

SHRI AKHTAR HUSAIN: I was trying to submit for the consideration of the Council one fact, that it would be expedient and desirable that persons who are appointed official liquidators should come from a particular class or.....

MR. DEPUTY CHAIRMAN: Leave them alone. We are not concerned with that now.

SHRI V. K. DHAGE (Hyderabad): He means that even the court liquidator must have a particular qualification before he is appointed as such.

MR. DEPUTY CHAIRMAN: The Central Government will appoint the liquidators.

SHRI AKHTAR HUSAIN: Now, Sir, it seems to be clearly understood that the appointment of liquidators should be such that the aims and objects with which this amending legislation is being passed should be achieved rather than frustrated. If the liquidator is an inexperienced person, then he would not be able to make much headway. In that case, the very object of these new provisions in the Bill would be defeated. But if the person appointed knows his work, there would be no difficulty. And I trust that the Council would accord its approval to the provisions of this Bill and make it easy and possible for the work of liquidation proceedings to be done expeditiously, and I hope, to the satisfaction of the depositors.

SHRI O. SOBHANI (Hyderabad): Mr. Deputy Chairman, I rise to support this Bill because after reading the report of the Banks Liquidation Proceedings Committee no doubt is left in my mind as to the urgency either of the Ordinance or of the introduction of this measure. Sir, there is one thing to which I may be permitted to draw the attention of the hon. Deputy Minister, and that is the necessity of following up this legislation by a consolidated Banking Bill. Sir, the reason why I am making this suggestion is that although we have got the Banking Companies Act of 1949, and now we have got this amending Bill, yet for provisions like the appointment of directors and other things we have off and on to refer to the Indian Companies Act. And it would [illegible] matters if we have a co[illegible] Banking Act. I may also [illegible] opportunity, Sir, of referring [illegible] has been said in the Committee's report on page 33. It says:

> "The depositors are not parties to the appointment of any of the directors."

Sir, it is well-known that the success of a bank depends more on its depositors than on the shareholders. There are cases where banks with a paid-up capital of say Rs. 50 lakhs have deposits to the extent of Rs. 5 crores or more. Sir, in the case of insurance companies you are aware that the policy-holders have been given the right of appointing directors according to the Insurance Act of 1938, as modified up to 1st June 1950. Therefore I strongly feel that the depositors have a much stronger case, and I respectfully commend this proposition for the consideration of the hon the Finance Minister. We are however going to consider the draft of the consolidated Indian Companies Act, and I submit, Sir, that there should be a provision in that Bill for the election of the representatives of depositors on the Board of Directors to safeguard the interests of the depositors as in the case of the policy-holders.

Sir, I agree with the observations made by the hon. Member, Mr. Ghose, that in drafting a legislation of this

sort one has to be careful not to scare away honest people from serving on the directorate of banks Sir, I come from Bombay and except for the last ten years, I was associated with industrial concerns, commercial concerns and insurance companies in Bombay and I know that whenever a joint stock company was promoted there were about 40 or 50 leading persons—businessmen, bankers doctors barristers—who made it their business to accept the directorship of companies And the promoters always approached them and invited them to join their Board because their names attract capital In England Sir such directors had been described as guinea-pig directors Thus you know Sir there is a provision in the Companies Act that a man must have the qualifying share in his own name before he can act as a director (*Interruption*) Sir, I have known of persons very highly placed persons, who were directors of as many as 40 or 50 companies And you can imagine Sir that very little attention was paid by them to the day-to-day management because they had no time and they had their own business concerns to look after And when they became directors they attended meetings for a few minutes and were anxious to take their fees and then go to do their other business I therefore say Sir, that it would be desirable to encourage the right type of persons to become directors of joint stock companies

4 P M

Therefore it is very important that you must not and should not place such difficulties in the way of people becoming directors because as Mr Bimal Comar Ghose pointed out no honest man would take the risk of becoming a director for an occasional forty or fifty rupees buying qualification shares and holding himself responsible for all the acts of the managing director at the head office of the bank as well as managers of the branches If a bank has got its head office in Bombay and has got branches all over the Bombay State, then it would be difficult for him to scrutinise all the acts of the local managers, and if you are going to hold him responsible for every act of his subordinates, then an honest man would think thrice before he accepts any directorship There is one more submission and that is this In drafting legislation pertaining to insurance companies, joint stock companies and banks and other commercial concerns, we have to take care that the legislation is not only foolproof but also crook-proof because crooks know ways and means of circumventing any legislation but an *honest man does not know the tricks* of this trade and if there are so many difficulties in the way of his becoming a director then he would be scared off

With regard to the observations made by Mr Bimal Comar Ghose that the liquidator's duty must be not only to liquidate and to collect the money from the debtors and to pay it to the creditors but also to make an effort to rehabilitate the banks which are in difficulties

SHRI B C GHOSE Not of the liquidator

SHRI O SOBHANI Whose duty is it?

SHRI B C GHOSE Government should set up some machinery for that

SHRI O SOBHANI I agree with that. It should be the Government's business to see that banks are rehabilitated rather than be completely wound up and removed from the picture I would support the suggestion that we should take a lesson from the measures adopted in the U S A and other countries because banking is more highly developed there than in India and it would be good for us to learn from what other countries have done after gaining experience in the severe period of depression in 1929—1938

Sir, I fully approve of the recommendations in this measure for the appointment of court liquidators I have got some experience of official

[Shri O. Sobhani.]

liquidators appointed by the High Court of Hyderabad and I know how slow they were in their proceedings. Of course, there is one thing about the appointment of court liquidators. Government will have to exercise very great care in the selection of the court liquidators. I will not mention any names, but as I am talking of liquidators, I am reminded of a certain individual in Bombay who made a huge pile while he was connected with the work of liquidation.

SHRI A. C. GUHA: He was not a court liquidator.

SHRI O. SOBHANI: I would not like to give further information lest I should give a clue to his identity.

SHRI B. K. P. SINHA: Everybody knows. The Deputy Minister's interruption makes it clear that he knows.

SHRI O. SOBHANI: I would not say anything more.

SHRI A. C. GUHA: But he was not a court liquidator.

SHRI O. SOBHANI: Even a court liquidator can be corrupt if he is not held in check.

With a view to seeing that honest persons are not scared off from accepting directorships, I have given notice of certain amendments and I shall speak on them at the appropriate time.

SHRI V. K. DHAGE: Mr. Deputy Chairman, after having listened to the various speeches that have been delivered here by the Deputy Minister of Finance in introducing the Bill and also by my friend Mr. Bimal Comar Ghose and others, one begins to feel that this legislation has been brought up rather late. It is my feeling, after having read the various notes and literature given to us by the Ministry that the consequences which have now ensued in the banking business are entirely due to the halting manner and the delay caused in banking legislation from time to time. The Central Banking Enquiry Committee's report had already stated that the management of the banks was not in competent hands, that the advances that were being given were not properly secured and that the Government should take proper steps in the matter of securing the interests of the depositors. The Committee, I think, came out with its report some time in 1930. But after that, the only thing that the then Government of India did was to amend certain sections of the Indian Companies Act. If I am right, the Indian Companies Act was amended and it was therein incorporated that any company that used the word bank, banking or banker in its name shall be deemed to be a bank, etc., that is all. Now, Sir, after 1936, there came a time in 1939 when there was a crash in a certain bank. I will point out from this note that since 1926 to the end of 1952, 351 banks had suspended business and that the total amount involved was Rs. 30 crores, besides Rs. 67 crores which is under arrangement. If hon. Members will look at the statement that has been supplied, they will see that up to 1937, twenty-three banks had gone in liquidation and suspended their business and about Rs. 3½ lakhs were their outside liabilities. Suddenly, in 1938 about eight banks suspended their business and the amount involved as outside liabilities was Rs. 2,84,60,000. Then in 1939, thirty-eight banks suspended business and the amount involved as outside liabilities was Rs. 29 lakhs. In the three years 1938—1940 sixty-seven banks had suspended payment and the total outside liability was about Rs. 4 crores.

This had happened in 1938 but the Government of India did nothing. They merely came out—I think it was the Reserve Bank of India which had then framed it—with a Bill and that Bill did not become law. What I am trying to drive at is that the question of securing the interests of the depositors did arise some time in

1938 itself but the Government of India did not take that up. They took up other measures and passed various Ordinances and various Acts not with a view to safeguard the interests of the depositors but with a view to safeguard some other interests. For instance, in 1942 the Indian Companies Act was further amended and the control of the banks with regard to their capital was taken up. Similarly, in 1946 another Ordinance or amending Act was passed and, by that, the capital structure in the management was found to be not quite desirable and therefore with regard to that certain amendments were made. Again in 1948 it was found that the management of the banks was not very proper and another Ordinance or amending Act was passed by which the Reserve Bank of India was given the right of inspection. And then in 1949 came the Banking Companies Act. It will be seen from the statement that in 1947, soon after the independence of India was achieved, 33 banks suspended their payments with a total liability of Rs. 4,74,16,000 and the amount involved under arrangement had been Rs. 15,35,000. In this manner, from 1947 to 1949 we had 120 banks that had suspended payments and there was a total liability of about Rs. 20,00,00,000 with outside liability and the liability under arrangement amounted to about Rs. 63 crores. When the banking legislation of 1949 was adopted, I would like to know from the Government, as to why they had not then taken into consideration a provision with regard to liquidation such as is being brought on the Statute Book now. So I say that the Government of India had not taken the proper measures, and had not used their imagination in a manner that would have stopped the recurrence of the crash that took place in 1952. I also want to know, as my friend has raised the question, when the Ordinance has been promulgated, how it has been implemented? What I would like to know also is when from 1949 several other banks have suspended payments and this Act of 1949 was devised in order to protect the banking business as a whole how this crash has come about? In 1950 there were 33 banks that went into liquidation, in 1951 some 24 banks went into liquidation and in 1952, the figure given here is 7 but I think it is much more than 7 that went into liquidation. This has involved a total liability of nearly Rs. 6 crores. Therefore I feel that the Government of India while enacting the law of 1949 should have taken the proper measure according to their experience which they had since 1939. I feel that if in the 1949 Act the provisions had been made with regard to inspection and the right with regard to making report etc. by the Reserve Bank of India and if the Reserve Bank of India had carried out the functions that were assigned to it in the Act of 1949, it should have seen that this sort of crash did not occur and it should have carried out its duties so vigilantly that no banks would have gone into liquidation. I also feel after having seen the various provisions of this amending Bill and also the entire Banking Act, that what has happened now is that the banking legislation leaves hardly anything for the general shareholders to exercise any considerable control over the management of the bank. The scheme of the Act has been that restrictions have been placed with regard to capital as to how it will be floated, as to what dividends shall be declared and how much of the reserve fund should be created out of the net profits before the dividend is declared. Apart from this the Banking Companies Act also lays down what kind of persons will be able to manage the banks. He should not have a contract for more than 5 years at a time, he should not have any remuneration which will not be in proportion to the resources of the bank.....

SHRI K. S. HEGDE: In the draft Company Law which will apply to banks also, these provisions have been provided and that is already introduced in the House.

SHRI V. K DHAGE: But I have not said anything further.....

SHRI K. S. HEGDE: The same provisions which you are contemplating

[Shri K S Hegde]

have been provided in the Company Law

SHRI V K DHAGE I am only saying what the Banking Companies Act has laid down It has provided for control through the Reserve Bank or through Government over the management of the Banking Companies, even restrictions are placed upon the directors, upon the managers and restrictions with regard to declaration of dividends, restrictions as to how and in what kind of business the bank will indulge are there They have also stated what is the business that will not be done by a bank and as to how the assets of the bank have to be invested and so forth That being the case, the banking legislation leaves very little for the shareholders to have a control over the management of the affairs of the bank, and the Reserve Bank or Government in some way or other have come to exercise a good deal of that control over the banking companies

This legislation which has come before us lays down that if the banking company is not capable of managing its business from day to day, then it will go into liquidation There are various processes that are laid down as to how it will go into liquidation, whether the Reserve Bank will inspect etc I don't want to go into that but nevertheless there is that provision made as to how a bank will go into liquidation or will be wound up and that the bank that has gone into liquidation will have a Court Liquidator appointed Not only that but there will be an officer also appointed who shall immediately take charge of all the assets, books, cash etc, of the bank And if the liquidator whether during the process of arrangements or during the process of winding up, comes to know that there have been certain acts of commissions or omissions on the part of the directors or the officers of the bank, they will be brought to book And that there will be no limitations on the contractual liabilities of the directors You will see that the Banking Companies Act has gone to such an extent that it has practically given all power to the Reserve Bank or to the Central Government in some way or the other. That being the case, I would like the hon Deputy Minister to consider whether it is not time now to go into the question of nationalisation of banks The only thing that will have to be done is the furnishing of capital Otherwise, the Banking Companies Act envisages every other aspect all but the aspect of nationalisation That is my second point and I hope my hon. friend Shri Hegde has now been able to follow what I was driving at by restrictions placed on the business as well as on the directorate and also on the declaration of the dividends, etc.

Thirdly, there is a thing which I suppose needs the special consideration of the hon Deputy Minister, a point which has also been very much stressed in the other House That is about the creditors of the bank The creditors of the bank will have to travel a long distance in order to be able to put up their claims the reason being that in the present Bill, the high court has been given the power, the high court at the place where the registered office or the main or principal office of the bank is situated, and that High Court will be able to decide the entire matter not only with regard to the creditor but with regard to the debtor also In a case like this, the creditor will certainly come to suffer a little disadvantage I would therefore like the hon Deputy Minister to make some provision whereby the creditors who are not at all at fault for the bank going into liquidation or for suspending its business and payment, get a little consideration in regard to the making of their claims

We have found from the notes that have been circulated to us that the situation caused by crashing of banks has been very serious both in Bengal—West Bengal—and in Travancore-Cochin But the papers that have been circulated to us do not contain any material or any information with

regard to the banks that have suspended payment in Travancore-Cochin. But there are papers circulated containing information about the suspension of business by banks in West Bengal State. Therein it has been pointed out that certain banks have not even collected a single rupee or have not even paid a dividend of a single rupee, while the liquidator has been in office. I would like to know from the hon. Deputy Minister as to what are the causes which have contributed to the fact of even a single rupee being not collected and not a single rupee having been given as dividend. But this is a matter which needs a very detailed information and personal knowledge and I shall leave it to some of our hon. friends here who come from West Bengal to ventilate the grievances in that regard.

In conclusion, I would say that however halty this measure may be, although the depositors may not be able to receive any large dividends as the hon. Minister admitted in the other House, yet I would like to support this Bill, as the Hindustani saying goes: नहीं मामू से नक्टे मामू भले ।

SHRI B. M. GUPTE (Bombay): Mr. Deputy Chairman, I generally support this Bill. but in my opinion, it is defective in certain respects and so needs some amendments. The first defect is that the exclusive jurisdiction vested in the High Court under the Act of 1950, and retained in this Bill is unsuitable for the liquidation of small banks. In the first place, the work of the High Court has increased enormously, owing to the provision of the fundamental rights and of articles 226 and 227 in our Constitution. So this will unnecessarily add to the burden of the High Courts by bringing in petty litigations. But the worse defect is that it adds unnecessarily to the cost of the winding up of the small banks and therefore it is unfair both to the depositors and to the debtors of these banks. Generally all these banks are in mofussil areas and they are situated in places away from the seat of the High Court. Naturally whatever advantage is given by having summary proceedings provided for in this Bill will be offset, will be more than swallowed by the cost of travelling to the seat of the High Court and the cost of engaging solicitors and counsels. Therefore, in my opinion, it is not to the advantage of the depositors in these small mofussil banks. Even with regard to the debtors also, even if he has a very legitimate defence to make, or even if he wants to ask merely for payment in instalments, he will have to go to the seat of the High Court, engage solicitors and counsels. Therefore, the provision is unnecessarily unfair both to the debtor and to the depositor of these small banks. Moreover, there is no power to transfer the proceedings to the district courts later on. That is practically impossible under the provisions that we are now making, because everywhere in this Bill we mention "High Court" and "High Court". I submit that an amendment should be made at least to enable this transfer. I do not mind the exclusive jurisdiction remaining in the High Court, but in appropriate cases, the High Court should have the power on the lines of section 164 of the Indian Companies Act to refer the matter to the district court, after passing the winding up order. That is my first suggestion.

Then, in my opinion, it is not proper that the provision for an appeal in a criminal matter should be left to the discretion of the High Courts or left to the rule-making power of the High Court. There will be no uniformity in this matter. In my opinion, in such a vitally important matter there should be uniformity and therefore, it should have been provided for in the Bill itself. One High Court may make one provision and another High Court may make another provision and I do not see why it should be left to them. They may make a provision or they may not make a provision. It is not a minor matter. When you are allowing appeals on sums worth Rs. 5,000, why should there not be an appeal in a criminal matter? Therefore, my suggestion is that there

[Shri B M. Gupte]

should be an appeal in criminal matters provided in the Bill itself I do not make any concrete proposals about it but there should be, in my opinion, uniformity and moreover this important matter should not be left to the rule making power of the High Court

SHRI K S HEGDE There is a slight mistake, Mr Gupte So far as the right of appeal is concerned, it is provided in the Act,—the conditions under which appeals may be preferred and the manner in which such appeals are to be preferred

SHRI B M GUPTE It is said there that

SHRI K S HEGDE It is provided in the Act

SHRI B M GUPTE No, the clause says, High Court may provide and not High Court shall provide Then the Expert Committee had commended the Bombay rates with regard to charging of commission According to the Committee those rates are very fair and they would certainly lessen the cost of winding up proceedings If that is so, I do not see why they should not have been incorporated in the Act itself because in this matter also various High Courts may prescribe various scales and the cost may not be reduced With due regard to uniformity, my suggestion is that the rules concerning appeal and the scale of charges should both be incorporated in the Bill itself

Then another point is with regard to clause 10, section 45F The rule of evidence has been changed and entries in the books of the bank are allowed in order to charge a delinquent director, but the distinction is made that it shall apply only to the directors of those banks, the proceedings against which have been started before the introduction of this Bill Now, I do not see what difference there is between the position of a delinquent director of a company against which proceedings were started before this Bill was introduced and the position of a delinquent director of a company against which proceedings are started after the introduction of this Bill The delinquency is there all the same I at least do not see the difference So, I suggest that that difference should be removed and this rule of evidence should apply even to the later proceedings, proceedings which have been started after the introduction of this Bill

Then there is a point in regard to section 45G After the public examination, it is provided that the court may pass an order disqualifying any director for any further office for five years My submission is that there should be a notice, there should be an opportunity given to the person concerned After the examination, the director will be cross-examined and one would not know how the mind of the judge would be working all the while He may ultimately pass an order of which the person concerned would have absolutely no information or no anticipation It is provided here that even in cases where no fraud is proved—even in such cases—without giving an opportunity we disqualify a person Even before a public examination it is provided that every person shall be first given an opportunity to say why he should not be examined publicly I say that a notice at that stage is not very useful What will he show? Why should he not be examined publicly? It is only natural justice that before passing an order that a person be disqualified, he should be given an opportunity to say why that order should not be passed Of course, I might be told that he may be allowed to become a director later on with the permission of the court That is the provision but nobody will go to him as long as that stigma is there and there will be no occasion for asking for permission Therefore even before passing such an order, an opportunity should be given to him These are my suggestions and I hope the hon Minister will consider them.

With these words, I support the motion.

SHRI C. P. PARIKH (Bombay): Mr. Deputy Chairman, I rise to support this Bill, especially the provisions relating to expediting the liquidation proceedings and reducing the cost for which this Bill is specially meant. Behind this, there is a great history which is mentioned in the Statement of Objects and Reasons from which we find that during the last 25 or 30 years 321 banks have failed, with a liability to be recovered of Rs. 30 crores. The Congress came into power in 1947 and as early as 1949 they came with the Banking Companies Act. It was late by two years, in my opinion, because the whole of the financial and economic structure of a country depends on the sound running of banks in the country and even though the history of the past 25 years showed that the Indian banks were not functioning properly, I think, they delayed the measure by two years. Even then, the amending Bill of 1950 was also a half-hearted measure. We witnessed that in 1949, 48 banks suspended business, in 1950 thirty-three banks suspended business and in 1951 twenty-four banks suspended business. It does not reflect to the credit of those who manage the banks but it also does not reflect to the credit of the Reserve Bank or the Government of India which are in duty bound to protect the depositors' and the shareholders' interests and for the financial and economic structure of the country. Therefore, it is coming too late and even if it is too late, I would point out, Sir, that the main object of this should be to prevent liquidation of the banks, prevent the failures. About this, I will offer certain suggestions at the end but for the economic recovery either in the industrial, agricultural or commercial field, banking system is most important and we have known that the indigenous banks have failed in the past. With this knowledge, I am thinking that we are proceeding in a half-hearted manner.

Now, Sir, it is not only the depositors' money. No money is recovered by the share-holders. When they are unable to pay to the depositors, much less will they be able to pay to the share-holders. This is a very important point that I am making. Without share-holders, banks will not be formed in this country. I think, Sir, we want the number of banks to increase and to spread over smaller and bigger areas. Without that, Sir, our economy will not improve because finances are required by big and small people and, we have till now provided only the bigger people with finances and the smaller people have been neglected. I am sure the Finance Minister is bringing in an amendment to the Reserve Bank Act which we shall be discussing later on. Of course, there have been failures owing to our losses in Pakistan. Nobody will dispute that but I think, Sir, that Government have not gone deeply into the matter to ascertain methods of preventing these failures. These failures can be prevented, in my opinion.

Now, Sir, apart from that, I will say that the provision for recovering the liabilities as arrears of land revenue is a good procedure because without that you will not be able to recover to the extent that you desire.

The inclusion of small depositors, with a deposit of Rs. 100 or less in the preferential list of creditors is a good feature. That supplements the list of preferential creditors under section 230 of the Indian Companies Act. I say, Sir, that when accounts of the Savings Bank is taken for preference the current account and the small depositors should also be taken into account because such small depositors are also many and they are bound to multiply in the future and the Government may have to come with an amending Bill later on. If they make provision this time, it would be very well.

Now, Sir, there are some provisions about directors' powers of control, direction and supervision which is not exercised nowadays and it is only due to the directors not exercising their powers properly that these failures

[Shri C. P. Parikh.]

have occurred and we cannot deny that. There are various clauses in that regard and especially I refer to 45H, J and O. Now, these clauses are very necessary, I will not deny that. But let us examine what will be effect of these clauses on the economic and banking structure of the country because as one of the Members has already pointed out, people will not be willing to serve—or, honest persons will not be willing to serve—on the Board of Directors of these banks; but whether they are willing or not, we must make provision to see that the directors who serve on the directorate look after the interests both of the depositors and of the shareholders. I have known of many banks where the manager carried on the whole burden and the directors simply endorsed all such actions; some of the directors might have derived indirect benefits and the managers were men who had no financial standing but were fortunate enough to become managers in some banks. This should be stopped. I think, Sir, a manager will not manage properly unless the Board of Directors is very efficient and has full control over him.

I was offered a directorship in five or six banking concerns and I refused all of them. Unless I find that the body of directors who are also along with me are able to exercise control it is no use being on the directorate. Therefore when people are offered directorships in certain banks they must remember that they will be liable to the nation as a whole when the bank is not properly carried on. It is not a personal thing that one may do with it as he likes. It is a trust of the nation. It is the money of the poor man who deposits his little savings there. The savings of all the people are there and unless we protect these savings our economy will not advance. That is the main feature and this clause of putting a restraint on the directors is, in my opinion, good, but I think, Sir, we have to examine it in a way as to how this evil can be remedied otherwise than is provided for in the Bill. The provision, as it is, says that the High Court also may have a director publicly examined. The High Court may make an order that that person shall not, without the leave of the High Court, be a director of any other company if it considers him not fit to be a director of the company in question. These are very wide powers, Sir, given to the High Court. The High Court may no doubt be given the power to declare that a director is not fit to be a director of the company but for that reason, Sir, he should not be debarred from becoming a director of any other concern or any other company in India. As per provisions in the Bill, Sir, when these directors become unfit according to the opinion of the High Court, automatically they cannot remain directors anywhere else. I say, Sir, this is a harsh provision. The Board of Directors is composed of a number of directors and naturally one has to think that the liability is joint and several. It may so happen that a particular honest director happens to be absent from some meetings and it may so happen that something wrong happened at those meetings which resulted in a situation that when the matter came up before the High Court, the High Court found all of them guilty. It may happen, Sir, that an honest director may get involved in this and he may be declared not fit to be a director of any other company. If this be the case, Sir, even honest men will be fighting shy to become directors of any banking company. The effect of this law, Sir, will not be known till some cases come up before the High Court, but when some honest directors are penalised, I think, Sir, it would be difficult to find honest directors coming forward, and that point has been made by Mr. Ghose also with whom I agree. We should also find a remedy. In 45G it is provided: "The official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission of any person....." Now, Sir, these words are very wide. I do not deny the object behind this

provision, Sir, but if some such words like "misconduct" or "wilful negligence" had been put in here it would be more specific and in this case also, Sir, the purpose would have been achieved because persons who were honest may be in a position to feel that they will not come under the clutches of this law if they did not commit such offences. It may be too late for the hon. the Finance Minister to accept amendments of this nature but I think, Sir, some happy wording is necessary in order to induce honest directors to serve on the Board. The punishments that may be given to the directors do not stop with those provided in 45G.

Another section is section 45H and this makes special provisions for assessing damages against delinquent directors. It says: "the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay", etc. When the High Court makes such an order, naturally the delinquent director is to deposit some money to defend himself. So the directors will have to be out of pocket for some allegations and charges which may not be substantiated or which may not prove true in the long run. This is also hardship because summary proceedings will react also on those who are honest and those who are not guilty.

Then, Sir, we come to the period of limitation. When the contract is there there is no period of limitation. I will not dispute it, Sir. That is a good provision, but when raking up the past cases some period could have been put in. I agree with the period *of limitation being put as twelve* years in respect of other claims against the directors. I will not object to that because the directors must understand, when they want to serve on the bank, that they have to be responsible to the nation and those persons who are willing to serve on those lines will only then come in. At present on the Board of Directors there are so many persons who act without responsibility and this will be a great restraint on them and it is necessary.

Now, Sir, with regard to the Liquidation Proceedings Committee, they have recommended that the liability of the past directors should extend upto three years, but Government have thought it fit to make it an unlimited period. I do not, however, dispute that.

Now, Sir, about the trial in a summary way. I refer to 45J. I say, Sir, that this is going a little too far because you will be frightening so many directors who may be willing to serve honestly on the Board of Directors. I have no doubt that the High Court will exercise this power in a reasonable manner but then it is provided that "when trying any such offence as aforesaid, the High Court may also try any other offence which is an offence under the Code of Criminal Procedure" and I think we have to be cautious here. Losing five or ten lakhs may not matter to a man because persons with a certain financial standing will be serving on the Board of Directors, but in the matter of going to jail or be convicted of an offence he would like to lose twenty lakhs for absolving himself rather than go to jail. Therefore if the trial for any criminal offence is to be there, the trial should be under the Code of Criminal Procedure. Summary procedure is too drastic in my opinion in this regard. Section 45J(3)(a) says, "need not summon any witness, if it is satisfied that the evidence of such witness will not be material". In the Criminal Procedure Code the words used are, "that the evidence will not be relevant" and here the words used are, "will not be material". Of course, the High Courts are expected to behave in the most sober manner but even then the fright in the man is a great thing. What is the loss in putting it in a better way because the director may feel, "If I am honest I have nothing to fear". But at present he fears that if the version of the court is this way or that he will be penalised to an extent which one would never like.

[Shri C. P. Parikh.]

Then, Sir, section 45J(3)(b) says, "shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court, necessary in the interests of justice". I think, Sir, this is a slightly strict provision because the leniency that the High Court would have otherwise shown is curtailed by this provision. Even in criminal cases, Sir, adjournments can be had.....

SHRI K. S. HEGDE: You want adjournments as of right.

SHRI C. P. PARIKH: Yes, reasonable demands for adjournment should not be refused. One may require to produce some evidence in his defence.

MR. DEPUTY CHAIRMAN: The words "in the interests of justice" are there.

SHRI C. P. PARIKH: No doubt they are there, but then the words which are there in the Code of Criminal Procedure should not have been changed here.

SHRI K. S. HEGDE: The idea is that adjournments must be granted very rarely.

SHRI C. P. PARIKH: Government have kept it in the Criminal Procedure Code also. Then why bring it here?

Now I come to 45J(5) wherein it says, "all such trials shall be without the aid of a jury". This also, I think, is a little going too far. In the preceding sub-section (4) there is shown a concession for which I am thankful to the hon. Minister and there it is provided, "be taken cognizance of and tried by a judge of the High Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company". That amendment was made after the introduction of the Bill and I think that is a good amendment because otherwise it would have been very harsh.

Now, I do not want to deny that these provisions should exist in some form or other. These are, of course, necessary. But they should be in a manner that people will not be frightened.

I shall now come to where the onus of proof is on the accused; that is section 45G, sub-section 8. It says: "Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory at all reasonable times". Sir, an examination has to be conducted and notes have to be taken down. In the Criminal Procedure Code the onus of proof lies on the complainant, neither is the accused to give evidence initially nor is he to prove the onus. Here, too, the onus should lie just the other way. Unless a very liberal interpretation is put on this, that will be a source of grievance.

SHRI K. S. HEGDE: The question of onus does not arise at all.

SHRI C. P. PARIKH: It is not exactly onus; it is equivalent to onus. The examination starts that the man is the accused. He gives evidence. And this will be used against him. My friend is a lawyer and I am not one, and I do understand law to some extent. The procedure in the Criminal Procedure Code is different.

SHRI K. S. HEGDE: This is an exact copy from the Insolvency Law.

MR. DEPUTY CHAIRMAN: Under the Criminal Procedure Code, the court records evidence, every sentence is recorded and read out to the witness. There is no question of onus in this section.

SHRI C. P. PARIKH: Sir, if you, as a lawyer, were to consider it so, I shall not go into it further.

Another point is about the directors. Many of the directors will fight shy of

coming in. For the larger interests of the country Government should consider appointing 25 per cent. of the Board That is one-fourth of the number of directors should be appointed by the Government Shri Sobhani was saying that the representatives of the depositors should appoint some directors I am afraid that they will not be able to function properly Even in the insurance and other companies, they are not functioning properly So, my request is that Government should appoint 25 per cent of the directors on each company which wants to carry on banking business Then naturally, the other directors will try to come in and the integrity of the directorate will be assured in a greater degree People will think that Government is looking into all these matters and the Government directors will also be in a position to command the influence of the other executives—the managing directors and directors Government should have the power of appointing some directors Before nationalisation, we should know how to nationalise This is the first step towards that If we cannot control the failures of these institutions, we may not know how to nationalise What is nationalisation after all? Nationalisation is a process So, to begin with 25 per cent of the directors should be appointed by the Central Government on each Board

Then, Sir, the Banking Companies Act of 1949 gives some powers to the Government regarding the resources, advances and deposits of the bank. The procedure at present is whenever the banks make advances, they are to submit a list of these persons who are given advances above Rs 1 lakh The amount varies from bank to bank The Reserve Bank exercises a control in this matter, a weekly list has to be submitted to it and it scrutinises it and says in certain cases that such and such advances are not proper Each scheduled bank is under the close supervision or scrutiny of the Reserve Bank Sir, we want banking to flourish in this country There are many foreign banks in this country and Indian banks of good repute are only about 10 and banks without a capital and reserves of less than one crore are tottering Here the loanees are fearing that their advances will be called from them any moment.

The Reserve Bank exercises control over scheduled banks If we want a sound banking system to develop in this country we want more and more of control to be exercised by the Reserve Bank When the advances are scrutinised by the Reserve Bank they should be notified as approved or unapproved advances, for then, the bank is in a better position and the directors naturally are in a better position to carry on The banks will not fail in the country as they do now, if this were the position And, in case of difficulty, the Reserve Bank should come to the aid of the scheduled bank by taking over the advances approved by them and save the bank from disaster Then, the banks will not be in difficulties I do not think that by such halting measures we will be able to put our banking structure on sound lines The Reserve Bank should help the scheduled banks, co-operative banks and the State corporations after exercising sufficient control

[THE VICE-CHAIRMAN (SHRI B C. GHOSE) in the Chair]

Then Sir, with regard to policy of the Reserve Bank, I would like to mention a few words When the directors are nominated, the economic and social objectives of the institution are lost sight of Practically you have gone to the old system of the Britishers You do not care whether the objectives of helping smaller men are believed by the directors for the larger interests of the country This policy is not going to help us very much Much has not still been done in the field of agricultural credit and advances to small and cottage industries This Bill is coming too late The question is naturally asked because the Reserve Bank was functioning all these years, why this Bill was coming so late The directors of Reserve Bank do not see to the prospect of the Reserve Bank

[Shri C. P. Parikh.]

helping the smaller man. I say, if you want to develop the finances of the country my suggestion is worth consideration by the Finance Minister.

Now, Sir, with regard to other matters like investments in shares and securities, they are to be scrutinised. We have seen, Sir, in the past many banks have failed on account of indulging in share speculation. In Bengal, as my hon. friends must be aware, banks bought shares which slumped to the extent of 25 per cent. I submit, Sir, that the lists of shares should be very carefully scrutinised by the banks. If we want to control and supervise the scheduled banks, then our control over their investments in shares and securities should be more rigid. I have just given the instance that the banks in the past have advanced loans for parts of machinery. Now, Sir, without full machinery the parts are useless. But loans have been given for parts. We have therefore to see how advances are given by the banks.

Then, Sir, there is another point with regard to debtors. When the list is finalised, the debtors have to go long distances to put up their cases before the court liquidator. In order therefore, Sir, that the long distances in India may not weigh heavily on the debtors, it may be mentioned that court liquidators in various territories may determine such cases in their respective territories and the debtors may appear before the court liquidators of their own territories. That will be a much better way in order that people may not have to run long distances for the settlement of their claims. These are the few suggestions which I have to make, Sir, and I am sure the hon. Deupty Minister will give his consideration to them. With these few words, Sir, I support the bill.

SHRI KISHEN CHAND (Hyderabad): Mr. Vice-Chairman, this halting measure is welcome though very much belated. As has been pointed out by several Members, banking is a very important sector of our economic activity. If we want our industry and trade to develop, sound banking system is very necessary. This amending Bill, though it has come very late, is at least trying to point out some of the inherent defects in our banking system. The Reserve Bank under the Banking Act of 1948 was entrusted with a large number of powers of inspection, supervision, direction and control. The hon. Member who has just sat down has suggested that the Reserve Bank should have all these powers and should exercise them. He has gone even a step further and has suggested that the Government should appoint some directors for all joint stock banks. I submit, Sir, that there were 400 or 500 banks before this liquidation business started, and if Government have to appoint two or three directors for each bank, it means that a selection of about 1,500 directors will have to be made. It is absolutely impracticable. Why do we want all this supervision and direction of Government when there is a simpler method? The Socialist Party has always suggested that banks and insurance companies should be nationalised. That is the only way. Nationalisation of banks is the only way if you want to develop sound credit system and we can achieve this very easily. You will see, Sir, that in the Banking Companies Act section 44 provides for procedure for amalgamation of banking companies. I expected. Sir, that in this amending Bill this section 44A would be amended further and its provision made simpler so that amalgamation of banks could be achieved easily. Sir, in our present economic condition the small banks have no future. It is absolutely impossible, with the high expense ratio, for a small bank to exist. In the last century, in banking, it was considered in the U. K. that small banks fulfilled a purpose. They came in direct contact with small industrialists and small businessmen and in that intimate contact they could help the devlopment and growth of industry and trade. But in the modern times it is absolutely futile to have small banks. A bank with a working capital of less than Rs. 1 crore is always

working on a margin Sir, in a working captial of Rs 1 crore if you care to look into the balance sheets of most of the banks you will find that the share capital will be Rs 10 lakhs and deposits Rs 90 lakhs Generally the ratio between the share capital and the deposits is about 1 10 So, a bank which is working with a small working capital under the limitations and the restrictions of the Reserve Bank, whereby it has to invest nearly 50 per cent of its assets in Government securities and at least 25 per cent in very liquid assets, the margin of profit becomes almost nominal for such a bank And if the small banks give a low rate of interest on deposits, nobody will come forward to deposit his funds in them The net result is that the small banks are slowly and gradually dying out The hon Minister has suggested simplification in the winding up process But why should we have a winding process when we can have an easier amalgamation process? Why should it not be considered by the hon Finance Minister that the Reserve Bank, when it finds that a bank is not meeting its expenses and when its expense ratio is going beyond a certain figure, should persuade one of the banks to absorb that small bank into it? I draw your attention, Sir, to the fact that in the nineteenth century in U. K the five big banks amalgamated over 100 banks each with them, so that the shape of banking changed from small banks with one branch or two branches into big banks with hundreds of branches We want a similar thing in our country I would welcome the day when we have ouly about ten or twelve banks in the whole country and each bank has about 500 or even 1,000 branches That will be far better because it will be the first step in my scheme of nationalisation, *i e*, to reduce the number of small banks and replace them by about ten or twelve big banks and then nationalise these banks one by one It can be achieved easily It may be said, Sir, that the big bank will not have contact with the small trader or small industrialist But what is happening now? As has been pointed by an hon Member, in West Bengal when such a large number of small banks had gone into liquidation, the poor trader and the poor industrialist who had borrowed money was being harassed to immediately pay back the loan which he had taken from the bank The net result is that the small industrialist and the small trader is lost for ever

He has got to close down his business This is one of the reasons why there is depression in West Bengal and in Travancore-Cochin and also in my own State of Hyderabad The result is that the Banks which were performing the function of advancing the working capital of these small traders and small industrialists have disappeared Therefore liquidation is the wrong process It is not only a process of liquidation of the banks but also the liquidation of the traders and industrialists who were connected with those banks Instead of that, if we have a method of some big banks continuing the affairs of those banks, it will be possible for the small trader to repay the loans in small instalments spread over a long number of years If we adopt the process of liquidation. naturally we will have to hurry the proceedings, as on account of delay the cost of liquidation will become very high If we hurry, the small traders and industrialists will be unable to repay their loans Therefore I have suggested the method of amalgamation.

Many hon Members have pointed out that in our enthusiasm and in our desire to make the credit system of our country fool-proof, we have gone to the other extreme of making the conditions and privileges of the directors very onerous A director has to hold himself responsible even for the faults of the manager in any branch. I do not think it is fair to hold the director responsible for acts committed even 12 years before or even earlier than that I think this idea of limitation is a fundamental idea in our legal system. I do not think it is right that in order to safeguard the interests of the depositors who are foolish enough to

[Shri Kishen Chand.]

deposit their money in small tottering banks, we should make such strict provisions. Nobody will come forward to become a director because he will be held responsible for even a slight mistake made by any officer of the bank even 20 years back as the same will be produced against him as evidence of his neglect. I do not think it to be right to hold the directors responsible for small mistakes of the officers of the bank over which they have no control. Therefore, Sir, in conclusion, while supporting this Bill. I request the hon. Minister to once again consider Section 44A of the original Act which lays down the procedure for the amalgamation of banking companies. On page 22 of this Bill, there are six sub-sections. and these sub-sections are so strict that without the consent of two-thirds of the share holders of the bank which is being amalgamated and the bank which is absorbing the other bank, amalgamation cannot take place. I submit, Sir, that if this clause is changed that on instructions from the Reserve Bank, a bank should be forced to amalgamate and that the Reserve Bank and its officers may evaluate the assets of that bank for this purpose, then I think very soon we can establish a sound credit system in our country.

SHRI H. P. SAKSENA: Why not nationalise all the banks?

SHRI KISHEN CHAND: I said that. You did not follow my argument from the beginning.

SHRI GULSHER AHMED (Vindhya Pradesh): Sir, I welcome this Bill with a mixed feeling because a measure like this ought to have been brought long before. Actually between 1947 and 1953 so many banks have crashed, and it has been noticed that the liquidators who had been appointed to liquidate and realise the assets and then distribute them to the creditors and shareholders, have taken a long time in finishing their jobs. It has been noticed also that the winding up of these banking companies, either by private liquidators or by liquidators appointed by the courts had cost very much. In one case in West Bengal it has been found that nearly 75 per cent. of the assets have been spent in litigation for realising the money, on the commission of the liquidator, etc. Sometimes it has been noticed that the liquidator though himself a lawyer or a Barrister, has engaged other counsel for the purpose of appearing in court. Due to the delay in the liquidation proceedings, a very huge number of people in this country have suffered. In some cases this has meant extreme hardship. I know of one case from Allahabad. A person who was known to me had retired from railway service. He got about Rs. 1,000 from his provident fund account for which he got a cheque from the railway. He came to me and asked me as to how he should deposit the money. I advised him to go to the Imperial Bank. He went to the Imperial Bank but as it was a crossed cheque, the Imperial Bank refused to deposit the money unless and until he had opened an account with the Bank or something like that. I asked a friend of mine whether he could help him. He said that he knew a particular Bank and said that that Bank would deposit the money. It was a West Bengal Bank which had a Branch in Allahabad. The Bank readily agreed and the money was deposited. Then after a month the Reserve Bank issued an order asking the Bank to suspend all transactions, both the taking and lending of money. Now, nearly two years have passed, and this man has not had anything. After he retired from railway service, this was the only money he had and now he is in a great trouble. He has got a big family of about eight members. Due to the dilatory liquidation proceedings, so many people are suffering in this country, but Government have never thought of changing the procedure for the winding up of banking concerns. They still followed the procedure applicable to joint stock companies which were not doing banking business at all. As a result of this, a

very large number of people in this country have suffered A measure like this could have easily been adopted by the Government by issuing an Ordinance Even the Reserve Bank could do it by the issue of instruction because it has large powers over the banks What happens is that whenever people go to the banks, they always try to find out whether a bank is a scheduled bank or non-scheduled bank When a man deposits his money in a scheduled bank, he has got the assurance that the Reserve Bank will come to help in case the Bank gets into trouble by giving money into the Bank in order to pay the creditor or the depositor Now when these things were happening in quick succession and so many banks have failed in this period of 4 years, I think some sort of well-devised means and methods should have been adopted by the Government to check this monstrous thing happening in the country Now after reading this Bill I find that probably this Bill is not going to help these people who have already suffered It might help in future the depositors or creditors or subscribers to the bank in case the Banks will crash or will go into liquidation but what is going to happen to those people who have already suffered by the failure of about 400 banks It does not seem that they are going to get any relief from this Bill One thing that I would like to know from the hon Minister is when the debate was going on he said that one of the things that have been provided in this Bill is the appointment of a Court Liquidator I don't know what he means by that whether he will be appointed by the Central Government or by the High Court itself because according to the Company Act the Liquidator will be appointed by the Central Government but he will be under the control and supervision of the High Courts but in the case of banking companies the Court Liquidator will be appointed by the Court and not by the Government

SHRI V K DHAGE By the Government.

SHRI A C GUHA In the Banking Companies Act also the provision is that he will be appointed by the Central Government Here also we have provided that the Court Liquidator will be appointed by the Central Government.

SHRI GULSHER AHMED Thank you I was under the impression that the Court Liquidators will be appointed by the Court

SHRI A C GUHA That was the provision

SHRI GULSHER AHMED So far as the appointment of court liquidator is concerned, I would like to remind the hon Minister that in the past it has been found that in spite of the Ordinances which were passed whereby the High Courts were given powers to frame rules and regulations for bringing speedy liquidation of banks in their respective provinces the Courts have failed to frame those rules and regulations From the experience it has been seen in one of the High Courts—in West Bengal,—it has been pointed out by some Member in the other House, that though the Ordinance was passed some 2 years ago, but no rules are framed by the High Courts even today, as a result of that people have suffered a lot Probably, if the High Courts had framed rules for speedy liquidation, I think, a large number of people who have suffered due to the failure of the banks in Bengal would not have suffered I would like an assurance from the hon Minister that he would see that the powers that are being given to the High Courts to frame rules and other things are being exercised and that he would try in a semi-official way—he cannot tell the High Courts to have vigilance—and see that rules and regulations are framed in time

There is another point on which I would like to have some clarification from the hon the Deputy Minister. In this Bill it has also been provided

[Shri Gulsher Ahmed]

that in some cases the High Court can appoint private liquidators if they think that a particular case is such that referring the case to the court liquidator will be expensive or because it is a small case or it is a small bank or for other reasons I do not think that is necessary and I do not know what is the idea in for having this provision here giving the power to the High Court to appoint private liqu dators Already there is provision that the official liquidator or the court liqu dator will be appointed by the Central Government He will be a permanent man, with a permanent office That being so, I do not think there is any necessity for giving special power to the High Court to appoint private liquidators as has been proposed in this Bill.

You, Sir, in your speech pointed out that the problem is not the problem of liquidation of banks, but that it is a problem of rehabilitating the banks and the Government of India ought to have adopted something like the American measures adopted during the period of depression when so many banks had failed in America in quick succession My submission is this, Sir that this is a big question, too big, because it involves the determination of whole monetary system and the banking system of the country In a small Bill like this, such a big problem cannot be dealt with It requires a lot of consideration and so many other prob'ems have to be taken into consideration At this particular moment, this Bill is merely concerned with the removal of the dilatory procedure in the matter of liquidation of banks in the event of their going liquidation failure or crash So this Bill is meant only for bringing about cheap and speedy disposal of the banking assets, for realising the assets and distributing them to the depositors, subscribers or shareholders So as I said, this Bill is concerned with the removal of the procedural difficulties that are in the Indian Companies Act, for the purpose of settling the affairs of the bank in a cheap manner and as quickly as possible and returning the money to the depositors or the subscribers

Then my hon friend Shri Subhani has referred to the provision whereby the director is going to be made liable criminally for any offence or any act as a result of which the bank failed or crashed The bank is a social institution and the director has a great social responsibility You cannot have such great responsibility, unless and until there is some restriction or some kind of a sanction behind it Otherwise, as we know, in the past some of the directors have misused this authority or responsibility and have brought ruination of so many people in this country Therefore a provision like that should remain in this Bill so that anybody who will take up the job of a director will be very careful and see that he does not do anything or any act whereby he will be held criminally liable if the banking concern fails May I inform this House that in England if any director commits a deliberate fraud or misappropriates money or is responsible for gross negligence not only is he liable under the civil law, but he is also liable under the criminal law. He can be sent to jail

SHRI K S HEGDE Even here it is so

SHRI GULSHER AHMED What will happen is this After all, the High Court is there and the director of the company will be produced before the High Court The High Court will try him summarily and I am sure that the High Court will not convict him and send him to jail simply because he has made a mistake The High Court will naturally go into the matter and try to find out whether any mistake or any act had been done by a particular director and whether it was *bona fide* or *mala fide,* whether he did it deliberately in order to cause a failure or crash of the bank or it was just mere

human error on his part and accordingly he was not responsible. The Courts will also see whether the agents or clerks or some others were responsible for the collapse or failure of the Banks. There are so many factors. The High Court, whenever it will consider such a case, will take into consideration all these factors and after hearing the evidence will naturally decide whether actually a director is guilty or grossly negligent in handling the affairs of the company and then naturally if he deserves to be sent to jail, he will be sent. If a man commits a petty theft, he is sent to jail for six months and when a man does something which ruins thousands of people, he deserves to be sent to jail not for six months but for six years. My hon. friend says that there is provision whereby he can be sent to jail and can be tried for a criminal offence but these directors have been clever. There is some lacuna and a loophole in the law whereby a director gets away easily and as hon. Members pointed out some of them transfer the property to their wives or friends thereby escaping the civil liability and also manage to escape from the criminal liability. I do not think that the apprehension that some of the hon. Members in this House have, that if this provision remains as it is no respectable person will like to become a director of a company, is quite correct. An honest man is always an honest man and I do not think that the High Court will be blind enough just to catch a man and if they find a small mistake, to send him to jail saying that the failure or the crash happened because of his mistake. I do not think that will happen. I do not think that the provision by which the director is made liable criminally is something very harsh as most of the hon. Members have expressed. Their apprehension that probably nobody would like to become a director is not correct.

Sir, I would like to know from the hon. Minister—probably he remembers it—that Indian Company Law Committee was appointed and that Committee had recommended the establishment of an independent Central authority like the Board of Trade of the United Kingdom to execute the functions of liquidation of companies registered under the Indian Companies Act or under the Banking Companies Act. I think that the Board of Trade in the United Kingdom has functioned in a very satisfactory manner. When an Indian Companies Bill is introduced in this House—the hon. Minister is concerned with that—I hope that he will see that some kind of procedure like the United Kingdom Board of Trade is provided for in it. If it is provided then we will not have to depend so much on the High Courts and Courts. A court after all is a judicial institution, I mean, they are not very much used to this kind of administrative functions. So there can be a kind of independent and separate body like the Board of Trade which can control all the companies in the country, of course subject to the directions and other orders that they will get from the different High Courts, and look after the liquidation of all the banks which are being forced to close their business.

As I have taken a long time I would like to finish my speech although I have got some more suggestions to make. With these few words, Sir, I take my seat. Thank you.

SHRI K. S. HEGDE: Mr. Vice-Chairman, my reaction to this Bill is rather mixed. The Bill is good in some parts but in other parts it seems to be rather a panicky reaction to certain exigencies that have arisen after 1947. I am one with my friends who said that so far as the banking law is concerned, no serious attempt has ever been made to consolidate it or put it in order. I was a student, Sir, when the Macmillan Committee Report was published in England. Immediately after the Macmillan Committee Report was published there was a great demand in this

[Shri K S Hegde]

country both from commercial circles and from administrative personnel that an enquiry similar to the enquiry that was held in England should be held in this country and we should have an elaborate and consolidated piece of legislation with reference to banking here In view of this agitation the then Government of India appointed a committee and the committee submitted several proposals in its report in 1930 For one reason or other, the Government of India of that time did not think it appropriate to bring in any legislative measure incorporating those proposals As the Mitra Committee very correctly puts it "Banking legislation in this country has been in shreds and patches" Somehow always there was a fright in the mind of Government to bring a consolidated legislation It merely tinkered with the legislation The Reserve Bank, after its incorporation in 1935, sent a draft Bill to the Government of India in 1939 Due to the war conditions the Government of India was not in a position or rather did not summon up enough courage to place any such legislative measure on the anvil Even after the attainment of independence in 1947 the then Finance Minister of the Government of India did not summon up enough courage to bring forward an appropriate measure on the floor of the House for the purpose of enacting it into law Many of the present difficulties probably could have been avoided had only an appropriate measure been brought in 1947 or even in 1948 It is true, Sir, that in a measure like this and in a measure where we have got to take note of commercial growth and the growth of banking system several changes in the law may be necessary at several stages of its development, but that is no excuse for saying that the Government had not enough material in 1947 in its hands for bringing in an appropriate legislative measure For some reason or other, the measure was postponed till 1949 What fails my comprehension is that in a situation, as it had arisen in 1947, it is rather difficult to appreciate how exactly Government postponed this piece of legislation Immediately after the partition of the country our banking was in a state of rather chaos, specially in the States of the Punjab and Bengal where the banks had headquarters in one State and their clientele in the other States Even before that it was a well-known fact that many of the commercial banks had stretched their wings too far and they were straining their resources during the post-war economy. As such I should have expected the Government to bring in the necessary legislation at a very early stage That was not done But even when a measure was brought in 1949 and an amending Bill was brought in 1950, the Government was unable to comprehend the full implications of the several metamorphoses that were taking place in the banking world at that time and to bring the necessary measure for speedy winding-up proceedings This is all past history But what I am concerned with now is this Look at even this present measure It is one more tinkering measure and possibly it is not the last word on the banking law If only one examines our banking law and compares it with the banking law obtaining in other advanced countries, one would feel that there are several things that one should still enact in the matter of the banking law of our land

I am in entire agreement with the proposals adumbrated in the Bill, in regard to the appointment of a court liquidator instead of the official liquidator It will be a mere repetition of the argument if I enumerate the several ills that have followed in the wake of the appointment of these official liquidators Naturally, they were interested solely in entrenching themselves in their official position Make hay while the sun shines, was their watchword Naturally, they were not interested in early liquidation and also, the law of liquidation was such that it resulted in enormous costs As one hon Member pointed

out, in one case it went up to 80 per cent. of the amount realised. Now, it is but proper that the situation must be remedied and a court liquidator who does not earn his commission but earns his pay should be appointed at the earliest possible opportunity. It is also provided that the normal rule of filing a suit, paying enormous court fees, getting a decree, and all these may be avoided. The measure suggested in this Bill is really a welcome one.

It is true that in liquidation proceedings or winding up proceedings, there should be one authority which should exercise all functions. From this point of view, it is really heartening to find that the Government have come forward with the proposal that the High Court is to be the only place or forum where the entire winding up proceedings should be initiated, tried and disposed of. But the only defect comes in when you come to look at the smaller banks. From the point of view of creditors, there will not be much difficulty. Whenever there is an entry in the Bank, it is *prima facie* evidence; and no new claim need be put in or produced. When it comes to the question of debtors, they will find it extremely difficult to travel all the way from their places to the seat of the High Court and make their claim. This difficulty was, perhaps, not present in the minds of the Government when the draft Bill was prepared. The Mitra Committee itself envisaged that the proceedings may be initiated in the High Court and in proper cases these may be sent down to the District courts for the purpose of disposal. I think it would have been more proper to do so in a number of cases, specially in the case of small debtors and small banks.

Coming to the question of the directors, here is a piece of Draconian law. To my mind it reflects that it is merely a creature of a particular banking circumstances partly of their own making. It is true that the directors have occupied a very important position in the banking world; the shareholder counts for nothing. He merely pays his share amount; after that whatever control he has got is merely nominal. The position of a depositor is worse; there is no doubt about it. It is said that a bad case sometimes makes a bad law. I feel that it is some of the directors who have rather instigated the Government to come forward with the Bill by their reprehensible conduct. This law is Draconian in *character in several aspects. I am* one with the Government in saying that every director must be available for a public examination.

[MR. DEPUTY CHAIRMAN in the Chair.]

As in the case of insolvency, it is absolutely necessary. I am also in accord with the Government that in several cases he may be responsible for many acts of omission and commission. But in dealing with the director, we are not merely dealing with a delinquent director but with the banking system as such. It is trite to say, Sir, that in this country the banking system still remains in its initial stages. Just now I have been going through the report of the Thakur Das Committee about rural banking where they have eloquently expressed themselves and said that banking, before it serves the economic needs of the country, will have to expand itself enormously. In that very report, Sir, they further say:

> "In order to gain the confidence of the clientele and the public it is necessary that we should be able to get the support of important men of the village and induce them to become directors of the company."

The object of inducing them to become directors of the company was that they may lend their names and serve as a point of confidence for the public. Now, if that is the purpose, the Government must wait and see what exactly is the reaction to this Bill. Let it not be taken that I am

[Shri K. S. Hegde.]

pleading for the delinquent directors at all. Far from it. By all means take all appropriate and strict measures that you have got against the delinquent directors. But for the sake of a delinquent director do not frighten every prospective director; do not frighten every respectable man from accepting a directorship. However efficient the director might be, he will not be in a position to fully control the working of the bank. He attends meetings once a month or twice a month or probably once in three months. He is there for an hour or two or three. And it is too much to expect that he will be able to comprehend the working of a bank. After all, the working of a bank does not centre round the directorate; it centres round the managing director or the manager, whoever he may be. If that is the case, what is the position of the director? It is not merely in this country, Sir, but even in other advanced countries like England and America that oftentimes directors are almost ignorant of the essential working of the banks. They have merely a superficial knowledge of the banks. That is why the word guinea-pig directors has come into vogue. Now in a country like India where either the people are illiterate or the people have got other onerous responsibilities, you cannot hang the Damocles' sword over their heads. Now, I do not know whether the hon. Deputy Minister for Finance has thought over this Bill or has visualised for himself what reaction it is likely to produce in the country. When you tell your directors that there is not going to be a law of limitation so far as they are concerned, that they are outside the pale of the law of limitation, what is going to happen? Well, oftentimes the burden of proof is shifted on them and they are told that they will be presumed to be criminals in certain matters till the contrary is proved. And worse still there is a provision in the Bill by which anybody's property can be attached if the High Court thinks it proper, not if there is a *prima facie* case. Brought up in British jurisprudence and having practised as a lawyer for so many years, it shocked my conscience to see a clause to say that, if the Hight Court—I am referring to 45H, clause (2), where it is said:

> "Where an application is made to the High Court under section 235 of the Indian Companies Act, 1913 and the High Court has reason to believe, etc."

You know, Sir, that in *ex-parte* cases the Judge can be made to accept many matters. This is true of the High Court as of any other court. This even applies to *ex-parte* decisions of the Privy Council, an eminent body like that. Human ingenuity is there and it can make black appear white and white appear black, and the lawyers' forensic ability is nothing if they are not able to do this at least in *ex-parte* cases. Still you are merely saying 'if the High Court has reason to believe'. I no doubt appreciate that there may be *benami* transactions. Crooks are always there, but it is the exceptions that always prove the rule. Why can't you have a proper wording—the term which is well-known in the legal world: "If a *prima facie* case is made out"? You have used this wording in 45H(1), but when you come to 45H(2), you change the wording from '*prima facie*' to 'if the High Court has reason to believe'. Any judge can be persuaded to attach not merely a relation's property but a friend's property, and the burden is cast on him to prove that the property is his. As a lawyer yourself, you know, Sir, what is exactly the burden of proof. It may mean either winning the case or losing the case, and if this is there, many people, innocent people, may have to lose their property for no fault of theirs. You are not realising the implication of this. It is not merely a section that you are changing. You are changing your entire jurisprudence, without knowing its repercussions in the future.

SHRI GOVINDA REDDY (Mysore): But no High Court will attach unless it has sufficient reasons

SHRI K S HEGDE: The wording here is 'if the High Court has reason to believe' I would request you

MR DEPUTY CHAIRMAN: That power is there even now

SHRI K S HEGDE: Probably you are referring to Order XXXVIII Rules It is only when an enquiry is made and the order confirms the attachment, then only the burden is cast on the person to prove that the property is his Under Order XXI Rules 58 the burden is always on the petitioner If it had been an incorporation of the provisions of Order XXI Rule 58, I would have welcomed it It will go a step further This is something more than an attachment In the case of attachment, it is not a final order It is only an interim order

MR DEPUTY CHAIRMAN: " after making an order under subsection (1), direct the attachment of such property "

SHRI K S HEGDE: With great respect, I say, Sir, that I have read the section comma after comma, line after line, full stop after full stop Under XXI and 58 the initial bburden is on the petitioner to prove that the property is that of the judgment debtor In the present case, there is nothing All that it needs is "Look here, that man had no property in 1947 In 1953 he has got property That property has come to him by some *benami* transaction" In all these, I am sure you will agree with me that it is safer to accept the well-accepted terms of law, which have a judicial meaning If you merely say 'has reason to believe', it may mean anything Here the liquidator need not prove anything except certain suspicious circumstances He need not prove the case at all I would ask you this When you are really trying to protect the depositors why are you doing this? You might ruin an entirely innocent party and in nine out of ten cases will be that it may be the innocent party Because the shrewder of the lot will create documents in their own favour It is always the crooks that are very difficult to catch Oftentimes it is the innocent man who will suffer and by your changing the entire approach you are still not going to catch the crook It is the innocent man that you are going to harass

AN HON. MEMBER: Then you have to change the law

SHRI K S HEGDE: Then change the law This is the thin end of the wedge I do know that several very revolutionary changes might be required in our procedural law or in substantive law

MR DEPUTY CHAIRMAN: But normally what is the proof required You simply put in an affidavit when you want an attachment But here the High Court must have 'reason to believe' Do you mean to say that an order will be passed very lightly by the High Court?

SHRI C G K REDDY (Mysore): I would like to ask if the High Court has reason to believe or the claimant has reason to believe?

MR DEPUTY CHAIRMAN: High Court The High Court will not pass an order without sufficient reasons

SHRI K S HEGDE: Is there any fundamental difference between 'has reason to believe" and "has made out *prima facie* case"? So far as 'has reason to believe' is concerned, mere a simmering case is sufficient for the purpose

MR DEPUTY CHAIRMAN: That is for attachment only, to see that the property does not pass away from the hands of the liquidator

AN HON. MEMBER: A case has to be made out in this connection.

SHRI K. S. HEGDE: There is some slight confusion. There are two stages in a case of attachment before judgment.

MR. DEPUTY CHAIRMAN: Let it be even for an execution. What is it that you file? You simply file an affidavit.

SHRI A. C. GUHA: Unless there is a *prima facie* case, how can the High Court pass such an order?

SHRI K. S. HEGDE: I am glad that the hon. Deputy Minister agrees that unless there is a *prima facie* case, the High Court will not pass an Order. Then why are you using two different phraseologies?

MR. DEPUTY CHAIRMAN: The wording in Order 38, Rule 5, is:

> "Where at any stage of a suit the Court is satisfied by affidavit or otherwise that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him....."

SHRI K. S. HEGDE: Exactly.

MR. DEPUTY CHAIRMAN: Here it is "reason to believe".

SHRI K. S. HEGDE: "Reason to believe" is somewhat lesser than 'being satisfied'.

MR. DEPUTY CHAIRMAN: Some reason must be placed for the High Court to pass such an order. Do you mean to say that the High Court will so lightly pass an order?

SHRI K. S. HEGDE: I have great respect for the High Court but a High Court acting in an *ex-parte* matter has its own limitations as any other Court has and even the Privy Council had that limitation.

MR. DEPUTY CHAIRMAN: In the execution court you simply act on an execution application from a person saying 'I want an attachment'. No other evidence is given.

SHRI K. S. HEGDE: You may have an initial attachment. In the course of attachment, once the judgment debtor or anybody on his behalf objects to attachment, a regular proceeding starts and the petitioner will have to prove. The burden is on the petitioner.

MR. DEPUTY CHAIRMAN: On the claimant, who wants relief from attachment.

SHRI K. S. HEGDE: Certainly not. It is not on the claimant. The burden will be on the petitioner.

MR. DEPUTY CHAIRMAN: It is on the claimant.

SHRI K. S. HEGDE: The courts have repeatedly held that even at this stage the burden of proof is on the petitioner.

MR. DEPUTY CHAIRMAN: Here it says:

> "Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit."

SHRI K. S. HEGDE: Yes, very correct, and that has been interpreted, making a distinction between.....

MR. DEPUTY CHAIRMAN: It has to be proved by the claimant.

SHRI K. S. HEGDE: No, it is not the claimant. But the attaching creditor will have to prove that he has the right to attach the property. because.....

MR. DEPUTY CHAIRMAN: No, I am afraid, the view that you state is not correct.

SHRI K. S. HEGDE: But unfortunately in a matter where it is not.....

MR. DEPUTY CHAIRMAN: Here rule 59 says:

> "The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached."

SHRI K. S. HEGDE: That is exactly my point. The claimant only shows that he has "some interest". Where an application is made.....

MR. DEPUTY CHAIRMAN: Kindly see the last two lines. It says:

> "and the property so attached shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner....." etc.

SHRI K. S. HEGDE: Yes, the words are "the real owner" and that makes all the difference. The objector merely proves that he has some interest in the property on the date of attachment. The production of a registered document is quite sufficient, a production of a sale deed. Then it shifts on the other petitioner to prove that that sale deed is a *benami* one. Immediately attachment is made under clause 45H, then the objector will have to prove that he is the real owner of the property.

MR. DEPUTY CHAIRMAN: In the case of the summary procedure, there is provision for a regular suit. But here that right is denied and the proceedings of the High Court become final.

SHRI K. S. HEGDE: That makes the matter worse, because at least in the other case the person has got the remedy of the regular trial after the summary enquiry. But here it is all decided in a summary manner. So your argument only strengthens my logic and my argument.

MR. DEPUTY CHAIRMAN: No, I don't agree with you.

SHRI K. S. HEGDE: He goes without any safeguard. First of all you have to prove that you have an interest on that date in the property. In a summary procedure, the courts decide one way or the other and then there is the right of suit. But here in this summary proceeding, you presume him not to be the owner of the property.

MR. DEPUTY CHAIRMAN: You know, Mr. Hegde, if there is no regular suit, the order in the claim case is final.

SHRI K. S. HEGDE: And here you have to give a corresponding regular suit. What I say is, you are now trying to presume that a certain property is *benami* standing in the name of somebody. Should there not be regular legislative safeguards before you finally come to that? Should there not be an enquiry as to which party has the right to the property? First of all the party goes to the court and he will have to prove that he has got the right to the property. That is a very important and fundametal concept so far as English jurisprudence is concerned. What you really do here is, you change the order of things. You merely say, if the High Court has reason to think that property is not his then attach the property and it is for the objector to prove that the property is his. To compare section 45H to the procedure under the Civil Procedure Code will be a tragedy.

It is just the reverse of what is being done so far as the provisions in the Civil Procedure Code are concerned. Now, what is more, you come to the question of the directors. What is meant by the directors? In the Mitra Committee Report (in paragraph 61, page 33) they suggest a very salutary provision. They contemplate action against the directors at the time of the winding up and persons who have been directors for three

[Shri K. S. Hegde.]

years before the winding up proceedings This is what the report says: "We recommend that all persons who have at the time of the winding up order or at any time three years prior thereto been directors of a bank or company would be liable to examination by the court unless the court dispenses with such examination in the case of any of the directors" Now when we come to the provisions of the Bill concerned, the word used is merely directors I have tried to find out whether this word 'director' has been defined. In the Banking Companies Act there is no definition for the word 'director'. In the Company Law also there is no definition but it only says that 'director' includes the person who calls himself as a director That is so far as the definition of the word 'director' is concerned. I want certain elucidation from the hon. Minister. Does he mean the directors at the time of liquidation or does it also include all directors who have been directors during the past 30 years or 50 years?

SHRI V K DHAGE: It means all of them.

SHRI K S HEGDE: Am I right?

SHRI V K DHAGE: There is a last section added new

SHRI K S HEGDE: Yes, Sir, the last section added includes all directors. So, accepting that position we will proceed further. Now take a director who has been a director about 30 years back and who is dead and is hence unable to prove or disprove from his personal knowledge, his heirs, assigns and successors will be liable to pay the call money and any claims arising out of any contract that he may have entered into 30, 50 or, let us put it at the extreme, 100 years back Are you going to rake up this matter? Is it the way of finally or effectively dealing with the matter? Would you not even allow him to lie peacefully in the grave? I cannot understand and I can only express myself by saying that this piece of legislation is likely to be .....

MR. DEPUTY CHAIRMAN: It refers to past directors also, 45V "For the removal of doubts it is hereby declared that any reference in this Part to a director, manager, liquidator, officer or auditor of a banking company shall be construed as including a reference to any past or present director, manager, liquidator, officer or auditor of the banking company."

SHRI K. S. HEGDE: That was exactly the apprehension that was passing in my mind and that is why I referred to the Mitra Committee's Report. There is a very salutary provision in that Report It mentioned "the present directors and persons who have been directors three years prior to the winding up proceedings were held responsible" But on the other hand now you give a blank cheque and say, any person who has been a director at any time in the past I do not know whether the hon Minister has paused to realise what exactly the implication of this provision is Let us visualise a breach of contract taking place something like 30 or 40 years back Are you now going to enforce against his heirs when the man has died, when probably there would have been very good material for defence at the time if he had been alive? Are you now enforcing a claim or a call money which was called 50 years back? The Law of Limitation has got a meaning; the Law of Limitation pre-supposes that after the lapse of a particular point of time things become difficult of proof and there is no point in keeping alive this liability It is quite obvious that in the case of directors, probably a longer period of limitation is always necessary There is no quarrel over it but there should be some limit for that period You cannot take centuries into consideration now and go into the investigation of the matter. Now if that is going to happen who will accept the directorship? Supposing I am asked to accept director-

ship and I do so and today I have got proof to prove that there was no such contract entered by me for which the banking company can make any claim against me in case it is wound up. But as at present provided for in the Bill, after my death, some 50 years later, some liquidator may take a fancy for reopening the matter in which I was a director and say, "You have entered into a contract and there is something on record that you have entered into a contract as a result of which the bank failed." I really cannot appreciate this provision of there being no time limit and it is rather shocking to me how the law can provide for such a provision without limit and how it could be brought forward in this Bill. Obviously the persons who were in charge of drafting this Bill did not realise the legal implications of it.

AN HON. MEMBER: That was an amendment accepted by the hon. Minister.

SHRI K. S. HEGDE: He accepted it in a manner in which he ought not to accept it. Now in the Bill that was originally circulated that clause was not there and that is why I am asking about definition of 'director'. The mere acceptance of an amendment in this form does not make the Bill sacrosanct. The Mitra Committee Report gave very good reasons and said that responsibility must be that of those directors who acted as such for three years before winding up. Very eminent persons have been directors and even very eminent lawyers in Madras have been directors of banks and even they have been surcharged for a particular transaction. Now if such great persons could commit errors, much lesser persons are bound to commit errors many times more. If you keep the period without any limit, many years later the records may be so manipulated so as to bring a particular director into trouble. That is why I say that there should be some reasonable time fixed for the purpose either for call money or for the enforcement by the banking company against any of its directors based on a contract. It is for this reason that I have given notice of certain amendments. Of course I am certainly for keeping the directors always under check and scrutiny by the Government and the Reserve Bank, as was suggested by my friends. I agree and I welcome the suggestion.

SHRI B. C. GHOSE: Nationalise them.

SHRI K. S. HEGDE: My friend Mr. Ghose says, "Why don't you welcome my suggestion of nationalisation?" This is not the occasion when I could cross swords with him on the question of nationalisation. I shall certainly take the earliest opportunity when the occasion arises to meet my friend's argument and try to convince him how by nationalisation of banks you certainly are not going to further the interests of the country and how it will make matters worse.

SHRI C. G. K. REDDY: How?

SHRI K. S. HEGDE: I shall not take the time of the House on this occasion to speak on that subject.

MR. DEPUTY CHAIRMAN: It may be on some other occasion.

SHRI K. S. HEGDE: I shall certainly meet your argument on some other occasion when we will be in good company.

SHRI V. K. DHAGE: There are two sides to the picture, as to how the banks are to be managed.

SHRI K. S. HEGDE: My friend seems to argue in a circle. He is on one point; I am on another. There is no question of nationalisation now.

So if the Government thinks on the same lines as I do then a provision like this can never be there and it is a harmful provision.

One other aspect that I would like to place before the House is the association of the Reserve Bank in the

[Shri K S Hegde.]

matter of liquidation It is true, Sir, and it has been very aptly said in the Mitra Committee Report that the Reserve Bank "must cherish the sound banks, nurse such banks and bury the dead banks". I am not quarrelling with the position that a Central Bank will always have some kind of connection with every one of the banks at all stages of its development and also at the stage of its extinction but the past history of the Reserve Bank does not encourage me very much or make me enthuse over the matter The Reserve Bank has turned out to be yet another commercial bank forgetting the important responsibilities that we bestowed on it through the Reserve Bank Act. The founders of the Reserve Bank visualized a very big future for the Indian banking through the instrumentality of the Reserve Bank They thought they were introducing in the land an institution which would be able to serve the industrial needs of the country and also the rural requirements What really has happened is that the Reserve Bank has developed a Wall Street mentality. It never knows any other economic theory except that it should function like the commercial banks of England. The directors are there more for their position and not for the time they give to the improvement of the Bank. Worse still, the Reserve Bank has developed a tradition under which it gives a very step-motherly treatment to the smaller banks and almost ignores the needs of the rural people As far as these are concerned, we will have another occasion when the Bill to amend certain provisions of the Reserve Bank Act comes up before the House For the present, I must enter a caveat against the way in which the Reserve Bank has been functioning in rehabilitating the smaller banks or sustaining them As I said, previously, it (the Reserve Bank) had developed a commercial bank mentality It invariably examines the whole thing from the point of view of a big bank and not from the point of view of a small bank Whenever there is any difficulty in a smaller bank, it goes with a big stick I am afraid that the closer association of the Reserve Bank with the liquidation proceedings will give a greater impetus to liquidation proceedings, more and more banks may be liquidated. And it is for the future historian to record these events.

The Reserve Bank has got a feeling that the small bank must be liquidated at the earliest possible opportunity. I feel that the power of inspection and the power to ask for submission of returns, as given to the Reserve Bank under the Act of 1949, has not been applied in the manner in which the legislators intended it to apply. It is merely a question of 'do or die' in so far as the smaller banks are concerned Instead of being helpful in the matter of winding-up proceedings, the Reserve Bank might go on encouraging smaller banking units wind up, consequently. As my hon friend Mr Kishen Chand pointed out, this might mean not only the rumination of the depositors and the shareholders but might mean the rumination of the small scale industries and to some extent of people living in the rural areas.

I am not denying that it might be necessary to intimately associate the Reserve Bank in the winding-up proceedings, but at the same time the Reserve Bank must be persuaded to take a realistic view or, if I may say so, a rural bias or a patronising attitude towards rural banking I do not agree with Mr. Kishen Chand when he says that we should not have more and more of the small banks and that instead we must have some few banks, ten or twelve. No In a big country like India, where we have to cater to a large village population, where we have to cater to the needs of agriculture and of small-scale industry, petty shop-keepers the smaller banks' existence is absolutely necessary. Any amount of branch banking will not serve the same need as the co-existence of the smaller

bank. So, it is necessary that the Reserve Bank must give the necessary impetus and assist smaller banks and guide them on proper lines and if there are any difficulties to nurse them when they are sick. I have given notice of a number of amendments. I shall deal with them when they come up for discussion but as I said in the beginning, while I welcome the measure in part, I am very unhappy about certain aspects of the Bill and it is not too late for the hon. Minister to incorporate them in the Bill and give a correct lead for the economic development of the country. I am afraid that in certain respects this measure instead of helping our economic development, may retard future progress and serve as an undesirable check on the development of banking.

SHRI S. N. MAZUMDAR (West Bengal): Mr. Deputy Chairman, I shall make only a few observations on this Bill and I shall not take much time of the House at the fag end of the day.

Firstly, Sir, I shall take up the question which was referred to by my friend Mr. Ghose, namely, the promulgation of this Bill as an Ordinance. Sir, we have not objected to the promulgation of Ordinances when they are in the interests of the people and an emergency arose in the period when Parliament was in recess. In fact we have actually welcomed the promulgation of the Ordinance regarding providing compensation to the labourers for lay-off and retrenchment and also the promulgation of the Ordinance regarding the Rehabilitation Finance Administration, though the last Ordinance could have been avoided if the business of both the Houses in the last session had been regulated in a proper manner. However, Sir, in this connection I would submit that I have not been satisfied by what my hon. friend, the Deputy Minister for Finance, has said, and nor I have been satisfied by what has been said here regarding the emergency. The emergency which arose long ago in 1949 and took its toll is now more or less a thing of the past. Here in the Statement of Objects and Reasons it is said that "the publication of the Committee's report has evoked hopes in the minds of a large number of distressed depositors that implementation would soon follow." About that point, Sir, as to how the hopes raised in the minds of the distressed depositors are going to be satisfied, I have not been able to obtain any clarification from my friend. Secondly, Sir, it is mentioned here that it was not possible to implement some of the administrative measures without amendment of the Act. But we do not know what use has been made of this Ordinance in the intervening period.

Now, Sir, I shall come to another point. It has been rightly pointed out by my friend, Mr. Ghose, that this is more or less a *post mortem* examination. Actually during the post-war period and post-partition period a large number of banks have failed in Bengal. They closed their doors and thereby they have put so many people to hardship. The majority of the people who were depositors of these banks were the people belonging to the lower middle class. I know, Sir, that in my home town itself the banks, during the post-war period and post-partition period, started closing their doors in as quick a succession as they opened their branches there at the time of the war. And that caused a great deal of hardship to a lot of people. Now it has been rightly pointed out that in 1949 Government promulgated an Ordinance in this connection and after that an Act was passed in 1950. But now it is 1953. Now after so many years the Government is coming forward with this amending Bill. So this is another manifestation of the habit of the Government of tinkering with measures which really provide some relief to the people. However, Sir, though I criticise the Government for this reason, still I support the Bill generally, because however inadequate

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and however belated it may be, it tries to give at least some relief to the people who are really affected by the failure of banks. But the main question is how much relief will be provided to those people who have already suffered due to the closing of these banks. From the report of the Committee which has been supplied to us and from the Statement of Objects and Reasons, we find that only a small sum could be given to the depositors after the liquidation proceedings and in the meantime on account of their hardship, many of these people had been ruined. I do not know much of this banking business. I do not claim to be an expert in this, but I am speaking from the point of view of the poor people of the lower middle class and the small businessmen who are affected by this state of affairs. It is admitted that the publication of the Committee's report had evoked hopes in the minds of the people affected; I want to know what will be done to justify those hopes. These people are not concerned with the legal aspects of the thing. They think that they can get some immediate redress, can get back at least some portion of the money which they had lost. Is there any possibility of their anticipations being justified? Will it be possible to provide some relief to these people? I am not quarelling about the definitions or the form or the expressions used in this measure. I am only concerned with giving some relief to those people who have suffered on account of the closure of the banks. Secondly, what is going to be done about the future? More attention should be given to the question of preventing failures and preventing the same things happening again. Many of the speakers who preceded me discussed the various aspects of this question but unfortunately I find that many of them have not been able to grasp the real position in a capitalist economy. It is the law of capitalism that the big concerns will swallow the smaller ones; whether it is the field of banking or industry, the same thing will happen. My friend, Mr. Parikh, who represents the views of big business in a manner justified that. He said—I have forgotten the amount he mentioned—that Banks having capital of less than a certain sum have no justification to exist. Actually, the process of development of the capitalist economy will swallow them up. I am not going to discuss all these details. I only want that in a State that claims to be Welfare State and in a controlled economy something should be done to mitigate the hardships of these poor people, the lower middle classes who have been depositors in these banks and also the small business people who were dependent upon these banks. Some steps should be taken to see that this sort of calamity of banks closing their doors all of a sudden like an epidemic is prevented.

I shall come to another point. Some criticism has been made about the Reserve Bank. I shall not dilate on that but I have also to express this opinion that actually the complaint that the Reserve Bank has not come to the help of the various smaller banks in times of necessity is justified. We shall be, I think, discussing something about it in connection with the Reserve Bank Amending Act. So I shall not take much time of the House in this connection. Now my friend Mr.....

MR. DEPUTY CHAIRMAN: Are you finishing your speech, Mr. Mazumdar?

SHRI S. N. MAZUMDAR: Yes, in a few minutes. I may continue tomorrow.

MR DEPUTY CHAIRMAN: Do you want some more time?

SHRI S. N. MAZUMDAR: I am concluding in five minutes.

MR. DEPUTY CHAIRMAN: You may continue tomorrow. There is a Message from the House of the People. The Secretary will read it.