within six months from that date, that is, before the 23rd March 1954. In fact, but for the necessity to re-delimit constituencies in that State, the general elections could have taken place much earlier. The Delimitation Commission has finished its work in these two States and it is understood that the electoral rolls for the new constituencies are also printed up and ready.

In these circumstances, Government have decided that the general elections in both these States will have to be conducted on the basis of the existing election law. It was hoped that it would be possible to get the Representation of the People (Amendment) Bill passed by both Houses of Parliament in sufficient time to run the general elections on the basis of the amended law; but unfortunately, this hope has not materialised. The elections will accordingly be held on the basis of the existing law and all necessary steps are being taken by the Election Commission and the State authorities, so that the elections in both the States are over by about the first week of March 1954.

SHRI M. MANJURAN (Travancore-Cochin): On a point of information, may I know why the general elections in Travancore-Cochin should be conducted before the 24th March 1954?

SHRI C. C. BISWAS: Under the Constitution there should not be an interval of more than six months between one session and another session of the Assembly.

PROF. G. RANGA (Andhra): In view of the fact that Government has proposed to go ahead with the elections and in view of the information given by my hon. friend that all other things are being kept ready, is it necessary then for the Government *to* continue their earlier notification to keep their interim administration till March? Can they not possibly have the elections much earlier and thus put an end to this interim administration?

SHRI C. C. BISWAS: Steps are already being taken in order to start all the preliminary operations. I have given only an estimate that it is expected to finish the elections by the first week of March, but it may be earlier.

PROF. G. RANGA: Can they not do it earlier?

MR. CHAIRMAN: He has said that he has given only the latest date.

THE BANKING COMPANIES (AMENDMENT) BILL, 1953—continued

SHRI S. N. MAZUMDAR (West Bengal): Mr. Chairman, yesterday I was on the point of referring to some apprehensions expressed by my hon. friends, Mr. Parikh, Mr. Hegde and to some extent by Mr. Ghose that honest people would be unwilling to accept directorships after the passing of this measure. I have already said that I do not claim to be an expert in legal or banking affairs, but as a layman it seems to me that these apprehensions are not well-founded, because I do not think any honest director has got anything to be afraid of by the provisions of this Bill for two reasons: First, from experience we have been seeing that on many occasions the industrialists were complaining, for example, that due to the rise in labour costs, it would become impossible to continue in industry. We have seen that they have, not discontinued it but have gone on continuing in industry. Secondly from our experience about how the directors and gentlemen of that class fare under the Congress Government, I can assure them that they need not have any apprehensions on this matter. Thirdly, the High Court which has been empowered in this connection, I do not think, will take any such revolutionary step that the honest directors need fear, as my hon. friends envisage.

Next, Sir, I shall come to some other points. As regards the failure of the banks, particularly in West Bengal, from what I know as a layman, it was due to three causes. Undoubtedly the most important reason was the unsound practices of the management even amounting to betrayal of the trust placed upon them by the depositors. The other was lack of help from the Reserve Bank in time. This was also an important factor. This was mentioned by my hon. friends earlier and I also add my voice. Lastly, there was the category of banks whose assets were mostly in Pakistan. In the conditions of the post-partition period, this led to serious difficulties. This Bill, as I understand it, seeks to deal mainly with the cases of the first category or with the conditions arising out of the first category. But what this Government contemplates to do in the future to help the small banks in times of need, about that a question has been asked from all sides of the House. Big banks rarely entertain a small investment proposal. The small traders and businessmen are not even known to the big banks and they don't give any help in time to them. Now we know in our economy the small banks have yet a role to play. The Rural Banking Enquiry Committee report also admitted that. It is no use saying that banks which do not have a capital above a certain limit have no justification to exist. There is no use saying that. How is the Government going to help the smaller banks and thereby help the smaller people in the villages and the small depositors dependent on these banks? What concrete schemes the Government is going to evolve in this matter we must know.

Now, as regards the Reserve Bank, many complaints have been made and these are also justified to a great extent. Now the Reserve Bank constituted as it is, I think cannot be very sympathetic to the smaller people but I am not going into that point immediately now. The question of the financial structure of the country was also raised but as regards that, it is my submission that unless a radical transformation is carried out in the financial structure, actually no radical measure to help these smaller people can be evolved. Some friends of mine yesterday raised the point of nationalisation of banks. I think if nationalisation of banks and other things are really meant to help the people, then certain pre-conditions must be fulfilled. In short, that pre-condition is, as I have said just now, a radical transformation of the economic structure. Coming to the question of banks, when there are foreign exchange banks, banks dominated by British capital in our country—some 15 to 20 and they are —in recent years—taking more and more interest in the internal trade, if these banks are left intact, what is the use of nationalisation? What is the use of that nationalisation? That I shall deal with later. In order to really carry out these things, it is necessary to nationalise and confiscate British capital, to abolish landlordism and zamindaris without compensation so that the peasants in the villages will be able to retain their earnings. Only on that basis any sound scheme of rural credit or any sound scheme of extending the banking institutions to the rural areas can be helpful; otherwise it will be a complete mockery or travesty of things. Secondly, we know how nationalisation is carried out under the Congress Government. The Air Corporation came into being only when the air bosses were no longer able to continue their business and then the Government stepped in. Assuming for granted that Government decides upon the step to nationalise the banks, what will happen? The bosses of the big five Indian banks most probably will be nominated as directors of that nationalised institution and they will not work the institution in the interest of the people, smaller people.

As regards the provisions of this Bill, as I have said, I don't know much of the banking business. Still, eon ling from West Bengal where a large number of banks failed resulting in serious hardship to a large

[Shri S. N. Mazumdar.]

number of people, I have come to know something about that. So I think it is my duty to mention it. Formerly, as far as my information goes, it was obligatory upon the liquidator to call meetings of creditors and contributors within a month of the winding up order for the sake of appointing a Committee of Inspection along with the liquidator. This was a very valuable right for the depositors but the Banking Companies Act of 1949 did away with this valuable right and the Court was given powers to dispense with the meetings and proceed with the appointment of a Committee. But this has taken away much of the confidence of the depositors. The Government has not paid any attention to this. If this was taken up and incorporated in the Bill, I think the poor depositors who have suffered much and who have come to be very apprehensive of this sort of affairs would have got some confidence. Now as regards the present liquidators, much has been said by my friend the Deputy Minister who piloted the Bill and also much has been said in the Report of the Committee as to how the liquidators in the majority of the cases at least, worked to entrench themselves in their own interests so that the liquidation proceedings became dilatory and expensive. Now the Reserve Bank is going to institute an enquiry into the affairs. My suggestion is that it should be seen that the present liquidators as far as possible, if not completely, should be excluded from continuing in the interest of that enquiry. Another fact was mentioned yesterday perhaps by Mr. Gulsher Ahmed that the Banking Companies Act of 1950 *i.e."* the Act which was passed to replace the Ordinance of 1949, provided that the High Courts should frame rules for the speedy disposal of the liquidation proceedings but as far as my information goes, the Calcutta High Court has not framed any rules. I don't understand how this could happen particularly in West Bengal and Calcutta where the situation was very serious. Actually in the report I find my suggestion to exclude the possibility of the present liquidators continuing.

SHRI GOVINDA REDDY (Mysore): They automatically cease with the enforcement of this.

SHRI S. N. MAZUMDAR: Now I shall come to the end of my speech. I shall repeat my appeal which I made yesterday to my friend the hon. Deputy Minister to see what actual relief can be given to those unfortunate people who have lost their money. Among these there are many helpless widows and there are many retired employees who practically deposited their life's savings in the banks and the closing of the doors of these banks have practically made them paupers. Hopes have been evoked in their minds but the hopes are not as I said yesterday, that some legal steps are being taken or some steps are being taken to expedite the liquidation proceedings. The hopes that have been evoked in their minds are that they may be able to get back some portion of their money, whether through the liquidation proceedings or by other means. As a layman I shall request the Government to consider this point whether any steps will be taken to provide some relief to these people. Because these people are not the victims of their own fault, they are the victims ^f the betrayal of their trust by the delinquent directors, they are the victims of mismanagement and callousness and negligence of the Government to come forward in time with measures to prevent this state of affairs. They are also to some extent victims of the negligence of the Reserve Bank of India. Because in previous legislations the Reserve Bank was empowered to see that undesirable practice as regards the opening of branches or as regards the opening of new banks cannot continue. But it practically did nothing in that matter. So I shall not take much of your time or of the House but before I resume my seat I shall make another appeal that these

people who have been rendered practically destitute due to the closure of the banks should be given some relief. I shall not quibble about the legal expression or form in which that relief is to be given but if really the Government wants to do some justice to them after so many years and after neglecting the whole thing callously for so many years, then this should be seriously done.

SHRI H. P. SAKSENA (Uttar Pradesh) : Sir, I hail the Banking Companies (Amendment) Bill, 1953, as the guarantor of the security of the small savings of the poor people who happen to be depositing, perhaps one in a thousand, their money in banks. At the time of making these deposits, these poor people, uneducated men in most cases, cannot differentiate between a good bank, a sound bank and a tottering bank. Banks, Sir, havp been in existence for long and shall remain in existence, in spite of crises that sometimes overtake banking institutions, as it happened four or five years back.

Now I have to draw the attention of this House to a very painful aspect of the manner in which we are proceeding with this legislation. The first Banking Companies Act was passed in 1949. That Act was amended in 1950. It is again now being amended in 1953. This justifies the criticism which our friends of the Opposition generally level against the Government that Government always proceeds with piecemeal legislation. And as I am a jealous watchdog of the reputation of the Government which I call my Government, I would not like this criticism and objection to prove true. Therefore, I would again urge upon the hon. Deputy Minister for Finance who holds all the authority of the Finance Minister, the great and illustrious Finance Minister of the Government of India, to see that at least so far as his department is concerned, this piecemeal legislation will be the last on the list.

Sir, as I said, this Bill guarantees the savings of the poor man. While going through this Bill, I found that it rings with one supreme importance, that of safeguarding the interests of the depositor and that is why I started by saying that this Bill is the guarantor of the security of the deposits, for by one means or the other it safeguards the depositor's interests against the loot of some of those capitalist friends who start banks and then at some period of time close the doors and the depositors suffer. My friends Shri Ghose and also Shri Mazumdar have drawn the attention of Government to that aspect. I am not so much concerned with the disaster that befell the depositors of West Bengal in the past. But I must see that such disasters do not happen in future and I am sure that the powers given to the High Courts and the appointment of official liquidators by the High Courts will go a long way towards guaranteeing the interests of the depositors.

One little thing that I could not understand was section 43A where it is stated:

> "there shall be paid, to every depositor in the savings bank ac count of the banking company, a sum of ....." etc., etc.

I cannot understand why the savings bank depositors are to be given priority and special preference or concession over other depositors. This passes my comprehension. To me, Sir, deposits of all types of depositors should be safeguarded. Why savings bank depositors alone? So I would like the hon. Deputy Minister for Finance to throw some light on this point when he gives his reply.

I find that after a lapse or a sleep of about 20 years, that is to say, from the time of its start, the Reserve Bank is also to be brought into this picture. My impression of the Reserve Bank was that it was a bank reserved for some reserved type of people, to do some reserved tasks. When this Reserve Bank was established in India

[Shri H. P. Saksena.] we thought that it would take care of the finances of the commonest and the poorest people also. But nothing of that kind has happened. Fortunately, Sir, we have as our Finance Minister today one of the best Governors of the Reserve Bank of India and therefore, we hope this Reserve Bank is to be brought into service more and more now.

I am reminded, Sir, of the manner in which banks about 25 or 30 years back were allowed to fail. That was a very sad and unfortunate period and I remember the stand taken by the late Lala Harkishen Lai when he openly chargedlthe European-owned banks of India of having brought about the failure of the banks owned by him and started by him. I too was a sufferer. I have been a suf ferer of bank failures myself and I know what it is to lose the money which in all honesty and with the best of prospects and hopes one sets apart and deposits in a bank. But to the credit of the banks administered by the late Lala Harkishen Lai, I must inform the House that I received full sixteen annas in the rupee .....

SHRI GOVINDA REDDY: Congratulations.

SHRI H. P. SAKSENA: .....of my deposits, plus interest at 6 per cent. Happily today, there is no jealousy and there is no competition from European-owned banks. All the banks are at present being owned by our own men and I hope that the banks will come to be looked upon as a safe place for the deposit of money.

It was a very sad state of affairs that we learnt from the sponsor of the Bill that most of the money realised by the liquidators in West Bengal wa$_s$ eaten away by their commissions and other administrative charges.

3 P.M.

I am sure under the plan which this Bill envisages there will be no difficulty on that score and that this Bill will start a new era in the banking companies of the country.

In section 45G it is stated that directors and auditors can be brought before a court for public examination. So I would like that if after examination the High Court considers the conduct and the character of any one of these directors or auditors to be suspicious, a directive be sent that they should subsequently not be appointed in any other bank as a director or as an auditor, whatever the case may be. Now this direction, if given effect to, will save other banks from those directors and auditors whose conduct is not above reproach. Something about it is mentioned on page 7, section 45G (9) (b).

A very useful clause is found in the Bill in which it is said that it will be the duty of directors and officers of banking companies to assist in the realisation of property. Otherwise it would be very difficult for the official liquidator to discharge his duties faithfully and properly to realise the heavy debts outstanding against the assets of the banks. Unless that active co-operation and assistance is offered by the previous management, it shall not be possible to realise the outstandings.

I say, Sir, that this Bill will not only improve the prospects of the safety of the depositors but it will also go towards ensuring to us a sound economic policy and I support it.

MR. CHAIRMAN: I would like you to be brief. We have had a long discussion.

SYED MAZHAR IMAM (Bihar):

جناب : (بہار) سید مظہر امام

چیرمین صاحب - میں اس وقت
آپکا زیادہ وقت اس بل کے متعلق
نہیں لینا چاہتا ہوں - لیکن چند
باتیں سجیشن (suggestion) کے طور

کہ نہیں لڑی ؟ ہوائی جہاز زیادہ امپارٹینٹ ہیں تو میں حکومت کے سامنے یہ بتلانے کو تیار ہ کہ اس وقت ملک میں جو بینکنگ سسٹم چل رہا ہے وہ عام جنتا کے لئے نقصان دہ ہے -

آج صورت یہ ہے کہ جتنے بھی بینک اس ملک میں ہیں وہ بڑے بڑے سرمایہ داروں کے ہاتھوں میں ہیں - ان بینکوں میں عام جنتا جو اپنا پیسہ روپیہ جمع کرتی ہے اسکو یہ بڑے سرمایہ دار یہ بڑے کیپٹلسٹ اپنے ہی بزنس (business) میں لگاتے ہیں - اگر ان کو اس بزنس سے کچھ فائدہ ہو گیا تو عام جنتا کو بھی کچھ فائدہ ہو گیا اور اگر نہیں فائدہ ہوا تو بینک کو دیوالیہ ڈیکلیر (declare) کرکے بیٹھ گئے - یہی صورت آج ہمارے ملک میں چل رہی ہے -

اس کے ساتھ ساتھ آپ یہ بھی دیکھیں کہ بونس(bonus) کیلئے جب بھی بینکوں کے ذریعہ کسی کو قرض دیا جاتا ہے تو اکثر ڈائرکٹرس (Directors) اور مینیجنگ ڈائرکٹرس (Managing Directors) کے رشتہداروں کو ہی دیا جاتا ہے - ان کے جو خاص لوگ ہوتے ہیں انکو ہی بزنس کیلئے روپیہ ایڈوانس (advance) کیا جاتا ہے اور عام جنتا کو اس سے کوئی فائدہ نہیں ہوتا ہے - اس طرح سے عام جنتا کا روپیہ لیکر یہ سرمایہدار اپنا بزنس کرتے ہیں - اب آپ کی خدمت میں رکھنا چاہتا ہوں - قبل اس کے کہ میں کچھ کہوں میں حکومت کو اس بات کے لئے مبارکباد دینا چاہتا ہوں کہ وہ اس بل میں جو امنڈمنٹ (amendment) لائی ہے اس سے حقیقت میں ڈپازیٹروں (depositors) کو فائدہ پہونچیگا - اور یہ اُمید کی جاتی ہے کہ اس ایکٹ کے پاس ہو جانے کے بعد ان لوگوں کا کچھ روپیہ وصول ہو سکیگا جو کہ اس وقت وصول نہیں ہو رہا ہے - اس لئے میں اس بل کا خیر مقدم کرتا ہوں -

مگر میں حکومت سے کہنا چاہتا ہوں کہ سب سے پہلی چیز یہ دیکھنے کی ہے کہ ہمارے ملک میں جو بینکنگ سسٹم (banking system)ہے وہ ایک کیپٹلسٹ سسٹم (capitalist system) ہے - اس لئے حکومت کو اس بات پر دھیان دینا چاہیئے کہ یہ سسٹم جو اس وقت ملک میں چل رہا ہے وہ عام جنتا کیلئے مفید ہے یا نہیں - میرا یہ کہنا ہے کہ جب حکومت ملک میں زمینداری ابالیشن (abolition) کر رہی ہے- سڑکوں پر موٹر چلانے کا نیشنلائیز (nationalize) کر رہی ہے- ہوائی جہاز کو نیشنلائیز کر رہی ہے تو اس سے زیادہ امپارٹینٹ (important) چیز جو ہے یعنی اس ملک میں جو بینکنگ سسٹم چل رہا ہے اسکو کیوں نہیں نیشنلائیز کرتی ہے - اگر حکومت اس نتیجے پر پہنچتی ہے

[Syed Mazhar Imam.]

روپیہ اطمینان کے ساتھ اس میں لگا سکیگی - اس سے روپیہ بھی زیادہ آئیگا اور جو چھوٹے بزنس کرنے والے ہیں جیسے کاٹیج انڈسٹریز (cottage industries) کے کام کرنے والے ہیں انکو بھی روپیہ ایڈوانس کرنے میں سہولیت ہو جائیگی - اس وقت جو کیپٹلسٹ بینکنگ سسٹم (capitalist banking system) ہے اس سے عام جنتا کو کوئی فائدہ نہیں ہوتا - زیادہ تر روپیہ کیپٹلسٹوں کے پاس ہی رہتا ہے جو اپنا ہی فائدہ سوچتے ہیں - اگر حکومت اس کو اپنے ہاتھ میں کرلیگی تو حکومت کے پاس روپیہ بھی رہیگا اور وہ عام جنتا کو لون (loan) آسانی کے ساتھ ایڈوانس کرسکیگی - اس لئے میں آپ سے یہ عرض کرنا چاہتا ہوں کہ آپ اس طرح کا کوئی قانون لائیں جس سے ہمارے ملک میں بینک نیشنلائیز ہو جائے -

دوسری چیز میں یہ کہنا چاہتا ہوں کہ اس وقت ملک میں جو شیڈولڈ (scheduled) اور نان شیڈولڈ بینک (non-scheduled banks) ہیں انکو فوراً ہٹا دیا جانا چاہیئے - جو اصول شیڈولڈ بینکوں کے لئے ہے اس اصول پر نان شیڈولڈ بینک نہیں آتے ہیں - اس لئے حکومت کو ان کے لائسینس (licences) لے لینے چاہئیں اور انکو قائم نہیں رہنے دینا چاہیئے - اس وقت ہمارے ملک میں کئی نان

ہیں - اس لئے جناب والا ، میں نے پچھلی دفعہ بجٹ سیشن (Budget Session) میں عرض کیا تھا کہ اس طرح کا امنڈنگ ایکٹ (Amending Act) لایا جانا چاہیئے جس سے جو بینکنگ سسٹم اس وقت ہمارے ملک میں رائج ہے اسکو بدلا جا سکے - میں پھر حکومت سے درخواست کرونگا کہ وہ اس طرح کے قانون کو لانے کیلئے آیندہ پھر سوچے اور اس بات کا خیال رکھے کہ جنتی پرسنل لائیبلیٹیز (personal liabilities) ہیں وہ سب ڈائرکٹرس اور مینیجنگ ڈائرکٹرس پر ہونی چاہئیں- میں یہ چاہتا ہوں کہ جب کبھی کوئی بینک دیوالیہ ہو جائے تو ڈیپازیٹرس کو ڈائرکٹروں اور مینیجنگ ڈائرکٹروں کی پراپرٹی (property) سے اپنا منی (money) ریلائیز (realise) کرنے کا حق ہونا چاہئے- یہ سچیشن میں حکومت کے سامنے رکھنا چاہتا ہوں اور عرض کرتا ہوں کہ وہ اس پر غور کرے -

میں نے پہلے عرض کیا تھا کہ حکومت کو ملک میں بینکنگ سسٹم کو نیشنلائیز کر دینا چاہئے - اس سے پہلا فائدا یہ ہوگا کہ سرمایہدار اس سے فائدہ نہ اٹھانے پائینگے - اور دوسرا فائدہ یہ ہوگا کہ سارے ملک میں جگہ جگہ بینکوں کی برانچیں ہونے سے عام جنتا کو بہت فائدہ ہوگا اور وہ اپنا

کےساتھ میں اس امنڈمینٹ بل کی تائید کرتا ہوں -

[For English translation, *see* Appendix VI, Annexure No. 112.]

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): I do not wish to take part in the debate except for the fact that I had *to* make two or three concrete suggestions.

At the outset I would like to congratulate Government for bringing in this legislation though this is incomplete. Though incomplete it is some effort to give some help to the poor depositors who have recently lost heavily in the failure of 180 banks in which 92 crores of rupees were involved and out of which nearly 30 crores have been lost.

To begin with, I feel, Sir, that this type of legislation coming before the Council of States is hardly of much use. It would be much better if the Council does not say anything on it because we are not allowed to bring in amendments and further more there is always a sort of rush for time and at that rate there is no point in making suggestions and even if made they are not likely to be incorporated in the legislation. I would therefore make an observation before I make two or three suggestions with regard to this legislation, to Government. In the matter of having even a Joint Select Committee there has been so much discussion in the other House. Instead of that, if in the Order of Business we were to have a Select Committee on a Bill—a sort of an informal Select Committee I would say—not after the introduction of the Bill in the House, but when Government contemplates any legislation, if Government puts a draft of that Bill *to both* Houses separately and asks such Members as are interested in that Bill to make their suggestions then the Government would be able to usefully incorporate those suggestions in the draft Bill that it introduces and the Members will have the satisfaction that they have been able to make some use of their presence

شیڈولڈ بینک فیل (fail) ہو چکے ہیں میں اپنے صوبہ بہار کےبارے میں کہہ سکتا ہوں کہ وہاں چند بینک فیل ہو چکےہیں - جن لوگوں کا روپیہ ان بینکوں میں جمع تھا ان کے لئے بھوکے مرنے کے سوا اور کوئی چارہ نہیں ہے - اکثر یہ دیکھا گیا ہے کہ ڈائریکٹروں کو اس بات کا پتہ رہتا ہے کہ یہ بینک فیل ہونے والا ہے مگر وہ عام پبلک کو اس کی کچھ بھی خبر نہیں دیتے ہیں - وہ ڈیپازیٹرس سے شام تک روپیہ لیتے رہتے ہیں اور بعد کو یہ ڈیکلیر کرتے ہیں کہ بینک فیل ہو رہا ہے - اس طرح سے ڈائرکٹرس اور مینیجنگ ڈائرکٹرس اپنے فائدے کے لئے عام پبلک کو کچھ نہیں بتلاتے ہیں اور ان سے روپیہ لیتے رہتے ہیں - ادھر جو لوگ روپیہ جمع کرتے ہیں ان کی حالت بہت خراب ہو جاتی ہے کیونکہ بعد کو ان کو کچھ بھی نہیں ملتا - ڈائرکٹر اور مینیجنگ ڈائرکٹر ہی اپنا فائدہ کر لیتے ہیں - اس لئے میں آنریبل منسٹر صاحب سے عرض کرنا چاہتا ہوں کہ اس بات کی طوف وہ غور کریں کہ ڈیپازیٹرس کے منی کے لئے ڈائرکٹرس اور مینیجنگ ڈائرکٹرس کو ریسپانسیبل (responsible) بنایا جائے -

میں پھر آنریبل منسٹر صاحب سے عرض کرونگا کہ آپ بنکنگ سسٹم کو نیشنلائیز کیجئے اور جنتا کو اس مصیبت سے نجات دلائیے - ان الفاظ

[Dr. Shrimati Seeta Parmanand.]

here. Under the present method as far as the Council of States is concerned, I think it is a futile waste of time as we are not able to make any suggestions which will be incorporated. When the Opposition makes suggestions or moves amendments they are usually thrown out and it is also for want of time because the Bill has already been passed by the other House and there is no time to return the Bill to the other House and the Members of our Party also cannot for shortness of time adequately deal with the Bill by making suggestions and there is also the Party Whip under which we cannot bring any amendments. I do hope, Sir, that the Government will consider the suggestion for a preliminary select committee.

Now I come to the suggestions with regard to this Bill. While giving this relief to depositors, Government should have seen that certain other precautions were taken so that the directors do not misuse the powers they have. One thing that should have been done, Sir, was to have given the power to the Reserve Bank to remove any director who is indirectly or directly connected with any corrupt practice in his public affairs. I would in this connection mention, Sir, that a case came before the House in connection with gold smuggling in which two directors of the Bank of India and the Central Bank were involved, and when Government was asked why they were not removed, Government was not able to reply whether the Reserve Bank had that power or not. Also, Sir, as a safeguard against the directors misusing the special knowledge they have of the likely failure of a bank, it would have been a good thing if Government had made it compulsory that there would be one Government director on every bank and that a certain percentage of the capital, say 5 per cent, or 10 per cent, to begin with, would be Government capital. This would indirectly not only give the training to Government personnel in banking business but would be a first step in the direction of nationalisation of banks in course of time, and I think, Sir, the new Economic Service which Government is contemplating to institute should be able to supply the personnel for these directors for the banks.

I would also like to suggest one or two things with regard to the winding-up of banks because, Sir, it has been said that the winding-up cost is often very heavy and leaves very little to be returned to the depositors. From thi$_s$ point of view, if it had been made compulsory that with regard to small banks the loans would not be given outside the State in which the bank is situate, it would not be necessary to serve processes and take legal action in different States, and if a certain percentage also had been laid down for winding-up costs, it would have been a good direction to the liquidators to keep the costs down. Government have already given relief to the depositors who have deposited Rs. 100/- only that that will be a first charge on the bank's assets. They should also see that the interest paid to the directors or the interest recovered from the banks for loans paid by them bears a certain proportion to the interest that they pay to the depositors. The present interest which is very low should be at least raised to 2 per cent, in their cases and if possible, in order to encourage the lower middle class people to save something and put it in the bank, such people whose deposits are not above a certain sum can be given preferential rate of interest.

Sir, as the time is limited, I think I should not go into the details about the small banks in their relation to the other banks and I would request the Government again t$_0$ consider the proposal of appointing a select committee before introducing a Bill where suggestions could be given by Members, so that the Council of States would be able to contribute to the type of legislation before us. Thank you, Sir.

[MR. DEPUTY CHAIRMAN *in* the *Chair."*\

THE DEPUTY MINISTER FOK 1 FINANCE (SHRI A. C. GUHA): Mr. Deputy Chairman, I am glad this Bill 1 has received a welcome reception from the Members of the House. In all 12 Members has>t.participated in the discussion, and I can say there is none who is opposed to the Bill as such. The main principles of the Bill have all been endorsed by the speak- , *ers* who have participated so far and I j hope other Members also will support the main principles of the Bill. Naturally there would be some difference of opinion about details. Some have suggested that the Bill has not gone far enough and that more stringent provisions should have been made. Some have suggested that there are some provisions which appear to them Draconic and should not have been placed on the Statute Book. Anyhow, Sir, I think Government may feel satisfied that the main provisions of the Bill have been supported by the Members of this Council. Before proceeding to the relevant clauses of the Bill, I think I should deal with some extraneous matters introduced in the discussion of this Bill. The first was the question of Ordinance. Members have asked why no action has been taken yet. I feel it is a very pertinent question and the Members have every right to put that question to the Government. I shall only remind hon. Members that under the Ordinance, the appointment of the court liquidator is vested in the High Court. That is the only operative portion of the Ordinance which Members have mentioned should have been implemented by now and without implementing that no other operative portions of the Bill or of the Ordinance would have any effect. I can only say that I had some discussion with the Chief Justice of the High Court of Calcutta, because this matter concerns the Calcutta High Court only and not any other High Court. I can appreciate the anxiety of Member$_s$ of Parliament about the appointment of the court liquidator and about putting this Ordinance into effect, but I would also like the hon Members to realise that the Higtv Court may also have some difficul ties. Firstly, the High Court was then enjoying a long vacation. It opened, I think, on the 23rd November.

SHRI B. C. GHOSE (West Bengal): That was known when the Ordinance was issued.

SHRI A. C. GUHA: But some preliminary steps had to be taken and it was expected that it might be possible for the High Court to appoint the court liquidator, but anyhow it has not been possible for the High Court to do that. I can assure hon. Members that the Chief Justice was very serious about the appointment of the court liquidator and it was at his instance that we did not feel satisfied only with the recommendation of the Banking Liquidation Proceedings Enquiry Committee that the appointment of a court liquidator might simply be an administrative measure. The Chief Justice himself pointed out that simply an administrative measure would not solve the problem. The court liquidator has to be appointed and will have to be vested with some authority so that pending cases of liquidation might be automatically transferred to him. So I am convinced that the Chief Justice is very serious about this, but he seems to have some difficulties. Anyhow it now vests in the Government and I think when the Bill is passed and placed on the Statute Book, the Central Government will take early step for the appointment of the court liquidator. We are already in correspondence with the Government of West Bengal and the Calcutta High Court and I hope it may be possible for us to appoint the court liquidator very soon.

Some members have mentioned something about smaller banks. Mr. Bimal Ghose, Mr. Gupta, Mr. Parikh and I think lastly Mr. Mazumdar and many other Members have mentioned about the smaller banks and about the help that they are rendering to the smaller businessmen. I think

[Shri A. C. Guha.] it is not quite correct to say that there are no smaller banks now in , India, even in Bengal. Whether they are operating in a proper manner and whether they are rendering the help that is expected of them to the small business, is of course a different thing. But there are smaller banks. One may feel that these smaller banks have not been doing their duty properly of rendering help to the smaller businessmen. I think the hon. Members will recollect that Parliament passed an Act for the establishment of State Financial Corporations and the Central Government is taking every interest for their establishment. They are also ready to render some help to the State Governments for the establishment of such corporations. These corporations will be in a position to help the smaller industries and businessmen. ! Moreover, I hope Members also will I recollect that the Reserve Bank has advanced about Rs. 12 crores to co- 1 operative banks and I shall be com- | ing forward before the Council with j another amending Bill, amending the Reserve Bank Act whereby the Reserve Bank would be entitled to give medium-term loan for agricultural | purposes and also for cottage and j small scale industries. Then there | are also land mortgage banks and other co-operative banks which can cater to these smaller businesses whether agricultural or industrial. So it | would not be quite correct to say j that the Reserve Bank and the Gov- 1 ernment have not been taking any interest about the smaller businessmen. I can agree that the help or the attention so long given to this question may not be quite adequate, but we are always living in a world of imperfection. However much we proceed forward, we find that the horizon has receded and it is almost as far off as before. So we can only say that we must try to meet the exigencies and to render whatever help is possible for the Government to do.

Lastly, it is at the suggestion of the Reserve Bank that the Shroff Committee has been appointed and *it is* expected that the Shroff Committee also will look into the question of proper banking facilities being available to industries and business.

Then some friends have suggested amalgamation of smaller banks and Shri Mazumdar has mentioned that this is the curse of capitalism. He said that it was the law of capitalism that smaller banks were swallowed by bigger banks. Sir, I do not know whether he would support the policy of having smaller banks and not the policy of having only a State-owned centralised banking system.

SHKI S. N. MAZUMDAR: I have said what I wanted.

SHKI A. C. GUHA: On the point of nationalisation, I find his opinion was not quite clear. He tried to bypass the issue because his plea or anxiety for the smaller banks would not quite fit in with the plea for nationalisation.

SHRI S. N. MAZUMDAR: I said that redical transformation should be carried out and then only it would be possible, which the Government is incapable of doing.

SHRI A. C. GUHA: I know the spiral of dialectics through which we have to wade will have its natural consequences. The smaller ones arebaing weeded out—whether it is in the capitalist society or in the socialist society or the communist society. But there I fear the weeding out of the smaller ones is much more rapid and much more drastic. I can only say, Sir, that in China, before the advent of the Chinese Communist Govern ment, there were seven Government or State Banks, and now they have got only the Peoples Bank of China and that is the only State Bank now operating throughout the State.....

SHRI S. N. MAZUMDAR: Because their entire economy has been recast and transformed.

SHRI A. C. GUHA: I am coming to that. In Russia also, witkin a year

after the Revolution, Lenin made a fervent appeal to all the Central Bolshevik Executive Committees and urged for the nationalisation of all the credit institutions by the State, and the concentration of all credit transactions in the Peoples Bank was formally achieved. That was only in 1918, one year after the Revolution.

SHRI S. N. MAZUMDAR: Yes, one year after the *Revolution.*

SHRI A. C. GUHA: In the words -of Lenin, this transformation of numerous middlemen functioning as banks into a handful of monopolists represents one of the fundamental processes in the growth of capitalism and capitalist imperialism I know this.

SHRI S. N. MAZUMDAR: Sir, I know from my early days that the hon. Minister has studied a lot of this literature. But, how is all this relevant, Sir?

SHRI A. C. GUHA: I think Mr. Dhage also mentioned about nationalisation and some other Members also advocated it. But I can only say that nationalisation presupposes some other things which Mr. Mazumdar just now stated. It presupposes, first of all, the nationalisation of all industries and business.

SHRI C. G. K. REDDY (Mysore): No, Sir.

SHRI B. C. GHOSE: Only the other day the Dominion of Australia passed a Bill for nationalising their banking system although it was later held ultra vires, but their great industries were not nationalised.

SHRI A. C. GUHA: Sir, I think unless industry is nationalised, no banking system can be properly nationalised. I do not claim to be an expert in banking as my hon. friend Mr. Ghose may claim. I am quoting an eminent Professor, Shri S. K. Hose of the Calcutta University, from his book, "Recent Banking Davelopment":

> "If, however, a general policy *of* socialisation is decided upon and banks have to be nationalised, it should be done after the socialisa tion of major industries .....".

SHRI C. G. K. REDDY: I can give hundreds of quotations, if quotations are wanted, from people more emi nent than the professor he has quoted for every argument; what is the use of all this.....

MR. DEPUTY CHAIRMAN: Order, order.

SHRI A. C. GUHA: Let me again say .....

SHRI C. G. K. REDDY: He is broaching a different subject.

SHRI A. C. GUHA: I did not broach the subject; the subject was broached by the Members.

To continue, most Members said that it was rather too late and some other Members have also tried to quote what I said in the other House. As far as I recollect, I have not said that this Bill will not be able to render any relief to the depositors. I said that enough mischief had been done but we should be able to salvage some of the depositors' money and I still feel that it would be possible for us to render some help, some relief to the depositors.

Sir, some Members have referred to the history of the banking law in the country starting from the Central Banking Enquiry Committee. That is, of course, weeping over a matter which goes back to 1930, but as soon as we attained independence, we tried to have a separate law for the banking companies, and it was done in 1949. But the liquidation proceedings were not incorporated in the Banking Companies Act. It was not thought necessary then, as w» feel it now, that the banking companies would require a separate liquidation proceedings. It is only the experience of these three or four yean that has made us wiser and so w»

[Shri A.. C. Guha.J have come before this House with this amending Bill.

Mr. Sobhani has said something about the practice of directorship being a profession with some men and he also mentioned the system of 'guinea-pig directors'. That only strengthens our case. We do not want, whether for a banking company or for a commercial company, that somebody should become a director without realising the full responsibility of his work, simply for obliging a friend or for the director's fees. We have tried in this amending Bill to make the directors realise the responsibility before they agree to become directors. In this connection, some friends have expressed the fear that it will scare away all decent and responsible men from being directors of banking companies. Some of the provisions of the Bill are already in the Banking Companies Act or in the Indian Companies Act, such as—public examination, summary trial, *etr.* I do not think there has been any case of misuse of these provisions, rather we feel that these provisions have not been used at all. We have only emphasised these provisions in this Bill and provided that these provisions may be used in the case of delinquent directors.

One friend was very much eloquent about the question of limitation. He went so far as to speak of centuries. He said that when centuries have gone, somebody may come with a claim against the descendant of a director of a banking company. Sir, that is only a hypothetical case.

SHRI K. S. HEGDE (Madras): Sir, the whole thing is hypothetical. We have.....

SHRI A. C. GUHA: We have provided for a High Court and we think that the High Court will use this power in a reasonable and judicial manner. We cannot question the bona *fides* of the High Court in using the drastic power. In the Penal Code there may be provisions for capital sentence but it is rarely that a judge goes up to capital sentence. The general tendency.....

SHRI K. S. HEGDE: On a point of information, Sir. Where is the discretion to the High Court? Can the High Court change the law of limitation?

SHRI A. C. GUHA: It is not the question of the High Court having a discretion but it is the question of the High Court asking a director to pay a liability which is 60 years old or 100 years old.

SHRI K. S. HEGDE: Has it got that: discretion?

SHRI A. C. GUHA: Certainly.

SHRI K. S. HEGDE: Under what provisions?

SHRI A. C. GUHA: Under the provisions of the Bill as worded and the inherent right of the High Court. It is the High Court that will give the decree and that will pass the order.

SHRI K. S. HEGDE: Anyway, my friend is not speaking in terms of law.

SHRI A. C. GUHA: I am not a lawyer; that is my misfortune. But still this Bill was drafted by lawyers.

SHRI K. S. HEGDE: Sir, I do not follow what my friend says.

SHRI A. C. GUHA: Because our draftsmen felt that the provision as put originally was not clear enough.....

SHRI K. S. HEGDE: I am afraid, Sir, he cannot take shelter behind the draftsman. The draftsman is his servant and not his master.

SHRI A. C. GUHA: I do not take any such protection. I said that although I was not a lawyer, this Bill was drafted by the lawyers.

Sir, Mr. Hegde has opposed these provisions but there are certain other-

Members who have welcomed them and some of them also have felt that the provisions have not gone far enough.

Then, Sir, I think that Mr. Dhage has mentioned something about the creditors. I could not follow what he meant by "safeguarding the interests of the creditors". In a bank the only creditors are practically the shareholders and the depositors. Shareholders in most casejjhave hardly anything to expect. It is only the question of the depositors' interests. And he has mentioned that the creditors will have to go a long way to put forward their claims. I think he had been under some misapprehension about the provisions of this Bill when he mentioned those things. It will be the liquidator who will safeguard the interests of the depositors and he will lay the claims before the court on behalf of the depositors for realising the loans. It is not that each individual depositor will go forward and put his claim before the liquidator or before the court.

Then, Sir, Mr. Gupte has said something about the exclusive jurisdiction of the High Court. Sir, it is not possible to have the liquidation proceedings done under any other authority. In the case of smaller banks he said that this might be done through some district courts. Then which district courts? That question would also arise. So it has been thought prudent to keep the High Court in exclusive charge of the liquidation proceedings of all banks.

Then, Sir, he said something about the rule-making power of the High Court. We agree, Sir, that different High Courts may frame different rules. But I think, conditions also may justify different sets of rules in different regions. It would not be proper to put some rigid rules in the Bill not liable to any change according to the conditions or according tc convenience. However, some of th< important rules have been put in th< Bill, and, as far as the other rulei are concerned, we have to depend on the High Courts.

Then some Members have mentioned something about section 45F, alleging contravention of the Evidence Act. Yesterday I quoted some passages from the letters of the Chief Justice of the Calcutta High Court. He himself suggested and mentioned that even though it might come into conflict with some of the provisions of the Evidence Act, it would be absolutely necessary for the speedy disposal of claims. It was also said, Sir, that before public examination is conducted some opportunity should be given to the directors. I think that is already provided for in the Bill.

Mr. Parikh has said something about the summary trial. I can only say that a similar provision is already there in the Banking Companies Act. So, I do not think there is any reason for apprehension that the High Court would do anything wrong. There is hardly any new provision in this matter. Then as for declaring a person unfit to be a director of any company, I think the provision there is not so omnibus as Mr. Parikh has suspected it to be. It will be only for a period of five years, and moreover the provision is that he cannot be a director without the permission of the court. So if the court feels that he may continue to be a director, it may give him that permission.

I think, Sir, that these were most of the points mentioned about the provisions of the Bill. But I should go back to some other matter extraneous to the provisions of the Bill and that is about the Reserve Bank. Both in the other House and in this House there have been many angry words about the Reserve Bank. As I have stated before, we live in a world of imperfection. So the Reserve Bank may not come up to their expectations. But the Reserve Bank is an evolving institution. It is not a static thing. Since its establishment in 1034 it has been taking more

[Shri A. C. Guha.]

and more responsibilities and it has been extending its activities in wider and wider fields. Though in the Banking Companies Act it is provided that the Reserve Bank might be -appointed the liquidator of any bank, it has not been possible for the Reserve Bank to be appointed a liquidator, firstly on account of the want of trained personnel and secondly of some technical difficulty also. Anyone connected with or interested in a Bank cannot be the liquidator. In most of the banks, at least in the more important of the banks, the Reserve Bank is an interested party since it advances money to such banks. In the -case of one bank—it was a scheduled bank—in West Bengal the Reserve Bank became the liquidator but then some of the parties filed a suit in the High Court that the Reserve Bank, being an interested party, could not continue to be the liquidator, and the Reserve Bank had to step aside. These are the difficulties for the Reserve Bank taking some of the obligations which hon. Members have suggested. I think it is proper to remind them that the Reserve Bank has been rendering some help to the banks in distress and has also tried to keep the banks working in a proper manner. I think Mr. Dhage yesterday mentioned that the Banking Companies Act has provided so many restrictions on the banking companies that these were almost Government-controlled bodies. To a certain extent this is true, and this control is being exercised by the Reserve Bank. Banks are required to make a statutory deposit with the Reserve Bank in respect of their time and demand liabilities. The Reserve Bank conducts inspections of all banks periodically, and during the last three years 369 banks have been inspected. There are several provisions in the Act for the Reserve Bank to conduct inspections of the working of the banks. The Reserve Bank, if it feels

necessary, can also ask for a change in the management of a bank. Then every banking company has to take a licence from the Reserve Bank without which no banking company can carry on banking business. Weekly, monthly and from time to time returns of their assets, liabilities and investments are to be submitted to the Reserve Bank. Then, if the Reserve Bank thinks that any banking company has not been working properly, the Reserve Bank has also the authority to take some precautionary measures and to safeguard the interests of the depositors short of sending the banking company into liquidation. So, these are the powers and privileges of the Reserve Bank in respect of banking companies.

MR. DEPUTY CHAIRMAN: The main criticism is that in spite of these powers, the Reserve Bank has not been able to prevent these crashes.

SHRI A. C. GUHA: If you will kind ly permit me. The logic seems to be —because something is wrong some where somebody has to be held res ponsible for that. This reminds me of a story current in our parts. There was [a] storm and a boat sank in the river. The boatman went to the king, and the king thought that somebody would have to be punished because the boatman had suffered some loss. Then the wise counsellors suggested that the potter's kiln had raised smoke which must have brought about some clouds originating the storm. So, fihe potter was punished. Similarly, if anything is wrong, the Reserve Bank has to be held responsi ble—this seems to be their logic. The Reserve Bank also knows that in spite of its best efforts.....

SHRI K. S. HEGDE: There is no logic in it. That is the only defect.

SHRI A. C. GUHA:.....many hanks have crashed, but that may be due to something being wrong in the working of the banks of our country. That is mostly due—[as] I think most Members coming fjrom West Bengal would agree—to the wrong persons conducting banks in a wrong manner, and no action of the Reserve Bank could have prevented St. Even if the Reserve Bank had been given full authority, then also these banks could

not have been saved. I think Mr. Ghose and Mr. Mazumdar will agree that some of these banks could not have been saved even with the best efforts of the Reserve Bank.

SHRI V. K. DHAGE (Hyderabad): There was one very important provision in /the Banking Companies Act, which the hon. Minister seems to have forgotten, in relation to the Reserve Bank. It says that the Reserve Bank will also issue instructions to banks as to how their banking business should be conducted, how they should invest their assets, etc. and therefore if inspection is carried out by the Reserve Bank, it can certainly say whether the way in which business was conducted by a bank was proper or not proper and issue such instructions for the purpose as it thinks proper.

SHRI A. C. GUHA: 1 think I have already said that after inspection the j Reserve Bank can issue instructions, and where necessary the Reserve Bank] can also ask that the management] of the bank should be changed. I 1 Ithink at least Mr. Ghose will 'agree that it is not very easy for any outside agency, some time even for a director, to know all that is happening in the bank. It is not possible for the Reserve Bank to get into all the clues and all the misdeeds of the managing directors of the banks.

Sir, I fully appreciate the sentiments expressed here by the Bank Liquidation Proceedings Enquiry Committee that the Reserve Bank of India should cherish the sound banks, nourish the sick banks and bury the dead banks. Here in the Bill we have provided that the Reserve Bank should have some supervisory control over the liquidation proceedings but we expect that in future there will not be many cases of banks going into liquidation and we also expect that the Reserve Bank will exercise its proper authority. I think the Banks also have now come to realise that it would not be proper for them 'to misuse the funds put at their disposal by the depositors.

MR. DEPUTY CHAIRMAN: The question is:

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

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill. There are no amendments to clauses 2 to 4.

Clauses 2 to 4 were added to the Bill.

MR. DEPUTY CHAIRMAN: The motion is:

"That clause 5 stand part of the Bill".

There is one amendment, in List No. 2.

4 P.M.

SHRI K. S. HEGDE: Sir, I move:

"That at page 1, lines 28 and 29 be deleted".

MR. DEPUTY CHAIRMAN: Amendment moved:

"That at page 1, lines 28 and 29 be deleted".

Clause 5 and the amendment are open for discussion.

SHRI K. S. HEGDE: So far as this amendment is concerned. I am afraid in the drafting of this Bill exclusive attention has been given to the depositors' interests. Undoubtedly it is true that the primary concern at the winding up proceedings is the interest of the depositors. That does not mean that the interests of the other parties should be ignored or deliberately thrown to the winds. Consistent with the interests of the depositors, the interests of the shareholders may also have to be taken into consideration. In fact this clause was necessitated by the recommerrda-I tion of the Mitra Committee as found in pages 58 and 59 of the report. If only the Government had cared to appreciate the report, this mistake

[Shri K. S. Hegde.] would not have occurred. The report says:

> "Doubts have been expressed regarding the powers of the Court to appoint such special Officers in the absence of any statutory provision to that effect and we think that these doubts should be set at rest by legislation. The functions of a Special Officer should correspond with those of a Curator under Section 119 of the Bank Act of Canada. A similar provision in the Banking Companies Act toill have a salutary effect."

At the foot of the very report they quote the section in the Canadian Act which runs like this:

> "The Curator shall generally have all powers and shall take all steps and do all things necessary or expedient to protect the rights and interests of the creditors and shareholders of the bank, and to conserve and ensure the proper disposition, according to law, of the assets of the bank; and, for the purposes of this section, he shall have free and full access to all books, accounts, documents and papers of the bank."

Two things are made clear by the Canadian Act, that the purpose of the appointment of a curator is to protect the interest of the creditors and also to protect the interests of the shareholders. These are the main persons who are concerned. I don't know how exactly this clause came to be drafted. The clause as it is run$_s$ as follows:

> "When an application is made under sub-section (1), the High Court may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him having regard to the interests of the depositors of the banking company."

SHRI C. G. K. REDDY: May I interrupt the hon. Member? If he will' excuse me, I should like to ask my friend, before he proceeds with this amendment, whether he believes that any bank under liquidation, past, present or future, would be able >to satisfy all the depositors completely and then will be able to satisfy other interests. I want to know whether he think$_s$ that there will be a bank under liquidation which can go beyond the depositors and satisfy any other interests.

SHRI K. S. HEGDE: I am unabla to share the pessimism of my friend opposite. There are certainly bound to be a number of cases where when a bank goes into liquidation, they will be able to pay sixteen annas to the depositor and then they may be able to pay some money to the shareholders. That i$_s$ what is mentioned in the Canadian Act.

MR. DEPUTY CHAIRMAN: But it is not excluded here. Mere non-men--tion of the shareholders does not mean that they are excluded.

SHRI K. S. HEGDE: In th$_e$ drafting of a section each word has a meaning and the courts are bound to give an appropriate meaning to the phraseology of the section. Either the words must be legislative surplusage or these words must have a meaning. What is ithe meaning that the courts are to give to these words "having regard to the interests of the depositors of the banking company"? If I am to accept the suggestions of the Chair, I should accept the contention that it is a legislative surplusage which is not a normal inference of law.

MR. DEPUTY CHAIRMAN: Only a special emphasis is laid on the word 'depositors'.

SHRI K. S. HEGDE: It says: "and shall also exercise such other powers as the High Court may deem fit to confer on him. having regard to the interests of the depositors of the' banking company".

MR. DEPUTY CHAIRMAN: Because the banking companies carry on their business mainly on account of the deposits.

SHRI K. S. HEGDE: How does the emphasis lose because it says: "*o which the banking company is or appears to be entitled and shall also exercise such other powers as the

High Court may deem fit to confer....." The High Court shall decide to confer on him certain powers in which the interest of the depositors will be the predominant consideration. Now. you are limiting the discretion of the High Court, which the Legislature is certainly doing. I am not sharing the opinion of the hon. Minister in saying that the High Court's powers are limitless. The High Court is a statutory body and its powers are limited by the state. There is nothing omnipotent in a Constitution which is governed not by traditions and conventions but by a written Constitution. So the powers of the High Courts are also limited. They are acting or revolving within an ambit. If you give legislative direction to a High Court that it will appoint a special officer who shall be "for the purpose of protecting the interests of the depositors," you are limiting its powers. What I am requesting is, either amend the word to say 'in the interests of the depositors and shareholders' or delete the clause because the High Court might appoint a special officer who will certainly look to the interests of the depositor. That is the primary interest. There is no objection about it and I don't rthink in the clauses of interpretation iJhere is anything said requiring special emphasis. I should think as the clause now stands, it completely rules out or takes away the jurisdiction of the High Court in appointing an officer to take charge except in the interest of the depositors. In cases arising wfaerd depositors wtould be able to get 16 annas in a rupee and there is surplus, the High Court will be powerless to appoint a special officer who can take possession of the records under this clause.

SHRI A. C. GUHA: Sir, I don't like to accept this amendment because it is not necessary. The special officer will take into his possession all the assets, books, documents, effects and actionable claims. This Bill is for the safeguarding of the interests of the depositors in particular. I don't think there will be any difference in the interest of the shareholders and of the depositors in this respect. Here, as you have rightly pointed out, we want simply to emphasise that this is the depositors' interest which should be safeguarded first and as the hon. Member opposite said, we can hardly envisage that a bank after satisfying a 16 anna claim of the depositors will be in a position to pay anything to the shareholders. There might have been some cases in the past when for some political reasons, as Mr. Saksena mentioned about Lala Harkishen Lai's Bank, owing to some political pressure, some banks had to close. They were in a position to pay even 16 annas of the depositors but now I cannot see any bank closing, there being no political pressure now—and so except that it must be only for some mismanagement or financial loss. So we cannot see any possibility of any bank after fulfilling the full obligation to the depositors would be in a position to fulfil any obligation to the shareholder. But that is not barred by this provision here. Taking into possession of the books and other things will safeguard the interests of the depositors as well as those of the shareholders in an equal manner but we want only to emphasise the depositors' interests here.

SHRI K. S. HEGDE: Sir, I beg leave to withdraw my amendment.

The amendment! was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 5 stand part of the Bill."

The motion was adopted.

+For text of amendment, tide column 2326 *supra.*

Clause 5 was added to the Bill. Clause 6 was added to the Bill.

Clause 7 was added to the Bill.

MR. DEPUTY CHAIRMAN: The motion is:

"That clause 8 stand part of the Bill."

There are two amendments.

SHRI B. C. GHOSE: Sir, I move:

"That at page 3, lines 11-13, for the words 'in the savings Bank account oi the banking company, a sum of one hundred rupees or the balance at his credit, whichever is less', the words 'with an amount of not over one hundred rupees to his credit in the current deposit or savings bank account of the banking company, a sum equivalent to the balance at his credit' be substituted."

SHRI K. S. HEGDE: Sir, I move:

"That at page 2, line 50, for the words 'proceeding for the winding up', the words 'winding up proceedings' be substituted."

MR. DEPUTY CHAIRMAN: The amendments and the clause are now open for discussion.

SHRI B. C. GHOSE: Sir, the purpose of my amendment is quite obvious and I trust the hon. Deouty Minister appreciates the reason which prompted me to propose this amendment. The explanatory note referring to section 43A states:

"The bulk of savings bank account holders belong to the poor and lower middle class."

That really is not quite true, and even if it were, there is no reason why Rs. 100 on every account should be returned and preferential treatment should be given to them. There are depositors in the savings bank accounts holding amounts to the extent of thousands of rupees and why should Rs. 100 of such depositors be-given a preferential treatment over other depositors? I could have understood if this clause was so framed that only depositors in savings bank accounts having to their credit not more than Rs. 100 should receive preferential treatment. But why should very rich people also get this preferential treatment up to the extent of Rs. 100? Therefore in the amendment that I have moved, I have suggested that any depositor, whether in the current deposit account or in the savings bank account, who has not to his credit more than Rs. 100 should be treated as preferential creditor. That means that the smaller people will get the advantage. Here I do not say that the-small man will not get the advantage; but the rich man also will get the advantage, that I think, is certainly not the purpose of the hon. the Deputy-Minister. Therefore, the amendment that I have moved will have this effect; that only people whose credit, rather the sum outstanding to their credit is not more than Rs. 100, whether in the current deposit account or in the savings bank account, will receive preferential treatment and the-amount up to Rs. 100 shall be returned to them first. As my amendment has the same purpose in view which-, the hon. Deputy Minister has. I trust: that he will see his way to accept it.

MR. DEPUTY CHAIRMAN: And! Mr. Hegde's amendment is merely a; drafting amendment, I think.

SHRI K. S. HEGDE: Yes, Sir. It is-a question of sjlight redrafting. Sa fas as the subject-matter of it is concerned, I am in entire agreement with the clause as it stands and I have only i suggested a small drafting amenment which to my mind seems to be rather necessary. I will briefly explain why it is necessary. The existing words in this clause read:

"In any proceeding for the winding up of a banking company,.

every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in section 191 of the Indian Companies Act 1913 (VII of 1913), the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness."

I presume the object of this clause, is to see that there is no further need for filing a claim or proving a claim as is now reauired under law. But for the words as they now are— "In any proceeding for the winding up of a banking company," I have suggested, "In any winding up proceedings of a banking company." I have suggested this change for this reason. The words, "In any proceeding" will relate to the very initial stage alone. The distinction between the two wordings is that "In any proceeding" will relate only to the initial stage, while the words "winding up pro-reedings" will cover all stages from the initial stage up to the final stage, till the final winding up is done. The existing wording will cover only the initial stage. The real difficulty is this. Suppose a claim comes up for consideration. If it does not come right at the initial stage, then after that, it may not be available for these proceedings. For that reason I have suggested the -- amendment[1] of the wording, substituting the words "winding up proceedings" for the words "proceeding for the winding up."

SHHI H P. SAKSENA: To me it appears that the difference between the two positions mentioned by Mr. Hegde is exactly the difference between tweedledum and tweedledee.

SHRI A. C. GUHA: Sir. I do not think this verbal change suggested by Mr. Hegde is necessary. We have been using a uniform language all through and I do not like to have a change here.

MR. DEPUTY CHAIRMAN: What do you say tn Mr. Ghose's amendment?

SHRI A. C. GUHA: Regarding that amendment, it is not possible to include Current accounts in this category.

SHRI B. C. GHOSE: Why not?

SHRI A. C. GUHA: I am coming to that. The savings bank account stands on a separate category. Generally such accounts are not held by people who may be called really commercial people. Such an account is ordinarily held by the ordinary middle-class man.....

SHRI B. C. GHOSE: And not by rich people?

SHRI A. C. GUHA: Not very rich people, not by people who are very much rich.

MR. DEPUTY CHAIRMAN: It is a saving.

SHRI A. C. GUHA: It is held by those who invest money as a source of getting some interest. And it is to the benefit of the category of such depositors that we have provided this clause here. If the hon. Member had suggested that between savings bank account up to Rs. 100 and those above Rs. 100 there should be a distinction, there would have been some point. But then we do not like to have such fine 'discriminations, anjd that m^ght lead to some other difficulties also. So, after due consideration, we have provided for it in this manner in this clause. As I have said, current accounts and savings bank accounts stand in separate categories. There might have been, as I said some point if we restricted ourselves to savings bank accounts up to Rs. 100 and not above Rs. 100. But that, however, 's not possible and also it may lead to some other difficulties and I do not : like to discriminate like that.

MR. DEPUTY CHAIRMAN: And do you press your amendment, Mr. Ghose?

SHRI B. C. GHOSE: Yes, Sir.

MR. DEPUTY CHAIRMAN: And Mr. Hegde?

SHRI K. S. HEGDE: I would request leave of the House to withdraw my amendment.

The amendmentt was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That at page 3, lines 11-13, for the words 'in the savings bank account of the banking company a sum of one hundred rupees or the balance at his credit, whichever is less', the words 'with an amount of not over one hundred rupees to his credit in the current deposit or savings bank account of the banking company, a sum equivalent to the balance at his credit' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

MR. DEPUTY CHAIRMAN: Then we come to clause 9. Is Mr. Ghose moving his amendment? That is the only amendment.

SHRI B. C. GHOSE: No, Sir.

Clause 9 was added to the Bill.

MR. DEPUTE CHAIRMAN: Then we come to clause 10 and I find there are fourteen amendments to this clause.

1For text *tot* amendment, *vide* column 2341 supra.

SHRI B. M. GUPTA (Bombay): Sir, I move:

"That at page 8, after line 3, the following be inserted, namely: —

'Provided that, no such order shall be passed, unless the .person concerned has been given an opportunity to show cause why the order should not be so passed'."

"That at page 6, lines 40-41, the words 'before the commencement of the Banking Companies (Amendment) Act, 1953'. be deleted."

"That at page 13, after line 33, the following be added, namely: —

*45Y. *Winding up may be referred to a District Court.*—(1) Where the High Court makes an order for winding up a banking company under this Act. it may, if it think$_s$ fit, direct all subsequent proceedings to be had in a District Court, and thereupon, sucii District Court shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

(2) When winding up has been referred to a District Court under sub-section (1), section 45N shall not apply in relation to the District Court and appeals from any order or decision made or given in the matter of winding up .by the District Court may be had in the same manner and subject to the same conditions in, and subject to which, appeals may be had from any order or decision of the same court in cases within its original jurisdiction'. " SHRI K. S. HEGDE: Sir. I move:

"That at page 3,—

(i) in lines 42—45, the words contained in the Indian Companies Act, 1913 (VII of 1913), or the Code of Civil Procedure, 1908 (Act V of 1908), or the Code of Criminal Procedure, 1898 (Act V of 1898) or' be deleted; and

(ii) in line 45. before the word 'any' the word 'in' be inserted,"

"Thai at page 4, lines 6-9, the words 'or any application made under section 153 of the Indian Companies Act, 1913 (VII of 1913) by or in respect of a banking company or anv question of priorities' be deleted"

"That at page 6, at the end of line 6, after the word 'days', the words 'for any special reason to be recorded in writing' be added."

"That at page 8, line 20. for the j words 'the High Court has reason to believe', the words 'a prima facie case is made out' be substituted."

"That at page 11, lines 8 to 18 be deleted."

SHRI O. SOBHANI (Hyderabad): Sir, I move:

"That at page 5, line 47, after the words 'date of the words 'his receiving notice of be inserted."

"That at page 7, line 37, for the words 'any proceeding, civil or criminal' the words 'any civil proceeding' be substituted."

"That at page 8, for lines 11 to 13. the following be substituted, namely:—

'an order against such persons to repay and restore the money or property after giving him reasonable opportunity of proving that he is not liable to make repayment or restoration either wholly or in part'."

"That at page 10, line 40, after the words 'in a civil', the words 'or criminal' be inserted."

"That at page 10, lines 41 and 42 be deleted."

MR. DEPUTY CHAIRMAN: The amendments and the clause are now open for discussion.

SHRI B. M. GUPTE: In regard to th(first amendment, regarding 45F, as pointed out yesterday, I do not se why there should be this differenc< why this new rule of evidence abou the documents of a banking compan; should operate retrospectively but nc prospectively. I do not see the diffei 114 CSD nce between the position of the delinquent director of the banks against which winding up order has been passed already and that in the case of banks against which winding up order will be passed hereafter. Why should not these latter delinquent directors come under the operation of that rule? I should like to know, why that difference is made.

SHRI K. S. HEGDE: Mr. Deputy Chairman, so far as my amendments are concerned, the first one, No. 9 relates to the proposed section 45A in part IIIA. The present section runs like this:

"The provisions of this part and the rules made thereunder shall have effect notwithstanding anything in consistent therewith contained in the Indian Companies Act, 1913 (VII of 1913) or the Code of Civil Proce dure, 1908 (Act V of 1908) or the Code of Criminal Procedure. 1898 (Act V of 1898) or any other law for the time being in force or any ins trument having effect by virtue of any law "

Now what I have suggested is that "contained in the Indian Companies j Act, 1913 (VII of 1913) or the Code J of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Pro-1 cedure, 1898 (Act V of 1898) or" should I be deleted because all the other things are covered by "any other law for the time being in force". The Companies Act, the Code of Civil Procedure and the Code of Criminal Procedure are also all laws which are in force but it i*j not merely a matter of superfluity of words: there may be certain difficulties. I do not know what exactly the hon. Minister has got in mind. j Does he wan': to abrogate merely the procedural law or does he want to J abrogate the substantial law as well? 1 The section as it stands today is \ likely to be interpreted as one of mere procedural law because you will kindly And out. Sir. that the Civil Procedure Code and the Criminal Pro-! r>edure Code are merely procedural : ' laws; the Insolvency Act contains both • \ the substantive section as well as the

I Shri K. S. Hegde.] procedural section. Now, if you enumerate these three things and add also "any other law", the interpretation of it is likely to be what it affects or what it infringes or what it overrides is merely the procedural section and not a substantive section. But on reading the Bill as a whole my impression is that the hon. Minister and the Government want this portion to stand irrespective of other laws, procedural or substantive which might be inconsistent with the provision. That may not be the effect if the section stands as it is today. Instead of that, if those words which to my mind are superfluous are deleted then probably the section will have a greater legal authority or greater legal effect than it has now

Would you like me to go to next section also, Sir?

MR. DEPUTY CHAIRMAN: Yes.

SHRI K. S. HEGDE: Similarly, when we come to section 45B, here again, I do not know whether there is some virtue somewhere in thi$_s$ drafting. The High Court shall, save as otherwise expressly provided in section 45C have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by ^{or} against any of its branches in India) or any application made under section 153 of the Indian Companies Ac:, 1913 by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or of fact, which may relate to or arise in the course of the winding up proceedings. What I have suggested is that the words "or any application made under section 153 of the Indian Companies Act, 1913 (VII of 1913) by or in respect of a banking company or any question of priorities" should be deleted. All that we need say is "or any other question whatever, whether of law or of fact which may relate to or arise in the course of the winding up proceedings[1]'. This is an exhaustive provision by itself, completely exhaustive "all Questions either of priorities or of procedure or ! even of rights". Now, if that be so, this section may not add to the usefulness of the provision but may detract from it. That is why I have said ! that that portion should be deleted; the remaining portions are self-contained and are effective and will serve your purpose much better than the •section as it is today.

Coming to line 45, I want the word J "in" to be inserted before the word ! "any".

SHRI A. C. GUHA: This is consequential,

SHRI K. S. HEGDE: Yes, this is consequential. You are right.

MR. DEPUTY CHAIRMAN: You should come t$_0$ amendment No. 11,

SHRI K. S. HEGDE: Yes, Sir.

This is rather an interesting clause in the Bill. I do not now whether you found it out, Sir. that when a person is *ex parte* then he must give reasons and satisfy the court for exceeding the limit which is 30 days but for no other reason whatsoever at all under the proviso, the High Court can do it.

MR. DEPUTY CHAIRMAN: If it so I thinks fit.

SHRI K. S. HEGDE: That is exactly why I have said in any other case that they might think fit.

MR. DEPUTY CHAIRMAN: Not , necessary in all cases.

SHRI K. S. HEGDE: That is why I have said in any case. Would you kindly bear with me for a minute, Sir?

MR. DEPUTY CHAIRMAN: Yes.

SHRI K. S. HEGDE: It says, "In any case in which any such list is settled *ex parte* as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied

that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the ..... ". He must have a good cause and he must also prove that he had good reason for absenting himself. When we come to the proviso, we find that the High Court can, if it so thinks fit, without any reason whatsoever at all, that is, no conditions, no period of limitation, entertain applications after the expiry of the said period of thirty days. That is why I said that the form in which you have put it is so inconsistent with the earlier thing. It looks very very illogical. For a very good reason you are *ex parte* but you should satisfy and you must prove that you have got a good defence but if you come after thirty days you need not even prove the good defence. All that you have said here is, "if the High Court thinks fit." Let there be some reason or logic in the piece of legislation that we are undertaking. For that reason, I have suggested the addition of "for any special reason it be recorded in writing". I have hardly found a section of such wide comprehension giving more powers in a case where less power should .be given rnd to limiting the powers where more powers ought to be necessary and for that reason I said that it is desirable to amend it by the addition of "for any special reason to be recorded in writing".

Then, Sir, I come to page 8, line 20. This is the aspect, Sir. which I presented yesterday.

MR. DEPUTY CHAIRMAN: *Prima facie* case.

SHRI K. S. HEGDE: *Prima facie* case for purposes of assessing the damages and other things. Now, I would not repeat what I said yesterday but I would like to present before you the different shades of meaning in certain legal phraseologies: (i) "has reason to believe"; (ii) "is satisfied" and (iii) "a prima *facie* case is made out." Each goes one step further the last being when it is proved. Now the least evidence will be required when there is 'reason to believe'. A little more evidence will be required where the High Court is to be satisfied. Still further evidence will be required if a *prima facie* case is to be made out. The quantum of evidence that will be required is essentially very much when the thing is to be proved. Now under which category be will come is the point for consideration. The hon. Minister was mixing up yesterday the two ideas 'has reason to believe' and 'a *prima facie* case'. He is obviously under the wrong impression that they mean the same thing. They do not mean the same thing. In fact there is a world of difference between 'has reason to believe' and 'there is a prima *facie* ease'. What I am suggesting is this. If you are proceeding against properties which are apparently in the names of some third parties, then it is not mere 'has reason to believe' but he must go a step further.

SHRI C. G. K. REDDY: I want a clarification from my hon. friend who is a lawyer. What would be the procedural difference between if the clause stands as it is and if a *prima facie* case is to be established? Would it mean delay? Would it mean a certain long procedure to be followed?

SHRI K. S. HEGDE: I would rather try to explain it in a layman's language. It is possible, in the case of 'has reason to believe' all that you need do is to create such and such suspicion and the possibility of the *benami* and leave it at that. Beyond that you need not have any other thing at all, but in a *prima facie* case you must satisfy the judge that there are good grounds to believe that the property standing in the name of B is really that of A.

SHRI C. G. K. REDDY: Evidence? SHRI K. S. HEGDE: Some evidence either by means of an affidavit or by documents. Now, so far as the time taken is concerned, it will not be neces sarily large for this reason that at that stage the opposite party will not be before the court. It is only the liquidator that will be supplying the material in the court. Such documentary

[Shri K. S. Hegde.] evidence or such evidence by means of an affidavit will have to be placed before the court. So there is bound to be no difference so far as the time taken is concerned. Now the illogicalness will be more apparent when we compare the wording of section 45H(1) and 45H(2). In 45H(1) the words used are: "the applicant makes out a prima *facie* case". Would you understand me, Sir, when I say that when you proceed against the director directly, what is required is a prima *facie* case? But when you proceed against some third party what is required is 'has reason to believe' and this is in 45H(2). To my mind it looks to be, legally speaking, something monstrous. If against the director you want a *prima facie* case, and because it is against third parties, you need not have even that. I do not think my friend is disputing the proposition that 'has reason to believe' is something very much thin in quality and quantity than 'has a *prima* facie case'. That is why I say that you should not put those persons who may be, for all intents and purposes, innocent, in a dangerous position. At least give him the same position as you ate giving to the delinquent director himself. May I say it in other words? Supposing there is a delinquent director you are proceeding against him and you are also proceeding against the person whom you suspect is the person in whose name he has the property. Now in the case of the director you say that a *prima facie* case should be made out whereas in the case of the benami person you say 'reason to believe' will do. I am afraid, Sir, sufficient importance has not been attached when drawing up these clauses and I think they do require a drastic change and at least the same wording should be used in both the provisions.

Then the last amendment that I have given notice of is No. 13 and it refers to page 11 of the Bill and it is for the deletion of sub-section (2) of section 450. This is an aspect I had tried to develop yesterday and I thought normally I should have carried conviction when I said that this clause is capable of removing all limi tations for all times, .both prospective and retrospective. It does not merely apply to the directors that are to be directors hereafter. AnH, director who as been a director, say, 50 years ago. it applies to him also. The hon. Min ister was briefed incorrectly when he told the House that the High Court has got discretion to waive it. I do not know of any discfetionary power being given to the High Court in this enactment or in the parent Act permitting the High Court to have different rules on limitation for different parties. A judge may go by the equities of the case but equities have nothing to do with limitation at all. It is a per se rule. It does not depend upon the sweet choice of the High Court to apply the law of limitation in one case and not apply it in another case de pending on the equities of the «ase. Equities do not come in at all for con sideration. Limitation is a statutory provision, and that statutory provision, when it comes into conflict with equi ty, the statutory provision prevails against equity. I do not know how exactly the hon. Minister was brief ed by his department to say that the High Court has not large powers. The High Court no doubt has, but it is limited by law excepting when in herent powers are exercised and this Is not the case here. Again another accepted position of the law is. wherever there is a statutory provision inherent powers disappear. That being the case, the clause as it is. is capable of considerable mischief and is likely to adversely affect the very object with which the Bill has been brought for ward. For this reason I request

SHRI C. G. K. REDDY: I would again ask a clarification as to whether the retention of the sub-section would mean that the liquidation proceedings which have been completed before this Bill comes into force would also be affected by this sub-section or would it be limited only to such banks which are now under liquidation and those which will hereafter come under liquidation. Why I ask this is because, Sir,

ii liquidation proceedings have been completed m respect of certain banks and this sub-section does not apply to them, then there is no question of a director's liability being brought into play fifty years later.

SHRI K. S. HEGDE: The question raised by my friend Mr. Reddy is rather very pertinent. Reading the section as a whole and taking the amplitude of it into consideration I do not think that it would be inapplicable to the cases that are already closed. There is no limitation in the section itself. Section 450(2) says:

> "Notwithstanding anything to the I contrary contained in the Indian Limitation Act, 1908 (IX of 1908) or section 235 of the Indian Companies Act. 1913 (VII of 1913) or in any I other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up" etc.

So even after the whole thing is closed, if you discover certain assets you can always reopen the case. There is no finality about it. It is always temporarily closed and not permanently closed. If you find an asset at any time you have a-'right to take out the asset and distribute it. 'Being wound up' is not a word of limitation at all. It is a procedural word, a word of explanation. So if a matter has been wound up for the time being, and if anybody says there is an asset available, you can | take proceedings, continue the matter, take the asset and distribute it. Now let us presume that a company goes into liquidation in 1954 and there was a director on its board in 1885. You can rake up some contract to which he was a party or rake up some call money due from him. That you can certainly do without any doubt or without any hesitation if this sub-section remains. So that, I believe, is the difficulty which my learned friend is anticipating. As such I reauest the hon. Minister to reconsider the whole thing and in the light of what is placed before him, to see his way whether he cannot delete the sub-section or amend it suitably. May I say in this connec tion .....

MR. DEPUTY CHAIRMAN: It refers to only two classes of claims. One is 'arrears of calls' and the other is 'contract, express or implied'. It is only to these two classes of claims that there is no period of limitation.

SHRI K. S. HEGDE: Yes, there is no period of limitation in respect of these two classes of claims and not so for damages, as in the latter case it is limited to twelve years.

MR. DEPUTY CHAIRMAN: As director of the company he must have done something.

SHRI K. S. HEGDE: I am trying to give you a concrete case. In 1900 there was a demand. That is a contract found in the records of the concern.

MR. DEPUTY CHAIRMAN: With the director of the company.

SHRI K. S. HEGDE: Yes, with the director of the company. There may be a case. In fact, complete proof is not necessary. It may not be an expressed contract. It may be an implied one. Now he may be dead, but the banking records will show a contract. You are now trying to rake up that thing and enforce it against him. I ask—would it be proper and would it be necessary in the interests of justice?

Let us take another case. A certain call had been made 50 years back. The call has not been paid. Probably he may have very good grounds in defence. Now you will be trying to impose that call after 50 years. It will be for that reason I feel, very difficult. The Mitra Committee Report anticipated this diffi culty. They met it in another way. They said 'if the liability shall be of the directors who are directors now and who have been directors three years before the winding up proceed ings started..... ' It is for that purpose that they made a specific recommendation like hat in para 61 of the Report, that it should be confined only to the present directors and directors who were there three years before the winding up of the concern so that there

[Shri K. S. Hegde.] will be some limitation put on this otherwise very arbitrary provision of law. I hope the hon. Minister will find his way to either suitably amend that clause or to delete sub-clause 12) of clause 45.

SHRI B. M. GUPTE: With regard to my amendment (No. 20) I would put in a special plea because there should be j no objection to giving thi$_s$ additional ! power which the High Court may or may not exercise. This does not disturb the structure of the Bill. Accord-] ing to the amendment the High Court i will have the power to refer the matter to District Courts in appropriate cases and I think there should be no objection at all because it only gives additional power to the High Court I for use at its discretion. It may or may [not be exercised but the power should I be there.

SHRI K. S. HEGDE: In support of Mr. Gupte's amendment, may I invite your attention to the opinion of the Madras High Court on the subject as circulated in the papers? It reads:

> "It may be desirable from the point of view of economy to pro- i vide as in section 164 of the Indian Companies Act that in the case of small banks proceedings subsequ- ! ent to the order of winding up may ' be transferred to the District Court."

SHRI O. SOBHANI: Sir, according to section 45D (9), in any case in which any such list is settled *ex parte* as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him. This arrangement, I submit, will lead to a lot of inconvenience in case of large companies. Many persons may not know of the settlement of the list and many may not even know about the pro- j cedure for settlement. I therefore sub- ! mit that the period of 30 days should run from the date of sytfn person receiving notice of the order of settlement of list. This is a very modest J amendment and I hope the Deputy Minister will see his way to accept it.

MR. DEPUTY CHAIRMAN: What about the other amendments?

SHRI O. SOBHANI: I am coming to them. By m$_y$ amendment (No. 15) I am suggesting that the words 'any civil proceeding' should be substituted in place of the words 'any proceeding, civii or criminal'. The deposition of a director made at his examination might be used in evidence against him. According to sub-section (6) of section 27 of the Presidency Towns Insolvency Act, this proposal strikes at the very root, of a safeguard provided by law of criminal procedure for the fair trial of accused persons. The safeguard is that the accused is not subjected to any cross-examination and the prosecutor has to establish his case without the aid of any admission from the accused. Often an honest witness is led to make statements that are both untrue and prejudicial to the interests of the witness. It would be a grave injustice to the witness if a statement made by him under the stress of cross-examination were used as evidence against him in his trial for an offence. Furthermore, the proposal is calculated to defeat the very object of the examination. Sir, the object of such an examination is to elicit information that cannot be obtained from the records of the banking concerns or from other sources. The provision that ths answers given in such an examination may be used as evidence in criminal proceedings is sure to give an inducement to him to give as little information as possible in hi$_s$ answers.

Then, coming to amendment No. 16. according to this clause on a *prima facie* case being made out under section 235 of the Indian Companies Act, the onus will lie on him of proving his innocence The proposal made by the Committee in effect goe$_s$ much further than the well-established principle that on a person being shown to be prima *facie* liable, the onus of proving the absence of h-'s liability is on him. The

committee states that such director or officer will then—that is, on the | establishment of a prima *jade* case against him—be presumed to be liable *to* make good to the banking company the loss alleged by the applicant in the misfeasance summons and where the claim in question is made jointly against more than one director or officer, they will presumably be liable jointly and severally. It is grossly unjust that the loss alleged by the liquidator should be presumed to be the actual loss until the contrary is proved.

Amendment Nos. 17 and 18. Section 45N deals with appeals and provides that no appeal can be filed in the ease of a civil proceeding under this Act when the value of the subject-matter is Rs. 5,000 or less. There is no reason I submit, why this pecuniary limit should be fixed. Sub-section (2) provides that an appeal against an order under the penal section 45J would cnly lie if the High Court so provides. If a person is going to be prosecuted he must be given a right of appeal.

SHRI C. G. K. REDDY: Mr. Deputy Chairman, in most cases, the amend ments that have been moved.....

SHRI A. C. GUHA: Is the hon. Member speaking on any amendment?

SHRI C. G. K. REDDY: I am opposing the amendments. In most cases, the amendments that have been moved, if accepted, would take away the very purpose of the Bill. The objective of this Bill, as all Members must have realised, is to see that things that have been happening before are stopped immediately. That is why an Ordinance was issued even without waiting for Parliament to assembly. In my opinion, the most important part of the whole Bill is clause 10 under which all the amendments have been moved. These amendments that have been moved by my hon. friend, Mr. Hegde and also Mr. Sobhani, if accepted, would take away those powers which we are seeking to give in the Bill to the liquidators and others connected with the proceedings to make it possi-bls for them to recover the moneys as early as possible and to the maximum extent.

My hon. friend Mr. Hegde referred I think first to the words "reason to believe". When I interrupted and asked him what was the difference between the words "reason to believe" and *"prima facie"* as my knowledge of law was limited, he explained it away by saying that there will not be much difference in 'time'"but in 'procedure'.

SHRI K. S. HEGDE: It is the quantum of eviclence.

SHRI C. G. K. REDDY: On my inter-ruption, he told me that there is a difference in procedure. The High Court will have to establish that there is a prima *facie* case. It means that the High Court is bound by law to be satisfied completely, so far as the words *'prima facie'* are concerned. This would mean that the liquidator would have to produce all the evidence that mav be necessary as asked for in an ordinary civil court. My hon. friend says 'no'; I don't know; but I do feel that there is a great deal of difference between the words "reason to believe" and "prima facie". It would make it inconvenient and make it difficult for the liquidator to proceed with the liquidation proceedings.

SHRI K. S. HEGDE: If that is all the object, why should he not make the liquidator the judge in his own cause?

SHRI C. G. K. REDDY: I may draw the attention of the hon. Member to the first paragraph where the words *"prima facie"* are used. The second paragraph is a consequence after the first paragraph is finished.

SHRI K. S. HEGDE: It deals entire-! ly with two different aspects.

SHRI C. G. K. REDDY: Let me finish it. First of all, it is to be established whether the director is delinquent and then only would it be possible for a liquidator or some other person to see that that director has madp an improper transaction.

SHHI K. S. HEGDE: There is absolutely no relationship between the first and the second paragraph, and the director in the first and the director in the second are independent.

SHHI C. G. K. REDDY: Perhaps the director mentioned in paragraph 2, is more harmful than the one meant in sub-section 1. Anyhow, this Bill is to see that certain dilatory procedure that has been there hitherto is not continued any further. Under the existing procedure it has become impossible for liquidators and others to proceed quickly and in a way necessary to protect the interests of the depositors. If you are going to fetter their powers, there is no purpose in passing this Bill. My hon. friend who is an advocate of the High Court and who knows that they exercise their fullest discretion and judgement in the orders they pass should also have known that there are *ex parte* decisions, given by the High Court, District Court and even the Munsiffs Court. So when there is so much agitation and where so much money has been mulcted from innocent people, we must be in a position to trust the High Court. In other cases where *ex parte* decisions are given, if you can trust the High Court and other courts, why can't you trust them in these proceedings?

SHRI K. S. HEGDE: In the one case it is a temporary order; in the other case, it is the Quantum of evidence. All that I was saying was: Do not hang a man without adequate evidence.

SHHI C. G. K. REDDY: Even there, if he proves that he is not to be hanged, he will not be hanged. The position is like this. Suppose I own a property, and the liquidator thinks that I am holding it on behalf of some other bank director, then, naturally, he would not make a false accusation against me. The liquidator will not make a complaint merely because he wants to put a person into trouble. He must be naving some evidence that the property is that of somebody and then only he will make an application to the High Court; and after all a final order is going to be given if he is unable to prove that it is his.

The next amendment too, I would oppose. My hon. friend wants to take off the whole paragraph. When I asked my hon. friend whether this would apply to banks whose liquidation has been completed, he said that it is possible that the court of law may reopen the process of winding up if an asset is recovered or discovered. If fifty years ago a director mulcted somebody else of his money and he was aible to avoid everybody's investigation keeping it away somewhere, and today, if we unearth that asset, what harm is there? I did not think that the Bill was so sensibly worded as all that because I do not expect the Government to produce anything sensible.

As regards the liquidation proceedings that are now going on, or may hereafter be instituted, I do not think that they would continue for long. With the provisions of this Bill, they will be completed in a very much shorter time. In fact that is one of the objects of the Bill. Therefore, there is no possibility of directors involved in present or future proceedings having to answer charges thirty years later.

SHHI K. S. HEGDE: The arguments advanced by my hon. friend are very very rare.

SHRI C. G. K. REDDY: I would request him to think for himself and try to balance the advantages this Bill seeks to give to the depositors with the disadvantages. It seeks to give protection to the depositors who are being mulcted by certain banks. We want to protect their interests. We want to balance these advantages and disadvantages. How many innocent men have been charged of murder? Some innocent men have been caught and hanged in history even in our own country. That does not mean we should have no law for murder. We must try to balance the disadvantages

against the advantages which this Bill 1 seeks to give. I believe that this Bill is not only hot 'Draconian' but it does not go far enough.

My hon. friend argued vehemently that the fundamental law is being thrown overboard. He say$_s$ that it will go against the fundamental right of the people. I think he wasted his eloquence on this Bill. If he had used it on the Preventive Detention Bill, I would have accepted it because that Bill was going to affect the fundamental right of freedom of individuals. But at that time he did not.

And so many hon. Members based their arguments on the allegation that the Bill goes against fundamental justice. Now, Sir, I do not think— although I am not a lawyer—that there is any such thing as fundamental justice. You will have to see in what way that justice is going to operate. If it is going to operate for the great majority of the people and may in its process once in a way catch hold of some who ought not to be caught hold of, then I think that is a very just measure.

Because we have certain concepts which are centuries old, let us not be stuck up in those concepts; 'et us go a little beyond them. When this Bill seeks to protect a body of people who put in their money with the full confidence and in the trust that the bank will keep it for them and will give it back to them whenever required b> them, and when in certain cases the bank misuses that money and ruiiv these people and ruins all their sav ings. must we not see to it that thei: interests are protected? In very ran instances, in very rare cases, if oni or two honest directors, good director? are going to be caught hold of, it doe not matter, because there are certai: other sections which give them th right to establish their innocence.

I would certainly vehemently oppos any amendment of those very section which seek to give power and authority to certain agencies which are going to be appointed to see that the interests of the depositors are protected.

SHRI A. C. GUHA: Sir, I think I should first deal with Mr. Hegde's amendment. He repeatedly asked me as to why two different phraseologies had been used in 45H(1) and (2). Sir, in clause 45H(1) the director, the promoter and the manager are .nade to make certain payments. So there is the provision for a *prima facie* case being established. But in 45H(2) it concerns only certain property which is attached and the party is given every facility to prove that the property actually belongs to him and not to any of the directors or promoters of the bank. So tni$_s$ is the reason why we have made this difference in phraseology. We want that this clause, 45H(2). should be more elastic, and that is why we have provided for the words "the High Court has reason to believe". I, therefore, oppose this amendment.

SHRI K. S. HEGDE: Probably the hon. Minister has not fully comprehended the amendment.

SHRI A. C. GUHA: The party can prove that he is not liable.

MR. DEPUTY CHAIRMAN: The first clause applies where it is a question of repayment of property or money. The second clause applies only where it is a question of attachment. That 1 is why there is a difference in phraseology.

SHRI K. S HEGDE: In the case of attachment as well as direct payment the result is the same.

SHRI A. C. GUHA: Sir. he has spoken previously also on this very thing ..... *(Interruption.)*

MR. DEPUTY CHAIRMAN: Please go on.

SHRI A. C. GUHA: Sir, we are very much of the opinion that this provision about there being no limitation of : i time for contractual liabilities of the

[Shri A. C. Guha.] director to the bank should remain and we have discussed this matter at various stages, and most carefully, and we have come to this decision that this should be retained. I fully agree with what Mr. Reddy has said that in very rare cases there may be one or two directors who may have to sutler some harassment, but this provision will give relief to thousands ot depositors. And according to the dictum "The greatest good of the greatest number", I think there would be no hesitation on the part of this House to accept this provision. As for Shri Gupte's amendment, I think, Sir, it is already the accepted policy of Government and it is already there in the Banking Companies Act that all liquidation proceedings should be conducted by the High Court. So we do not want to go back on that. I therefore oppose all the amendments.

SHRI B. M. GUPTE: Sir, I beg leave to withdraw my amendments.

Amendments! Nos. 5, 8 and 20 were, by leave, withdrawn.

SHRI K. S. HEGDE: Sir. I beg leave to withdraw my amendments.

Amendments! Nos. 9, 10, 11, 12 and 13 were, by leave, withdrawn.

SHRI O. SOBHANI: Sir, I beg leave to withdraw my amendments.

Amendments! Nos. 14, 15, 17, 18 and 19 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the Bill.

tFor texts of amendments, see cols. 2346-2347 *supra.* ,

Clauses 11, 12, and 13 were added to 1 he Bill.

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

SHRI A. C. GUHA: Sir, I beg to move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: Motion moved.

"That the Bill be passed".

SHRI B. C. GHOSE.Sir, but for a few observations made by the hon. Deputy Minister I would not have intervened at this stage. And I seek your indulgence so that I may make a few remarks. Firstly, about the nationalisation of banks to which he referred. I just wanted to say for his information that not only in Australia to which I had referred, but in France as well, the largest four commercial banks have already been nationalised.

SHRI A. C. GUHA: I know that.

SHRI B. C. GHOSE: But the industries have not been nationalised.

Secondly, about the Reserve Bank. It was quite proper for the Minister to give his vehement support to the Reserve Bank; I can quite appreciate that, but I cannot at the same time help saying that the Reserve Bank has not done its duty properly to the smaller banks. Even when inspection has been done as the hon. Minister must have known there have been cases where, even after a bank had been nspected by the officers of the Reserve Bank, the bank was found to be ab-olutely rotten apart from the cases vhere no measures were taken to see o it that the banks were salvaged.

The third point and that is the most important point which I want to refer 0 is with regard to the hon. Minister's

observations as to what the Government have been doing in the matter of helping the smaller people. I had the feeling and I was rather disappointed that the hon. the Deputy Minister was trying to minimise the im-pfeojtance of the case or the gravity of the situation. Now, he stated that there was to be a State Finance Corporation. That is yet to come, and that will be only looking after the long-term needs of trade and industry and these banks were meeting the short-term needs of trade and industry. Secondly he referred to another amending Bill. The amending Bill to the Re-serve Bank Act is yet to come. Thirdly, he referred to the Shroff Committee which is still investigating the matter. Its report will come and it will be considered, then probably a sub-committee will be set up and then the Cabi-net Committee will consider, and thereafter something may be done. So, these are all for the future. My contention was that nothing has been done in the past and so far, and therefore I should like very much the hon. Deputy Minister to realise the situation that has been created by the vacuum as a result of the failure of the banks and that the smaller people have not been able to obtain their credit requirements, and he should not be satisfied that Government has either done or is do- J ing everything to help the people in need of such credit. If he would only realise the gravity of the situation, I shall be satisfied. I have nothing more to add.

[THE VICE-CHAIRMAN (SHRI AKHTAR HUSAIN) in the Chair.]

SHRI A. C. GUHA; Mr. Vice-Chair-man, about nationalisation, I am not : giving any opinion of my own. I have only said that there may be different shades of opinion about nationalisation and that nationalisation by itself may not solve all the problems. I have only stated one, view. I myself think that nationalisiEon of banks presupposes also the nationalisation of trade and industry. I know France has nationalised the banks, but the nationalisation ol industry has not been effected there. And I do not know what difficulties France experiences on account of that. Anyhow, that is an opinion, and surely there are differences of opinion on this matter.

SHRI B. C. GHOSE: Sure.

SHRI A. C. GUHA: None can claim a monopoly of wisdom in this.

About the Reserve Bank or about the Government rendering help to the smaller business people, I have never claimed that I am satisfied or that the Government is satisfied. We are exploring possibilities and we know the needs and I can give this assurance that the Government—or even personally myself—will see that something is done to help the smaller business people, because that is part of the Government programme to have small business, small-scale and cottage industries and when the Government wants to foster these things, it is the obligation of the Government also to see that these industries get proper banking facilities. I have only mentioned the things just now under the consideration of the Government and some of them are before this House, and so Government is not sitting idle. The facts I have mentioned would prove to the hon. Member that I personally am not satisfied that everything has Been done in this matter. I have nothing more to add. I hope that this Bill would be able to do something good to the depositors who have suffered so much and who have .been mulcted by the bank authorities and perhaps also by the liquidators. If we can save something for them, I think, we shall be doing a great ser-vice to a large number of people who are distressed, particularly the poorer sections of the people. I hope that the House will now pass the Bill.

THE VICE-CHAIRMAN (SHRI AKHTAR HUSAIN): The question is:

"That the Bill be passed." The

motion was adopted.