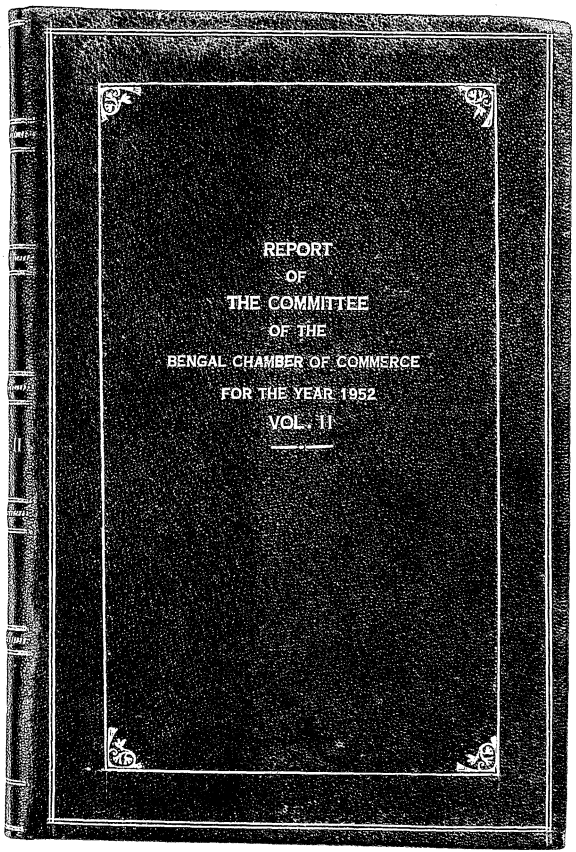
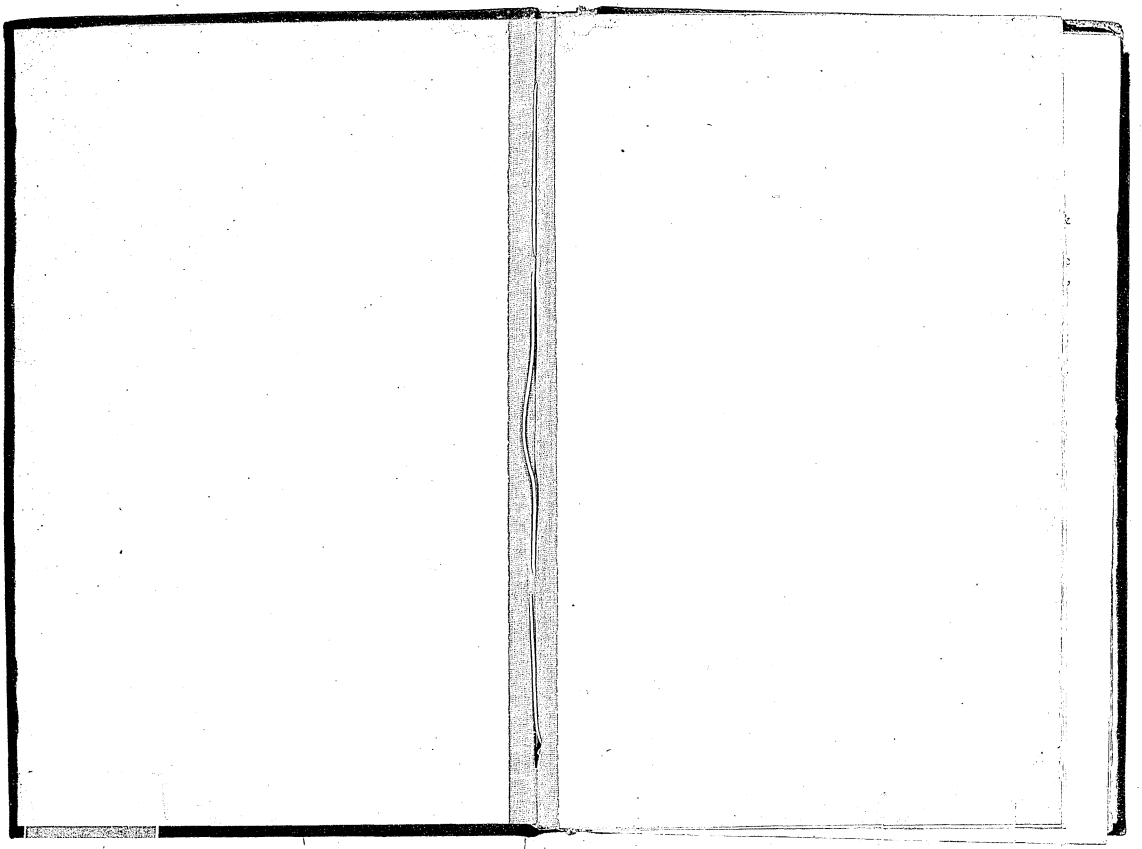

REPORT
OF
THE COMMITTEE
OF THE
BENGAL CHAMBER OF COMMERCE
FOR THE YEAR 1952
VOL. II



REPORT

OF

THE COMMITTEE

OF

THE BENGAL CHAMBER OF COMMERCE

AND

INDUSTRY

FOR THE YEAR 1952.

VOL. II

Documents & Correspondence

1953.

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LAW & LEGISLATION—GENERAL

COMPANY LAW COMMITTEE REPORT

Letter No. 3939 dated 30th May, 1952

From—The Secretary, The Bengal Chamber of Commerce & Industry

To—The Officer on Special Duty, Department of Economic Affairs, Ministry of Finance, Government of India, New Delhi.

I am directed to refer to your Letter No. (1)—Impl. CLR/52 of the 12th March last, inviting comments—by the 31st May—on the recommendations contained in the Report of the Company Law Committee.

2. The Chamber welcomes the Report as a notable and lucid document which contributes materially towards the public knowledge of the intricacies of company management and of the merits and demerits of the present system ; and which makes valuable and well-balanced recommendations for the improvement of the existing law and of its administration. Throughout the evidence, written and oral, which it has placed before the Company Law Committee, the Chamber has consistently supported all practicable measures which will close the loopholes in the existing Act against the malpractices of the dishonest and which will at the same time allow sufficient flexibility for honest and responsible company managements to operate efficiently under conditions of freedom from unnecessary and petty harassment. From this point of view, the Chamber believes that the recommendations of the Company Law Committee, read as a whole and faithfully implemented in the form in which they have been put forward, will go far towards achieving the desired objective even if in some directions they impose restrictions irksome and burdensome to honest and efficient management in the endeavour to close the avenues of escape for the unscrupulous. Taken as an integrated

structure and subject to what follows on some of the individual proposals, the Chamber finds itself able to accept the Committee's recommendations and welcomes in particular the proposals relating to inspection and investigation contained in Chapter XII, and the scheme of administration, involving the establishment of a Central Statutory Authority, described in Chapter XVII of the Report.

3. But it is necessary for the Chamber, in extending this general welcome to the Company Law Committee's proposals, to observe, firstly, that these go to the very limit of safeguard, supervision and regulation and that anything beyond that limit would so stultify efficiency and initiative as to make joint stock enterprise virtually unworkable; and secondly, that the structure recommended by the Committee, from the Central Authority downwards, is so composite a whole that any rejection of, or meddling with, its main component parts would vitiate its effectiveness. It is to be hoped therefore that the amending and consolidating measure—which the Chamber strongly favours—will not go beyond the Committee's recommendations.

4. The Chamber now wishes to comment as follows on some of the individual recommendations made in the Report :—

Chapter iv.—Definitions & Jurisdiction.

Pp. 25/26 : 29—Nationality of Directors—In this paragraph the Committee draw the attention of Government to the provisions contained in the company legislation of some countries requiring that one or more of the directors should be persons of the nationality of the country in which the company is formed and registered. At this particular stage of development, when it would be unwise to take any action likely to deter acceptable foreign capital from associating itself with India's industrial progress and in circumstances in which, in any case, collaboration between nationals and foreigners has been such a marked feature of recent years, the Chamber ventures to suggest that statutory compulsion in this direction is both undesirable and unnecessary.

Chapter v.—Constitution & Incorporation of Companies.

P. 30 : para 35—Managing Agency Agreement to form part of Articles—As a minor point which might result in misunderstanding, it should be pointed out that the marginal heading of this paragraph, "Managing agency agreement to form part of Articles", does not accurately reflect the Committee's substantive recommendation, namely that the managing agency agreement should be *affixed* to the Articles.

Chapter vi.—Shares & Share Capital.

Pp. 36/38 : para 48—Future classification of shares and rights to be attached to each class—The recommendations contained in this paragraph include suggestions that as regards issues made after the date of publication of the Report all fresh capital other than equity capital should be preference capital; that "preference shares should, in future, have only qualified voting rights"; and that in the case of existing companies which have shares conferring voting rights more favourable than those recommended, the companies must within three years from the passing of the Act bring the voting rights in respect of such shares into proportion to the amount of capital paid up or credited as paid up thereon.

As the Chamber reads this particular set of recommendations, all that is intended is that voting rights carried by *existing* preference shares should merely be brought into proportion to the capital paid up as required by item (v) on page 37 of the Report, not that such existing preference shares must in future carry only qualified voting rights as laid down in item (ii). This intention, it is suggested, should be made quite clear in the consolidating bill, namely that the voting rights attached to existing preference shares may continue unaffected provided, of course, they are strictly in proportion to the capital paid up or credited as paid up thereon.

Chapter vii.—Prospectus, minimum subscription and allotment of shares.

Pp. 42/46 : para 55 (pp. 390/98)—Prospectus—Clause 24 (2) (a) on page 394 states that the Auditor's Report shall deal with

the profits or losses of the company, distinguishing items of a non-recurring nature in respect of each of the five financial years immediately preceding the issue of the Prospectus. Clause 34 on page 397 states that the report shall either indicate by way of note any adjustments respecting the figures of any profits or losses which appear to the persons making the reports necessary, or shall make these adjustments and indicate that adjustments have been made. The Chamber understands that the normal procedure is for Auditors to omit items of a non-recurring nature from reported figures of profits for Prospectuses and make such adjustments as they consider appropriate.

While the Auditors may still be entitled to make adjustments in respect of items of a non-recurring nature and it may be contended that it is only if they consider that no adjustments are necessary that such items should remain in the accounts and then be shown separately, nevertheless the Chamber feels that it is important to make it absolutely clear that the existing normal procedure may be permitted.

Chapter viii—Company meetings & proceedings.

P 58 : para 78—Resolutions and Notices.—The Company Law Committee recommend here that, where they are applicable under the existing Act, extraordinary resolutions should be replaced by special resolutions. If this recommendation, which the Chamber accepts, is acted upon, it will be necessary to ensure that other enactments such as the Companies (Donations to National Funds) Act, 1951, which require extraordinary resolutions of the Company, are correspondingly amended.

Chapter ix.—Management of Companies: Directors & their powers.

Pp. 64/65 : para 86 : Qualifications and conditions of appointment of directors—While the recommendations contained in this paragraph of the report will undoubtedly involve practical difficulties, the Chamber is prepared to accept them subject to the consideration of one point, namely that provision should be made for the possibility of qualification shares being owned by a firm and used by a member of the firm as his qualification, *i.e.* that there should be no prohibition on the registration of shares in the joint names of the partners of a firm and that such shares should be regarded as being in beneficial ownership.

P. 66 : para 88—Prohibition of tax-free payments to employees—Paragraph 88 proposes that "following the provisions of Sections 189 of the English Companies Act, 1948" no remuneration payable by the Company to any officer, employee or servant should be tax-free. This goes very much further than the English Act which, as is explained on p. 267, merely prohibits tax-free payments to directors. The Chamber would have no objection to the latter provision but greatly doubts, under present conditions, the expediency and desirability of a blanket provision on the lines now proposed, that is to say applicable to officers, employees or servants of the Company, for the reason that—in common with the experience of the Government of India themselves—many commercial and industrial concerns have found it difficult or impossible to recruit highly skilled technicians for short-term specialised appointments except on the gurantee of a certain fixed remuneration. Indeed, the Income Tax (Amendment) Bill, 1952, recently published, recognises this position by proposing a new subsection of Section 4 of the Income Tax Act exempting from Indian tax any income received by an employee of a foreign enterprise, not engaged in any trade or business in the taxable territories, where his stay does not exceed ninety days.

The Chamber therefore considers that the suggested new section of the Companies Act should apply to directors only. If Government find themselves unable to accept this suggestion, it is recommended that there should at least be a provision for exemption from it in individual cases on application to the Central Authority.

P. 66 : para 90 : Age of directors—The Chamber strongly deprecates the suggested imposition of an age limit of 65 years for directors of companies other than private companies not subsidiaries of public companies. In the Chamber's experience a rigid limit of this nature is unnecessarily restrictive and fails to take into account not only the comparative short-

age at the present time of really experienced directors but also those cases in which the individuals concerned are perfectly capable—as many of India's public servants and personalities are—of continuing efficiently as directors after the age of 65. The Chamber does not think it to be in the interests of the country's commercial progress and industrial development to deprive companies peremptorily and permanently of the services of some of the best of their directors and again urges that the proposed age limitation, as in the United Kingdom, should be capable of being waived in individual cases by special notice and ordinary resolution of the company.

The Chamber feels that if the services of a gentleman who is over age to be a director are worth retaining and paying for as an adviser, there is no good reason why the individual concerned should not continue to be a director. The appointment of an adviser seems likely to lead to additional cost to the company as presumably in most cases another director would have to be appointed.

Pp 67/69 : para 91—Number of directorships which a director can hold—Here also the Chamber wishes to urge a small qualification to the proposed statutory limit of 20 directorships, again solely in the interests of the efficient management of companies where they operate under the managing agency system. The Chamber's recommendation is that *ex-officio* directorships should be excluded from the limit of 20.

The Chamber also strongly endorses the view of the Company Law Committee that, having regard to the paucity of high grade business ability in the country at the present stage, there should be no whittling down of the limit of 20, already sufficiently restrictive under existing conditions.

P. 72 : para 98—Prohibition of voting by interested directors—In this paragraph of the report, which discusses the prohibition placed on an interested director from voting at a meeting on any contract or arrangement in which he is directly concerned, it is proposed that "the interested director should not take part in the proceedings of such meeting". The corresponding recommendation on pp. 293/294 of the report is that

"A director shall not take *any part* in the proceedings of the meeting of a Board of Directors at which a contract in which he is directly or indirectly concerned or interested is being discussed and voted upon".

This proposal might in certain circumstances mean that not a single director could participate in any part of the proceedings of a particular meeting. The intention surely is that the interested director's non-participation should relate only to the particular contract or arrangement in which he is interested, not that he should be precluded from taking part in the other business of the meeting.

Pp. 80/81 : Para 111—Retirement and removal of Directors—In this paragraph of their report the Company Law Committee recommend that in future a director of a company, whether under an agreement or not and notwithstanding anything to the contrary in its articles, shall be removable by an ordinary resolution of which special notice has been given.

This recommendation raises a question which the report (*vide* para 202) leaves for decision by the Government of India and on which the Chamber would like to take this opportunity of expressing its views, namely the extent to which it is proposed in the new consolidated Companies Act to incorporate the provisions of the Indian Companies (Amendment) Act, 1951. If, as the Chamber hopes will be the case, the comprehensive safeguards recommended by the Company Law Committee are adopted largely as they stand, particularly the proposed new Sections 153C and 153D, it seems to the Chamber unnecessary to add to the structure by superimposing any of the provisions of the 1951 Act relating to directors other than those of sub-section (2) of Section 86J which the Chamber considers should be retained in the new Act.

If this course is not adopted, that is to say if the provisions of Section 86J (2) do not find a place in the new Act, then the Chamber strongly urges that the amended version of existing Section 86G of the 1913 Act should make the removal of a director subject to a special, not an ordinary, resolution of the company. To adopt the recommendation of the Committee without retaining the safeguard of Section 86J (2) will

merely play into the hands of undesirable elements wishing to obtain control of the company for their own purposes.

For the same reason the Chamber feels strongly that an increase or decrease in the number of directors should only be by *special* resolution, not by ordinary resolution as proposed on *page 174* of the Report.

Chapter x—Managing Agents.

P. 86: Para 117—Duration and renewal of appointment—This paragraph proposes that initial appointments should be restricted to 15 years, instead of 20 as at present, and that renewals should be limited to 10 years. It also recommends that in future no renewal, reappointment, or extension of the term of a managing agent should be made except during the last 24 months of the agreement due to expire: a corresponding recommendation is contained in paragraph 118 in the context of the Committee's recommendation that all existing managing agency agreements should be terminated on the 15th August, 1959, unless they expire before that date.

Though regarding the limitation to fifteen years of the period of the first appointment of managing agents as unduly restrictive when applied to certain types of companies calling for long-term development policy and finance, the Chamber is prepared to acquiesce in it in the interests of unanimity provided there is no disposition to reduce it still further. The Chamber, however, cannot accept as reasonable the proposed restriction of renewals to ten years. If fifteen years on first appointment involves—as the Chamber knows from experience it will—an undue restraint on the incentive to the managing agent to embark on the promotion and development of a company, the ten year period for renewals will be even more discouraging to the managing agent in formulating and progressively implementing a long-term forward policy, particularly in the case of mining and development companies where assured continuity of both management and agreed development policy are essential. The Chamber strongly urges that renewals should be for the same period as for a first appointment, namely fifteen years, and sees no valid reason for the proposal that the periods should be different. If

the grounds for the suggested differentiation are that more frequent renewals act as a safeguard to the shareholders of the company against mis-management or inefficiency on the part of the managing agents, remedies for these eventualities are to be found elsewhere, for instance in the recommendations for the removal of managing agents contained in paragraph 119 of the Committee's report.

The Chamber also wishes to urge reconsideration of the further aspect of the Committee's proposals, namely that which seeks to prohibit the reappointment of managing agents except within twenty-four months before the expiry of their agreements. The effect of this proposal will be that for up to a period of two years before the agreements run out managing agents will be in a state of complete uncertainty as to whether they will continue thereafter to be responsible for the management, finances and policy of the company. The resultant natural hesitancy in respect of forward planning may well be disastrous to the company's progress. On these grounds, the Chamber strongly urges that the two-year period should be increased to five years.

There is a further connected point not covered by the Company Law Committee's recommendations which the Chamber considers should be suitably provided for in the new Act. As is known to Government, it is the frequent practice of managing agents, particularly in the development stages of a managed company, to make substantial loans to it whether by way of overdraft or otherwise and/or to stand as guarantor for it in respect of bank advances. The Chamber thinks it only reasonable that where the managing agency agreement lapses and is not renewed, it should be provided that the managing agency appointment will continue until such time as the loans made to the company by the managing agents are repaid and until the managing agents are released by the bank from any guarantees they have given on behalf of the company. If provisions on these lines are not included in the Act, it can easily be imagined, firstly, how prudent managing agents will of necessity have to limit the finance they make available to the company towards the end of the term of their appointment unless they are sure of renewal; and secondly, how unscrupulous concerns who gain control of the company with the

object of acquiring the managing agency will take advantage of their position to decline repayment of loans and to evade the responsibility of bank guarantees made by the former managing agents.

Pp. 90/93 : para 122—Transfer of Managing Agency in case of a firm or limited company—In this paragraph the Company Law Committee deal with the difficult question of what constitutes a change in the constitution of a managing agency firm or company. They recommend that in the case of a managing agent which is a public company and whose shares are officially quoted on a recognised stock exchange, the exemption at present granted by Section 87BB of the Act (introduced by the 1951 Amendment Act) should continue. In the case of managing agency companies other than public companies as so defined, the Committee recommend, *inter alia* (item (iv) (b) on page 92 of the Report), that the managing agency agreement should automatically and immediately expire if the votings rights attached to the shares held collectively by the persons who were the beneficial share holders in the managing agency company at the date when the agreement was entered into, at any time during the continuation of the agreement fall below 51% of the total voting rights.

This is a proposal which cannot fail to be most alarming for many managing agency companies of long standing and repute because, in its present form, it will result in the loss of all their managing agency agreements, to the great detriment of the managed companies, if they—the managing agencies—are unable to obtain an official quotation on a recognised stock exchange and, through circumstances outside their control such as the death of one substantial beneficial owner of the shares, fail to retain 51% of the voting rights. While agreeing with the Company Law Committee that some control is necessary over changes in the constitution of managing agency concerns, the Chamber feels that the proposal put forward in the Report with reference to managing agency companies other than public companies throws them, without any safeguard, at the mercy of stock exchanges who may—as has often occurred—irresponsibly refuse markings to them.

To meet the circumstances referred to above, the Chamber considers it only reasonable that there should be a safeguard to the extent of a right of application to the Central Authority for exemption from the suggested provisions of sub-paragraph (iv) (b) of paragraph 122 on page 92 of the Report. The Chamber earnestly hopes that this recommedation will be fully examined and favourably considered, as the effects of the proposal in its present form may well prove disastrous to many managing agency companies of high standing and to the managed companies for which they are responsible.

P. 95 : para 126—Quantum of remuneration of managing agent—As Section 87C on page 364 of the Report is drafted, the calculation is in respect of annual profits and in consequence, except to the extent that managing agents are entitled to a minimum remuneration, nothing can be drawn until after the end of the year. The Chamber suggests that the calculations might be made half yearly and if there is any loss in the second half of the year, it would be carried forward and set off against profits in subsequent half years.

P. 96 : para 127—Minimum Remuneration—The recommendation in this paragraph proposes to place a limit of Rs. 50,000 per annum, irrespective of circumstances, on the minimum remuneration of the managing agents which may be fixed by the company. In view of the extreme rigidity of this proposal, the Chamber thinks it should be permissible by special resolution of the company and with the sanction of the Central Authority to fix a minimum remuneration in excess of Rs. 50,000 in the same way as is proposed for managing agency commission in excess of 12½% of the nett annual profits.

P. 97 : para 129—Prohibition of payment of additional remuneration—It should be made clear that the prohibition against any remuneration to the managing agents additional to or in any other form than those laid down in the proposed redraft of section 87C does not preclude the payment to managing agents of intesest on overdrafts given to the managed company at such rate as may have been authorised by the directors.

P. 97/99 : para 130 (Pp. 364/65 : draft section 87C)—Definition of nett profits—remuneration of Managing Agents—(i) The

Chamber suggests that bearing in mind the varying arrangements now in force with regard to managing agency commission it is equitable that *losses* of previous years included in the calculation in future should be restricted to losses in respect of periods subsequent to the amendment of the Act. Furthermore, it should be provided that a loss once deducted from subsequent profits, should not again be deducted on a later occasion.

It is also necessary to draw attention to one undesirable repercussion of the proposal to deduct from the profits, for the purposes of calculating commission, the losses of previous years. Where a managing agent resigns or is removed from office, leaving the company with heavy losses to be carried forward, the effect will be to penalise the new managing agents for the failing of their predecessors ; and there may well, indeed, be occasions when the company will find it difficult or impossible to obtain the services of suitable new managing agents. To meet this likely position, the Chamber recommends that in such circumstances the losses sustained by the company prior to the date of appointment of a new managing agent should not be deducted from the profits of the company for the purposes of calculating the new managing agent's commission.

(ii) The Chamber is not clear as to the circumstances in which *depreciation* might not have been taken into consideration in arriving at profits of earlier years. The Chamber will refer later to the difficulties of calculating depreciation under the provision of the Section as drafted in respect of existing assets but submits that further calculations should be omitted.

(iii) The practical difficulties and the extra work entailed in the calculation of depreciation for the purposes of managing agency commission do not appear to have been fully appreciated by the Members of the Company Law Committee.

So far as current *additions to capital expenditure* are concerned presumably it is proposed that the calculation should be done in the same manner as for income tax purposes by reference to the months when the buildings or plant and machinery are put into use. This entails considerable time and labour and while this calculation can be effected, in large concerns

it may mean a delay in the preparation of the company's accounts. Furthermore, it might so happen that the company's income tax assessment might not be completed for some considerable time after the end of the accounting period and in such cases it might be necessary to rework all the depreciation figures so that the calculations for depreciation for commission purposes fall into line with those finally agreed for income tax purposes.

In the case, however, of assets in use before the amended section becomes operative, even greater difficulties appear as the figure on which the calculation is to be based in the first year is not defined.

If some notional figure has to be evolved, then further calculations will be necessary with all the consequential difficulties they will involve.

The Chamber therefore suggests that to avoid all the innumerable complications that arise owing to notional depreciation, the depreciation to be deducted for commission purposes should be that charged in the accounts.

While *E. P. T.* and *B. P. T.* have been expressed as a charge on income, in actual fact they represent taxation which for all other purposes has been treated as appropriations of profit and the Chamber suggests therefore that no deduction should be made for these items when calculating commission.

The Chamber is not clear as to the meaning of sub-section 4 of draft section 87C. Where, for example, the end of the second year falls during the company's accounting period, should the calculation be made by reference to the new formula for the whole year or part of a year only ?

Chapter xi—Accounts and Audit.

Pp. 113-132-paras 147-203 (pp. 400-420)

1. BALANCE SHEET (Page 403).—The Chamber does not agree that it is desirable to lay down the exact form in which the Balance Sheet of any Company is to be prepared. Apart from the practical difficulties of conforming to such a requirement,

it would be a retrograde step, in the Chamber's view, to insist on too rigid a form of accounts as this will greatly retard the development in India of modern accounting techniques. If it is eventually decided that a form of Balance Sheet should be prescribed, the position should be made as flexible as possible and not only should it be possible to show heads additional to those appearing in the draft form, but it should not be necessary to use all the headings if they are not applicable or if the amount involved is nil.

Furthermore, if the information required is given, it should not be necessary for the order and the grouping to follow exactly that laid down in any forms that may be prescribed.

The Chamber also draws attention to the following items in the form as drafted :—

(i) *Page 411*—The necessity of a liability fund as shown in reserves on page 411 is not understood.

(ii) *Page 412*—The Chamber notes that it is suggested that debts due by officers of the company other than directors must also be shown. The Chamber suggests that it is desirable that "officers" should be clearly defined and in particular it should be stated whether or not it includes auditors for this purpose.

(iii) *Debts over three months old to be shown as loans. (pp 120 and 416)*—Government will appreciate that in many cases, debts due by themselves are outstanding for over three months and if the proposal of the Committee is accepted, then such debts will have to appear under "Loans & Advances.". Furthermore, in many businesses, particularly those connected with Engineering, it is provided in the contract that a portion of the contract money shall not be paid for some months. In such circumstances it does not seem to the Chamber reasonable that such debts should be included under the heading "Loans & Advances.". Furthermore, the arbitrary transfer of a book debt to another heading may mean that the Balance Sheet will not show a true and fair view of the company's position.

The Chamber appreciates that the Company Law Committee have in mind the possibility that directors of a company may

have allowed book debts due by themselves to remain outstanding for lengthy periods. The Chamber therefore, has no objection to debts due by directors which, under the present law have to be shown in the balance sheet, being divided into two headings, (*a*) those which have been outstanding for less than three months and (*b*) those that have been outstanding for over three months.

Page 415, Item (*g*)—The Chamber cannot find any reference to this note in the Balance Sheet and in any event it appears redundant.

Page 416, Item (*n*)—The note refers to the balance sheet and the need to show corresponding figures of a previous period. The second sentence of the note refers to requirements in the case of companies having quarterly or half-yearly accounts. Surely, it is intended in this sentence to state that the corresponding figure to be shown is the figure appearing in the balance sheet prepared as at the corresponding date in the previous year and no reference to profit and loss account should be made in this note.

2. PROFIT AND LOSS ACCOUNT (Page 417).—While the Chamber agrees it is desirable that adequate disclosure should be made in the profit and loss account it does feel that the Schedule as drafted contains far too much detail and that particularly in the case of larger companies, the extra work involved and the additional details shown will not provide the shareholders with the information which should be supplied in a form readily understandable.

The Chamber suggests that it is sufficient to show in the profit and loss account details as set out in the draft schedule attached as an appendix to this letter.

The Chamber has the following comments on matters included in the form as drafted.

Page 417—(i) The Chamber feels that item (viii) is unnecessary in that provisions made for specific liabilities will normally be shown under the appropriate heading *e. g.* salaries,

rents, Insurance, etc. The effect of the proposal would be to exclude liabilities for these items from the appropriate headings and to include them in a lump sum item for all liabilities rendering comparative figures almost meaningless.

Page 420, Clause 5 (2) (a)—It is not clear whether it is intended to refer to assets acquired before the amendment of the Act or depreciation written off before the commencement of the Act.

P. 128 : para 174—Chartered Accountant or partner of his firm to sign Auditor's Report etc.—The Chamber sees no reason why a qualified assistant under a power of attorney should not sign reports etc. on behalf of his firm. In such cases, the firm is still responsible for his actions and in the case of any criminal proceedings, the individual is in any case liable for his own actions. The Chamber also visualises the case of an individual practitioner who might be on holiday or ill : in such cases no one would be in a position to sign any report if he is not permitted to authorise a qualified assistant to do so under a power of attorney.

Chapter xvi —Foreign Companies.

(Pp. 165-167 : paras 223-24 p. 434—Sect. 277C)

Foreign Companies, Section 277C, page 434—Under the law in many other parts of the world the provisions with regard to Balance Sheets and Profit & Loss Accounts are such that it is not necessary to give such detailed information as is proposed for India.

In the case of companies having interests throughout the world, considerable difficulty will therefore be experienced in analysing their accounts to provide the amount of detail proposed by the Committee.

What will be a difficulty in case of an Indian Company may become an intolerable burden in the case of foreign companies and may be a discouraging factor that will be taken into consideration by the foreign company when considering whether or not to risk capital in India.

The Chamber feels that a form on the lines of the existing Form H is adequate.

Annexure and Addendum

P. 251 : Redraft of Section 81—resolutions—In item (v) of the Committee's proposed redraft of existing Section 81 of the Act it is provided that a resolution shall be a special resolution when it has been passed "by a majority of 75 per cent of the members present and voting at a meeting .....". In view of the uncertainty which has always existed, in practice if not in law, as to the proper interpretation of "a majority of 75%", the Chamber recommends that this uncertainty should be ended by deleting the words 'a majority of", thus making a special resolution clearly one which has been passed by 75% of the members present and voting at a meeting.

P. 356/357 : Redraft of Section 83B—Appointment of Directors—To meet the position of a director holding office as a trustee of debenture holders, it is recommended that Section 83B should include a proviso similar to the one suggested in the Committee's redraft of Section 86E, para (c), on page 261 of the Report.

5. The Chamber trusts that these comments on the Company Law Committee's impressive and otherwise eminently practical report will be given full consideration by the Government of India before the drafting of the new consolidating Act is undertaken. If any elaboration of the views expressed in this letter is necessary the Chamber will gladly depute representatives to discuss the matter in New Delhi.

Appendix : Draft Schedule for Profit and Loss Account

Draft of.....Schedule.

The profit and loss account shall include the particulars set forth under the following headings :—

1. The gross income before any deduction on account of costs or expenses showing separately turnover and distinguishing in-

come from investments, dividends from investments, dividends from subsidiary companies and each other source from which the income has been derived.

II. The gross expenditure showing separately any expenditure chargeable under the following heads :—

(i) the purchases and the opening and the closing trading stocks or, alternatively, the cost of sales.

(ii) Provision for depreciation on fixed assets.

(iii) Interest on debentures and other fixed loans.

(iv) Amounts provided for taxation on profits.

(v) Amounts provided for the redemption of (a) share capital and (b) loan capital.

(vi) Provisions for losses of subsidiary companies.

(vii) The total of the amounts paid as remuneration to the Managing Agents, if any, whether as fees, percentages, or otherwise ;

(viii) The total of the amounts paid, whether as fees, percentages or otherwise, to the Directors as remuneration for their services and, where a special resolution of the company so requires, to the Manager. If any Director of the company is by virtue of the nomination, whether direct or indirect, of that company, a Director of any other company any remuneration or other emoluments received by him for his own use, whether as a Director of, or otherwise in connection with the management of, that other company, shall be shown in a note at the foot of the account or in a statement attached thereto ;

(ix) The aggregate amounts of any compensation paid to Managing Agents, Directors or former Managing Agents or Directors of the company (1) as such and (2) otherwise, for loss of office or in connection with or arising out of their retirement from the company or from any other company of which the Director is a Director by virtue of the nomination, whether direct or indirect of the company sub-divided to show the amounts paid respectively,

(a) by the company ;

(b) by such other companies ; and

(c) by any other person.

(x) The aggregate amounts of any pension paid to Directors or former Directors of the company, (1) as such and (2) otherwise, sub-divided to show the amounts paid respectively ;

(a) by the company ;

(b) by any subsidiary company ;

(c) corresponding figures for the immediately preceding period.

III. Any profits or expenditure applicable to any previous period, if material.

IV. The aggregate, if material, of amounts withdrawn from reserves.

V. The aggregate, if material, credited in respect of provisions made for specific liabilities, contigencies or commitments no longer required.

VI. Any material respects in which any items shown in the profit and loss account are affected by any change in the basis of accounting.

VII. Dividends paid or proposed, disclosing whether such amounts are stated before or after deduction of income tax.

VIII. Corresponding figures for the immediately preceding period or, where the account is for a half-yearly period, for the corresponding period in the immediately preceding financial year of the company.

LAW & LEGISLATION—TAXATION

THE INDIAN INCOME TAX (AMENDMENT) BILL, 1952

Letter dated 17th June, 1952.

From—The Secretary, The Bengal Chamber of Commerce and Industry.

To—The Secretary to the Government of India, Finance Ministry (Central Board of Revenue), New Delhi.

I am directed to request the Ministry of Finance to take into consideration the following comments on the Indian Income Tax (Amendment) Bill recently introduced in the House of the People.*

2. The Bill has received the careful attention of the Chamber and is a welcome measure which the Chamber finds itself able broadly to accept subject to two general observations and to suitable action to meet the detailed points raised below. The Chamber's first general observation is intended to give prominence to the view which it strongly holds that the responsibility for the enforcement of the tax clearance procedure envisaged in *Clause 23* of the Bill should not be imposed on the owners or charterers of ships and aircraft with the heavy and indeterminate penalties proposed in that clause but should be independently discharged by Government in the same way as the passport, health and customs requirements of the law. The Chamber's second general observation is that the Bill, in *Clause 34*, repeats what the Chamber had occasion last year to describe as the quite indefensible principle in taxation of retrospective legislation. The Chamber feels bound once again to emphasise the assessee's essential right to be able to determine at any given time his precise tax obligations and commitments according to the law, and the Courts' in-

* The Indian Income Tax (Amendment) Bill, 1952, was introduced in the House of the People on 26th May, 1952, and published in the Gazette of India, Part II, Section 2 on 31st May, 1952.

terpretation of it, at that given time and to be protected against any amendments which alter these obligations and commitments retrospectively.

3. The following are the detailed points which the Chamber would ask the Finance Ministry to consider:

CLAUSE 2—Amendment of Section 2.

Sub-Clause (a) of this clause of the Bill proposes to insert a new definition of "assessee" which is satisfactory except that the Chamber thinks consideration should be given to the inclusion of the words "or to" after the words "person by" in the first line of the proposed definition as refunds as well as payments of tax are involved.

CLAUSE 3—Amendment of Section 4.

Clause 3.1)(b)(i) seeks to amend sub-section (3) of Section 4 of the Act relating to the exclusion from assessable income of income from property held under a trust solely for religious or charitable purposes or derived from business carried on on behalf of a religious or charitable institution. The wording of the proposed new sub-section (4)(3)(i) and of the proviso is obscure and the Chamber will be grateful if it can be re-examined to ensure that the following interpretations of it, which cannot be intended, are not capable of being read into the sub-section :—

Firstly—the words "in so far as such income is applied" in the substantive part of the sub-section might suggest that income derived from property held under Trust or other legal obligation solely for religious or charitable purposes is exempt only if it is applied to such purposes in the particular year and not if it is accumulated for application to such purposes in later years. In this connection, income accumulated for constructing a building wholly used for the purposes of a religious or charitable institution suggests itself as an example of the kind of income which would not be exempt under the suggested interpretation, although there is no reason why such income should not be exempt since it is entirely used for the purpose in respect of which exemption is contemplated.

Secondly—the wording of the proviso seems to be capable of being interpreted to mean that the exemption does not extend to income of religious or charitable institutions when the income is applied or set apart for application to religious or charitable purposes *within* the taxable territories. In paragraph (i) of the proviso, the words "religious and charitabe purposes" should in any case presumably read "religious or charitable purposes".

Sub-Clause (1)(b)(iii) of Clause 3 of the bill proposes to insert certain new clauses giving exemption in respect of, *inter alia*, technicians paid by foreign enterprises if their stay in India does not exceed 90 days. The Chamber must again press, firstly, for reconsideration of the period of the stay which is too short to make the concession of real value to the progressive development of Indian business and industry and, secondly, for the extension of the exemption to cases in which the enterprise responsible for the temporary visit of the expert is engaged in trade or business in the taxable territories. The practical experience of many branches of the Government of India itself supports the contention that if the services of a highly qualified foreign technician are to be of real and lasting value to the country, his stay cannot be restricted to as short an aggregate as 90 days and it is again strongly urged that nothing is to be lost by extending the period of tax-free visits to 183 days in any year. Otherwise, either the services of the required experts will just not be forthcoming or much of the value to be derived from them will have to be sacrificed. Furthermore, when the remuneration—as in many cases is unavoidable—has to be borne by the Indian business or the Indian branch of a foreign enterprise, the Chamber contends that it should also be allowed as deduction from income if the exemption is to have any value in such circumstances.

CLAUSE 4—Amendment of Section 5.

Sub-Clause(f) of clause 5 of the Bill proposes to insert a new subsection (5A) into Section 5 of the Act to the effect that Inspectors of Income Tax shall perform such functions "as are assigned" to them. In the Chamber's view, these words involve too wide a delegation of the duties of Income Tax Officers or

other Income Tax authorities, extending even to assessments. The functions of Inspectors of Income Tax should be clearly defined and restricted to their purpose of inspection.

Similarly **Sub-Clause** (g) which seeks to revise sub-section (7) of Section 5 of the Act contemplates that Appellate Assistant Commissioners shall be sub-ordinate to the Commissioners, is open to objection. In the Chamber's view, the Appellate Assistant Commissioner should come under the administrative control of the Appellate Tribunal.

The wide latitude granted in the proposed **Sub-Clause** (h) of Clause 4 of the Bill will have the effect of virtually depriving the assessee of any advantage from approaching the Commissioner under Section 33A if the latter has already issued guidance to the Income Tax Officer. And it is equally anomalous that the Inspecting Assistant Commissioner should be empowered, for instance, to issue guidance to an I. T. O. with regard to the imposition of a penalty under Section 28 and also himself to sanction the penalty.

CLAUSE 7—Amendment of Section 9.

Sub-Clause (1)(a)(ii), of Clause 7 of the Bill introduces a proviso increasing the allowance for repairs to property affected by the Assam earthquake of 1950 from one-sixth to a maximum of one-half of the annual letting value. This concession is appreciated but the Chamber is unable to see, in fairness to the victims of the earthquake, why it should be limited to one-half.

CLAUSE 8—Amendment of Section 10.

Sub-Clause (a)(iii), the Chamber must again point out, restricts inequitably and drastically the allowance of revenue expenditure and does not in the opinion of the Chamber give effect to recommendation 166 of the Income Tax Investigation Commission. The words "of the nature" imply that any expenditure *of a similar nature* not covered by Clauses (i) to (xiv) cannot be claimed under this or any other section. The Chamber requests that sub-clause (a)(iii) be re-examined in this light.

Sub-Clause (b),i) of Clause 8 adds a new clause to sub-section 5 of Section 10 providing for the determination of the written-down

value of assets acquired by a person through gift or inheritance. As "market value" cannot be readily arrived at, it is suggested for consideration that the words "or the market value thereof whichever is less" should be omitted, leaving the depreciation to be calculated on the written-down value as in the case of the previous owner; no sacrifice of revenue would be involved by by such a change.

CLAUSE 12—Amendment of Section 18.

The Chamber suggests that in Sections 18(3A)(i), 18(3B) and 18 (3D)(i), the deduction in the case of a Company should be at the rate applicable to *that* Company, i. e. in the case of those which are entitled to a rebate the deduction should be after taking the rebate into account.

Sub-Clause (c) of Clause 12 of the Bill introduces an amendment to secure that credit for tax deducted at source under Section 18 will be given where the amount deducted has been *paid* to the account of the Central Government. The Chamber submits that the person from whose salary, dividend, interest etc. tax is deducted at source should be protected from any claim by the Revenue Authorities for a second payment of the tax due in cases in which an employer or company makes the deduction at source and then fails or deliberately omits to pay the tax so deducted to the Treasury. As drafted, this amendment to subsection (5) of Section 18 opens the door to gross abuse, at the expense of a wholly innocent party, of a requirement of the law made by Government for the convenient collection of tax on its behalf. In circumstances such as those referred to above, the recourse should certainly be against the party which has deducted the tax and appropriated it, not against the recipient of the salary, dividend interest etc, who has already suffered the tax deduction.

CLAUSE 13—Amendment of Section 18A.

Sub-Section (c) and (d). A number of assessments have been completed since the 31st March 1952 and interest on advance payments has been paid to dates after the 31st March 1952 and the Chamber suggests that the amendments proposed in sub-clause

(c) should only be effective in respect of assessments for 1952/53 and later years if this effect has not been secured by clause 33 of the Bill.

In any event, in the new proviso inserted by sub-clause (c) and in the first of the two new provisos referred to in sub-clause (d), the Chamber recommends that the words "interest shall be payable" be replaced by the words "interest shall accrue" as otherwise no interest will be payable in respect of sums deposited long before the 31st March 1952.

Sub-Clause (c) also proposes to discontinue, as from the 1st April 1952, the 2% interest payable by Government from the date of payment of advance tax to the date of provisional or regular assessment. In the Chamber's view, this amendment will remove that one remaining incentive to the Income Tax Officer to complete assessments and is to be deprecated on these grounds ; the rate of interest is not in all conscience substantial under present conditions and there is no reason why, when even with this incentive assessees have frequently got to wait several years before assessments are completed, this small interest payment should not in equity be made. Furthermore, advance payments of tax by businesses are not in many cases comparable with income under the head "salaries" as, when accounts are finally prepared, there may be no profits owing, for example, to losses having been incurred in the second part of the year.

Sub-Clause (d)(ii) proposes a second proviso to sub-section 6 authorising the Income Tax Officer to reduce or waive the interest payable by the assessee in cases in which the assessment is not contested by the assessee. The Chamber sees no reason why the exercise of this power should be arbitrarily restricted to uncontested assessments and urges that this limitation should be removed.

CLAUSE 14—Amendment of Section 22.

Sub-Clause (a) proposes an amendment designed to enable a person who has sustained a trading loss to file a return voluntarily and to have the loss determined and carried forward as a set-off in subsequent years. The clause as it is worded is capable, as

was pointed out last year, of discrimination against such an assessee and the Chamber considers that it should either be provided (or an assurance given) that the Income Tax Officer will extend in suitable cases the time specified in the general notice under sub-section (1) of Section 22 or that he will issue notices under sub-section (2) and allow suitable extensions of time ; and that provided the return is put in within the time allowed, the assessee will be entitled to the benefits of the new sub-section (2A). This concession should also be granted for 1952/53 as the time under sub- section (1) will have elapsed before the Bill becomes law.

The proposed amendment, under sub-clause (b) of this clause of the Bill should, it is recommended, include a safeguard limiting demands for accounts or documents to such as are relevant to the assessments under consideration. The words "including a statement of all assests and liabilities *not included in the accounts*", forming part of the proposed amendment, are capable of the most serious abuse and harassment especially in the case of the individual, and an assurance is at least necessary that the provision will not be used in this way.

CLAUSE 16 – Amendment of Section 30.

The Chamber has taken exception to the contemplated right of an Inspector of Income Tax to make an assessment. If Clause 4 is not amended to remove this right, then the Chamber must press strongly for a right of appeal to the Appellate Assistant Commissioner.

Furthermore, if the Director of Inspection is authorised to make assessments, a right of appeal to the Appellate Tribunal should be provided.

CLAUSE 20—Amendment of Section 35.

The amendment of shareholders' assessment in respect of section 23A orders should also be modified if the 23A Order is cancelled or altered.

CLAUSE 21—Amendment of Section 37.

The proposed new **sub-section** (2) of section 37 authorises any Income Tax Officer, Appellate Assistant Commissioner and the

Appellate Tribunal to impound any books of account or other documents produced and to retain them for such period as the authority in question thinks fit. This power, which apparently extends even to documents of title, could result in the utmost degree of harassment.

It should be sufficient, in the opinion of the Chamber, to empower the income-tax authorities in question to compel the production of relevant documents, the retention of which should be subject to a stated and reasonable maximum period.

CLAUSE 22—Amendment of Section 46.

The explanation proposed to be added to sub-section (7) of section 46 appears to the Chamber to be quite unnecessary as the available modes of recovery are adequate. As worded, it is extremely vague—e. g. "a proceeding for the recovery of any sum" and "if some action is taken to recover ....."—and would permit of several attachments being made in respect of the same assets of the assessee with the result that no individual attachment could be satisfied. The Chamber urges the deletion of the proposed explanation.

CLAUSE 23—Insertion of new Section 46A.

Since the proposal to require persons not domiciled in India, or who do not intend to return, to obtain tax clearance certificates before leaving the country was originally mooted as part of the Taxation Laws Amendment Bill in 1949, the Chamber has supported it though regretting the necessity for it. The Chamber has however, strongly opposed—and still opposes—the means adopted in sub-section (2) of the proposed new section 46A of enforcing this provision, namely by placing on the owner or charterer of any ship or aircraft the onus of ensuring that an affected person is in possession of a certificate, under penalty of payment of the tax payable by such person and a fine of up to Rs 2000. As has already been stated in the preamable to their letter, this is a responsibility which should clearly attach to the Government administration in the same way as enforcement of passport, health and customs formalities.

The obligation to obtain and carry tax clearance certificates applies to persons who are not domiciled in India and who, even if domiciled in India have in the opinion of an income-tax authority no intention of returning to India. This will involve shipping and aircraft operators in intricate questions of domicile which they are not in a position to determine ; and, in the case of all passengers domiciled in India, will place them under the necessity of satisfying themselves that the income-tax authority is in fact of the opinion that they intend to return to India unless they—the operators of the ship or aircraft—are to run the risk of penalty and fine. This responsibility is an impossible one which the Chamber once again urges be discharged by Government themselves.

Whatever the means finally adopted of enforcing this regrettable new provision of the law, the Chamber wishes to take this opportunity of emphasising one important practical consideration, namely that for the successful operation of the system of tax clearance certificates, it is of the utmost importance that arrangements for their prompt issue by the income-tax department should be carefully planned and made well in advance. There are two pre-requisites to this : firstly that the proposed new section 46A should not be brought into operation without due notice which the Chamber considers should be at least three months ; and secondly, that the rules to be framed under sub-section (4) should be made available to the public for comments and suggestions prior to their introduction.

CLAUSE 22—Amendment of Section 49D.

As the Chamber pointed out a year ago, one of the defects of the otherwise welcome new provisions of section 49D will be that in certain cases double taxation will still continue.

For instance, in the case of unilateral relief allowed in the United Kingdom, this is admissible only in respect of income which does not arise in that country. On the other hand, the relief allowable under the proposed section 49D in India will be in respect of income actually arising in the U.K. provided it is not deemed to accrue or arise in India. If the unilateral relief is spread over the entire income, the rate of tax on the income cal-

culated according to the present set up on the income arising in the U.K. will be reduced although such income will not in fact have received any relief in the U.K.

In the Chamber's view it should be made clear that the arrangements will be such that the whole of the tax chargeable in India or in the other country will be recoverable at the lower of the two rates in respect of the whole of the doubly taxed income.

CLAUSE 27—Amendment of Section 54.

Section 54 deals with the disclosure of income by a public servant and the amendment proposed seeks to widen the scope for such disclosures (a) in connection with a prosecution and (b) of information gathered from the accounts of one assessee for use in the assessment of another.

The Chamber still considers that in the amended version of clause (a) of sub-section (3) of section 54, the substitution of the words "of any matter" for the existing words "of any such statement, returns, accounts, documents evidence affidavit or deposition" is a retrograde step the effect of which will be to nullify section 54(1) and to destroy the confidential nature of assessment proceedings. In the chamber's view the old clause should remain.

As regards **Sub-Clause (iii)** of clause 27 of the Bill the Chamber again fails to see any sound reason for the deletion of the words "in connection with income-tax proceedings". This was not one of the recommendations of the Income-tax Investigation Commission.

CLAUSE 31—Substitution of new Section 67.

The Chamber still cannot see why the Central Board of Revenue should seek to modify the constitutional right of the assessee to test in a competent Court the legality of proceedings initiated by the income-tax authorities. The existing section is regarded as adequate, though if necessary the Chamber would have no objection to a proviso that any assessment delayed as a result of legal proceedings instituted by the assessee should not be barred under time limitation.

CLAUSE 34—Validity of certain notices and assessments.

This clause of the Bill raises in notable form the objection already taken in this letter to retrospective legislation affecting all assesses. While sympathetic towards the intention of the clause, the Chamber cannot accept a further amendment to a section of the Act, already amended in 1948, making it applicable to assessment years earlier than 1948 ; any such action vitiates the basic principle that an assessee's tax liabilities as ascertained according to the law, and according to the Courts' interpretation of that law, at any stated time should not be altered detrimentally to the assessee with effect anterior to that time.

Furthermore, in the opinion of the Chamber it is fundamentally wrong for the Government of India to anticipate judgment of the Courts on the interpretation of a section of the law deliberately made and subsequently amended by Government to express their own intentions.

The Chamber trusts that these observations on the Income Tax (Amendment) Bill, 1952, will receive careful consideration before the Bill is proceeded with.

LAW & LEGISLATION—TAXATION

TAX CLEARANCE CERTIFICATES.

Letter dated 15th October, 1952.
From—The Bengal Chamber of Commerce and Industry.
To—The Central Board of Revenue.

Likely difficulties which should be covered in any executive instructions issued by the Board.

1. Exemption Certificates should be issued to employees of companies who undertake to meet the taxation obligations in respect of the emoluments paid by them to their staff. Taxation Clearance Certificates have been issued in Pakistan in such circumstances where employers have given an undertaking on the lines of the attached draft.

Draft Certificate

Date.....

Name in full .....

Full residential address in India .....

Occupation.....

We,....., are the employers of Mr.....,who is retiring from the Company's service with effect from .....

We certify and guarantee that the tax payable on Mr.....'s salary earned from the Company will be paid over to the tax authorities in..... The necessary clearance certificate may therefore be issued to him on this understanding.

(Name, Stamp & Signature)

Furthermore, where companies are prepared to hold themselves responsible for the tax obligations of visitors (e. g. home officials) then an Income Tax Officer should readily issue Income Tax Clearance Certificates.

While most cases will be covered by undertakings from employers, the following cases require to be borne in mind :—

(i) persons making frequent journeys to Pakistan or elsewhere for business purposes ;

(ii) those who have had no previous assessments in India ; (for example, a person who comes to India in employment and has to leave the country before the close of the previous year for his first assessment year on grounds of health or owing to a sudden termination of service) ;

(iii) employees whose employment necessitates movement from place to place in India ; (for example, an individual may have, as a practice due to the reason of his continuous movement about the country, submitted all his Income Tax annual returns to the Calcutta Tax Authorities but after a temporary stay in Bombay wishes, due to health reasons, to leave India immediately and to depart from

Bombay. Would this, under the intended requirements, mean his personal attendance and application to the Calcutta Tax Authorities for the Clearance Certificate?).

2. Where companies have not undertaken to meet the tax obligations of assessees, difficulties are envisaged.

There are the cases of :—

(i) non-residents who have income arising in India who visit India briefly for business or personal reasons as also those with close or direct connection with firms here ;

(ii) technicians or executives from the Head Office of non-resident concerns visiting India, for short periods, either for giving technical advice to the staff in, or for inspection of, their Indian Branches. In these cases the visiting persons often receive no remuneration in India but may be paid actual out-of-pocket expenses during their stay in the country.

3. Retirement. Certain difficulties are visualised on the retirement of an individual from India, particularly where under the definition of "Resident", he is resident in India in respect of the income of the year after the employment in India has ceased.

Mr. "A" retires from the service of his employer on the 31st March 1953, but receives commission after that date in respect of the period before termination of his services. He therefore, receives commission during 1953/54 from his ex-employer, which is assessable to tax in the fiscal year 1954/55.

If Mr. "A" leaves India before 31st March 1953, and the employer gives the undertaking referred to in paragraph 1 above, no real difficulties arise as the employer will deduct tax from the commission at the rate applicable to non-residents or the rate

applicable, whichever is the higher. If the employee later decides to exercise his option, then in most cases he will be entitled to a refund when his assessment is made.

Mr. "B" also retires on the 31st March 1953 in the same circumstances but remains in India until, say, the 2nd April 1953.

He is then in India for a time during the fiscal year 1953/54 and unless this short period is considered an "occasional" or "casual" visit, Mr. "B" is assessable as "resident and ordinarily resident" for the fiscal year 1954/55 on the whole of his world income for the year 1953/54. At the time when he leaves India, it is quite probable that he will not have any idea what his income outside India will be for the rest of the year as he will not know what employment, if any, he will obtain in the U. K. In such circumstances, it seems inequitable to take into consideration any income which, in any event, is not applicable to India and the amount of which is unknown. Any retention of funds might mean that capital required for, say, the purchase of a house in the U. K. would not be available to the individual at the time required.

If however, as previously suggested, the Department is prepared to accept from the employer an undertaking that he will deduct tax at the rate applicable, as a resident, to the emoluments paid to the employee or at the rate applicable to a non-resident, no difficulty will then arise.

4. Delayed assessments. Persons whose assessments for a number of years, prior to the date of the intended departure, are unsettled owing to the delay in deciding disputes regarding the basis of assessment, e. g. a person an earlier assessment on whom is under appeal and in consequence whose subsequent assessments are kept pending.

5. Special difficulties are likely to arise in the case of self-employed persons, tourists, missionaries, Consular officials and students. There are also Pakistan employees of a company visit-

ing India for health purposes or medical treatment ; and those who visit this country to prospect and report to their employers on trade or industrial possibilities. Tourists should possibly be exempted from the requirements of Tax Clearance Certificates as otherwise they will be discouraged from visiting India.

When a husband and wife leaving India travel together they are presumably both covered by the draft provisions of the legislation but in cases where wives have to make the journey alone they should be either exempted or should at least be able to obtain an exemption certificate without having to await a settlement of their husband's tax affairs. All children below the of 18 years should moreover be exempted from the scheme.

6. General. Particular reference is made to the practical difficulties through extended closure of Government offices at times such as the Pujas. In general it is imperative that the nature of the undertakings or evidence required by the authorities should be clearly laid down so that each case may be quickly decided and persons not detained against their will. There should be provisions for an authority to whom aggrieved persons may appeal for a swift hearing and quick decision.

LAW & LEGISLATION—TAXATION

THE ESTATE DUTY BILL, 1952

Letter No. 1012 dated 11th February, 1953.

From—The Bengal Chamber of Commerce and Industry.

To—The Secretary to the Government of India, Ministry of Finance, New Delhi.

I am directed to place before you the Chamber's views on the Estate Duty Bill* at present under reference to a Select Committee.

2. The Chamber feels it necessary to point out that the Bill has certain dangers in the present special circumstances of India's industrial and commercial development and especially in the context of the Five Year Plan. Capital investment is everywhere already hesitant, and it would be a matter for great regret if too drastic an introduction of Estate duties checked the flow of capital on which the success of the Five Year Plan must to a great extent depend. It is necessary also to point out that if the rates of Estate Duty are not kept at a very low level, not only will capital continue to be hesitant but will tend actually to withdraw itself from productive employment in the commerce and industry of the country and retreat to non-productive uses to avoid the impact of death duties.

3. One problem, the solution of which is essential if serious damage is not to be done to an important sector of industry and commerce, is that of Double Taxation. The Chamber takes this opportunity to impress on the Government the vital need for the conclusion without delay of agreements for the avoidance of Double Taxation with other countries, and particularly with the United Kingdom.

* The Indian Estate Duty Bill, introduced in the House of the People on 11th August, 1952, and published in the Gazette of India, Part II, Section II, dated 16th August, 1952.

4. The extent to which important matters throughout the Bill are left to rule-making or to discretionary power is in itself likely to be a serious deterrent to the inflow of capital. The Chamber fully realises the advantage which wide rule-making powers have from the administrative point of view, especially in a measure necessarily so complex as this, but it is felt that the range and scope given to rule-making and to the discretion of the Executive is far too wide. It is not doubted that these powers would in practice be exercised reasonably, but nevertheless in its present form the Bill can hardly be reassuring to investors. The Chamber suggests that the minimum exemption limit should be incorporated in the Bill. In this connection it is pointed out that the minimum exemption limit in the U. K. (now £ 2,000) is incorporated in the U.K. Act.

5. Another aspect of the Bill about which the Chamber feels concern is that of "controlled companies." The Bill's provisions on the subject are expressly declared to be adapted from corresponding British legislation, though they involve a resort to rule-making on a scale unknown in that legislation. As the Chamber understands the position, these provisions, here as in Britain, are designed to check a particular type of evasion. That being so, their target is almost exclusively the private company, since that is the natural and only really suitable vehicle for evasion of this sort. But the Chamber is apprehensive lest, owing to the special forms of commercial and industrial organisation in the country, and especially in Bengal, some unexpected and unwanted results may be produced by the provisions in their present state.

This question is in its way a good illustration of the uncertainty that the abandonment of too extensive a tract of law to rule-making can produce. There are in Bengal some large companies such as Managing Agencies, where a controlling interest is in the hands of a Group of individuals, but where nevertheless there are perhaps thousands of small shareholders. The Chamber is confident that these companies are not meant to be affected,

but if this part of the Bill is passed in its present form, there can, owing to the blanket nature of the reference to rule-making, be no certainty of their immunity. If such companies were affected there might be some highly undesirable results : in particular, numerous small shareholders might have to bear a very heavy and wholly undeserved burden. Nor would it be possible for the companies to secure themselves in advance through indemnities taken from individual shareholders, since the shareholders might well refuse to grant them.

6. The question of valuers (clause 4) has also engaged the attention of the Chamber. It is felt that there might in the course of time grow up a body of men who were dependent upon Government for a large share of their business, in that their principal work might be the making of valuations for the purposes of the Act—a situation which could not be regarded as wholly desirable. While it is realised from the explanatory note to Clause 2 (19) that the valuers would be non-officials like the Board of Referees under the Excess Profits Tax, there might, nevertheless, be a great risk of their performing their duties in a manner not entirely satisfactory. The Chamber urges therefore that the valuers under the Act should be selected from those only whose professional practice is large and wide enough to exclude the possibility of an unhealthy dependence on this type of work.

7. The Chamber's more detailed comments on the Bill are as follows:—

CLAUSE 3(1)(b).—The Chamber is doubtful as to the meaning of this clause and the reason for its insertion. If it means simply that a disposition of property shall be deemed to be a disposition even though the disponor acquired title to the property in a different form, it is unobjectionable ; but since this meaning seems to lack force, the Chamber feels it necessary to enquire further in order that the provision may be adequately considered and commented on, should that be desirable.

Accordingly the Chamber would request the Government to clarify (a) the meaning of the clause, and (b) the purpose of its insertion.

CLAUSE 11.—It is felt that in this clause the same principle should be applied as is contained in the proviso in Clause 10 : i.e. duty should not be leviable even if the disponor did not *immediately* part with "*bona fide* possession" etc. (Sub-Clause (2)), provided that he did so part at least two years before his death (or 6 months if for public charitable purposes). This principle is applied in Sub-Section (4) of Section 43 of the U.K. Finance Act 1940.

It is suggested that the proviso in Clause 10 of the Bill could be adapted for this purpose, probably as an additional proviso to Sub-Clause (2) of Clause 11.

CLAUSE 12—EXPLANATION. As it stands, this very materially enlarges the effect of the clause itself. The Chamber thinks it likely, however, that it is not intended to be so wide, and that the following amendment, besides being reasonable, would conform with the draftsman's intentions ; namely, the insertion after the word "maintenanace" of the words "during his life or any other period determinable with reference to his death."

CLAUSE 13.—Although this exactly corresponds with the U.K. statutory provision, nevertheless as a matter of U.K. Revenue practice duty is only claimed on *half* the value of the property where, for example, a husband has conveyed property to himself and his wife as beneficial joint tenants. This practice is stated in English text books (c.f. Dymond's Death Duties 11th ed., p. 142). It occurs to the Chamber that Government might wish to adopt this practice, either as a matter of law by amendment of the section, or as a matter of established concession under Clause 32.

CLAUSE 17.—*Sub-Clause* (1)—It is suggested that the words "subject to the provisions of Clause 20" should be added to Clause 17(1) in the last line on page 7 of the Bill.

The suggestion is made to remove the possibility of a clash between the provisions of Clauses 17 and 20. Clause 17 says that on the death of a deceased transferor a fraction of the assets of the company shall be deemed to be included in the property passing on his death ; Clause 20 says that immovable property in other countries shall not be included in the property passing on the death of the deceased. If therefore the company in question held land in, for example, the U. K., it might conceivably be argued that a fraction of such land passes on the death by force of Clause 17 notwithstanding Clause 20. Such an argument may will be unsound, but it would be better to avoid the difficulty by means of the amendment suggested.

The difficulty has never arisen under U.K. law, because the U.K. Finance Act 1894, Section 2 (2) did not except immovable property situated abroad from the property passing on death but from the charge for duty ; the U.K. Finance Act 1949, Section 28 which replaces that section, clearly qualifies Section 46 *et seq.* of the 1940 Act.

Sub-Clause—(4). There is no express provision for preventing duplication of charge, that is to say the payment of duty both on the value of the shares and also on the value of the fraction of the company's assets. Such a provision is contained in Section 51 (as amended) of the U.K. Finance Act 1940.

It is observed that the rule-making power conferred by Clause 17 expressly covers the U. K. Finance Act, 1940, Section 47 (matters to be treated as benefits), Section 49 (determination of net income) and Section 50 (determination of value of assets); it is stated in the "Notes on Clause" that the U.K. Section 51 is intended to be dealt with by rules made under Clause 32. The Chamber suggests that there should be added to Sub-Clause (4)

of Clause 17 a further paragraph expressly empowering the Board to make rules limiting the charge for duty and preventing duplication of the charge on the lines of Section 51 of the U.K. Finance Act 1940 (as amended).

It would obviously be unfair and undesirable that duty should be charged on *both* the value of the shares concerned *and* the value of the fraction of the company's assets, and the Chamber feels that the principle involved is important enough to merit an amendment on the lines suggested.

CLAUSE 19.—The Chamber thinks that "distributed assets" in Clause 19 ought to be defined by reference to Clause 17(3), as in the case of the U.K. Finance Act, 1940: see Section 59 of the U.K. Act.

CLAUSE 20.—It is suggested that a proviso in terms of that in Clause 17 (4) should be added to Sub-Clause (2) of Clause 20, i.e., "provided that all rules made under this sub-section shall be laid before the House of the People not less than fifteen days before the date of their final publication".

CLAUSE 29.—Reference is made to the Clause in the introductory paragraphs of this letter. As there stated, it is of the utmost importance that a double Estate Duty avoidance agreement be concluded as quickly as possible, especially with the U.K.

CLAUSE 36.—For clarity, the Chamber suggests that in line 18 the reference should be to a "particular", and not a "special buyer" : the Lord Chancellor used the expression "a particular buyer" in the leading case in which the principle embodied in this Clause was finally enunciated in the U.K. : See *I. R. Commissioners v. Crossman* 1937 A. C. 26 at p. 44.

CLAUSE 47.—Reference is made to the Chamber's comments on Clause 29. In the meantime some immediate provision for relief of Double Taxation is a necessity, and in this

connection the Chamber suggests that in Clause 47 in the phrase "he may make an allowance" the word "shall" should be substituted for "may". It is conceived that the Government's intention has probably always been that the existing Clause should have the effect in practice of the amendment proposed, but for the reasons earlier stated, the Chamber feels that the principle should be clearly set out in the Act and not left to discretionary power. In the United Kingdom the principle of such relief is absolute, where an avoidance agreement does not make it unnecessary.

CLAUSE 50(1)(b).—It would be reasonable, the Chamber suggests, that there should be inserted after the words "at any time" the words "on or after the death of the deceased". This would resolve a problem which caused much uncertainty and difficulty in the U.K., and some litigation, until it was finally resolved by Section 44 of the U.K. Finance Act 1950.

CLAUSE 50 (3).—In terms, this may make it obligatory for a large number of persons (e. g., specific legatees, trustees of derivative settlements and mortgagees) to deliver and verify within a short period of death a full account of *all* the property passing on the death. It may be that in practice the estate duty authority would be content with the account which would usually be delivered by the personal representatives, but in theory the sub-clause could produce unexpected results, including the imposition of penalties under Clause 52. The Chamber submits that the sub-clause should be amended to provide that accountable persons other than the personal representatives should only be liable to deliver and verify an account when called upon by the Controller, and then only to the extent of the information reasonably available to them, and, possibly, only in respect of the beneficial interest in possession to which they have succeeded.

CLAUSE 68.—It is suggested that the proviso appearing after Sub-Clause (2) is intended to apply to both Sub-Clause (1)

and (2) : and that accordingly the proviso ought to read "Provided that such property or interest shall not.....".

CLAUSE 72.—The note to this Clause states that it is adapted from Section 67, Indian Income Tax Act, 1922. In the Chamber's opinion, however, the Clause as drafted goes very much further, and raises a serious doubt whether an act done by an estate duty authority *ultra vires* would not be rendered *ipso facto* valid for all purposes. It is suggested that the clause might reasonably be amended to read (following closely the wording of Section 67 of the 1922 Act) as follows :—

> "Save as provided in this Act, nothing lawfully done by an estate duty authority under this Act shall be called in question in any court, and no prosecution, suit or other proceeding shall lie against any officer of an estate duty authority for anything in good faith purporting to be done by such authority under this Act."

Miscellaneous matters.—(1) Although interest on estate duty is referred to in certain clauses (e.g., 65 and 67), there is no provision as to the rate of interest to be charged. This is dealt with in the U.K. Acts ; the rate at present is 2%.

(2) Under U.K. law, the rate of duty in respect of agricultural land has always been lower than the rate applicable to other property ; and duty on such property is now fixed at 45% less than the rate payable in respect of the other property passing on death (Section 28 (1) of the Finance Act 1949).

(3) Where a life interest is determined before the death of the life-tenant, the trustees may be personally accountable for the duty prospectively payable if the life-tenant does not live for two years (Clause 11 and 50(1)(b) of the Bill). The U. K. Revenue has for many years adopted the practice of agreeing with the trustees in advance the amount of the settled property which they can safely distribute in such circumstances.

This convenient practice has been given statutory force by Section 44 (3) of the Finance Act 1950 : and an addition to Clause 11 of the Bill on these lines would, the Chamber considers, be desirable.

The Chamber trusts that these general comments on the Bill and the particular amendments proposed to certain of its clauses will receive the full and sympathetic attention of the Select Committee now examining the Bill.

LAW & LEGISLATION—TAXATION

SALES TAX—GENERAL.

Letter No. 5520 dated 28th July 1952.

From—The President, Bengal Chamber of Commerce & Industry.

To—The Hon'ble Minister for Finance, Government of India, New Delhi.

In the course of the recent debate in the House of the People on the motion to refer the Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Bill to a Select Committee, you indicated your intention to get the Finance Ministers of the States Governments together in pursuance of the Central Government's policy of achieving by persuasion a greater measure of uniformity in the levy of State sales taxes. It is the earnest hope of the Chamber that your conference with the representatives of the States' Finance Departments will achieve its purpose and that your appeal to their good sense may bring about some relief from the innumerable difficulties confronting the business community today because of the complexity of States' sales tax laws and administration and the confusion surrounding the interpretation of Article 286 of the Constitution.

2. You are doubtless fully conscious of the inconsistencies of the States in their imposition of this tax, and the diversity of views between one State and another and between the Central and the States Governments in regard to their respective rights; you must be well aware that the provisions of Article 286, although basically designed to limit the application of State sales tax to transactions within the State, have been the subject of controversy in various parts of the country, where, in the interests of States' revenues, the intention of these provisions is being variously construed. The brunt of all this confusion is, of course, borne by the trading public, and it is the purpose of this letter to bring to your notice specific instances of conflicting views and problems arising from them with which the Chamber

itself has been directly or indirectly concerned. Unless the Central and the respective States Governments can reach some agreement on these aspects of the problem, the business community has no choice between bearing any sales tax imposed and the very considerable expense and worry of prolonged Court proceedings instituted in an attempt to establish the legality or otherwise of the demands made upon it. The Chamber in giving you the following summary of disputed sales tax questions does not propose to argue the legal side, but merely hopes to convince you that any discussions on sales tax must, in equity, give due regard to the interests of the taxpaying public the terms of Article 286 of the Constitution sought to protect.

(*1*) *Bihar Sales Tax.*

Firms in West Bengal which have despatched goods to customers in Bihar either direct or through banks, have been informed by the Sales Tax Authorities of the State that they must (1) register as dealers in the State; (2) allow Sales Tax Officers to inspect their accounts, sales registers, etc. or even produce these books and accounts in Patna; (3) submit returns in respect of such sales as from the 26th January, 1950; and (4) submit to assessment of sales tax on all such sales effected on and after that date. In many cases those demands have been contested, broadly on the grounds (1) that if a firm in West Bengal has no agent or branch establishment in those other States, but merely sells goods to customers there, such sales do not come within the scope of their respective Sales Tax Acts; (2) that they offend against Article 286(2) relating to inter-State trade or commerce; and (3) that the terms of the Article were not operative in most of the States of India until their Sales Tax Acts were amended under the Adaptation of Laws (Third Amendment) Order of 1951. Opposition to these demands has drawn from the Bihar Sales Tax Authorities the statement that tax and penalty, if any, will be collected as an arrear of land revenue from dealers outside the State, irrespective of whether they are registered as dealers in Bihar. Meanwhile develop-

ments are taking place likely to lead to difficulties with the Uttar Pradesh Sales Tax Department. Demands made so far cover the assessment periods 1948/49—1949/50 & 1950/51, but there are signs that these assessments may be extended to the 1951/52 accounting period.

Fortunately no such action on the part of other States Governments in this part of India has yet been reported and no attempts need be made in this representation to go over the whole grounds of contention between West Bengal commercial concerns and the Sales Tax Authorites of Bihar as these cases will in all probability be taken to the High Court of Patna. The Chamber's point is that it is obviously unreasonable to expect firms having extensive business dealings in the various States to register as dealers in every State to which their goods are despatched, to submit returns to every State Sales Tax Department and to be liable to sales tax assessments in every State, no matter whether the goods are not consumed in that State or are sold in the course of inter-State trade. According to the Bihar Authorites every consignment of goods which is booked to a place within Bihar is deemed to have been sold in Bihar and therefore attracts the provisions of the Bihar Sales Tax Act. Apparently no consideration is given to the fact that goods despatched to a State may be for onward transmission and final consumption elsewhere.

(2) Sales tax on supplies to the Railways and the Directorate General of Industries and Supplies.

This case, involving the question of delivery and consumption in the State for the purposes of Article 286, is mentioned because it illustrates how the Central and State Governments are at variance over this point. Some months ago the Railways, presumably on the instructions of the Railway Board, refused bills for sales tax on supplies delivered against contracts stipulating delivery at a point in West Bengal. The reason given was that as the goods were for transport to and consumption in another State, no sales tax was chargeable,

whereas the West Bengal Government informed contractors that since delivery had been made in West Bengal the sale was liable to West Bengal sales tax. When the position was reported to the Railway Board by the Chamber, it was agreed, and contractors were so advised, that sales tax bills would be paid, subject to a written undertaking that the amounts paid would be refunded to the Railway Board if, in consultation with the State Government, it was found that the tax was not payable. But for some unknown reason the Railway Board have limited this concession to sales tax bills in respect of supplies to the North Eastern Railway, and have declined to meet any other sales tax bills until an agreement with the States Governments has been reached. A similar attitude was adopted by the D. G. of S. & D. in similar circumstances, but it is not yet known whether they have agreed to the Chamber's suggestion that they should adopt the same procedure as the Railway Board in the case of the North Eastern Railway.

Here again it is obvious that there is no clear agreement between the Central and States Government Departments as to what constitutes "inter-State trade" ; what is "actual delivery" ; and what is meant by "consumption" for the purposes of Article 286.

(3) Sales Tax on Sales of Ships' stores and bunker coal.

In West Bengal sales of stores and bunkers to ships are subject to sales tax, regardless of whether the goods are for consumption on the high seas or inland waterways outside West Bengal territory or for consumption in West Bengal itself. In Bombay, on the other hand, it has been announced by the Sales Tax Commissioner that only that part of ships' stores and bunkering intended for consumption within the Bombay State is taxable. The Chamber has unsuccessfully impressed on the West Bengal Government that consumption within the State as well as delivery is a necessary condition for the levy of tax and that stores and bunkers purchased for consumption on the high seas are not taxable ; they are, in any case, in the nature of

export goods. This matter also may have to be made the subject of a test case in the Courts with consequent expense to both parties concerned. It is brought to your notice so that you may appreciate the conflicting attitudes of the States of West Bengal and Bombay on this question and how unwise it is to collect revenue on sales to ships which may result in withdrawal of this important trade from the port of Calcutta.

(4) *Travancore-Cochin Sales Tax.*

In a judgment given by the Travancore/Cochin High Court last April it was held in effect, that sales of raw materials imported into India and exported out of India in a processed form did not incur sales tax at any stage, as the goods were not imported for local consumption in India but for treatment in the Travancore-Cochin State and export to foreign countries. Likewise, local purchases of the same goods with the intention of processing for export were exempt from tax according to the judgment. The Travancore-Cochin Government have appealed to the Supreme Court against this decision. Disputes such as this are clear evidence of the existing uncertainty of the States in the treatment of transactions with overseas suppliers and purchasers in respect of goods to be imported or exported into and out of India.

3. As has been stated, in the absence of a clear interpretation of what constitutes "Inter-State trade or commerce", "delivery and consumption in that State", and "in the course of the import of goods into or export of goods out of the territory of India" under Article 286 of the Constitution of India, the result must be a prolonged and expensive series of Court cases. Not only will it be necessary for these to be instituted in various High Courts according to the State whose ruling or legislation is being challenged, but appeal to the Supreme Court will also almost certainly ensue. If this unfortunate course of events is to be avoided, either agreement on the interpretation of Article 286 will have to be negotiated by the Government of India or

reference made immediately to the Supreme Court under Article 143(1) of the Constitution. In the latter connection, the position has become so bad that the Chamber has in course of preparation a petition to the President of the Republic setting out, in their legal context, the various points—only the principal of which have been referred to above—calling for an authoritative ruling.

* * *

Letter—No F. 12(1)-P/52 dated 26th August, 1952.

From—The Deputy Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs, New Delhi.

To—The President, Bengal Chamber of Commerce & Industry.

I am directed to acknowledge the receipt of your letter No. 5520 dated 28-7-52, and to state that as observed by you the Government of India propose to convene a Conference of the Finance Ministers of the various States shortly. The question of formulating a uniform policy to the extent possible in regard to the levy and administration of sales tax by the States would, undoubtedly be discussed at the Conference.

2. As regards your suggestion in respect of a correct interpretation of Article 286 of the Constitution, I am to state that the Government of India have already advised the State Governments of the legal and constitutional position regarding the levy of sales tax under Article 286, impressing upon them the desirability of bringing their Sales tax laws in conformity with the provisions of the Constitution of India. You would appreciate that the Sales tax being a subject within the purview and competence of the State Governments, the Government of India can hardly do anything beyond that already done by way of giving advice and guidance to the State Governments on the correct interpretation of Article 286 of the Constitution. In individual cases, it is for the agrieved party to take up the question of wrong levys with the appropriate authority prescribed for this purpose in the State Sales Tax Acts. In view of this position you are advised to take up the cases mentioned in your letter with the State Governments concerned direct.

LAW & LEGISLATION—TAXATION

SALES TAX PETITION

Copy of the Petition submitted by the Associated Chambers of Commerce of India to the Hon. the President of India, New Delhi, 25th September, 1952.

The Hon'ble the President of India, New Delhi

In the Matter—of the Associated Chambers of Commerce of India having its registered office at Royal Exchange, Calcutta.

and

In the Matter—of Article 286 of the Constitution of India.

and

In the Matter—of Article 143(1) of the Constitution of India.

The humble Petition of the Associated Chambers of Commerce of India most respectfully *sheweth* :—

(1) That the Associated Chambers of Commerce of India was constituted in the year 1920 mainly :—

(i) to promote and protect the trade, commerce, industries and manufactures, of their member interests in India and Ceylon ;

(ii) to take up, consider and discuss questions connected with or affecting trade, commerce, industries and manufactures ;

(iii) to promote or oppose legislation affecting such trade, commerce, industries and manufactures.

The present members of the Association are :—

The Bengal Chamber of Commerce & Industry
The Bombay Chamber of Commerce
The Madras Chamber of Commerce
The Upper India Chamber of Commerce
The Punjab Chamber of Commerce
The Calicut Chamber of Commerce
The Coimbatore Chamber of Commerce
The Cochin Chamber of Commerce
The Tuticorin Chamber of Commerce
The Travancore Chamber of Commerce
The Cocanada Chamber of Commerce

The Association embraces in its membership the great majority of the important commercial and industrial interests of India and many of the small units of industry (with the exception of the cotton industry). The member Chambers, together with their affiliated or connected trading and industrial bodies, are responsible for the greater part of the country's tea, jute and jute goods, rubber, coffee, mining, engineering, iron and steel, paper, oils and oilseeds, chemicals, tobacco, hides and skins industries, as also the bulk of ocean going shipping, imports, exports, banking, insurance, oil companies, public utility companies and other important sections of the transport, commercial and productive activities of the country. In north east India for instance, the Bengal Chamber of Commerce and Industry alone represents approximately half of the trade and industry of India. Through its connection with the Indian Jute Mills Association, the Indian Tea Association, and the Indian Mining Association it deals with 95% of the jute industry, 81% of the tea industry and 56% of the total coal raisings of the country.

2. That the companies and firms in the membership of the constituent Chambers are engaged in a wide range of trading activities throughout India and with foreign markets. As sellers and/or purchasers of large and varied consignments of goods and commodities to and from the different States, they constitute an immense section of organised inter-State trade. The major exports of tea, jute and jute goods, coal, vegetable oils and other commodities comprising the great proportion of India's most lucrative foreign trade is carried on by the interests within the orbit of the Association, which similarly handles the bulk of imports of machinery, raw materials for industry and consumer goods. The interpretation of Article 286 of the Constitution is therefore of vital concern to the interests represented by the Associated Chambers of Commerce. In as much as commerce and industry may be wrongfully assessed to sales tax by reason of the incorrect interpretations of States Governments of the expressions "in the course of import into India" or "in the course of export out of India" or "in the course of inter-state trade" as contained in the Article, the Association considers it to be a duty to present this Petition on behalf of the entire business and industrial community and in the interest of India as a whole.

3. In this Petition, your Petitioners pray that you may be pleased to refer under the powers conferred on you under Article 143(1) certain

important questions of law regarding the interpretation of Article 286 of the Constitution which are of great public importance to the business, industrial and trading community. Conflicting decisions of Courts and the varying interpretations put by different State Governments, Sale Tax Authorities and Tribunals on Article 286 are introducing a large element of uncertainty in trade relations which are sure to affect the prosperity of the country unless there is an authoritative pronouncement by the Supreme Court in regard to the interpretation generally of Article 286 of the Constitution.

4. At the outset your Petitioners wish to place certain general considerations before you relating to the power of the States to levy a sales tax both under the Government of India Act 1935 and after the new Constitution the effect of Article 286 on that power.

5. Under the Government of India Act 1935 under Section 100 read with Item 48, List 2 Schedule VII, the Provinces had the power to levy a tax on the sale of goods. As no law enacted by a Provincial Legislature could have extra-territorial operation, it was essential that the transaction of sale should have taken place within the Province in order that the particular Province could impose a tax on that transaction of sale. In the absence of any special definition of the expression "sale" in the Government of India Act, the expression had to be understood in the normal sense in which it is used in the law merchant, in the Contract Act and in the Sale of Goods Act, i.e. a transaction by which the property in the goods passes from the Vendor to the Vendee. The result was that in the case of goods forming the subject of inter-state trade and commerce or import into or export out of India, the Province where the sale took place in the sense property passed from the Vendor to the Vendee alone had the power to levy a sales tax.

6. Under the Constitution, but for Article 286, the position would practically have been the same. Under Article 246 read with Entry 54, the States are vested with the power to levy a tax on the sale and purchase of goods. As under the Government of India Act 1935, under these provisions the States where the sale takes place in the sense property passes would have the power to levy sales tax. The Madras High Court has however, in a recent case an abstract of the judgment in which appears in the newspapers of the 30th instant, taken the view that the expression "sale" is used in a popular sense and the mere fact

that the property in the goods passes according to the law merchant outside the limits of the State by reason of the transfer of the documents of title does not detract from the authority of the State where the sale takes place in the popular sense (i.e. where the price is paid) from levying a sales tax. The State in which the property in the goods passes according to the law merchant is not bound by the decision of the Madras High Court and may conceivably take the opposite view and as a result, the same transaction may be the subject of taxation by both the States.

7. At the time when the Constitution was framed, there was strong feeling in the country that the levy of sales tax on transactions of sale in the course of inter-State trade or commerce or in the course of import into or export out of India would seriously affect the general trade and industrial prosperity of the country as a whole as also the central revenue. It was with the intention and object of withdrawing from the States the power to levy tax on sales other than purely domestic sales that Article 286 was framed. The power of a State to levy a sale tax is now controlled and restricted by the provisions of Article 286.

8. Article 286 provides as follows :—

> 286 (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—
>
> (a) outside the State ; or
>
> (b) in the course of the import of the goods into or export of the goods out of the territory of India.
>
> *Explanation*—For the purposes of sub-clause (a) a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods, the property in the goods has by reason of such sale or purchase passed in another State.
>
> (2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the

imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce.

9. Much confusion has however been caused and great dislocation of trade has taken place due to the varying interpretations of this Article given by the sales tax authorities, Tribunals and Courts in various States. In several cases, such an interpretation has resulted in more than one State levying a tax on the same transaction of sale of goods forming the subject of inter-State trade.

10. The first question that arises is with regard to the proper interpretation of the explanation to Article 286(1)(a). Your Petitioners submit that in cases where the property passes in one State but the delivery for purposes of consumption is made in another State, the effect of Article 286(1)(a) read with the explanation is to prevent the former State from levying the sales tax. The explanation does not enable or empower the State where the goods are delivered for the purposes of consumption to levy a tax. The power to levy a sales tax is to be found only in Item 54, List II, Schedule VII read with Article 246 of the Constitution and not in Article 286. In the result, your Petitioners submit that where the transaction of sale in the sense of property passing takes place in one Province and the goods are delivered for the purposes of consumption in another Province, neither the former State nor the latter has the power to levy a Sales Tax. The Sales Tax Authorities in the various States are not accepting the above contention of the assessees. They are taking the view that Article 286(1)(a) read with the explanation substitutes the State in which the Sale takes place for purposes of consumption for the State in which the sale takes place according to law merchant and makes the former the sole and exclusive venue for the purposes of taxation.

11. The Petitioners further submit that even if Article 286 read with the explanation is to be construed as empowering the State in which the delivery for purposes of consumption takes place to levy a Sales Tax, both the conditions contained in the explanation have to be satisfied, viz.,

(1) The goods must be actually delivered in the State ;

(2) Such delivery must be for purposes of consumption in that State;

If either condition is not satisfied, the State has no power to levy the Sales Tax. Though the expression used in the explanation is "for the purposes of consumption", your Petitioners submit that the best evidence of the goods being delivered for purposes of consumption in a particular State is their being consumed in that State. If, therefore, as a matter of ordinary routine and practice in the course of business, the goods are consumed in a State other than the State in which the goods are delivered as a result of the sale, the Courts have to presume that the goods are not delivered for purposes of consumption in the latter State and therefore neither State will have the power to levy a sales tax. The taxing authorities in the various States however are proceeding on the footing that if goods are delivered in a State A but are consumed in the ordinary course of business in another State B, even then, State A has got the power to levy sales tax and that it is immaterial to consider where the goods are actually consumed.

12. The use of the expression "actual delivery" in Article 286 creates a further difficulty. There is considerable divergence of opinion as to whether the expression connotes physical delivery of the goods or includes delivery by transfer of documents of title and delivery thereof. Your Petitioners submit that though the expression used is "actual delivery", actually delivery of goods forming the subject matter of sale must be deemed to take place at the time when the documents of title are endorsed in favour of the buyer and delivered to him. From that moment, the seller is no longer in control over the goods. It is impossible to conceive of a second delivery of the goods themselves as constituting actual delivery within the meaning of Article 286(1)(a) explanation (as distinguished from the delivery of the documents of title) after the seller has lost control over the goods. To illustrate, if the seller in State A sells to a buyer in State B for purposes of consumption in State B and delivers the documents of title even in State A, your Petitioners submit that though the goods are physically delivered to the buyer in State B, as the documents of title are delivered in State A, there is actual delivery of the goods only in State A. In such a case, as the consumption is in State B, neither State A nor State B has got the power to levy a sales tax. The sales tax authorities in some of the States again are not accepting the above interpretation and are taking the view that as the goods are delivered physically in State B for consumption in that State, State B has the power to levy the sales tax. It is therefore necessary to get a ruling of the highest Court of the land in regard to the expression "actual delivery" in Article 286(1) explanation.

13. The interpretation of Article 286(2) also raises several difficult and important questions. Your Petitioners submit that the terms of Article 286(2) are absolute and are not in any way controlled by the explanation of Article 286(1)(a) as the explanation commences by expressly stating that it is only for the purpose of construing Article 286(1)(a). In each case therefore, the Court or the sales tax authorities or Tribunals in dealing with the applicability of Clause (2) will have to address themselves to the question whether the sale takes place in the course of inter-State trade or commerce. The authorities however are taking the view that even in cases of sales made during the course of inter-State trade or commerce, the State where the delivery takes place for the purposes of consumption is entitled to levy the sales tax. The expression "in the course of inter-State trade or commerce" is adopted from the judgment of the United States Supreme Court bearing on the exclusive power of the Congress in regard to inter-State trade or commerce. The preponderance of judicial authority in America in respect of the commerce clause in America is in favour of the view that the protection of inter-State trade or commerce clause is not lost until inter-State movement is ended. Such inter-State movement is deemed to have ended when the goods come to rest within the State and have become part of the common mass of the goods in that State. There is authority for the proposition that if a transfer of ownership takes place in one State and the actual delivery takes place in another, the latter State has no right to levy a sales tax, as to enable it to exercise such a power would be to enable the State to project its powers beyond its borders and tax an inter-State transaction. It is of very common occurrence that the seller sells the goods in one State to a buyer in another State and the goods are sent from one State to another. Your Petitioners submit that no tax at all is leviable in respect of these transactions by either State as the said transactions are the subject of inter-State trade or commerce. The sales tax authorities and Tribunals are not accepting this position and relying presumably upon the explanation to Article 286(1) are taking the view that the State where the delivery is made is entitled to levy the sales tax and are thus acting contrary to the mandatory provisions of Article 286(2).

14. Your Petitioners further submit that in view of the similarity of the language employed in Article 286(1)(b) and 286(2) considerations applicable to sale of goods forming the subject matter of inter-State trade, are equally applicable and if anything apply with greater force to sale

of goods forming the subject of export or import. Article 286(1)(b) is absolute and is not in any way controlled by the explanation which is added only for the purposes of Clause (a). In dealing with this Clause, the only question to which the Court or the taxing authorities will have to address themselves is whether the sale takes place in the course of export or import. To illustrate, in respect of a sale to a purchaser in a foreign country even though delivery may be made in the State seeking to impose a tax, the State cannot levy a sales tax when the certainty of a foreign destination is plain. The principle underlying Article 286(1)(b) is to a large extent similar to that underlying Article 1 Section 10 of the American Constitution which lays down that "No State shall without the consent of the Congress levy duties on imports or exports except what may be absolutely necessary for executing its inspection laws". In construing this Article, the Supreme Court of the United States has repeatedly held that if in substance the attempted tax is on exports, the tax must be taken to violate the provisions of the Constitution notwithstanding the fact that the sale or delivery might take place within the limits of the State prior to the export of the Article provided that the sale is intimately connected with the export process and is with a view to its export. The taxing authorities in various States however are taking the view that if a sale takes place or the delivery is effected within a particular State that State has the power to levy a sales tax even though it is with a view to export and is in effect a part of the export transaction.

15. The Petitioners state that the cause of sales in the course of import into India stands exactly on the same footing as that of sales in the course of export and they have not therefore been dealt with separately in this Petition.

16. Your Petitioners have given anxious consideration to these various problems. The institution of test cases in the various High Courts would be a long and dreary course. It is quite possible that different High Courts may come to different decisions regarding the interpretation of the Article. In a matter like the present, which affects trade and commerce vitally, your Petitioners feel that the slow and costly remedy of filing suits or taking proceedings in the High Courts and carrying each case on appeal to the Supreme Court would entail great hardship to the various commercial bodies. A speedy determination of the questions arising on the construction of the Article will be in the larger interests of India and of the commercial community.

The Petitioners state that the very object of Article 143 is to avoid delay and expense and secure a speedy determination of such questions. The questions arising out of the interpretation of this Article are of great public importance and affect the entire trade, commerce and industry of the country. Your Petitioners accordingly request you to exercise your powers under Article 143(1) of the Constitution and refer the questions given below to the Supreme Court. Your Petitioners have considered all the general problems so far brought to the notice of the Association and the more specific issues requiring clarification and have accordingly formulated the following questions for your consideration for being referred to the Supreme Court for consideration and report thereon.

Questions

I. In a case where a sale takes place according to the Sale of Goods Act and the law merchant in a particular State but the actual delivery for the purposes of consumption is made in another State, has either of the States the power to levy a sales tax ; does Article 286(1)(a) read with the explanation confer upon the latter State a power to levy a sales tax or whether its effect is only to prohibit the former State from levying a sales tax.

(Vide paragraph 10 of the Petition).

II. Even assuming that the State where delivery for purposes of consumption takes place has the power to levy a sales tax and is to be treated as being substituted for the State where the property passes as the venue for taxation, if as a direct result of a sale, goods are delivered in State A, but in the ordinary course of business are consumed in State B, can either of the States levy a tax on the transaction of sale ?

(Vide paragraph 11 of the Petition).

III. Does the expression "actual delivery" in Article 286(1)(a) explanation mean physical delivery : does not the transfer of documents of title constitute actual delivery within the meaning of Article 286(a) explanation ;

Illustration :—If "X" sells to "Y" and delivers documents of title in State A and thus loses control over the goods, but the goods are physically delivered in State B, where does the actual delivery take place within the meaning of the said Article ?

(Vide paragraph 12 of the Petition)

IV. Is Article 286(1)(b) in any way controlled by and subject to the provisions of Article 286(1)(a) explanation.

(b) If a sale is effected with a view to export and is intimately connected with the export process, does the fact that the sale takes place within the State, or that delivery is effected there, enable a State to levy a sales tax and is not such a sale a sale "in the course of export" within the meaning of Article 286(1)(b)

(Vide paragraph 14 of the Petition)

V. In any event, is Article 286(2) in any way controlled by and subject to the provisions of Article 286(1)(a) explanation ?

(b) What exactly is the import of the expression "in the course of" in Article 286(2) ?

Illustration :—If goods are sent from one State to another, has either State the power to levy a sales tax until the goods have come to rest within the latter State and have become part of the common mass of the goods in that State.

(Vide paragraph 13 of the Petition)

LAW & LEGISLATION—TAXATION

BENGAL SALES TAX

Bengal Sales Tax : Sales to the former Department of Industries and Supplies effected between 1. 6. 46 and 31. 3. 49.

Letter No. 5245, dated 18th July, 1952.

From—The Bengal Chamber of Commerce & Industry.

To—The Directorate of Supplies & Disposals, New Delhi.

As you know, the question of the right of the West Bengal Government to levy tax on sales made under contract with the former Department of Industries & Supplies in the period 1.6.46 to 31.3.49 has been in dispute for some years past.

2. During 1949 and 1950 the Chamber had lengthy correspondence with the Central and West Bengal Governments, but for the purpose of this letter it will be sufficient to give you the following brief history of the case :—

Under section 5(2)(iii) of the Bengal Finance (Sales Tax) Act, before it was amended as from the 1st April 1949, sales to the Supply Department of the Government of India and the Indian Stores Department, as also to railway and water transport administrations, were exempt from Bengal sales tax. The Supply Department and the I. S. D. officially ceased to exist on the 1st June, 1946 when they were absorbed into the Directorate of Industries and Supplies. After partition, the West Bengal Government held that the exemption clause in the Act had become inoperative because the Department of Industries and Supplies did not inherit the exemption ; but the Directorate insisted on claiming the exemption and refused to pay tax on goods supplied under contracts entered into with firms in West Bengal. With the deletion of section 5(2)(iii) from the Act under the West Bengal Finance (Sales Tax) Amendment Act of 1949 (effective from 1st

April 1949), the Government of India agreed that, subject to the terms of the individual tender and acceptance, they were liable to pay tax on contracts entered into after the 31st March 1949 ; but no statement was forthcoming on the question of payment for the 1st June 1946 to 31st March 1949, until, in December 1949, the Chamber received the following statement from the Ministry of Industry & Supply :—

> "We have decided not to pursue with the West Bengal Government the question of exemption from payment of sales tax in respect of sales to the Department of Supply for the period 1st June 1946 to 31st March, 1949. The West Bengal Government have been informed of the decision for taking such action as may be advised to recover the tax payable to (? by) dealers in accordance with law.
>
> 2. The Government of India have also decided that each case of payment of sales tax to (? by) the dealer in respect of stores supplied during the above period will be considered on its own merits. The initial liability to pay such tax being that of the dealer, any question of reimbursement of this tax by the Central Government acting as purchaser will be admitted only on an examination of the individual facts of each case and on a consideration of the terms of contract under which the stores were supplied. Such reimbursement will not in any case be made to the dealers except on production of evidence of payment of tax to the West Bengal Government."

As the result of the judgment of the Calcutta High Court in the Shree Ganesh Jute Mills case last January, several firms were informed by the Directorate that in view of the High Court's decision that sales to the Directorate between 1.6.46 and 31.3.49 were not subject to the operation of the Bengal Finance (Sales Tax) Act, 1941, the question of reimbursement of such tax did not arise. Since then, however, this judgment has been reversed by the ruling of Mr. Justice Das Gupta and Mr. Justice P. N. Mukerjee on the appeal filed by the Government of West Bengal

against the High Court's decision and it has been held that a dealer was liable to pay tax on the sale of goods delivered to the Department of Industry & Supplies during the period in question. Contractors can therefore expect no relief from the burden of this tax unless the decision of the Court of Appeal is set aside by the Supreme Court or the Central Government agree to modify their attitude.

4. Arrangements have now been made for the Shree Ganesh Jute Mills' case to be taken to the Supreme Court which will finally decide whether in fact sales to the Directorate of Supplies and Disposals were legally chargeable to West Bengal sales tax during the period 1.6.46 to 31.3.49. Pending the outcome of this appeal, I am to suggest that it would be only reasonable on the part of the West Bengal Government to defer the assessment of sales tax on such sales and for the Directorate of Supplies and Disposals to agree that, in the event of the tax being chargeable, the Directorate will meet the suppliers' bills for the recovery of such tax where admissible.

* * *

Letter dated 21st August 1952

From—The Government of West Bengal (Finance Department, Taxation)

To—The Bengal Chamber of Commerce & Industry.

With reference to your letter No. 5245 dated the 18th July 1952 on the above subject, I am directed to say that the Government regret their inability to defer the assessment proceedings and realisation of sales tax for any further period.

It is expected that the constituents of the Chamber will pay up the taxes due from them without delay.

* * *

Letter dated 10th September 1952

From—The Bengal Chamber of Commerce & Industry.

To—The Director General of Supplies and Disposals, Ministry of Works, Housing and Supply, Government of India, New Delhi.

In continuation of my letter No. 5244 of 18th July 1952, I am directed to send you herewith a copy of a letter No. 1841-F.T. of 21st August which the Chamber has received from the Finance Department of the Government of West Bengal. As you will see from this letter, the Government of West Bengal have rejected the Chamber's request that they should defer assessment and realisation proceedings pending the outcome of the appeal to the Supreme Court which is being made by the Shree Ganesh Jute Mills Co., Ltd. and have asked that the Chamber's constituents make prompt payment against their assessments.

2. In view of the fact that the case is now being taken to the Supreme Court and is to that extent still *sub judice*, the Committee of the Chamber consider that the West Bengal Government's attitude is unreasonable, but at the same time they see little hope of persuading Government to defer taking further action. If the State Government are determined to proceed with assessment and realisation in the disputed cases, however, the Committee consider that the affected companies should be given such safeguard as is possible for the recovery of tax payments from the Central Government. They would therefore be glad if you would let them have official confirmation that your Department will maintain the attitude which they adopted prior to the initial judgment in the Shree Ganesh Jute Mills case and which was communicated in the Ministry of Industry and Supply's letter No. D. O. P.—1 46(2) dated 6th December 1946, viz. that claims for reimbursement of the tax will be admitted on an examination of the individual facts and on a consideration of the terms of contract under which the stores were supplied.

3. In view of the uncertainty in which suppliers continue to be placed in this matter and since they are merely asking for a re-iteration of the principle which the Central Government earlier decided to follow, the Committee trust that it will be possible for your Department to give this undertaking without delay.

* * *

Letter No. CSIA/17(38)/II dated 26th December 1952

From—The Directorate General of Supplies & Disposals, Co-Ordination Supplies Section IA, Ministry of Works Housing & Supply, Government of India

To—The Bengal Chamber of Commerce & Industry.

In reply to your letter No. 6538 dated the 10th September 1952 I have to inform you that this office is unable to entertain claims for W. Bengal Sales Tax in respect of supplies effected during the periods 1. 6. 46 to 31. 3. 49 pending final decision of the Supreme Court. In the event of the Supreme Court deciding the question in favour of the West Bengal Government, each case will be decided on its merits.

INDUSTRIAL

EMPLOYEES' PROVIDENT FUNDS ACT AND SCHEME.

Letter No. 3330 dated 6th May, 1952.

From—The Secretary, Bengal Chamber of Commerce & Industry.

To—The Secretary to the Government of India, Ministry of Labour, New Delhi.

I am directed to refer to the Ministry of Labour's Notification No. SRO 671 of the 16th April publishing for comment by the 7th May the draft of the Employees' Provident Fund Scheme under section 5 of the Act. Copies of the draft scheme were not received in Calcutta until the 22nd April, leaving only a fortnight for the reprinting of the draft, its study by affected industrial interests and the preparation of notes on it. It has not been possible to complete the examination of the draft scheme within this very limited time and detailed comments on many important aspects of it will therefore be submitted as soon as possible and in any case not later than the 31st May, not only by the Chamber but also by several of its connected industrial Associations such as the Indian Jute Mills, Indian Engineering and Indian Paper Makers Associations.

2. The Chamber is also informed that some—not all—of the establishments comprised in the industries mentioned in the first schedule to the Act have been informed by letter that it is proposed to bring the Act—presumably, more properly, the Scheme—into force from the 1st July 1952 and that applications for exemption under section 17 of the Act should be submitted to the appropriate Government by the 7th May. The Chamber doubts whether the elaborate machinery necessary for the efficient administration of the Scheme could be assembled and made to work by that date—which is in any case a most unsuitable one to choose as few of the existing provident funds for which exemption is not eventually sought close their accounts on that date; in order therefore to effect the transfer to the Fund established

under the scheme of the accumulated balances standing to the credit of the existing provident funds special closings of accounts, with attendant audit and other expenses, will be necessary to the detriment of the members of the existing funds. It is also necessary to made it clear that most existing funds will be unable to submit the required exemption applications by the 7th May and to place it on record that the trustees or managers of such funds do not regard themselves as being under any reasonable or legal obligation to conform to the requirement of making applications by that date.

3. In the meantime I am instructed to draw attention to the following more obvious difficulties, anomalies and ambiguities in the scheme which preliminary consideration of the draft has brought to light.

CHAPTER II.

Administration—The administrative machinery proposed in this chapter of the Scheme seems to be unnecessarily complicated and elaborate, consisting as it does of a Board of Trustees (The Central Board), State Boards, and, until State Boards are set up, Regional Committees, together with provident fund Commissioners and, necessarily, a large staff. The Chamber will have further comments to offer on this chapter of the Act in due course.

CHAPTER III.

CLAUSE 26, read with the definition of an "excluded employee", requires that every employee in a factory to which the scheme applies shall become a member of the Fund if his monthly basic wages do not exceed Rs. 300/- or that equivalent. Employees excluded on the grounds that their basic wages exceed this figure will presumably remain members of the existing fund if there is one; and under clause 27 of the Scheme, those eligible for the Government Fund have the option, within three months, of electing to continue membership of an existing "recognised" provident fund only if the latter Fund's rules with respect to contributions are in conformity with or are more favourable to the employees than those specified in the Act or the Scheme. There is some

misunderstanding as to whether this is intended to mean that the option extends to the employee only where the existing recognised fund applies for and obtains exemption under section 17 of the Act. On a literal reading of clause 27 of the scheme this is not so; but confirmation will be appreciated.

CLAUSE 36 requires every employer to send to the Commissioner, within fifteen days of the commencement of the scheme, a return of the employees required or entitled to become members of the fund showing the basic wages and dearness allowance including the cash value of any food concessions paid to each such employee. The time allowed for the preparation of this return, which may run into thousands of individual entries, is insufficient.

CLAUSE 39 provides that the rate of "administrative charge" may be reviewed by the Central Government from time to time in consultation with the Central Board; and the letter which Government has addressed to individual affected industrial establishments explains the intention to be that an employer will be required to pay this administrative charge at the rate of 5% of the total employers' and employees' contributions to the fund; and at the rate of 2½% on the part of private funds exempted under section 17 of the Act. As will be argued in the Chamber's more detailed letter, this administrative charge—which is presumably that referred to in clause 3 of the second schedule to the Act—is extremely high and in the opinion of the Chamber and its connected industrial Associations certainly quite unjustifiable in the case of employers maintaining an exempted Fund. In such cases a certificate by a qualified and registered accountant to the effect that the private fund's accounts are in order and in accordance with the requirements of the law should be sufficient, without the submission of elaborate returns etc. to the Commissioner. It is a moot point, which is still under consideration by the Chamber, whether any separate administrative charge is justified as the customary practice is for costs of administration to be a charge on the provident fund itself. In any case the *maximum* rates of the administrative charges should be specified in the scheme itself and the rates should be fixed within that maximum on the basis of actual experience.

CLAUSE 49. Receipts from the administrative charge are to be credited to "Central and State Administration accounts". There is no provision for the disposal of balances remaining in these accounts after the administration expenses have been met. Clarification on this point

is necessary and if the balances are not utilised to reduce the administrative charges they should, it is suggested, inure to the benefit of the Fund itself.

CLAUSE 60. Under this clause interest at such rate as may be determined by the Central Government shall be credited to the account of each member of the Fund. There is no provision in the Scheme as to the similar disposal of "forfeits", that is to say amounts not claimed or claimable by retiring or disqualified members of the Fund, except that they shall be credited to a Reserve Account in the case of those dismissed for serious and wilful misconduct. In the Chamber's view all "forfeits" should be distributable among members of the Fund in proportion to their accumulated balances.

Winding Up. There is no provision in the draft Scheme for the winding up of the Fund. It is suggested that, as is normal in such cases, provision for this eventuality should be included in the scheme.

Cash value of food concessions. As was pointed out when the Act was under consideration, the calculation of the cash value of variable food concessions will present considerable difficulty. Whatever formula may be devised to overcome this difficulty in debatable cases, it is very necessary that the amount of the contributions to the Fund actually made by the employer on that portion of the employee's remuneration should be accepted by the Income Tax Officer assessing the employer for tax purposes on the basis of the receipts granted by the Commissioner when the payments are made.

As already stated, further detailed comments on the draft Scheme will follow.

* * *

Letter No. 3687 dated 21st May, 1952.

From—The Secretary, The Bengal Chamber of Commerce and Industry.

To—The Secretary to the Government of India, Ministry of Labour, New Delhi.

In continuation of my letter No. 3330 of the 6th May which expressed the Chamber's preliminary reactions to the draft Employees Provident Funds Scheme under Section 5 of the Act, I am now directed to convey to you the considered views of the Chamber and its connected industrial interests.

2. As was stated when the Employees Provident Funds Act was under consideration, these interests do not object in any way to the compulsory application of the provident fund system to selected industries or indeed to the whole field of organised industry. They have, however, many misgivings about the Scheme as drafted and issued for opinion with Notification No. SRO 671 of the 16th April last. In the first place they consider that *practical implementation of the scheme*, whatever its final form, is being unduly rushed if it is still intended to promulgate the Scheme on the 1st June and to bring it into operation from the 1st July. As has already been pointed out, very elaborate administrative machinery will be necessary to run the Scheme efficiently and the Chamber is extremely doubtful whether it can be assembled and made to work within that limited time. If applications for exemption under Section 17 of the Act are to be entertained up to the 30th June—in which connection the Chamber must again repeat the view that these should not be required at such short notice after the promulgation of the final Scheme—it will be sometime thereafter before they can be disposed of and, if rejected, it will then be necessary for the private provident fund concerned specially to close its books as at the effective date of operation of the Scheme in order to transfer to the Government Fund the accumulated balances referred to in sub-section (2) of Section 15 of the Act. The 31st December would be, to the large majority of provident funds, a much more suitable date of transfer and the Chamber accordingly recommends that the inauguration of the Scheme should be deferred until the 1st January 1953. In the meantime the staff necessary for running the Government Fund could be recruited and trained, the necessary office accommodation obtained and the mechanised equipment assembled ; during the interval existing provident funds would have adequate time in which to effect the appropriate changes in their rules should they elect to apply for exemption and individual employees in the

scheduled industries, in consultation with their respective trade unions and employers, would be enabled in a more orderly way to consider their position under the proviso to Clause 27 of the Scheme.

3. The Chamber cannot but regard the *administrative arrangements* provided for in the draft Scheme as unduly complex, involving as they do a multiplicity of Central and State Boards of Trustees, Regional Committees, Commissioners and Executive Officers with their permanent staffs. Simplification is very necessary if the scheme is to work efficiently and is most desirable if only from the point of view of the cost of the top-heavy administration and the administrative charges now visualised. If it is now too late simply to provide by statute that provident funds on the basis laid down in the Act shall be maintained in the scheduled industries under a suitable system of Government returns and inspection, it is at least essential that the Government Fund should be so devised as to reduce to the minimum the complicated mechanism to be set up to run it, as also the onerous documentation which the Scheme in its present form seeks to impose on the affected employers.

4. In the matter of the proposed *administrative charges*—5% of total contributions payable by employers who come under the Scheme and 2½% by those who secure exemption—the Chamber must record its strong objections on two grounds. Even accepting that some charge is leviable under Section 6 of the Act read in conjunction with the second schedule, the Chamber submits that the 5% charge—which reflects the over-elaborateness of the proposed mechanism—is grossly excessive even as an initial levy subject to review under Clause 39 of the Scheme; and that there can be no justification whatever for the proposed levy of 2½% on employers exempted from the scheme who will have their own administrative costs to meet. Nor is there, in the Chamber's view, any justification for the whole of Government's administrative costs being imposed on employers; if they are not made a charge on the Fund itself, they should at least be shared

by Government, the employer and labour. If any charge is levied on exempted funds, such charge together with the actual administrative costs of the employer in running the exempted fund should certainly not exceed the percentage charge payable by non-exempted funds.

5. Turning now to the more detailed aspects of the draft Scheme, the Chamber has the following comments to offer:—

CLAUSE 2: DEFINITIONS.

2(e): "*Continuous service*"—It would seem preferable, in the interests of uniformity and for the avoidance of disputed interpretations, to adopt the definition contained in the Factories Act with reference to leave with pay.

2(f) (iii): "*Excluded employee*"—As has been pointed out by the Indian Engineering Association, this definition requires clarification with regard to contract labour who are employed for specific purposes and to that extent periodically and temporarily and who may be working in a number of factories during a given period. The principal employer is not responsible for the payment of such contract labour and the responsiblity for provident fund deductions must attach to the contractor.

2(g): "*Family*"—This definition should be reconsidered in the light of the relative provisions of the Indian Income Tax Act.

Cash value of food concession—Dearness allowance, which under the Explanation to Section 6(1) of the Act includes the cash value of any food concession, is to be added to the basic wage for the purposes of calculating the employer's and the employees' contribution to the Fund. As was observed when the Act was being considered, the determination of the cash value of variable food concessions will present much practical difficulty unless a formula for the purpose is devised by way of a definition of the expression. Is—for instance—the cash value of food supplied to the factory employees through a "below-cost" Industrial Canteen to be included and how is it to be calculated?

CLAUSES 3-25.—In addition to the observations already offered on the complexity and over-elaborateness of the machinery proposed in this chapter of the Scheme, there are several directions in which clarification is necessary. There is no definition of the respective functions or jurisdictions of the Central and State Boards, both of which appear to be unnecessarily large, though the intention would seem to be that all affected units of industry within a particular State shall be responsible to the State Board; throughout the provisions of Chapter III relating to payments and returns, reference is made to "the Commissioner", but whether the reference is to the "Commissioner who shall be the Chief Executive Officer of the Central Board" or to the "Commissioner who shall be the Chief Executive Officer of the State Board" is not clear. The device of Regional Committees, to be superseded by the State Boards is an apparent indication of the doubts which Government themselves entertain of being able to set up the administration necessary to work the Scheme by the date of its introduction and strengthens the view already expressed that the date should be deferred until the administrative and staff arrangements are prepared in advance.

CLAUSE 26.—This clause of the draft Scheme, read with the definition of "excluded employee", restricts membership of the Fund to those drawing basic wages of up to Rs. 300/- per month and lays it down that if a member's basic wage increases beyond that figure, he will continue to be a member of the Fund, but on the basis of contributions not exceeding one anna in the rupee of Rs. 300/- plus the appropriate dearness allowance. This monetary ceiling will involve hardship in the case of a progressive employee at present a member of a provident fund. To overcome this disability, it is suggested that staff rising to a basic wage exceeding Rs. 300/- should be permitted to transfer to the employer's provident fund where such exists and that provision should be made in the Scheme for the accumulations at their credit in the Government Fund to be similarly transferred.

CLAUSE 27.—raises a point on which differing interpretations have been placed and on which clarification is desirable. As the Chamber reads the Act and the draft Scheme, a factory exempted under Section 17 of the Act will not be, in terms of Clause 26 of the Scheme, "a factory to which this Scheme applies" with the result that the employees of the exempted factory will not be required or entitled to be members of the Government Fund. If that interpretation is correct, no question arises of their individually exercising the option under Clause 27 of the Scheme except where —as is likely to occur under the proposed time schedule for the introduction of the Scheme—the exemption under Section 17 of the Act is not formally notified until after the Scheme comes into force. To meet such cases, which may be numerous, it will be necessary to provide that where in these circumstances accumulations have been transferred to the Government Fund under Section 15 of the Act and Clause 28 of the Scheme, these accumulations shall be re-transferable to the private fund on the exemption being granted.

There is no provision in Clause 27 or elsewhere in the draft Scheme for the exemptions referred to in Section 17 (b) of the Act.

CLAUSE 29—read with Clause 32 of the Scheme, provides that the contributions payable shall be calculated monthly. It would greatly simplify the work involved were the system under the Employees' State Insurance Act to be adopted, namely of basing the contributions on the payment made to the employee up to the end of the last completed week of the month, the remaining days in that calendar month to be taken into account in the ensuing period.

CLAUSE 36.—The system of returns under this Clause should, it is suggested, be simplified as it seems unnecessary to require them half-yearly as well as monthly.

CLAUSE 49.—Receipts from the administration charge are to be credited to "Central and State Administration Accounts".

There is no provision for the disposal of the balances remaining in these accounts after the administration expenses have been met. Clarification of this point is necessary.

CLAUSES 51, 52 and 60—The implication of these clauses of the draft Scheme are not clear. The first of them prescribes that interest, profit and loss etc. on investments shall be credited to an "interest suspense account" and the second provides that all dividends, interest and profits on the sale of investments shall be credited, and losses arising therefrom shall be debited, to the Fund. Under Clause 60 interest at such rate as may be determined by the Central Government shall be credited to the account of each member of the Fund. There is nothing in the draft Scheme to show what happens to any excess of interest etc. earned over the amount allocated amongst the members under Clause 60 though all such earnings will have been credited to the account of the Fund under Clause 52 through the medium of the interest suspense account referred to in Clause 51.

There is also no provision in the draft Scheme for the disposal of what are ordinarily termed "forfeits", that is to say amounts not claimed or claimable by retiring or disqualified members of the Fund, except that under Clause 71 they are to be credited to a reserve account in the case of those dismissed for serious and wilful misconduct. In the Chamber's view, all "forfeits" should be distributable among members of the Fund in proportion to their accumulated balances.

CLAUSE 69.—Several of the provisions contained in this clause, defining the circumstances in which accumulations in the Fund are payable to a member, are unduly stringent and out of line with the prevailing industrial and commercial practice; if adopted they will lead to a deterioration in employer-employee relationships and, in the case of retrenchment for instance, will bear heavily on the employee. One such unnecessarily harsh provision is that an employee retiring before the completion of five years' membership of the Government Fund will, even if he has

attained the "age of superannuation" which is not defined, forfeit the employer's contribution plus interest notwithstanding the fact that he may previously for many years have been a member of a private fund his accumulations in which have been transferred to the Government Fund. Similarly the two year period referred to in sub-clause (2) of Clause 69 and the conditions of withdrawal under the second proviso to that sub-clause appear to require reconsideration with a view to their being brought more closely into line with the existing practice in industrial provident funds.

CLAUSE 70.—Desirable as the provisions of this clause of the draft Scheme may be, it is to be observed that by reason of the provisions of Chapter IXA of the Indian Income Tax Act, they can at present find no counter-part in the rules of existing recognised provident funds. It is not clear from the Act or the draft Scheme whether the inclusion of similar provisions will be a condition of the exemption of an existing fund under Section 17 of the Act; in that event it will be necessary for the Act in this respect to over-ride Chapter IXA of the Income Tax Act.

CLAUSE 71.—provides that in the case of a member of the Fund who is dismissed for serious and wilful misconduct, the Commissioner (Central or State ?) may order the forfeiture of the employer's contribution of the last two completed years and the unexpired portion of the then current year after giving the member concerned an opportunity of showing cause why the forfeiture should not be made. In the Chamber's opinion it should be made clear that in arriving at his decision, the Commissioner shall have no power to review the circumstances of the case in so far as it concerns termination of employment in the factory and that any decision to refrain from ordering the forfeiture shall not be deemed to condone the offence responsible for the employee's dismissal.

The forms—as drafted are in some cases unnecessarily detailed, e. g. in form B where height has to be stated and in completing which many employees will be unable to furnish a date of birth.

Winding up.—There is no provision in the Draft Scheme for the winding up of the Fund. It is recommended that, as is normal in such cases, provision for this eventuality should be included in the Scheme.

Calculation of Employer's contributions.—Whatever formula may be devised to overcome the difficulty of determining the cash value of food concessions, already referred to in this letter, it is very necessary that the amount of the contribution actually made to the Fund by the employer should be accepted by the Income Tax Officer assessing the employer for tax purposes on the basis of receipts granted by the Commissioner when the payments are made and that instructions should be issued to the Income Tax Department to that effect.

It is hoped that the Government of India will take these and other detailed comments submitted by employers' organisations into careful consideration before proceeding to finalise and promulgate the Scheme which is bound to have far-reaching effects on industrial relations in the scheduled industries employing a vast number of workmen.

INDUSTRIAL

MINISTRY OF LABOUR QUESTIONNAIRE ON INDUSTRIAL RELATIONS.

Views expressed by the Bengal Chamber of Commerce and Industry in reply to the Questionnaire on Industrial Relations issued by the Ministry of Labour under cover of their letter No. LRI-87(61) dated the 1st July 1952.

I. PRELIMINARY.

Question :—

1. Do you consider revision of the Industrial Disputes Act, 1947 necessary ? If you do, in what respects and for what reasons ?

Answer :—

1. The Bengal Chamber of Commerce and Industry is strongly of the opinion that a thorough revision of the legislation governing the settlement of industrial disputes is overdue, and that for this purpose the Industrial Disputes Act, 1947, should be withdrawn and replaced by new and comprehensive legislation.

In the opinion of the Chamber, the main principles underlying the Industrial Disputes Act and the machinery created to enforce them have long passed the stage when their utility in enforcing the settlement of disputes is outweighed by other serious disadvantages. In particular, it is considered that as the Bill has been applied it has—

(a) acted as a serious deterrent to the development of the voluntary direct settlement of disputes between employers and employees ;

(b) seriously weakened the growth of constructive trade unionism based on mutual and helpful co-operation with employers ;

(c) increased the number of disputes and in many cases intensified them, and in particular increased the number of references to compulsory adjudication ;

(d) resulted in terms of settlement often unreal and unsatisfactory which have led to a worsening and not an improvement in labour relations.

As will appear from the detailed answers to subsequent questions, the Chamber is strongly of the opinion that the growth of peaceful relationships within industry requires as an urgent necessity the replacement of the Industrial Disputes Act by legislation which will give the maximum encouragement to the voluntary settlement of disputes, through direct negotiations between employers and employed.

In addition to the main objections to the Industrial Disputes Act, there are a large number of its individual provisions which have been found in practice to be unsatisfactory or objectionable. It is felt that it would be out of place to deal with these in the Chamber's replies to the main Questionnaire.

II. NATURE OF LEGISLATION.

Question :—

2. Do you consider it necessary or useful to have a uniform basic law relating to industrial relations applicable to all States, or

Answer :—

2. The Chamber considers that a uniform basic law relating to industrial relations and applicable to all States is essential. As will appear from their reply to the appropriate question, they think that it is desirable for parallel independent legislation to cover the special circumstances of Banking and Insurance Companies.

Question :—

3. Would you allow States to have their own legislation if they do not wish to avail themselves of the central legislation ?

Answer :—

3. The Chamber considers that it is undesirable for individual States to be authorised to introduce supplementary trade dispute legislation. Provided the Central legislation is appropriately drafted and allows some degree of elasticity in application, it should meet all reasonable requirements throughout the country and would at the same time ensure that the main basic principles were uniformly applied.

Question :—

4. Would your prefer the law relating to industrial relations to be a short and simple one containing only the minimum indispensable provisions, or

5. Would you make it an exhaustive one, providing for agencies and authorities, all of which may not be availed of by all States ?

Answer :—

4 & 5. While the sections of the legislation relating to the voluntary settlement of disputes should be as simple as possible, the experience of the previous and existing legislation indicates that the Act as a whole must be comprehensive and must provide for the creation of all necessary agencies and authorities, though it seems that perhaps greater scope should be left for questions of procedure etc. to be covered by Central rules rather than in the body of the Act.

Question :—

6. Is it necessary to incorporate the provisions of the Industrial Employment (Standing Orders) Act, 1948, in the industrial relations law ?

Answer :—

6. Agreed conditions of service embodied in registered Standing Orders constitute one of the first steps in the improvement of industrial relations. The existence of known conditions has not only a valuable stabilising effect in itself but also provides the best starting point for discussions on points of disagreement which, if unresolved, lead to disputes. The acceptance of Standing Orders and of a regular procedure for introducing changes followed by discussion is an integral part of the system of negotiation and discussion which, in the opinion of the Chamber, represents the main development now required in industrial relations. For these reasons, it seems to the Chamber very desirable that provision for the introduction and registration of Standing Orders should be included as a part of the general industrial relations law. It is therefore agreed that the provisions of the Industrial Employment (Standing Orders) Act, 1948, suitably amended, should be incorporated in the new legislation.

III. JURISDICTION OF THE CENTRAL AND STATE GOVERNMENTS.

Question :—

7. (a) What should be the respective jurisdictions of the Central and State Governments in regard to industrial disputes ? Does the division of jurisdiction provided for in Section 2(a) of the Industrial Disputes Act, 1947 require any alteration ?

Answer :—

7. (a) The question of the respective jurisdictions of the Central and State Governments in regard to industrial disputes should be treated mainly as a practical matter and, in the opinion of the Chamber, the direction in which legislation has been shaping is satisfactory. The provisions of the Labour Relations Bill, which stipulate that certain concerns such as railways, major ports etc., should come within the Central Government's sphere and provide permissive authority for the inclusion under Central responsibility of other establishments not confined to one State and so notified by the Central Government, seem the most satisfactory way of dealing with the very large range of industries and interests affected.

(b) Under Section 32 of the Industries (Development and Regulation) Act, 1951, industrial disputes concerning such controlled industries as may be specified in that behalf by the Central Government are to come within the Central sphere. What considerations should the Central Government bear in mind in deciding to bring within the Central sphere industrial disputes in any such controlled industry ?

(b) In the opinion of the Chamber the extent to which the Central Government should bring within the Central sphere industrial disputes in controlled industries under the Industries (Development and Regulation) Act, 1951, should be decided individually in each case and only after the fullest consultation with the establishment or factory, and, with the appropriate local Government.

(c) Should disputes in cantonment boards and air transport companies be brought within the sphere of the Central Government ?

(c) In the opinion of the Chamber cantonments and air transport companies should be brought within the sphere of the Central Government. The position of air transport companies is similar to that of railways and other forms of inter-State transport, and the Central Government's special interest in the administration of cantonments justifies the extension of their authority there.

Question :—

8. Employers having branches or establishments in several States have increasingly been asking for expansion of the jurisdiction of the Central Government. In view of the difficulties of centralised administration, do you think that it is necessary or proper for the Central Government to agree to any large-scale extention of their administrative jurisdiction ?

Answer :—

8. It remains to be seen how far, if accepted, the permissive powers provided in the Labour Relations Bill for the transfer to Central Government control of labour disputes in establishments having branches in several States will be utilised. It seems unlikely, however, that the number of such cases will be such as to require a large-scale extension of Central administrative jurisdiction, and it seems that subject to these borderline cases the main division of jurisdiction as between all-India concerns and those confined to particular States or regions will remain.

IV. SCOPE OF LEGISLATION.

Question :—

9. (i) Should the law apply only to industrial establishments as commonly understood or should it apply also to—

(a) commercial establishments,

(b) banking and insurance companies,

(c) transport services,

(d) service establishments such as telegraphs, telephones, broadcasting, irrigation, public works, etc.

(e) plantations and agricultural establishments,

(f) any other establishments ?

Answer :—

(9) (i) It is considered that the trade disputes legislation should be as comprehensive as possible and it should therefore cover the main range of organised industry, commerce, etc. There would seem to be administrative advantages, however, in introducing some restrictions designed to exclude the smallest class of enterprise in whatever field it occurs, and a justification since in such cases the more acute aspects of disputes, etc., seldom arise. The example of the Factories Act legislation might be followed, and arrangements made for the exclusion of any establishment employing less than 20 persons. Apart from this exception, it is considered that the trade dispute legislation should cover industrial establishments, commercial establishments, transport service establishments, plantations and agricultural establishments, and other establishments except small establisments employing less than 20 workers. As regards banking and insurance companies, it is considered that these should be covered by parallel but separate legislation to provide for their special circumstances.

Question :—

(ii) **Should the law apply to—**

(a) **small establishments employing less than a prescribed number of employees ;**

(b) **armed forces and police forces ;**

(c) **civil servants ;**

(d) **persons employed in a managerial or administrative capacity ;**

(e) **apprentices ; and**

(f) **domestic servants.**

Answer :—

9. (ii) (a) As indicated above, it is suggested that small establishments employing less than 20 persons should be excluded from the operation of the trade disputes legislation.

(b) The Chamber considers that as at present the legislation should exclude the armed forces and police forces.

(c) The Chamber considers that the present arrangements which exclude civil servants, save those drawing under Rs. 200/- per month or those non-gazetted in Government concerns such as the Railways, Ports, Telegraphs, Ordnance Factories, etc., are satisfactory.

(d) The Chamber is strongly of the opinion that persons employed in a managerial or administrative capacity should be excluded from the application of the law and that in addition persons employed in a confidential capacity should also be excluded.

(e) & (f) The Chamber considers that apprentices and domestic servants should be excluded, and that the latter term should be extended to servants employed in hospitals, charitable institutions, and educational institutions.

Question :—

10. **How should the expression "civil servants" be defined ?**

Answer :—

10. The definition of "civil servants" contained in the Labour Relations Bill is, in the opinion of the Chamber, satisfactory.

V. DISPUTES IN BANKS.

Question :—

11. **It has been suggested that the uninterrupted working of a bank is of far greater public importance than that of a factory or other industrial concern and that it is, therefore, necessary to evolve a special scheme for the regulation of employer-employee relations in banks as distinct from the general scheme of industrial relations in industry. What are your views in the matter ?**

Answer :—

11. The uninterrupted working of the banking system is of the greatest importance to the maintenance of the whole nexus of ordinary economic life, and the Chamber is strongly of the opinion that special measures should be taken to ensure that labour disputes in banks do not interfere with the provision of banking facilities to the public in general. In addition, banks are under a legal obligation to open daily to the public, except on Sundays and gazetted bank holidays, and this

consideration strengthens the general case that trade disputes should not be allowed to interfere with their ordinary working. Banks therefore fall into a category similar to public utility interests, but on the other hand, the type of employee engaged and the nature of the work done justifies the application of specialised arrangements for the settlement of disputes. The Chamber is, therefore, of the opinion that in the case of banks there is justification for the adoption of specialised legislation to regulate relations between employer and employees. Somewhat similar considerations apply in the case of insurance companies, and it is considered that these should also be included in separate legislation.

Question :—

12. Do you think that strikes and lockouts, as legal instruments of bargaining in banks, should be banned and replaced by an alternative machinery consisting of conciliation and adjudication, which will automatically be available to the parties without the intervention of, or interference by, Government ?

Answer :—

12. It is understood that banking interests are in agreement that strikes and lockouts as legal instruments of bargaining in banks should be prohibited and that machinery should be constituted which will be automatically available to parties to a dispute without the need of a special reference to Government, and the Chamber strongly supports this proposal. It has been suggested by banking interests that the machinery of negotiation should consist of local Conciliation Boards, with a restricted right of reference of major disputes to a Standing Tribunal, with a right of appeal to the general Labour Appellate Tribunal. This proposal is strongly supported by the Chamber.

Question :—

13. Should the Standing Tribunal envisaged in paragraph 13 be a multi-member Tribunal including an expert in banking ?

Answer :—

13. The Chamber agrees with the suggestion of banking interests that the Standing Tribunal referred to above (question 12) should consist primarily of persons with banking experience or knowledge, and that it should include a banking expert preferably from the Reserve Bank of India.

Question :—

14. It has been suggested that expert knowledge of banking is necessary for the successful administration of the special law proposed for banks and that the Reserve Bank should, subject to the control of the Central Government, be made statutorily responsible for the administration of that law instead of the present industrial relations machinery. What are your views in the matter ?

Answer :—

14. It has been pointed out by banking interests that under the Banking Companies Act, 1949, all banks are under the surveillance of the Reserve Bank which is in possession of detailed information on the position of each individual institution. It has therefore been suggested that the Reserve Bank should, subject to the control of the Central Government, be made statutorily responsible for the administration of the special law proposed for banks, and this view is strongly supported by the Chamber.

Question :—

15. In order to safeguard the position of office-bearers of trade unions in banks, do you think that, without prejudice to the general power of dismissal in accordance with the prescribed procedure, no punishment should be inflicted on an office-bearer, and no office-bearer should be transferred from office to office within twelve months of the previous transfer except in consultation with the trade union concerned and, in the event of disagreement, except with the approval of the Conciliation Officer ?

Answer :—

15. The Chamber is very strongly of the opinion that as regards ordinary matters of discipline there should be no discrimination as between office-bearers or members of trade unions and other employees. The suggestion that office-bearers and trade unions in banks should be subject to disciplinary action only in consultation with the trade unions concerned is highly objectionable, is susceptible to abuse, and is likely to impair discipline. The Chamber is strongly opposed to any suggestion that there should be special treatment of such individuals on matters relating to the ordinary maintenance of discipline.

Question :—

16. In view of these special features of employer-employee relations in banks, is it preferable to provide for them through a separate legislation ?

Answer :—

16. As indicated above the Chamber is strongly in support of the view expressed by banking and insurance interests that there should be separate legislation to govern employer-employee relations in banking and insurance companies.

VI. DISPUTES IN DEFENCE INDUSTRIAL UNDERTAKINGS.

Question :—

17. It has been suggested that civilian workers employed in industrial undertakings under the Ministry of Defence should be excluded from the scope of the law relating to industrial relations for the following reasons :—

(i) Such workers belong to a class distinct from ordinary industrial labour and have, by the very nature and importance of the duties on which they are employed, to be subject to a stricter code of conduct than corresponding personnel in civilian establishments.

(ii) They differ even from other Government employees engaged in industrial undertakings in that they generally work in close association with service personnel from whom a very high standard of discipline is expected and the possibility of such personnel being affected by any laxity in their fellow civilians in the same establishment cannot be ignored.

(iii) It is necessary to exclude such workers from the general law in the interests of security and of the imperative need for avoiding situations which might adversely affect the efficiency of the armed forces, as will happen if work in defence factories and installations is brought to a standstill as a result of labour strikes.

What are your views ?

Answer :—

17. The Chamber supports the suggestion that civilian workers employed in Industrial Disputes under the Ministry of Defence should be excluded from the scope of the law relating to industrial relations.

Question :—

18. As an alternative to the exclusion of defence civilian personnel from the industrial relations law, it has been suggested that industrial disputes relating to such personnel should be decided by ad hoc boards consisting of—

(1) a representative of the Ministry of Defence as Chairman,

(2) a representative of the aggrieved workers, and

(3) the Director or the Officer-in-Charge of the establishment in which the dispute has arisen,

instead of Industrial Tribunals. Please state your opinion.

Answer :—

18. If complete exclusion of defence civilian personnel from the industrial relations law is impracticable, the Chamber agrees with the suggestion that industrial disputes relating to such personnel should be decided by ad hoc Boards formed as proposed.

VII. BASIC PRINCIPLES.

Question :—

19. Having regard to the fact—

(i) that in an economy which is organised for planned production and distribution, such as is envisaged for the country in the near future, strikes and lockouts have practically no place,

(ii) that the country is at present passing through a period of economic emergency, and

(iii) that it is imperative to maintain production at the highest possible level

which, if any, of the following basic approaches to the problem of industrial relations would you recommend :—

(a) The parties should be left to settle all disputes and differences by negotiation and collective bargaining among themselves without the intervention of the State except to the limited extent of providing a machinery for voluntary conciliation or arbitration. The State will encourage bi-partite negotiations by setting up joint committees at every level and for all important industries.

(b) The State should take an active role in the settlement of disputes by making both conciliation and arbitration compulsory in the event of the failure of negotiations and by reserving to itself the power to refer disputes for compulsory arbitration.

(c) The law should put restraints and restrictions on the freedom of the parties in the earlier stages of a dispute by making notice of change of conditions and of strikes or lockouts obligatory, by making conciliation compulsory and by prohibiting strikes or lockouts for defined periods, but it should place no ultimate restrictions on the freedom of the parties to resort to direct action and should not make arbitration compulsory.

20. Which of the following methods of settlement of disputes would you prefer, or object to, and why :—

(a) Mutual negotiation and collective bargaining ;

(b) Voluntary or compulsory conciliation by the machinery prescribed by the law ;

(c) Voluntary arbitration by machinery—

(i) chosen by the parties ;

(ii) provided by the law ;

(d) Compulsory adjudication ?

Answer :—

19-20. The Chamber considers that, whether from the point of view of those indirectly concerned, such as the community at large and the Government of the country, or those immediately affected, namely, the employers and the workers, labour disputes with their inevitable dislocation of production, disturbance in working relationships and general economic waste should be prevented as far as possible. It must therefore be the object of the contemplated legislation to evolve machinery and procedures with the double object of lessening the likelihood of disputes, and if they arise, ensuring their settlement not only with speed but also in a manner most likely to be satisfactory by the two parties and therefore reasonably permanent.

It is clear that the most satisfactory method of dealing with a dispute between two parties is by voluntary settlement. An agreement freely entered into as a result of full discussion and contact and the understanding of mutual points of view must, by its very nature, be more acceptable and conclusive than one which contains any element of coercion or influence from a third party. There is no merit in the intervention of Government machinery as such in a labour dispute.

It follows that of the possible basic approaches to the problem of industrial relations the idea that the parties should be left to settle all disputes and differences in negotiation and collective bargaining amongst themselves without the intervention of the State is an attractive one. It is doubtful, however, whether legislation which relies entirely on these methods will achieve its purpose in present circumstances. The collective organisations of employees, particularly trade unions, are in many industries still undeveloped or in a rudimentary stage and the degree and extent of State intervention during the period since the war has acted as a positive discouragement to the development of the close and continuous relations between employers and trade unions which successful collective bargaining requires. Collective bargaining as a final method of settling disputes is not yet at a stage when full responsibility can be transferred to it.

An alternative is a continuation of the present system under which direct negotiation between the parties has been virtually replaced by compulsory State intervention in disputes with the main emphasis on rapid reference to compulsory adjudication. That policy, in the opinion of the Chamber, has failed to solve the problem of industrial

relations. Compulsory adjudication in the post-war period has resulted in enforced decisions which were in most cases unsatisfactory to both parties and seldom had even the merit that they represented some element of mutual compromise. In most cases they were accepted with reluctance and only because of their obligatory character, and were often the object of very vigorous attempts to alter them even during the period of so-called settlement. The main objections to the system are, however, that it seriously discouraged the development of mutual settlement between employers and employed. Knowing that the more serious a dispute appeared to be the more likely it would be immediately referred to a Tribunal and bearing in mind the natural tendency of Tribunals to attempt to concede some proportion of the demands made, the grounds of dispute were often widened to an extent which prevented any direct discussion between employers and workers and any chance of reasonable negotiated settlements. It is clear that in itself compulsory State intervention is an unsatisfactory method of settling disputes and that if the ideal to be attained is the growth of voluntary settlement by direct negotiation between the parties, the authority conferred by the Industrial Disputes Act on the executive to interfere at any stage of a trade dispute must be severely restricted.

In the opinion of the Chamber the immediate objective in the present circumstances is legislation which will give the fullest stimulus to voluntary negotiation and settlement, at the same time possessing, though only to be utilised as a last resort, reserve authority whereby, if voluntary negotiation fails, the State organisation can be brought in to encourage, and if necessary, to dictate a settlement.

Briefly, the system which the Chamber has in mind and the procedure to be followed in resolving a dispute is as follows :—

1. There will be three connected stages involved in the settlement of disputes, the first two being obligatory, and the third containing an element of choice as between compulsory machinery and agreed settlement, namely :—

   (*i*) *Voluntary settlement*—through negotiations with Works Committees and subsequently, if required, Trade Unions ;

   (*ii*) If voluntary settlement fails, *conciliation* through—

      (a) negotiations carried out by Conciliation Officers ;

      (b) negotiations carried out through a Board of Conciliation ;

   (*iii*) If conciliation fails *forced settlement* as a result of—

      (a) reference of a dispute to an agreed arbiter ;

      (b) reference of a dispute to compulsory adjudication.

   (*iv*) *Provision for Appellate jurisdiction*—there should be a comprehensive right of appeal from decisions of adjudicators to an Appellate authority as at present.

2. It would be obligatory on the parties to the dispute to utilise each succeeding stage in voluntary settlement, and the Government machinery would have no right of intervention at that stage. References to conciliation could be made jointly or individually by parties to a dispute. The reference to arbitration would be made jointly by the parties concerned without a right of Government intervention. The alternative of reference to an Adjudication Tribunal could be made either by the parties in joint application, or by Government acting on its own responsibility.

3. The reference to adjudication would not be obligatory on Government. It should be provided that it should be left to their discretion and that, save in the case of public utility companies, the alternative of leaving the parties to settle the issue by a strike or a lockout should be available though probably utilised only in exceptional cases. On the other hand, as indicated above, the two parties by a joint application could arrange for the submission of the dispute to adjudication.

4. There should be a final right of appeal to an Appellate Tribunal in which any decision by an adjudicator could be tested, whether the issue was one relating to law or any other aspect of the adjudication award.

5. All stages of voluntary discussion, conciliation, etc., would be governed by fixed periods with appropriate time limits, though provision for extension would be made.

6. In order to give clarity to disputes, it would be provided that the first stage would be an application made by one party to another with the object of altering the conditions of service then existing, or expressing a desire for negotiations on matters likely to lead to disputes.

7. Provision would require to be made in the legislation for the introduction of Works Committees and the appointment of bargaining agents with appropriate powers and functions.

The essential differences between the proposed procedure and that which is now followed under the Industrial Disputes Act and proposed under the Labour Relations Bill are first that a definite sequence of voluntary negotiation and conciliation would require to be followed. In the second place, that there would be no interference from the Government machinery until the stage of conciliation was reached and then only on the invitation of the two parties. The procedure for voluntary discussion would be laid down and every encouragement given to the parties to make use of that rather than to accept the intervention of the Government machinery. Finally, though there would be provision for Government reference to adjudication, that would be used sparingly, would be invoked by the parties themselves and there would be the prior right of reference to arbitration under an agreed arbiter.

VIII—RIGHT TO STRIKE OR LOCKOUT

Question :—

21. To what extent is the right to strike or lockout to be deemed inviolable ?

21. The ultimate right to withdraw labour by striking or to close down production by means of a lockout are of high importance but it must be recognised that the community at large has an overriding interest in ensuring that the exercise of that right does not jeopardise public life, safety or the maintenance of public order. This consideration justifies the imposition of an absolute ban on strikes or lockouts

in public utility companies and presupposes a reserve authority on the part of Government to prohibit strikes or lockouts in other cases if the public interest requires it. In addition, it is accepted public policy to reduce the general economic dislocation caused by strikes or lockouts and therefore to restrict this final form of action until all available means of settlement have been exhausted. In these circumstances the right to strike or lockout cannot be deemed to be inviolable and in the opinion of the Chamber should be prohibited under the following circumstances—

(a) without giving the appropriate period of notice of a desire to undertake negotiations or to ask for a change in conditions ;

(b) during the period of such notice and the subsequent period covering the various stages of negotiation ;

(c) during an appropriate period following the failure of negotiations.

This would imply in practice that strikes or lockouts would be prohibited from the time of giving notice of negotiation till the failure of voluntary settlement after reference to a Conciliation Board. Thereafter, subject to the appropriate period of notice, it would be at the option of the parties—

(i) to declare a strike or lockout ;

(ii) to refer to voluntary arbitration ;

(iii) to request a reference to compulsory adjudication.

Should the Government intervene and refer the dispute to adjudication there would be a similar limitation on the right to strike or lockout during the period of the adjudication and for an appropriate period thereafter.

Provision should also be made for the prohibition of strikes or lockouts after reaching an agreement or obtaining an award and during the continuance of it on matters covered by the award or agreement. There should be no restriction on strikes or lockouts in respect of matters not covered which if arising would, of course, be treated as new disputes subject to the process of negotiation.

Recent experience has shown the urgent necessity of clear definition of strikes and lockouts if the application of restrictions on them are not to interfere with the ordinary operation and administration of industrial enterprise. The present definition of lockout in the Industrial Disputes Act 1947 is as follows :—

> "Lockout means the closing of a place of employment or the suspension of work or the refusal by an employer to continue to employ any number of persons by him".

The application of this definition has severely restricted employers in taking normal action to adjust the scale of their production in accordance with ordinary factors such as fluctuations in raw material shortages, etc. The essential element of a lockout is that it is intended to compel employees to accept terms and conditions of employment or that it is in consequence of a labour dispute. The original definition of a lockout in the Trade Disputes Act, 1921, recognised this distinguishing feature and it is essential that it should be restored otherwise the restrictions contemplated on the right to declare a lockout can interfere in the most serious way with factory administration or organisation. It is also most essential that there should be no loophole in the legislation whereby a reduction in the scale of operations of an employer for any reason other than to compel workers to accept terms of employment can be construed as a 'go-slow' policy on the part of employers.

In the case of strikes the proposed restrictions on striking without notice will eliminate the lightening strike but it is most important that the definition of striking should cover the adoption of a 'go-slow' policy and also the case of a sit-down strike.

Question :—

22. Should there be a specific provision in the law that no employer shall dismiss, discharge or otherwise punish a worker by reason of the fact that the worker has gone on, or joined, a strike which has not been held by a prescribed authority to be illegal under the provisions of the law ?

Answer :—

22. It seems that this is an unnecessary and highly undesirable proposal. A strike or lockout involves the breakdown of the normal relationship between employer and employed, and in law terminates the contractual relationship between the parties. In practice, no employer would normally refuse to take back strikers who were willing to resume work immediately and who had not been responsible for any active indiscipline or violence, but it seems highly undesirable to use this practical position to justify what would be a substantial alteration in the legal position.

Question :—

23. Should there also be another provision to the effect that no employer shall prevent a worker from returning to work after a strike which has not been held by prescribed authority to be illegal unless—

(a) the worker entered, or continued to remain, on strike after refusing an offer of arbitration from the employer, or

(b) the worker, not having refused arbitration, has failed to offer to resume work within 15 days of a declaration by Government that the strike has ended ?

Answer :—

23. This proposal is equally open to the objection that it creates rights in a field where they do not exist at present. Normally employers will not refuse to employ workers who return promptly after the end of a strike either because negotiation has been resumed or a strike is ended, but there seems no reason why they should be compelled to keep places open for as long as 15 days to allow the striker to return.

Question :—

24. Should Government be empowered to prohibit strikes and lockouts in any industry during a public emergency if such prohibition is necessary or expedient for securing the public safety or the maintenance of public order or for maintaining supplies and services essential to the life of the community ? If so, what safeguards, if any, would you suggest ?

Answer :—

24. Government's right to prohibit strikes and lockouts during a public emergency has been generally accepted subject to publication

and discussion of their action in the appropriate State or Central Assembly. In the case of a lockout the definition must be restricted so that it does not cover cessation of work due to causes outside the control of the employer or not in connection with the dispute which at present might fall under a prohibition of a lockout.

Question :—

25. What curtailment, if any, of the right to strike or lockout would you consider justifiable in the case of public utility services ?

Answer :—

25. In the case of public utility services the present requirements of notice before a strike, followed by the various processes of negotiation or conciliation and completed by compulsory adjudication are justified and should not be altered except to be made more stringent. The same safeguards on the definition of lockout referred to in the previous questions are also required under this head. Strikes or lockouts in the case of public utility services should be declared *ipso facto* illegal.

Question :—

26. Where the right to strike or lockout is denied or curtailed in accordance with the foregoing paragraphs, what provision, if any, should be made for the just settlement of the claims of the parties ?

Answer :—

26. Special provision should be made to resolve disputes of employees working in public utility services and providing for compulsory conciliation and, if necessary, adjudication.

Question :—

27. What restrictions, or prohibitions, if any, should be imposed on strikes and lockouts—

(a) started without going through the prescribed procedures such as service of notice, prior negotiations etc. ;

(b) before or during negotiations ;

(c) during the pendency of conciliation, adjudication, appeal or similar statutory proceedings ; and

(d) during the period of operation of settlements, collective agreements, awards etc.

Answer :—

27. Strikes or lockouts should be prohibited in the circumstances mentioned under heads (a), (b), (c) and (d) but in the latter case the workers should be free to strike in connection with demands unconnected with the settlement, agreement or award and the employers should be free to lockout the workers.

IX—PUBLIC UTILITY SERVICES

Question :—

28. Is it necessary to amend the list of public utility services mentioned in Section 2(n) of the Industrial Disputes Act ? If it is, what items would you add to, or delete from, the list ?

Answer :—

28. In addition to the existing provisions in the 1947 Act and the Labour Relations Bill, the Chamber considers that employees engaged in watch and ward duties, safety men and power-house workers should be included in the definition of public utility services. The present provision of the Labour Relations Bill extends the definition of a public utility service to systems of public conservancy or sanitation, hospitals, nursing homes or fire-fighting services owned or managed by local authorities. The Chamber is of the opinion that workers engaged in these duties in the appropriate sections of private industry etc. should also be included in the definition. Some provision is required to meet the case of continuous process workers in those sections of plants where sudden discontinuance of operations would result in damage either to life or property. It is assumed that workers in banks and insurance companies would be covered by separate legislation, but if not, it would be desirable to bring them within the definition.

Question :—

29. Should Government be empowered to declare any industry or establishment a public utility service "if in the opinion of the appropriate Government, public interest or emergency so requires"?

Answer :—

29. The Chamber agrees that Government should be empowered to declare an industry or establishment a public utility service, if the appropriate Government considers public interest or emergency so requires.

Question :—

30. Should public utility services in the public sector be treated any differently from public utility services in the private sector ?

Answer :—

30. In the opinion of the Chamber, there is no justification for any difference in the treatment of public utility services in the private sector.

X—AVOIDANCE OF DISPUTES

Question :—

31. Should the conditions of employment of workers and matters of general interest to them be reduced to writing in the form of standing orders ? If so, what procedure would you suggest for settling the terms of standing orders and what provision would you make for resolving differences regarding the interpretation or application of standing orders ?

Answer :—

31. The Chamber is strongly in favour of the general adoption of Standing Orders which define conditions of service. Suitable Standing Orders broadly covering the subject are already in force in most industries and are working satisfactorily. There has been much unnecessary delay in their official registration, however, because registration officers have attempted to adjudicate on their contents. In order to prevent unnecessary delays of this nature there should be a simple procedure for registration, and registration officers should not be permitted to question the contents of Standing Orders submitted to them for that purpose. Once registered, requests for alterations in the Standing Orders should be made by either party by the submission of a formal application and

should then be subjected to the processes of negotiation, etc provided for in the case of ordinary disputes.

Question :—

32. Is it necessary to lay down in concrete and specific terms the duties and responsibilities of both sides ? If so, is it possible to do so ? For instance, can a manual be prepared showing what work is expected of each category of workers and what should be the minimum output and quality ? Is it also possible to lay down what wages and other privileges the worker is entitled to ? What steps should be taken to make the contents of such a manual known to workers, the large majority of whom may be illiterate ?

Answer :—

32. The introduction of Standing Orders represents a very large step forward in the direction of defining conditions of service. In addition, there is generally a wide range of subjects on which conditions have been clarified as a result of tribunal awards, agreements with labour etc. In the opinion of the Chamber it is most undesirable to go beyond this. To attempt to reduce to written terms details of tasks, output etc. is quite impracticable. Even if it were not, to apply to productive industry systems of bureaucratic regulation would destroy much of the vital resiliency and capacity for adjustment which must characterise day to day industrial operations and are main aspects of the function of management. The Chamber strongly suggests that further consideration should not be given to a proposal so undesirable and impracticable.

Question :—

33. Do you consider the functioning of shop-stewards, wherever they exist, useful ? What steps would you recommend for developing that agency ?

Answer :—

33. In the opinion of the Chamber the introduction of shop-stewards in Indian industry is premature and undesirable. In certain industries experiments are being made on a voluntary basis, and it is considered that any effort to hasten this process by compulsion might have very undesirable results. At present it is sufficient to lay emphasis on the desirability of the introduction of Works Committees.

Question :—

34. Is there any complaint at present that workers, individually or collectively, are unable to approach managerial authorities at different levels for redress of grievances and if so, do you think that clear instructions issued by the employer in this respect will reduce the number of disputes or, at any rate, assist in solving them promptly ?

Answer :—

34. It is a function of good management to ensure that satisfactory facilities exist to allow workers, whether individually or collectively, to approach managerial authorities at appropriate levels for the redress of grievances. In most well-run plants, the procedure for the redress of grievances is clearly defined and known, and the increasing number of personnel and labour departments employing qualified labour officers has to a considerable extent removed any ground for complaint that may have existed.

Question :—

35. Have Labour Welfare Officers functioned effectively in promoting the welfare of labour, in avoiding disputes, and in creating goodwill and understanding ? Have you any suggestions for making them more useful ?

Answer :—

35. It is uncertain whether the question concerns the Labour Welfare Officers appointed by certain State Labour Departments, or those employed by private industry. If the former, experience has varied greatly but there have been many complaints about the quality of the officers appointed and their intervention in labour disputes has often had unhappy results.

XI—MULTIPLICITY OF AUTHORITIES

Question :—

36. One of the complaints against the Labour Relations Bill is that it provides far too many authorities. Which of the following authorities mentioned in clause 3 of the Labour Relations Bill would you retain or delete and for what reasons ?

(1) Registering Officers.
(2) Works Committees.

(3) Conciliation Officers.
(4) Boards of Conciliation.
(5) Standing Conciliation Boards.
(6) Commissions of Enquiry.
(7) Labour Courts.
(8) Labour Tribunals.
(9) The Appellate Tribunal.

Have you any suggestions for adding to the list ?

Answer :—

36. The Chamber considers that the following authorities should be retained in any future trade disputes legislation :—

Registering Officers,
Works Committees.
Conciliation Officers.
Boards of Conciliation.
Labour Tribunals.
The Appellate Tribunal.

The Chamber does not consider that Standing Conciliation Boards, Commissions of Enquiry, or Labour Courts, would fulfil a useful function in the system of labour relations which is contemplated.

As will appear from the appropriate paragraph, it has been suggested that provision should be made for voluntary arbitration and for certified bargaining agents.

XII—BIPARTITE AND TRIPARTITE MACHINERY

Question :—

37. Do you consider that an adequate bipartite machinery should be established for all important industries so that a tradition of internal settlement of disputes might be built up and the intervention of Labour Courts and Tribunals kept to the minimum ?

38. If you do, what sort of machinery do you visualise and for what industries ?

39. Should there be only one bipartite committee for an industry for the whole country or should there be committees for each industry in each region ?

40. Should there be a general bipartite committee at the Centre on the lines of the Joint Consultative Board for problems of all-India importance or interest ?

41. Do you consider that the formation and functioning of the bipartite machinery should be made compulsory and that provision should be made to ensure that no dispute may be taken up in conciliation or adjudication until it has been considered by the bipartite machinery ?

Answer :—

37, 38, 39, 40 & 41. The Chamber considers that bipartite machinery has a most important part to play in the evolution of opinion on a wide variety of labour matters. Facilities for frequent meetings on the lines of the Joint Consultative Board for discussion of problems of all-India importance and interest are highly desirable, and the Chamber considers that similar machinery in each State would provide a means of liaison between employers and organised labour of considerable importance. In the opinion of the Chamber such machinery should be kept on a strictly informal basis, the main object being to exchange views and ascertain where common ground lies on matters of general importance. It is thought that the value of these contacts might be considerably reduced if in addition bipartite machinery were asked to intervene in the actual settlement of disputes. It is better that the settlement of disputes should be left for direct negotiation between the body or bodies of employers and the Trade Unions concerned. Otherwise relationship within the bipartite bodies might often be harmed by the repercussions of individual disputes.

It follows from the above that the Chamber considers that bipartite machinery should be of a loose and informal nature, and it is most undesirable that there should be any element of compulsion attached to it.

Question :—

42. In addition to bipartite committees, do you consider the machinery of tripartite committees necessary for consulation between Governments, employers and workers ?

43. The more important of the existing tripartite committees are:—

(a) Indian Labour Conference.

(b) Standing Labour Committee, and

(c) Industrial Committees for the more important industries such as, textiles, jute, coal, cement, paper etc.

Which of these do you suggest for continuance and what should be their composition, periodicity of meeting and functions ?

Have you any suggestions for any other committees ?

44. Do you consider that the tripartite machinery should be made statutory ?

Answer :—

42, 43 & 44. The Chamber's experience of the functioning of the tripartite committees, particularly the Indian Labour Conference and the Standing Labour Committee, has been highly unsatisfactory. The numbers of representatives at the Labour Conference, the formality of the proceedings, the shortness of time normally given for consideration of subjects and available for discussion, has made it little more than a forum where a dogmatic expression is given to views already known. As in the case of the Joint Consultative Board, there is considerable room for occasional informal discussions between representatives of workers, Government and employers, but any attempt to elaborate on these, and in particular to make tripartite machinery statutory, would in the opinion of the Chamber defeat the purpose for which it is put forward.

XIII—WORKS COMMITTEES

Question :—

45. Do you consider that Works Committees are useful for the settlement of differences on the spot ?

Answer :—

45. Although mostly in the experimental stage, useful results have been obtained in many cases as a result of the development of Works Committees, and the Chamber attaches great importance to them as a potential instrument in the peaceful settlement of disputes of a minor or internal nature. They are not, however, a suitable form of organisation in the special circumstances of banks, insurance companies and commercial offices.

Question :—

46. Why is it that many establishments have not succeeded in setting up Works Committees ?

Answer :—

46. It is obvious that the introduction of what constitutes in many industries a new and novel organisation will encounter difficulties and in addition the Chamber understands that there has been a good deal of opposition from trade unions who in some cases are apprehensive that the establishment of Works Committees may reduce their control over the workers.

Question :—

47. Have Works Committees already set up been functioning properly ? If not, what are the reasons ?

Answer :—

47. The Chamber understands that experience of Works Committees has varied a great deal not only from industry to industry but as between individual factories. The existing stage of labour relations in any individual enterprise is obviously of considerable importance in determining the initial success or failure, and there are inevitable divergences in the character of the workers' representatives. This variety of experience is inevitable and does not in any way diminish the Chamber's view that Works Committees constitute a valuable organisation which should be developed as fully as possible.

Question :—

48. Is there any truth in the statement that employers in some cases and trade unions in others have discouraged the formation or functioning of Works Committees ?

Answer :—

48. As indicated above the Chamber is informed that in many cases trade unions have been hostile to the creation of Works Committees. Employers as a whole have, it is believed, welcomed the institution of Works Committees which, despite difficulties and in some cases initial failures, represent a promising method for the settlement of internal disputes.

Question :—

49. What should be the composition, method of constitution and functions of Works Committees ? Should workers' representatives in Works Committees be chosen by the representative trade union having the backing of the majority of workers in the unit, and in the absence of such union should workers themselves elect their representatives ?

Answer :—

49. The present composition and method of constitution of Works Committees is reasonably satisfactory. Since these bodies are essentially for the purpose of discussion and consultation, a loose and informal constitution which can be adapted to circumstances is probably most satisfactory. As regards the functions of Works Committees, the general experience of employers is that it is preferable that they should avoid the discussion of matters of major importance such as wage claims, claims for bonus, or questions involving major alterations in terms of service. These fall more appropriately within the sphere of collective bargaining with trade unions, and both from the point of view of the encouragement of the latter and from that of the successful development of the Works Committees, should be excluded from discussions with the Works Committees. At the same time it is desirable not to lay down rigid conditions and this is probably a matter which should not be included in the legislation but should be the subject of broad directives. Possible subjects for discussion appropriate to Works Committees might be general working conditions, all aspects of welfare, accident prevention, avoidance of waste, improvements in methods of organisation or work and questions associated with the method of payment of wages excluding alterations in remuneration.

As regards the election of Works Committees, the Chamber considers it very desirable to exclude the method of selection by a trade union. This introduces an unnecessary and undesirable complication.

The relationship, if any, between the trade union and the Works Committee should be informal.

Question :—

50. Should Works Committees function also as production committees looking to such matters as increase of production and productivity, improvement of quality, reduction of costs, elimination of waste, care of machinery etc.

50. Matters relating to the improvement of production, quality, elimination of waste, etc, are the primary concern of the management, and while there may be a useful field of discussion on such matters with Works Committees, it should be left to the management to decide whether such questions should be raised. As a general rule, it is probably undesirable in the present stage of development to burden Works Committees with technical matters which are in most cases outside the scope of their usefulness.

XIV—NEGOTIATION

Question :—

51. Do you consider that when either party wishes to make a change in the *status quo*, notice should be given to the other party ? In what other cases of an actual or apprehended industrial dispute would you make the issue of a notice obligatory before the declaration of a strike or lockout ? What should be the period of notice ? Would you make it obligatory on the party receiving the notice to enter into negotiations with the party issuing it ?

Answer :—

51. In practice industrial relations in most concerns are at present governed by—

(a) the Standing Orders on matters of procedure etc. ;

(b) the terms of a Tribunal award or agreement of a more or less comprehensive nature.

Outside of the matters covered by the above, there is a considerable field of decision on technical and production questions which have, in the past, been determined by the Management without consultation and

without the need for giving notice of an alteration in the *status quo*. In the early stage of collective bargaining, it is probably desirable to limit the field in which notice of an alteration in the *status quo* is required, and the Chamber thinks that a practical approach would be that—

(a) any change contemplated or desired in the content of Standing Orders or in the terms of an existing award or agreement should be the subject of a notice ;

(b) alterations in the *status quo* concerning matters not covered by Standing Orders, awards, or agreements, should not require to be the subject of obligatory notice.

In cases of disputes which do not involve a change in the *status quo*, the essence of collective bargaining is that notice should be given of the dispute and discussion should take place on it. The conditions in which notice should be given in a matter which is the subject of grievance and requiring discussion should be similar to those required in the case of notice of a desire to change the *status quo*.

It should be emphasised that, with the change in emphasis on the method of settlement of disputes, there are three essential steps involved, namely—

1. the issue of a notice of a desire to commence negotiations ;
2. a period in which negotiations can take place ; and
3. if negotiations fail, a period in which a further respite is given for settlement before the final decision to strike or lockout is taken.

The Chamber considers that it should be obligatory on the party receiving a notice to negotiate to enter within the prescribed period into negotiations with the party issuing it.

Question :—

52. If an agreement is entered into between the parties through negotiation, would you seek to make the agreement legally binding or would you leave it to the voluntary acceptance and observance of the parties ? Should such an agreement be registered with a prescribed authority ?

Answer :—

52. The Chamber considers that an agreement entered into between the parties through negotiation should be legally binding and should be registered with a prescribed authority as soon as possible and not more than two weeks after the agreement has been entered into. Matters covered by a registered agreement should not be subject to further reference by either party or by a Conciliation Board, Tribunal, etc., during the period of the agreement.

XV—COLLECTIVE BARGAINING

Question :—

53. Do you think that elaborate statutory provisions such as those found in the laws of industrially-advanced countries on such matters as the certification of the bargaining agent, the rights and responsibilities of the bargaining agent, the binding nature of agreements entered into by the bargaining agent, the supersession of one bargaining agent by another, the enforcement and revocation of collective agreements etc. are suited to the conditions obtaining in this country ? or

54. Should collective bargaining be left to be conducted on the present informal basis ?

Answer :—

53 & 54. It is the policy of the industrial interests associated with the Chamber to foster the growth of responsible trade unionism and this policy has been followed steadfastly for a period of more than 15 years. To that extent, the Chamber welcomes any development which stimulates collective bargaining in the hope that this will do much to assist in the evolution of new and vigorous forms of constitutional trade unions. On the other hand, the Chamber was somewhat perturbed at the provisions for the appointment of Bargaining Agents contained in the Labour Relations Bill, which in its opinion went further than is justified by the present position and likely growth of trade unionism in India for some time to come.

While the Chamber recognises the value of the appointment of certified Bargaining Agents, who will alone be authorised to negotiate

with employers over the main field of industrial disputes, it is thought that certain safeguards should be introduced, namely :—

(a) There should be a legal obligation on an employer to accept as a certified Bargaining Agent a trade union which could prove that 55% of the employees were its members. In such cases the employer would undertake not to negotiate or deal with any other trade union of its employees.

(b) There would be no restriction on the voluntary recognition of a trade union with a smaller percentage of the employees provided that the unions concerned had the largest degree of support of employees in the particular concern. In such cases the employer would grant the union the rights of a certified Bargaining Agent.

(c) There should no compulsory recognition of federations of trade unions. This should be left as a matter for direct settlement between the appropriate organisation of employers and the federation, and the former would have the right in such circumstances to appoint them, if considered desirable, as certified Bargaining Agents.

(d) Certification of the union as a Bargaining Agent would not affect the position of a Works Committee in the same concern in dealing with subjects falling within its scope.

A simplified system of certification on the above lines would not require the same elaborate provisions contemplated under the Labour Relations Act, but there should be provision giving the employer the right to withdraw certification if the union fails to fulfil the conditions for certification or if it fails to give effect to the terms of an agreement. Agreements reached as a result of collective bargaining should be legally binding and provision should be made for their registration.

Question :—

55. Do you consider that there should be a single bargaining agent over as large an area of industry as possible and that uniform conditions should be secured in at least all the establishments in one centre ? If so, what kind of union should qualify as a representative union entitled to speak on behalf of the workers of the whole centre ?

Answer :—

55. As indicated the Chamber thinks that in present circumstances the most suitable unit for appointment as a Bargaining Agent is an individual company's trade union, but larger units can be provided for on the basis of voluntary negotiation between the employers and workers concerned.

Question :—

56. Would it be sufficient to provide that an agreement between a trade union and the employer should be binding on, and as between, the employer and the workers who are members of the trade union and that where a trade union proves that more than 50% of the workers of the employer are its members, the agreement should be binding also as regards the non-members of the establishment ?

Answer :—

56. An agreement between a trade union and the employer should be binding on all employees whether members of the trade union or not.

Question :—

57. Similarly, would it be sufficient to lay down that a federation would be entitled to bargain on behalf of the members of such of its affiliated unions as have a majority of the workers of the establishment concerned as members ?

Answer :—

57. In the case of a federation, the agreement should be binding on all employees of the members of the employers' organisation involved in an agreement to negotiate.

Question :—

58. Where there are no proper trade unions, should provision be made for the election of representatives who will take the place of the bargaining agent on behalf of all the workers of that establishment ?

Answer :—

58. In the opinion of the Chamber it is very undesirable to give rights as a Bargaining Agent to elected representatives of the employees where there is no trade union. In such a case, the employer should be free to arrange for voluntary negotiations with his Works Committee, if he so desires, or to proceed through the machinery of conciliation.

XVI—CONCILIATION

Question :—

59. In what cases may a Conciliaition Officer offer his services and in what cases must he do so ?

Answer :—

59. As indicated in the replies to Questions 19 and 20, the system which the Chamber favours begins with negotiations at the Works Committee or trade union level, but there should be a legal responsibility on the parties to proceed to the next stage of settlement when negotiations fail. In view of this, it is the opinion of the Chamber that a Conciliation Officer should intervene in a dispute only when the necessary approach has been made to him by the parties involved.

Question :—

60. What should be the period within which the Conciliation Officer should complete conciliation proceedings ? What provision should be made for extension of that period by agreement between the parties ? Should Government have power to extend the period of conciliation ?

Answer :—

60. It is agreed that the present provision of a time limit of 14 days should be retained, with provision for an extension by agreement between the parties. It is not considered that Government should have independent power to extend the period of conciliation without the agreement of the parties.

Question :—

61. Should it be laid down that an agreement entered into between the parties in the course of conciliation will not be vitiated by reason of the non-observance of any provisions of the law ?

Answer :—

61. It is the view of the Committee that agreements which will become legal documents on registration should conform with the provisions of the law.

Question :—

62. **In what circumstances should a dispute be referred to a Conciliation Board and what should be the composition and procedure of the Board ?**

Answer :—

62. In the opinion of the Chamber a dispute should be referred to a Conciliation Board only on a reference by one or both of the parties and after the failure of conciliation proceedings by a Conciliation Officer. The existing constitution of a Board, namely, an independent chairman with two or four members appointed on the recommendation of the parties to a dispute to represent these parties is considered satisfactory. In view of the nature of its functions, a Conciliation Board should not be bound down by restrictions on procedure.

Question :—

63. **Are Standing Conciliation Boards necessary ?**

Answer :—

63. As indicated the Chamber does not consider that Standing Conciliation Boards are necessary.

Question :—

64. **What provisions would you recommend for registration and enforcement of agreements arrived at in the course of conciliation proceedings before—**

(a) **Conciliation Officers,**

(b) **Conciliation Boards ?**

Answer :—

64. Agreements arrived at in the case of conciliation proceedings should be registered with the appropriate official, and breaches of such agreements should incur the penal provisions of the legislation. In such circumstances certification as a bargaining agent can be withdrawn from the Union responsible.

Question :—

65. **What provisions should be made to ensure that the proceedings do not pend at the same time before a Conciliation Officer, a Conciliation Board, a Labour Court or a Tribunal ?**

Answer :—

65. Under the procedure suggested there is no possibility of proceedings pending at the same time before a Conciliation Officer, Board or Tribunal.

XVII—ARBITRATION

Question :—

66. **Do you consider that it is necessary to provide for compulsory arbitration or adjudication in the law ?**

Answer :—

66. As indicated in the Chamber's replies to questions 19 and 20, it is their opinion that the proposed legislation must contain provision for references to compulsory adjudication on the failure of conciliation proceedings, and as a result of a joint application by the parties or at the discretion of the appropriate Government.

Question :—

67. (a) **If you do, what types of courts or tribunals would you recommend for the purpose ? There is a suggestion that purely local disputes such as those relating to working conditions, health, safety, welfare and kindred matters should go to the lowest category of courts which might be called Labour Courts, that crucial questions such as those relating to wages, hours of work, rationalisation schemes, bonus etc., should be referred to a higher category of Courts which might be called Industrial Courts or Tribunals, and that where all-India uniformity is necessary the matter should be referred to a Central Industrial Tribunal. What do you think of it ?**

(b) **If you agree with the suggestion above, what steps would you recommend for ensuring that parties do not have to go to more than one forum for the settlement of a series of disputes, some of which may be minor and some major ?**

(c) Should a party or both parties acting jointly, be entitled to approach any of these authorities direct or should the appropriate Government alone be competent to make a reference to the authority concerned in order to invest it with jurisdiction over a particular dispute ?

Answer :—

67(a) It is theopinion of the Chamber that the machinery of settlement proposed will result in the elimination of minor disputes at an early stage in the proceedings. There is no justification for the constitution of Labour Courts, and indeed a positive disadvantage. It is not unlikely that a system of Labour Courts would have the same disadvantages over a wide field of minor disputes as the system of compulsory adjudication has had in restraining satisfactory voluntary negotiation on larger issues. As regards Tribunals and the Appellate Tribunal, it is also considered that the development of voluntary negotiation will reduce the number of references made to them. On the other hand, disputes which are so referred will inevitably be of a serious nature and because of this it is the strong opinion of the Chamber that greater provision should be made for appeals from Tribunals to the Appellate body. It is considered that any decision of a Tribunal or any part of it should be subject to a right of appeal to the Appellate Tribunal, and that the present restrictions on the form of appeal should be removed.

The Chamber sees no advantage in the creation of a central Industrial Tribunal, provided that the right of appeals to the Appellate body is unrestricted.

Question :—

68. What should be the qualifications of the Chairmen and Members of these Courts or Tribunals ?

Answer :—

68. The present provisions regarding the qualifications of the Chairman and members of the Tribunals and the Appellate Tribunals are satisfactory save that in the former case persons who are qualified for judical offices but who have not actually held them should not be eligible for appointment. Provision should be made in the legislation for the appointment in appropriate cases of qualified accountants or other experts in finance as members of Tribunals.

The Chamber suggests that appointments to Tribunals should in future be made by the judical departments of the Central or State Government, since it is considered that such a method of appointment will act as a valuable safeguard in maintaining the position and prestige of the Tribunals and in ensuring their judicial impartiality. In this connection the Chamber would refer to the case of the Income Tax Appellate Tribunal which was under the supervision of the Central Board of Revenue and the Finance Ministry and which was eventually reconstituted on an entirely independent basis.

Question :—

69. Do you think that legal technicalities and formalities of procedure should be reduced to the minimum before Labour Courts and Tribunals ?

Answer :—

69. It is the Chamber's hope that if the procedure for the settlement of disputes proposed is adopted, there should be a considerable reduction in the cases eventually coming before Tribunals. On the other hand, it is likely that such cases will involve disputes involving questions of outstanding importance. It is essential that these should be treated with the care and consideration required and should be governed by strict and invariable rules of procedure.

Question :—

70. Should the State or a Court or Tribunal have the power to require any employer or employers generally to maintain and furnish data relating to the plant, manufacture, industrial transactions and dealings which might be needed for the settlement of industrial disputes ?

Answer :—

70. In the opinion of the Chamber the powers suggested are excessive and unnecessary. Disputes coming before the Tribunals will be specific in nature and the existing provisions which empower Tribunals to enforce attendance and require the production of documents are adequate. Information about the position in industry as a whole can be most suitably provided by assessors. In particular Tribunals should not have the authority to direct one party to produce information at the request of the other.

Question :—

71. Do you consider that the requisite measure of uniformity can be achieved by prescribing 'norms' and standards which may govern the mutual relations and dealings between employers and workers and settlement of industrial disputes ? If you do, what procedure would you suggest for the evolution of 'norms' and standards and how should they be made binding on Courts and Tribunals ?

Answer :—

71. In the opinion of the Chamber, there is considerable scope for agreement by bipartite discussions on the question of "norms" and standards to act as a guide to Tribunals in making decisions on some of the main questions in disputes, such as wages, bonus etc. There can be no question of prescribing such standards. As they evolve, as the result of a normal development of consultation and discussion, they should be placed before Tribunals only as a recommendation and a guide.

Question :—

72. Should a provision be made for voluntary arbitration and if so, should the arbitrator be the one prescribed for compulsory adjudication or somebody chosen by the parties ? If the latter, should any qualifications be prescribed for the arbitrator ?

Answer :—

72. In the opinion of the Chamber there is great scope for the development of voluntary arbitration as a means of settling disputes. The procedure followed should be as simple as possible and, in particular, it is essential that the choice of the arbitrator should be made freely by the two parties concerned without outside intervention. There should be no power given to Government to appoint an arbitrator, if the parties themselves fail to agree.

Question :—

73. Should a reference to a Tribunal for adjudication pertain only to the units in which there are current unresolved disputes or should it, in the event of the existence of widespread disputes in an industry, extend also to the units in which there are not actual disputes but which are bound to react unfavourably if they are not included in the reference ?

Answer :—

73. It has always been undesirable to extend the range of adjudication beyond the unit in which a dispute takes place. The procedure suggested for the initiation of negotiations will make the causes of the dispute particularly clear and, in these circumstances, there will be no justification whatsoever for extending it beyond its immediate area. Tribunals or Governments should not be permitted to enlarge the scope of disputes by bringing within the sphere of adjudication concerns where they have not arisen.

Question :—

74. Should there be any provision for appeals from the decisions of any of these authorities ? Are you in favour of the retention, or abolition, of the Appellate Tribunal ?

Answer :—

74. In the opinion of the Chamber the Appellate Tribunals have been of great value and it is essential that they should be retained and the sphere of their operation extended. Experience has shown that with the development of the adjudication process throughout India there is a vital need for some form of final revisionary authority such as the Appellate Tribunals which will ensure a measure of all-India uniformity in the interpretation of the law and in the application of basic principles. In the absence of such a body it is conceivable that there might be the growth of very serious local divergencies in basic labour conditions.

Question :—

75. If you are in favour of the retention of the Appellate Tribunal, what should be its jurisdiction ?

Answer :—

75. The existing restriction on the jurisdiction of the Appellate Tribunal namely, that an appeal must involve a substantial question of law, should be withdrawn and the right of appeal to the appellate body should be made comprehensive.

Question :—

76. Should the proceedings of Labour Courts and Tribunals be excluded from the jurisdiction of the Supreme Court and/or of the High Courts in the matter of appeals for writs ?

Answer :—

76. The existing jurisdiction of the High Court and the Supreme Court should be maintained.

Question :—

77. Should Government have power to set aside or modify awards ? If so, in what cases and subject to what conditions ?

Answer :—

77. The Chamber considers that, so long as there is the Appellate Tribunal, Government should have no power to set aside or modify awards.

XVIII—DISMISSAL AND RETRENCHMENT

Question :—

78. Should cases of dismissals of workers be deemed to be industrial disputes which could be referred to a Tribunal for adjudication ?

Answer :—

78. In the opinion of the Chamber it is of the highest importance that the new Industrial Disputes legislation should adopt a realistic and balanced view on the question of the dismissal of individual workers as it affects the conception of a labour dispute. The attention given to this issue in this country in recent years has been wholly disproportionate and contrasts strongly with practice in other industrialised countries. It has caused a mischievous distortion of trade union activities, has been a potent source of misunderstanding between employers and trade unions, has seriously interfered with the workings of Tribunals and has interfered with efficiency in production and, in the sense of discipline amongst workers, to an extent quite out of proportion with its significance.

The suggestion that dismissals of workers should be considered as industrial disputes implies that, in ordering dismissal, the employer is exercising a right of questionable justification. Yet there is no suggestion that there should be any restriction on the right of the worker to withdraw his labour at any time which he desires. In the opinion of the Chamber there is a similar inherent right on the part of the employer to determine the employment of workers when circumstances so require it and in its opinion there can be no question but that the regulation of the volume of employment in consonance with economic requirements is an essential principle of efficient management and production.

The proposal that dismissals of workers should be accepted as the subject of industrial disputes seems to arise from—

(a) a desire to challenge the right of the employer to adjust his conditions of employment ;

(b) from a belief that dismissals are normally carried out in an arbitrary manner ; or

(c) from a belief that they are often made an excuse for actions which are in fact victimisation for trade union activity.

As regards the first, it is impossible to compromise with principle. Subject to suitable safeguards, preventing hasty or capricious action, the right of the employer to adjust his labour force to possibly changing requirements can be challenged only at the expense of the industrial progress and prosperity of the country. In the opinion of the Chamber, the suggestion that dismissals may be arbitrary, is equally unjustified. The vast majority of industrial undertakings now regulate relations with their workers on the basis of accepted conditions of service which provide in detail for the conditions in which workers can be dismissed for disciplinary reasons and which cover the circumstances in which ordinary services can be dispensed with. In all cases there is provision for the review of decisions if they are objected to by the individual workers and capricious action is carefully safeguarded against. It should perhaps be borne in mind that the available labour force in India which is trained and efficient is not so large that an employer will dismiss a satisfactory worker without good cause.

As regards victimisation for trade union activity, no employer would support such action and the Chamber would strongly support suitable action in cases in which this is proved. There therefore seems no satisfactory ground for taking the elaborate precautions which are in fact involved in the suggestion that any case of dismissal may be considered a trade dispute and should go through the ordinary channels of negotiation, etc., before it can be finalised.

In support of what is said above, the Chamber would point out that, as a result of the existing provisions of Section 33 of the Industrial Disputes Act, a very large number of cases of dismissal for various causes has been reviewed by Tribunals. In the overwhelming majority of cases the action taken by employers has been found to be fully justified and their decision has been accepted by Tribunals. The burden placed upon adjudication machinery by the hearing of the very large number of cases involved has been very great and has in the case of large industries almost brought the Tribunal machinery to a standstill. Any continuation of this position would have serious reactions on the arrangements for adjudication.

The Chamber suggests that there is an unchallengable case whether considered as a matter of principle or as one of expediency for accepting the position that the right of individual dismissal of a worker by an employer carried out under the provisions of the Standing Orders should not be considered a labour dispute.

Question :—

79. Where a worker is proved to have been wrongfully dismissed, should the Industrial Tribunal have power—

(a) to order reinstatement, and/or

(b) to award compensation ?

Would you give the employer the option to pay compensation in lieu of reinstatement ?

Answer :—

79. On practical grounds the Chamber is strongly opposed to the compulsory reinstatement of any worker. The general reactions to a decision to reinstate a worker, on discipline, etc. are so unsatisfactory that it is considered most desirable that alternative methods should be

permitted. The Chamber considers that in all cases there should be a right on the part of the employer to decide whether he is willing to accept a recommendation for reinstatement or whether he is agreeable to pay compensation in lieu.

Question :—

80. Where a worker wrongfully dismissed is an office bearer of a union of the workers of that establishment, should reinstatement be obligatory if demanded by the worker ?

Answer :—

80. The Chamber considers that if a worker wrongfully dismissed is an officer of a union, that in itself does not justify discriminatory treatment and it is considered that here, as in other cases, the employer should be given the opportunity of deciding whether to pay compensation or to accept a recommendation for reinstatement.

Question :—

81. Would you allow the employer to effect retrenchment in his establishment in certain circumstances without having to submit that matter for adjudication. ?

82. In what circumstances would you make it obligatory on the part of an employer to send a notice to Government of an intended retrenchment and in what circumstances, if any, would you expect Government to refer that matter to a Tribunal for adjudication ?

83. (a) In particular, should employers be required to give prior notice of retrenchment likely to result from rationalisation, standardisation or improvement of plant or technique ?

(b) Is such a notice necessary where there is agreement between the employer and the workers regarding the scheme of rationalisation etc. and the consequent retrenchment ?

Answer :—

81-83 Employers are strongly opposed to the reference of any question relating to retrenchment to a Tribunal for adjudication. Broadly speaking, retrenchment arises from one of two causes, namely :—

(a) a reduction in the scale of the concern ;

(b) application of measures of rationalisation.

The first is normally due to the effect of economic circumstances, examples being a reduction in market demands or a fall in raw material supplies. Decisions on such matters must normally be made with speed ; nothing can be more disastrous than their postponement until the completion of investigation by a Tribunal. Questions raised are normally highly technical and Tribunals have been almost uniformly unsuccessful in dealing with them. Decisions regarding the scale of a factory are the essence of managerial function and the transference of these decisions to a third party which is implied in the application of the Tribunal process is little short of disastrous.

In the case of retrenchment due to measures of rationalisation the case against reference to adjudication is overwhelming. Most rationalisation involves long-term planning, particularly where the introduction of new machinery and plant is concerned combined with stage-by-stage implementation. Its effect on the scale of employment arises only gradually. In some cases a measure of rationalisation, apparently involving a reduction in workers, turns out not to have affected employment because of natural wastage or the development of other circumstances. If, however, plans of rationalisation are required to be submitted to adjudication, employers must be prepared to put their plans before the Government perhaps years before they are put into force or, alternatively, to run the risk that at the subsequent stage in operations their proposals may be altered by Government decisions. Such a situation must act as a serious deterrent to the introduction of more efficient methods and in the opinion of the Chamber the whole proposal to refer such matters to adjudication is quite impracticable and most undesirable.

The Chamber would point out that in 1951 considerable progress was made in discussions in the Development Committee on Industries and other bodies associated with the Planning Commission in reaching agreement on the procedure to be followed in cases of retrenchment whether due to a reduction in the scale of operations or to the application of measures of rationalisation. It was the intention that the cases involving retrenchment falling under these categories should not go before Tribunals but that employers in carrying them out should be guided by broad rules evolved as a result of bipartite discussions. The

Chamber considers that these proposals are both realistic and practical and feels that this is one of the important matters in which discussions between the representatives of the two sides can produce further useful results without the intervention of the Government.

Question :—

84. Should the issue of a notice and the grant of gratuity to retrenched workers be made compulsory ?

Answer :—

84. Retrenchment should invariably be carried out under the provisions of the Standing Orders which cover such eventualities. As regards the question of the grant of a gratuity, it should be pointed out that in most industries gratuity schemes or similar arrangements already exist for the precise purpose of covering such risks as the loss of employment, retirement through old age, etc.

XIX—INDUSTRIAL RELATIONS (GENERAL)

Question :—

85. Should legal practitioners be permitted to appear in any proceedings under the industrial relations law and if so, in what proceedings and subject to what conditions ?

Answer :—

85. The Chamber considers that legal practitioners should not be briefed to appear in any proceedings save those before the Tribunal or Appellate Tribunal and also in cases in which an arbitrator in arbitration proceedings desires the case to be represented by Counsel.

Question :—

86. What restrictions, if any, should be placed on the right of the employer to alter the conditions of service of workers or to discharge, dismiss, or otherwise punish them during the pendency of conciliation or adjudication proceedings ? Does the present law on the subject require any modification ?

Answer :—

86. There is at present a complete restriction on the right of the employer to alter conditions of service of workers or to discharge, dismiss or otherwise punish them during the pendency of conciliation or

adjudication proceedings and the Chamber desires to draw Goverment's attention to the serious repercussions which this situation is having through industry as a whole.

There are few major industries or concerns which have not been involved in Tribunal proceedings during recent years and the effect of the application of the present restrictions is in practice to withdraw the employer's rights to take effective disciplinary action connected with the ordinary day-to-day operations of the concern. Such concerns have often been under continuous conciliation proceedings or proceedings before a Tribunal or an Appellate Tribunal for a very long period—in at least two major industries for periods of 15 months—with the result that they are during that period unable to discharge or apply any punishment to any workmen in their employment without the written permission of the Board or Tribunal concerned irrespective of whether the discharge or punishment has any connection whatever with the dispute. It has, however, proved impossible for the Tribunals concerned to handle all these individual cases and eventually it was necessary in the instance of one large industry for approximately 60% to be struck off and dealt with under the industry's Standing Orders. Of these cases, more than 60% were offences involving absence without leave, while the next largest category related to cases of theft proved against and mostly admitted by the workmen concerned. In other words all these were totally unconnected with any aspect of the disputes which brought the particular section of the Act into operation. Yet during the whole period of the Tribunal proceedings employers were not allowed to take the appropriate disciplinary action nor was the Tribunal able to deal with them. The effects of this situation on the general level of discipline in the industries affected, particularly on questions such as absenteeism, petty theft, etc. have been very serious.

The Chamber thinks that it must now be appreciated that the omnibus provision of the present legislation is unnecessary, unjustified, detrimental to good working relationships and the maintenance of discipline and that some alternative arrangement must be made. In their opinion Government have never justified the alteration in the original provisions of the 1947 Act. The position prior to the amendment of that Act in 1950 when the permission of a Tribunal was necessary only in respect of dismissals or punishments for misconduct connected with these particular disputes before the Tribunal covered the whole position satisfactorily and is entirely accepted by employers. There is perhaps

no other section of the Act to whose revision employers attach more importance and which circumstances more strongly justify.

Question :—

87. What penalties, if any, other than those imposed by criminal courts, may be imposed on parties for resorting to illegal strikes and lockouts ?

Answer :—

87. In the opinion of the Chamber the penalties which should be imposed in respect of employers or employees who resort to illegal lockouts or strikes should be as follows :—

Criminal—

1. Fines which could be considerably increased above the present level for participation in or instigation of an illegal lockout or strike. In the opinion of the Chamber the imposition of imprisonment is undesirable.

Disciplinary—

2. Most Standing Orders contain provisions for dismissal for participation in illegal strikes and though dismissal would be resorted to only in outstandingly bad cases, it is thought that the power of dismissal should be retained.

Withdrawal of Privileges—

3. Provision should be made for the withdrawal of certification or recognition as a Bargaining Agent in respect of a trade union which has taken part in an illegal strike.

The Chamber considers that the proposals appearing in the Labour Relations Bill permitting deductions to be made by employers in respect of wages, leave, bonus, etc. in the case of illegal strikes or payments to be made by them to the workers in the case of illegal lockouts should be abandoned. An employee who goes on strike is not entitled to the payment of any remuneration and the deduction of these monies in the case of illegal strikes is not a penalty.

The Chamber would also draw attention to the provisions of Section 102 of the Labour Relations Bill which permit the Tribunal to direct the payment of a strike allowance to employees. Such an allowance has no justification of any sort and in fact is an encouragement to strike action and the Chamber is strongly of the opinion that it should be deleted.

Question :—

88. What steps would you suggest for the prompt and effective implementation of settlements, collective agreements, and awards—

(a) in respect of money recoveries, and

(b) in respect of other action ?

Answer :—

88. The effective implementation of settlements, collective agreements, awards, etc. should be covered by the imposition of appropriate penalties preferably in the form of fines in appropriate cases. In addition the employers should have the right to dismiss employees failing to comply with settlements and to withdraw the recoguition of the trade union if it is involved.

Question :—

89. Should the law contain any special provisions for enabling the appropriate Government to exercise control over an industrial undertaking—

(a) where the employer has refused to comply with the terms of a settlement, collective agreement or award, or

(b) where the industrial undertaking is threatened with closure as a result of an actual or apprehended strike or lockout, if such a course is considered necessary in the public interests ?

Answer : —

89. The proposals in the Labour Relations Bill for the control by Government of undertakings which do not comply with the terms of collective agreements etc. are considered to be unwarranted and unreasonable. No provision should be made in the law in regard to the exercise of control over industrial undertakings by Government.

Question :—

90. Where an offence is committed by a company, or body-corporate, who, as representing the company, should be liable to be prosecuted ?

Answer :—

Prosecutions should be lodged against the company or body-corporate as such.

Question :—

91. Should Labour Courts or Industrial Tribunals be empowered to try offences punishable under the industrial relations law as if they were criminal courts ?

Answer :—

91. The Chamber is strongly opposed to the suggestion that Labour Courts or Industrial Tribunals should be empowered to try offences punishable under the industrial relations law as if they were criminal courts.

Question :—

92. If so, to whom should appeals from the orders of such a Court or Tribunal lie ?

Answer :—

92. Does not arise.

Question :—

93. What should be the range of penalties that may be imposed by criminal courts for violation of—

(a) the less important, and

(b) the more important

provisions of the Act.

Answer :—

93. The present penalties providing for imprisonment should be removed but it is felt that there is room for increasing the fines which can be levied under the Act.

Question :—

94. Do you consider that no application made, proceeding held or order passed under the industrial relations law should be rejected or held invalid on the ground that there is a defect in procedure or some legal or technical flaw unless it be proved that such defect or flaw has adversely affected the interests of either party.

Answer :—

94. The Chamber is opposed to the proposal that applications, proceedings or orders under the industrial relations law should not be rejected on the ground that there is a defect in procedure. The processes of the industrial relations law should be legally acceptable.

XX—TRADE UNIONS

Question :—

95. Do you consider amendment of the Indian Trade Unions Act, 1926, necessary ? If so, in what respects and for what reasons ?

Answer :—

95. The Chamber considers it desirable to amend the existing Trade Unions Act, 1926, in several respects particularly with regard to the rates of subscription, restriction on outsiders, the declaration of strikes, restriction on different categories of employees joining the union, etc.

Question :—

96. Should the trade unions law apply to persons employed in the armed forces or police forces of Government and fire brigade personnel ?

Answer :—

The Chamber considers that trade union law should not apply to employees in the armed forces, police forces of Government and fire-brigade personnel. Provision should also be made to exclude confidential and supervisory staff, safety men, watch and ward staff, as also employees in hospitals, educational or charitable institutions and conservancy staff.

Question :—

97. Should the rules of a trade union provide for.

(a) the rate of subscription payable by members.

(b) the circumstances in which the name of a member may be struck off the list of members ; and

(c) disciplinary action against members resorting to strike without the sanction of the executive of the union, or otherwise violating the rules of the trade union,

in addition to the matters already provided for by the existing law ?

Answer :—

97. The Chamber agrees that the rules of trade unions should provide for the three points suggested as well as the matters already provided for at present.

Question :—

98. Do you consider that the rules of a trade union should provide for the procedure for the declaration of a strike.

Answer :—

98. It is essential that the rules of trade unions should provide for the procedure for the declaration of a strike.

Question :—

99. Should a trade union consisting wholly or partly of civil servants be denied registration if it does not prohibit its members from participating directly or indirectly in political activities ?

Answer :—

99. The Chamber is in agreement.

Question :—

100. Should a registered trade union consisting wholly or partly of civil servants be liable to have its registration cancelled if a member

takes part in political activities and the union refuses or fails to remove him from membership ?

Answer :—

100. The Chamber is in agreement.

Question :—

101. Should the order of a Registrar refusing to register a trade union be appealable to a civil court as in the existing Act or to a labour court under the labour laws ?

Answer :—

101. The Chamber considers that the orders of the Registrar should be appealable to a civil court.

Question :—

102. Should trade unions consisting wholly of Government employees—civil servants or industrial employees—be permitted to maintain a seperate fund for political purposes ?

Answer :—

102. No.

Question :—

103. Should provision be made in the law for maintenance by registered trade unions of account books and vouchers, lists of members, particulars of subscriptions paid by members, records of proceedings by the executive etc. ?

Answer :—

103. The Chamber considers such a proposal desirable.

Question :—

104. Is it necessary to exclude altogether outsiders from the executives of trade unions or is it enough to restrict their number ? If the latter, what is the maximum number of outsiders who may be allowed to become office-bearers ?

Answer :—

104. The Chamber considers it desirable that as an ultimate object outsiders should be debarred from the executives of trade unions but they appreciate that at the present stage this is impracticable. It is suggested, however, that the number of outsiders should be restricted to two and that provision might be made for their gradual elimination and replacement by workers. While the above applies to trade unions in industry the Chamber considers that there is little need or justification for outsiders either as executives or members of trade unions in banks, insurance companies or commercial houses.

Question :—

105. Should outsiders be allowed in unions composed wholly or partly of civil servants ?

Answer :—

105. No.

Question :—

106. Should an employer have the right to recognise any number of unions in his establishment or should he be allowed to recognise only the most representative one ?

Answer :—

106. Presumably, the provisions regarding the recognition of trade unions in the Trade Union Bill will be replaced by the procedure laid down for the acceptance of bargaining agents. In that connection the Chamber agrees that there should be only one bargaining agent for each establishment.

Question :—

107. Should provision be made for the compulsory recognition of trade unions through the order of a labour court ?

108. What procedure would you suggest for the settlement of the claims of rival unions asking for recognition ?

Answer :—

107 & 108. The Chamber's views on the grounds on which an employer should recognise a trade union cover these two points. A union which has 55% of the employees in its membership should be entitled to legal recognition as a bargaining agent.

Question :—

109. **Should trade unions having civil servants as members be denied recognition if they do not consist wholly of civil servants or if such a trade union is affiliated to a federation of trade unions to which a trade union consisting of members other than civil servants is affiliated ?**

Answer :—

109. Yes.

Question :—

110. **Should any such restrictions apply to trade unions of employees of hospitals or educational institutions, of supervisors or of watch and ward staff ?**

Answer :—

110. The Chamber considers that trade unions of employees of hospitals or educational institutions should be prohibited.

Question :—

111. **In what circumstances may recognition once granted be withdrawn ?**

112. **What should be the rights of recognised trade unions ?**

Answer :—

111 & 112. These matters will be covered by the appropriate regulations governing the withdrawal of recognition of bargaining agents and their rights when certified.

Question :—

113. **Should the executives of a union have the right to visit the residence of an employee, whether the residence forms part of a labour colony or not, situated on the premises of the establishment or on land owned or controlled by the employer ?**

Answer :—

113. No provision should be made in the proposed trade union law covering this matter. It should be one left to be decided by mutual agreement between the parties concerned.

Question :—

114. **Should the executive of a union have the right to hold union meetings on the premises of the establishment or on land owned or controlled by the employer ?**

Answer :—

114. The trade union legislation should not cover a matter of this sort. The holding of meetings should be settled by direct negotiations between employers and unions. It is most undesirable that legislation should confer any absolute right of this type which is peculiarly liable to abuse and may frequently involve the most serious threat to life and property.

Question :—

115. **Do you consider that Inspectors should be appointed for checking compliance with the trade unions law and if so, what should be their functions ?**

Answer :—

115. The Chamber agrees that inspectors should be appointed to ensure compliance with trade union law, particularly in connection with the checking and verification of union membership rules, accounts, etc.

RAILWAYS

RAILWAY CLAIMS : LEGAL WORK OF THE RAILWAYS.

Circular No. 9-A. C. & 4793 Calcutta, 4th January 1952.

From—The Associated Chambers of Commerce of India.

To—All Constituent Chambers.

I am directed by the President to send to the constituent Chambers the attached copy of a letter dated 28th December which has been received from Mr. S. Ramaswamy Iyer, Officer on Special Duty (Law) of the Ministry of Railways (Railway Board).

The President, in consultation with the Bengal Chamber, will arrange to meet Mr. Iyer when he visits Calcutta towards the middle of this month. He has already explained to him that difficulty will certainly arise, in respect of the Calcutta area alone, in obtaining information and opinions on the points which Mr. Iyer has raised in time for a report to be made to the Railway Board before the end of January, much less before Mr. Iyer's visit ten days to a fortnight hence. In the meantime and in anticipation of the possibility of Mr. Iyer visiting the other principal commercial centres throughout the country, the constituent Chambers will doubtless wish to prepare their views on the several points which Mr. Iyer's letter raises. As experience in these matters will almost certainly vary between one centre and another, the President does not think it practicable to aim at presenting these to the Railway Board in composite form through the Association and suggests that the Chambers individually should themselves do so, endorsing to this office a copy of any comments they may forward to the Board whether as a result of discussion with Mr. Iyer or in response to his letter of the 28th December reproduced below.

Letter No. OSDL/Chamber/51 dated 28th December 1951

From—Mr. S. Ramaswamy Iyer, Officer on Special Duty (Law), Ministry of Railways (Railway Board), Madras.

To—The Associated Chambers of Commerce of India.

At the instance of the Railway Board in the Ministry of Railways, (Government of India), I have been examining the legal work of the Railways, with a view to suggesting reorganisation of the legal work to meet present needs. I am trying to understand the problems created by the very large increase of litigation against Railway Administrations. The great bulk of litigation consists of suits for value of goods lost or damaged. The suits are filed by the owners of goods, whose claims made to the Railways have not been satisfied. The number of such claims during the last few years has increased enormously, and the amount paid by the Railways to satisfy these claims runs into crores of rupees. On the one hand the Government and Railway Administrations face serious problems regarding the proper disposal of these numerous claims and the litigation arising therefrom—problems such as the investigation of the truth or otherwise of the claim, fixing responsibility for the loss between the owner and Railways, or between several Railways over which the goods are carried, disputes about valuation of the goods, and the defences that should properly be raised by the defendant Railway against the plaintiff. On the other hand, members of the public, especially businessmen, who consign the goods are put to great trouble, loss and inconvenience by the non-delivery of or damage to goods, and by subsequent efforts to obtain compensation.

I shall be thankful to your Chamber for its views and proposals on the following matters :

(1) The avoidance of loss of or damage to goods, which has apparently become a great evil in recent years.

(2) Reduction of the number of claims.

(3) The method of satisfactory disposal of these claims.

(4) Any method of final settlement of disputes about these claims, which will avoid or prevent a suit in a court of law.

(5) Any improvements in the present mode of conduct and defence of the suits by Government, represented by the Railway Administration, so as to avoid hardship to persons who are compelled to go to court, and also to safeguard the interests of Government and Railway Administrations.

Any reforms necessary in the Indian Railways Act or any other part of the law, may also be suggested.

As I have to complete my work and submit the report on it to the Railway Board before the end of January, I request you to send me your reply not later than the 15th January 1952.

I expect to be in Calcutta in the middle of January 1952, and shall be glad to have an opportunity to meet any of your office-bearers, or members and ascertain their views personally. If any time is fixed, I shall arrange to meet you. I shall inform you after my arrival in Calcutta.

* * *

Letter dated 26th March 1952

From—The Secretary, Bengal Chamber of Commerce & Industry

To—The Secretary to the Government of India, Railway Ministry (Railway Board), New Delhi.

I am directed to refer to the discussions which took place in Calcutta with Mr. S. Ramaswamy Iyer, Officer on Special Duty (Law) last January and the following month, with Mr. A. A. Brown, Officer on Special Duty (Claims Prevention).

As arranged with these officers I now enclose a memorandum by the Chamber dated 25th March and trust that it will prove of assistance to the Railway Board. Four spare copies of the memorandum have been forwarded under separate cover and may kindly be passed on to Mr. Iyer and Mr. Brown.

* * *

Memorandum

Settlement of claims against Railway Administrations : Legal work of the Railways.

On the 28th December 1951 Mr. S. Ramaswami Iyer, Officer on Special Duty (Law) of the Ministry of Railways (Railway Board), addressed the Associated Chambers of Commerce of India—who in turn referred the enquiry to the individual constituent Chambers—on the question of the enormous increase in the legal work of the Railways occasioned mainly by the suits filed against them for the value of goods lost or damaged in transit. Mr. Iyer, who met representatives of the Bengal Chamber in Calcutta on the 17th January, divided the problem into the following components on which he invited the views of commercial and industrial organisations together with any suggestions for reforms considered necessary in the Indian Railways Act or other relevant parts of the law :—

(1) The avoidance of loss of or damage to goods which has apparently become a great evil in recent years.

(2) Reduction in the number of claims.

(3) The method of satisfactory disposal of these claims.

(4) Any method of filing settlement of disputes about these claims which will avoid or prevent a suit in a Court of law.

(5) Any improvements in the present mode of conduct and defence of the suits by Government, represented by the Railway Administration, so as to avoid hardship to persons who are compelled to go to Court and also to safeguard the interests of Government and Railway Administrations.

2. Later, on the 21st February 1952, the undersigned in company with the Secretaries of other Chambers of Commerce, had the pleasure of meeting, in Calcutta, Mr. A. A. Brown, Officer on Special Duty(Railway Board), Claims Prevention, who gave an interesting and helpful account of the present claims position and the steps being taken by the Railway Board to improve it. It is hoped that the following observations, which are based on the questions posed by Mr. Ramaswami Iyer, may also be of interest to Mr. Brown.

3. During the course of discussion with Mr. Iyer on the 17th January, the Chamber explained that from the point of view of consignors and consignees the problem fell into two parts—*firstly*, prevention, by all possible means, of the loss of or damage to goods tendered to the Railways, covering items (1) and (2) of his questionnaire ; and, *secondly*, improvements in the disposal of claims when they arise, covered broadly by the

remaining items of his questionnaire. As regards the first part, the Chamber's comments and suggestions related almost exclusively to operational, as distinct from administrative or legal, defects and improvements in railway working. These, Mr. Iyer explained, were outside the immediate sphere of his enquiry and he could not comment authoritatively on them ; but he agreed that they were very relevant to the problem created by the enormous number of claims and the litigation to which unsettled claims gave rise and he assured the Chamber—as did Mr. Brown at the later interview—that they would be carefully considered by the Railway Board if incorporated, as they now are, in the memorandum which the Chamber undertook to submit.

Part I—Operational Difficulties and Improvements.

Though it is not easy, without some measure of overlapping, to categorize the operational defects which give rise to so many claims, the Chamber thinks that from the point of view of the railway user the main directions in which remedial measures can and should be taken may be grouped under the following heads. It is of course appreciated that many of the suggestions offered will be difficult to put into effect except as part of a sustained and determined policy to be followed over a number of years.

(1) Rolling Stock.

(*a*) *Condition.*—A very high percentage of the damage to and loss of cargo in transit over the railways is due to the defective state of the wagons used by the Railways, both open and closed. Improvement in their maintenance and general condition is an urgent necessity, particularly in the following directions, namely (i) the sealing up of crevices in the floors, walls and flap-doors of both open and closed wagons to prevent leakage and "bleeding" (e.g. of grain consignments) ; (ii) improved coverage of wagons to reduce the amount of rain and water damage, especially during the monsoon ; (iii) more satisfactory arrangements for the locking and sealing of closed wagons, in which connection the universal adoption of improved locking devices such as the Ellis Patent system is strongly recommended ; under such an arrangement, it is essential that locks should not be removed or replaced by other locks when the wagon moves from the administration of one railway to that of another ; (iv) better cleaning arrangements for both open and closed wagons, especially wagons used for dirty cargo, to avoid adulteration of later consignments ; (v) the introduction of a larger percentage of closed wagons ; and (vi) more durable, and readable, labelling of wagons in order to avoid the mis-despatch and mis-delivery which at present occurs, in which connection it is recommended that the wagon labels should be such as to permit of the despatching and destination station, routing instructions and any other necessary particulars being in larger and bolder type.

(*b*) *Handling and Movement.*—(*i*) Very material damage occurs to certain types of cargo owing to fly and hump-shunting which should be reduced to a minimum by strict instructions to the staff concerned with severe disciplinary consequences if these instructions are ignored.

(*ii*) Such instructions regarding the careful handling of goods entrusted to the Railways should extend to the staff responsible for the stacking of goods in the railway sheds and the loading of them into wagons where much unnecessary damage is caused. The use of hooks should be abolished or rigidly restricted.

(*iii*) As is mentioned under another heading below, more frequent checks should be made on the condition, locks etc. of wagons at all intermediate stopping places, at transhipment stations, marshalling yards, and at points where wagons are handed over to a "foreign" railway.

(*iv*) As far as possible, the general policy of the railways should be to introduce more "through services" for goods traffic, to limit the number of intermediate stopping places and where these are unavoidable to ensure that the watch and ward arrangements are improved.

(2) Staff.

(*a*) *General.*—Under the Railways Act, the railway administration is in the position of a "bailee" and, as such, is expected—and is indeed required—by the law to do what any prudent person would do in the circumstances. The bailee is for example required to take as much care over goods entrusted to his care as he would in similar circumstances take if these goods were his own property.

The Chamber feels that there is room for these responsibilities to be brought home repeatedly and strongly to all sections of the railway staff into whom should be instilled the attitude of an ordinary business

administration that a "good customer" is worth keeping and pleasing, that the senders of goods by rail are "good customers" to a State-owned service, which must be prepared to face increasing competition from efficient road, inland steamer and air transport. Such an attitude would go a long way towards restoring the public's confidence in the Railways and their services as public carriers and would be a healthy change from the impression frequently given to railway users that they must themselves be prepared to meet the consequences if they despatch their goods by rail, exemplified for instance in the tendency of booking staff to endorse railway receipts and to protect themselves in every conceivable way against their proper responsibilities. Fixation of direct responsibility throughout the railway services should be much more rigid and disciplinary action for the avoidance of these responsibilities and for negligence should be much more severe.

(*b*) *Booking Staff and System.*—From the point of view of the prevention of loss and damage in transit there is room for considerable improvement in the booking staff, booking arrangements and booking supervision. The following suggestions are offered in the hope that they will prove helpful:—

(i) Many claims on the railways result from incorrect calculation of the freight at the despatching station, particularly at rural stations; and, in cases of doubt, most railway servants err in favour of the railway. It is for the Railway administrations themselves to decide whether the instructions to their booking staffs can be improved to avoid mis-calculation of freight; but in cases of genuine doubt it might—it is suggested—be possible for a consignor or consignee who operates on the system of payment of freight by credit notes or on a ledger account or similar system to be given the benefit of the doubt on the understanding that if it is eventually found that the freight has been under-charged, the necessary adjustment would be made.

(ii) Booking staff should be encouraged to give more guidance to consignors regarding the proper description of their goods, the packing of them and the labelling of the packages. More literature on the subject should be issued at intervals for the benefit of the public. The prevailing tendency to endorse railway receipts should be discouraged unless there is clear evidence of insecure packing; and the necessity for the issue of "said to contain" receipts should be reduced to a minimum by

having an adequate number of efficient employees available at loading points to check the number and contents of packages, thus enabling a clean receipt to be issued, and to examine disputed packages.

(iii) The documents relating to goods handed over to other railways in course of transit should be more clearly made out and improved in form.

(iv) Supervision over booking staff should be improved; there are undoubtedly many cases, leading to spurious claims on the railways, in which wrong weights, numbers of packages and misdescriptions of the contents are deliberately entered in the railway receipt and even in which railway receipts are issued when no goods are tendered. These malpractices equally, it is agreed, involve gross dishonesty on the part of the public and the Chamber would support any measures that can be devised to penalise such dishonesty whether on the part of the consignor/consignee or the railway staff concerned.

(*c*) *Watch and Ward*—The Watch and Ward system and staff of the railways should be improved in the following directions:—

(i) More escorts, if necessary armed escorts, should be provided for goods trains.

(ii) Strict instructions, with severe penalties for breach of them, should be issued to intensify watch and ward arrangements at all marshalling yards, stopping places, transhipment points and on approach to urban areas.

(iii) Frequent changes should be made in the duties, and in the areas of duty of all watch and ward staff to prevent a natural tendency to slackness and their implication in reprehensible practices.

(iv) Supervision over all watch and ward staff should be improved.

The foregoing comments and suggestions are put forward in the hope that they may be of assistance in the investigations being undertaken by Mr. Iyer and Mr. Brown.

Part II—Claims Settlement.

Items (3) to (5) of Mr. Iyer's questionnaire can only be dealt with by the Chamber from the necessarily coloured point of view of the consignor/consignee of the lost or damaged goods and, without more detailed knowledge of the railways' internal arrangements, the Chamber's treatment of this part of the enquiry cannot avoid being critical even with the best intentions of ultimately proving helpful.

It is desirable to state at the outset what the general experience of the public is and to emphasise certain aspects of that unsatisfactory experience already mentioned to Mr. Iyer in conversation. It is all too common that when a claim is submitted, acknowledgment of it is delayed or, when the formal acknowledgment is received, there follows a long period of apparent inaction during which frequent enquiries regarding the disposal of the claim have to be made by the claimant. More often than not this has to be followed up by a personal interview with the Claims Officer and it is frequently only at that stage that real investigation of the claim begins. It is no exaggeration to say that claims of over Rs. 500/- in value are seldom met within six months and many of them drag on for years.

In its detailed treatment of this part of the enquiry the Chamber has found it convenient to discuss the subject in three sections and it proposes in this memorandum to follow that procedure. Taking into account the experiences of railway freight consignors, there seem to be three factors to be considered: (i) delays in settlement of claims—legal and practical, (ii) difficulties in investigation and claims settlement procedure, and (iii) conduct of court cases and possible alternative forms of settlement.

(i) **Delays in settlement of claims**—*Legal and practical.*—Broadly speaking, delays on the part of the Railway authorities prove inconvenient to consignees on the railways for two main reasons. Firstly, companies making claims naturally suffer financial loss and uncertainty in knowing of the solution of their appeals. Secondly, their claims may be rejected as being time-barred. Recently the attitude of the Railway authorities has frequently been to seek protection under the Limitation laws against the claims submitted. Hence claimants have been forced to file suits in Court to prevent claims becoming time-barred by limitation.

Since, under the Railways Act, the time limit allowed for filing a suit is one year and two months may be added for notices under section 80 of the Civil Procedure Code, the aggregate time available for settlement of claims without suit of law is 14 months. Members' experience shows that even after notice under section 80 has been served, little if any effort is made by the Railways to effect settlement with the result that consignees are forced in their own interests to file a suit. It is only after the suit has been filed that the railway authorities generally offer a settlement—a wasteful and unsatisfactory procedure both for claimants and for the railway administrations.

The Chamber therefore suggests that if suits are to be kept to the minimum, it is advisable to extend the period of limitation to two years by an amendment to articles 30 and 31 of the first schedule to the Limitation Act, 1908. Alternatively the limit could be extended to 20 months by making statutory provision that the six months granted under section 77 of the Railways Act for submission of claims should not count in calculating the limitation. To avoid the argument that notice of claim under section 77—not being a notice of suit but only the preference of a claim—cannot count towards the deduction of time, section 15 (2) of the Limitation Act should be deemed to extend the period of limitation for a suit against the railways.

Apart from these improvements of the legal position which would, if brought about, have the effect of speeding up settlement out of court, the Chamber proposes certain practical *time limits for the completion of investigations and claims.* It favours a graduated system of time limits prescribing the periods within which the various parts of the claims procedure should be completed. Before such a system could come into operation, it would be a necessary preliminary that the duties and powers of the various ranks of Investigation and Claims Officers should be precisely defined and that these officers should know the financial limit up to which they may settle claims on their own initiative. With this knowledge of his statutory power an officer would individually be able to settle claims within a fixed financial limit without submitting to higher authority. Thus for the various grades of claims there should be various grades of officers empowered to deal with them. If a claim could not be dealt with inside a certain time by one officer it should be sent automatically and by instructions to the next higher authority who should be expected to deal severely with any unnecessary delays. If this higher scrutiny failed it should after a fixed period be submitted to a yet higher official.

It should be feasible for a table to be appended to the Railways Act specifying the necessary time limits, the financial limits and the officers empowered to handle each range of claims. The Chamber does not feel competent to define these limits because it is not possessed of adequate knowledge of railway administration but feels that such a procedure is sound in principle and necessary in the circumstances.

A further inducement to handle claims expeditiously would be to allow interest on long outstanding claims. If any claim were not, for example, settled within a period of two months from inception, interest at the rate of (say) 6% per annum should be charged upon the Department responsible for settlement of the claim. This penalty would also have the advantage of bringing home to officers concerned the financial losses which firms experience through delays in claims settlement.

(ii) **Difficulties in investigation and claims settlement.**—(a) As already observed, it is essential in forestalling law suits to clarify *the responsibilities and powers of individual Claims Officers*. There has been in the past much evidence of a tendency among Claims Officers to feel that as long as a claim remains unsettled they can escape the consequences of any mistake, an outlook which both harasses claimants and brings the Railways into disrepute. One suggestion for remedying this is that a senior Claims Officer of the Railways might tour the main centres for one or two days each quarter to inspect local progress and to ensure regular disposal of claims. Alternatively, the Railway Board might appoint officers to make a careful and independent scrutiny of methods employed by the various claims organisations which often show considerable diversity. Again, the Railway Board might be empowered, on receipt of an appeal from a claimant, to institute an independent investigation. In the past when appeals have been tendered, the Railway Board has been rather prone to accept the verdict of the claims branch, irrespective of the merits of the appeal.

Another part of the procedure in which this question of ill-defined responsibility obtrudes is in the legal question of notice. Claims are generally settled either by the Chief Commercial Manager or by the Chief Commercial Superintendent or by Special Claims Officers. These officers are delegated by the General Manager of the railways concerned to handle claims ; but the authority to delegate such powers has been questioned by the various High Courts. At present all railways in India notify in the press, presumably under instructions from the Railway Board, the names of such persons on whom claims are to be served. This however

conflicts with requirements of the statute, *vide* the recent decision of the Calcutta High Court that claims could not be filed against the Chief Commercial Manager of the East Indian Railway who is merely a Departmental Head and has no authority to accept such notices under the Railways Act.

If the railway authorities intend and deem it sufficient that notice be served on an unnamed person—as seems imperative if delegation of powers is to be encouraged—a suitable provision should be made to clarify the terms of the statute. Otherwise the Court will not go beyond the ordinary meaning of the language of the statute and further outlets for delay will result.

In improving the legal problem of notice, it is suggested that model notice forms on the lines of those given in the Appendix to the Civil Procedure Code be added as an Appendix to the Railways Act.

(*b*) Investigation and claims settlement are particularly troublesome where the consigning railway differs from the destination railway. The diversity of the Indian railways inevitably leads to delay, uncertainty and often rejection of responsibility by its various sections.

If both the originating and destinational railways were fully informed of their functions in the settlement of claims, this innate weakness in Indian railway structure might be overcome. One of the reasons most frequently advanced by the Railway administration for their failure to effect settlement is that, in spite of considerable effort, they have failed to elicit a reply from the contiguous railway over which the goods have travelled. Nevertheless a convention exists whereby, after the expiry of a certain period, the railway destination is empowered to effect settlement on behalf of the contiguous railway. Unfortunately, experience shows that this convention is seldom acted upon with the result that legal steps are necessary to realise the claim.

Under the present Convention claims should be filed with, and settled by, the Railway administration at destination. In fact, when letters are addressed to the contiguous railways over which the lost or damaged goods have travelled, instructions are often received to resubmit claims to the railway at destination, thus encouraging claimants to understand that the destination railway is the proper authority to settle the claim. It is established at law however that notices must be served on all Railway administrations responsible for carrying the freight lost. Thus there is

every possibility that a suit will be delayed or even dismissed by reason of the destination railway passing over the responsibility for such damage to the contiguous railway administration. It is therefore essential that the correct responsibility should be defined in the Act and some alteration of the law should be made to reaffirm with complete clarity the rights of the destination railway to settle claims if it is satisfied with their validity. It is hoped that as a result of the scheme for the regrouping of railways, protracted correspondence between one railway and another will no longer be necessary in respect of claims and that a more integrated procedure for settling inter-railway claims will be evolved.

Both the legal and practical aspects of preferring claims would be much simplified if it were clearly laid down that the claim need be preferred by the owner of the goods against the destinational railway and against that railway only. It is pointed out that neither consignee nor consignor can determine which particular railway may be responsible for any loss or damage, where a consignment has travelled over more than one system. In fact they may not even be fully aware of all the lines over which the consignment has travelled. In the past, when there were various Company-owned and later State and Company-owned railways, there may have been some reason for the delivering railway securing the concurrence of the other railways concerned before admitting a claim; but now that virtually all railways, though differing in name, are in fact merely sections of the Indian State Railways, there can be no such reason, and the apportionment of responsibility in the case of an admitted claim should be entirely an internal matter and of no concern whatever to the claimant.

It is further essential, in order to provide for greater uniformity, to explain the meaning of the word "Loss" as used in section 77 of the Indian Railways Act because different interpretations have been given by different High Courts in India about the meaning and scope of this word. It should also be clearly stated when notices under this section are necessary, because different views have been expressed by the different High Courts in India.

Members with experience of railway freight difficulties have found that the basis of settlement varies in several respects between one railway administration and another and also between one State and another. In certain cases, assessment is made on the basis of the market value of the consignment—which appears to be the most reliable basis—but in several others claims are adjusted on the basis of the invoice value which

often results in financial loss to the claimant. In order to secure some uniformity it is recommended that a basis of settlement be prescribed in an Appendix to the Railways Act applicable to all railway claims as in the parallel case of the Land Acquisition Act. This uniformity should be easily achieved now that the regrouping of railways is almost complete.

(c) In addition to difficulties arising from claims staff and from the diversity of the Indian railways, members of the Chamber with experience of claims find that much of the trouble arises during the preliminary investigation. If law suits are to be prevented, then attention must be given equally to this aspect of the claims procedure. Firstly, adequate facilities for immediate investigation of shortages should be instituted. It is essential that the goods in which loss or damage occurs should be initially examined by representatives of the railways and the firms simultaneously. To facilitate this joint check in large goods sheds such as Howrah, measures should be taken to make it easier to obtain access to the Goods Shed Supervisor. In some recent cases representatives of firms have had to visit the Station on five or six separate occasions in order to secure a Supervisor's services for examining cases of loss or damage. This is all the more necessary as the Goods Shed Supervisor's report, ultimately called for by the Claims Officer and treated by him as authoritative, is often unreliable.

At present it is regrettably true that only when claims are submitted, or more frequently when personal contact is established between the company suffering the loss and the railway authorities, does the machinery for investigation begin to operate. Claims can only be dealt with satisfactorily if tackled immediately by both parties; and investigation of the valuation of the claim should be instituted simultaneously with the effort to trace missing packages. If this early attention is to be given to such losses, it is essential that

(i) the arrangement whereby a report is called for from the destination station only when the claims office receives notice of a claim, should be drastically altered. Destination stations should as a matter of course send to these Claims Offices reports (M. G. Rs) covering consignments in which shortages are observed immediately after unloading the wagon;

(ii) the signed statement of the Receiving Station Master should be sufficient to institute prompt enquiries by the

originating Claims Office. It is difficult for Chamber members to understand the present inordinate delays caused by the reluctance of Claims officers to accept this as evidence of loss.

There should, in the Chamber's view, be no objection to a loss certificate from the destination Station Master being accepted as sufficient for this purpose. Indeed there should be no objection to a Goods clerk certifying non-receipt if urgent action to settle claims were to be taken. By setting this up as a permanent and infallible rule, a great number of outstanding cases would be disposed of and less litigation would ensue.

In this connection it is important that some provision should be made for compromising cases. It is suggested that the Railway administration concerned in a loss should advise claimants of its decision regarding the claim within six months of the service of notice. If no such communication is received within that period claimants should be entitled to assume that liability has been admitted. Up till now instances have been frequent where claimants have filed suits merely because no decision has been forthcoming and no replies have been received to correspondence. It is important for the railways to realise that claimants are as anxious as the railways themselves to avoid being involved in litigation and would welcome any realistic basis for settlement of cases by compromise where difficulty in assessing the loss or damage arises.

Another factor which stimulates consignees to resort to legal process is the unsatisfatory method of Railway administrations in dealing with the cases out of court. All too often, in members' experience, Railway Claims offices repudiate liability for loss on the ground of "running train theft" without providing any evidence to support this contention. A member firm which has frequently been answered in this way has found that its requests for details have been consistently ignored. For want of complete information to confirm the loss from its own sources, it has had to take legal action. If when liability is denied on this ground, full information about the place and circumstances of the theft were supplied to the claimants for an independent check to be made through the police, the need to go to Court would not arise.

In this connection, the railway claims filing system also contributes to the hold-up. It appears to require drastic overhaul as it is a common occurrence for a number of acknowledgment cards to be received in

answer to repeated reminders submitted by traders, only to be followed by a request on the railway's part for copies of the full correspondence. Cases are also not unknown where two or more files have existed in the Railway office concerning a single claim, thereby impeding its settlement.

(iii) **Conduct of Court cases and alternative forms of settlement.**— Settlement of claims in Court has both its satisfactory and unsatisfactory aspects from the claimants' point of view. It is slow and expensive and the evidence is often difficult to establish. Nevertheless it is a safe remedy and ensures an exacting independent scrutiny of the facts. It is unfortunately open to delaying tactics by the railway authorities ; suits filed against railway administrations generally drag on for a considerable period chiefly because pleadings, documents etc. are not filed by the dates fixed by the Court on the ground that instructions have not been received from the Railway administration by its legal repesentative. Adjournments are frequently asked for on behalf of railway authorities on the pretext that the railways are not ready or that witnesses are not available. It is widely felt that, despite the admitted magnitude of the Railway administration's task, these delays in Court are mere subterfuges which allow the railways some time longer to make enquiries. This makes railway litigation harassing, unprofitable and expensive. Companies would therefore co-operate with railways in making a genuine effort to settle cases out of Court.

While the Chamber is satisfied that the amendments in claims procedure proposed above would avoid delays and minimise the number of Court cases, it ventures to set out the main alternatives to the present procedure which have been suggested by members of the Chamber for consideration :—

(1) Amicable settlement of claims by joint discussion of railway officials and company representatives conversant with railway law. Much damage has been done and delay and suspicion caused by the impersonal conduct of claims investigations which has obtained up to the present.

(2) Boards of Arbitration whose members are acceptable to both parties but whose decision is binding on the parties.

(3) A Board constituted on the basis of the Railway Rates Tribunal, for settling disputes relating to compensation claims. It should consist like the Railway Rates Tribunal of a

Tribunal and panels of assessors, as under sections 34 and 35 of the Railways Act. The assessors should include railway claims officers and prominent business men nominated by such institutions as Chambers of Commerce; and the Tribunal should include an ex-Railway Law Officer well-versed in railway law and procedure. It should sit at various centres to examine and decide on the disputes reported. The validity of its decisions and the execution of its orders might be defined in terms of sections 46A and 46B of the Railways Act.

In passing on these recommendations the Chamber is fully conscious of the disadvantages of arbitration and compromise procedure. Satisfactory settlement can only be reached by these means if such proceedings are carried out in a capable business-like manner and if the Railway authorities adopt an attitude of greater understanding and sympathy towards claimants. But in members' experience, arbitration can result in severe hold-ups and in many ways a court judgment is preferable.

If this memorandum has tended to be a critical appraisal of the railway claims procedure, it should not be thought that the commercial community are unappreciative of the magnitude of the railways' responsibilities in this matter or of the steps they have taken to speed up settlement of outstanding claims and to establish the machinery for prompt attention to claims submitted in the future. On the contrary, the Chamber is grateful for the sympathetic attitude which has recently been evident among senior railway officials in this matter and would be glad to see this outlook more widespread in the lower reaches of the railway hierarchy. It is in an effort to show that the commerical community is also anxious for an amicable solution of these cases, that these detailed enquiries have been undertaken and that this memorandum, which is now submitted for your consideration, has been compiled.

* * *

Circular No. 2827/TC/D. New Delhi, 1st April, 1952.

From—Government of India, Ministry of Railways, (Railway Board)

To—The Secretary, Bengal Chamber of Commerce and Industry.

In acknowledging with thanks the receipt of the memorandum prepared by your Chamber and forwarded with your letter No. 2984 dated 26th March, 1952 I am

to say that the Railway Board appreciate the trouble the Chamber has taken in preparing this memorandum.

2. I would add that the points raised in the memorandum will be examined carefully. In fact some of these points are already under consideration. For instance, the question or prevention of damage to consignments due to rough shunting and handling, has been prominently before the Railway administrations for some time and your Chamber will be glad to know that "Stop-Rough-Handling Weeks" have already been observed twice on all Indian Railways in recent months and it is proposed to develop and follow up this campaign with the aid of illustrated posters, films and suitable demonstrations to make the railway staff fully conscious of their responsibilities in this matter.

MARINE

SHIPPING CONGESTION IN THE PORT OF CALCUTTA

Telegram dated 5th July, 1952.

From—The President, Bengal Chamber of Commerce & Industry.

To—The Hon. Minister Transport and Railways, Government of India, New Delhi.

The Bengal Chamber feels compelled bring to your personal notice acute shipping congestion in Calcutta port involving hundred vessels at present in port representing greatest aggregation shipping since end war and compared with postwar daily average sixtyfive stop Additionally no less than twelve vessels detained Sandheads owing nonavailability berths stop This serious position mainly due accumulation foodgrains in docks and shortage coal for shipment stop As port anticipates bore tides seventh twelfth July which will further delay sailings immediate action necessary step up supplies coal to maximum capacity coal loading berths stop Earnestly request your intervention arranging allotment fivehundred to six-hundred coal wagons daily from coalfields to Calcutta docks during next three weeks which is only immediately practicable way to alleviate congestion.

* * *

Letter—No. 7-M(20)/52 dated 21st July 1952.

From—The Government of India, Ministry of Transport.

To—The Bengal Chamber of Commerce & Industry.

I am directed to refer to your telegram dated the 5th July 1952 to the Minister for Transport and Railways on [port congestion] and to say that arrangements have already been completed for the speedy clearance of foodgrains from the port. These include the acquisition of additional godowns, acceptance of a programme for the despatch of 20,500 tons of foodgrains by rail, engagement of 80 to 100 military trucks for the transport of foodgrains from docks to godowns, appointment of additional handling contractors etc. As a result of these measures, there is an already distinct improvement in the congestion in the docks.

As regards lack of coal for shipment, orders have been issued by the Ministry of Production increasing the present quota by 90 wagons a day temporarily for one month. The position is being futher examined and necessary measures will be taken to avoid congestion in future.

* * *

T elegram dated 26th July, 1952.

From—The Secretary, The Bengal Chamber of Commerce and Industry.

To—The Government of India, Ministry of Railways and Transport, New Delhi.

Reference correspondence ending Parthasarathy's letter 7-M (20)/59 July twentyfirst shipping congestion Calcutta Port shows no real improvement and immediate remedial measures again necessary stop Position twentythird July was total ninetyseven ships in port of which fortysix colliers compared with thirtynine when I telegraphed fifth stop This position reveals urgent necessity increase coal wagon arrivals at docks which from eleventh to twentythird averaged only 436 daily compared with 407 first ten days July stop Arrivals therefore failed by 61 wagons to implement Government intention increase quota by ninety wagons daily and as present position involves considerable carry-over colliers into August during which bore tides expected on fifteen days commencing fifth August earnestly request immediate action increase coal wagon allotments to Calcutta docks to average daily minimum five hundred with which assured Commissioner can easily cope stop Position critical as advised that owing bore tides necessary reduce vessels in port to about seventyfive before fifth August.

* * *

Letter—No. 7-m (20)/5 dated 3rd September 1952

From—The Under Secretary to the Government of India, Ministry of Transport, New Delhi.

To—The President, Bengal Chamber of Commerce & Industry.

I am directed to refer to your telegram dated the 26th July 1952 on [port congestion] and to say that the question of moving adequate coal to Calcutta Port with a

view to avoid shipping congestion has engaged the active attention of the Calcutta Port Commissioners and the Government of India in recent months. From the enclosed statement showing the daily average loading of coal from Bengal/Bihar coalfields, the programme for the despatches of coal from Calcutta Port and the actual despatches for the months of June, July and August 1952, it will be observed that there has been considerable improvement in the average loading of coal from the Bengal/Bihar coalfields and the despatches of coal from Calcutta Port during July and August 1952. Congestion at the Port is not due entirely to inadequate movement of coal to the Calcutta docks, but also to certain other factors over which the Port Commissioners or the Government of India have no control.

I am to add that the Government of India and the Calcutta Port Commissioners are keeping a close watch over the position and are doing their best to avoid shipping congestion at Calcutta Port.

* * *

Letter dated 8th October 1952.

From—The Bengal Chamber of Commerce & Industry.

To—The Secretary to the Government of India, Ministry of Commerce and Industry, New Delhi.

I have been directed by the Committee of the Chamber to address you in connection with the very serious congestion which at present exists in the Port of Calcutta, and which is largely the result of the delays to which steamers calling for coal cargoes are subject. It is understood that the coal mining industry, as represented by the Indian Mining Association, have already discussed this situation with the Coal Commissioner's office and with the Ministry of Production, particularly from that industry's point of view and with regard to the effects which the congestion is likely to have on coal shippers. The Committee of the Chamber naturally support the representations which have been made by the Mining Association but they also feel that the matter should be brought prominently to the attention of your Ministry because, apart from its concern to collieries, it vitally affects the country's export trade and the movement of steamers into and from the Port of Calcutta.

2. There are several aspects of this question which to the Chamber's mind warrant your serious consideration ; and the first deals with the congestion in the Port of Calcutta. The most recent figures available—those for 22nd September 1952—show that at the present time there are 82 vessels actually in the port, either in the docks and jetties or at river moorings, and a further 33, of which 25 are colliers, were detained at Sandheads awaiting their turn to enter the port. Even though the most energetic steps are taken, it will be about the end of November, at the earliest, before any appreciable improvement will be apparent, and this only if an adequate and regular daily supply of wagons to coal loading points is made available. It is almost unnecessary to emphasise how gravely congestion of this extent affects the efficiency of the port, how it operates to the prejudice of the export trade, and how it acts as a deterrent to shipping calling at Calcutta.

3. The capacity of the Calcutta port to deal with coal exports is strictly limited. A present loss of business in coal exports can never hope to be recouped by later deliveries, for to deal with the normal trade in exports strains the port's resources to their limit. The loss to the country's trade is therefore absolute. Furthermore, the sudden, and unpredictable, changes made in wagon supplies place merchants and shippers in an impossible position. They cannot cancel vessels which have been chartered some considerable time beforehand ; and these, on arrival, are met by delays and by the inevitable shipping congestion to which earlier reference has been made. Demurrage is incurred and instances are known of sums like half a lakh of rupees having to be paid on this account. A further loss is, therefore, suffered, with an inevitable loss of exchange, which could well have been avoided.

4. All of these foregoing disabilities stem from the inadequate movement of coal to the docks for export purposes and

the consequent delays in which steamers are involved in loading coal cargoes. The Chamber Committee are satisfied, therefore, that the only solution of the problem is a substantially increased allocation of wagons for the down-country movement of coal and that the congestion will continue until there is a considerable increase in the minimum daily allotment of wagons to the docks, combined with an increase in the dock labour force available for coal loading. The commencement of the congestion dates largely from an arbitrary reduction in the daily movement of wagons to the port which was effected by the Coal Commissioner's office in May of this year and, although there has been some subsequent improvement, the daily allotment is still well below the dock's requirements and its capacity. If Government can arrange for an increase in the down-country wagon allotment, therefore, it will also be necessary to ensure that there is no repetition of this sudden and arbitrary interference with the allotment to the docks; and at least 2 months' notice of change is imperative to avoid the ill consequences here mentioned.

5. The Committee appreciate that Government's transport difficulties are very great indeed and that their ultimate solution depends on the implementation of long-term plans which are already in hand. They believe, however, that the congestion in Calcutta port is at present so serious as to demand special and immediate attention to the wagon requirements of the coal export trade and they trust that Government will find it possible to give it this urgent consideration.

6. The Committee have directed that copies of this letter should be sent to the Ministry of Production and to the coal Commissioner, since the coal industry is their particular concern; but for the reasons mentioned earlier they believe that the situation also calls for the attention of your Ministry. It is hoped therefore that you will endeavour to take all possible steps which may relieve the present congestion and avoid in future a repetition.

MARINE

GANGA BRIDGE PROJECT

Letter No. 51/W/10/7 dated 26th March 1952

From—The Joint Director (Civil Engineering), Government of India, Ministry of Railways (Railway Board), New Delhi.

To—The Bengal Chamber of Commerce and Industry.

The Government of India have appointed Sir M. Visvesvaraya to examine the following 4 sites—

(i) Patna, both on the upstream and downstream sides;
(ii) Mokameh;
(iii) Sakrigalighat;
(iv) Farrakka or Rajmahal as a part of the Ganga Barrage Scheme;

for bridging the river Ganga and to make recommendation on the most advantageous location for a Broad Gauge Railway bridge, taking all relevant factors into consideration.

2. Sir M. Visvesvarya will also be glad to discuss the matter with the representatives of the various Chambers of Commerce etc. on 1st April, 1952, at 10 A.M. in the Committee Room of the E.I. Railway House at Calcutta. You are requested to send one of your representatives to this meeting. A Memorandum giving the Chamber's /Association's views on the location which is considered as most satisfactory from your point of view and the reasons therefor may be brought to the meeting, if possible.

* * *

Letter dated 5th May 1952.

From—The Secretary, Bengal Chamber of Commerce.

To—The Joint Director (Civil Engineering), Railway Board, Ministry of Railways, Government of India.

With reference to your Circular letter No. 51/W/10/7 of the 26th March, 1952, you will find enclosed a memorandum containing the Chamber's comments on the Ganga Bridge Project. This subject was discussed with Sir M. Visvesvaraya on the 1st April last and as there was insufficient time to prepare and present the memorandum to him then, I shall be obliged if you will kindly arrange for it to be sent to Sir Visvesvaraya as soon as possible.

Memorandum from the Bengal Chamber of Commerce on the Ganga Bridge Project.

While welcoming the opportunity of putting forward its views on the Ganga Bridge Project the Bengal Chamber of Commerce would like to preface this memorandum by stating that, in its opinion, too little time was given for consideration of this important matter before it was called upon to express its views. It may be, therefore, that fresh views may still be put forward by those of its members who were not consulted before this memorandum was prepared, which may affect the issue in important respects, and, if this does occur, the Chamber trusts that these further views will receive consideration at a later date.

The Chamber is called upon to express a view regarding which of the following four sites it regards as most suitable for the building of a railway Bridge across the river Ganga :—

(i) Patna both on the upstream and downstream sides.

(ii) Mokameh.

(iii) Sakrigalighat.

(iv) Farakka or Rajmahal as a part of the Ganga Barrage Scheme.

In this matter the views expressed by the representatives of the Bengal Chamber of Commerce may be summarised as follows :—

The Chamber considers that the Ganga Bridge project and the Ganga Barrage scheme should be combined at one site, namely at Farakka or Rajmahal, because

(*a*) a combined Barrage and Bridge scheme will *prima facie* be cheaper than two separate schemes.

(*b*) A combined Barrage and Bridge scheme will provide only one obstacle to inland navigation instead of two

and this argument will continue to apply even if more bridges are built since the number of such obstacles will always be one less.

(*c*) One, though admittedly not the only, major function of the proposed bridge will be to replace the Hardinge Bridge which, prior to partition, carried the major portion of the rail-borne traffic between Assam and N. Bengal and Calcutta, and which is now in Pakistan. Since it can no longer be used for this traffic Assam and North Bengal are cut off from Calcutta except for the Steamer services and the Assam Rail Link. The result is that, although two-thirds of the tea crop will probably in any case move by steamer from Assam and although the Steamer services and the Link have in fact succeeded in moving the crops, the jute and tea industries of Assam and North Bengal, on which depend the earning of a large portion of India's foreign exchange, suffer from shortage of transport in both directions at peak periods. In addition the route of the Steamer services passes through Pakistan and for that reason an alternative all-India route is desirable on strategic grounds.

The Chamber's contention is that since part of the objective is to replace the Hardinge Bridge and to create an adequate all-India route to Assam for strategic reasons the route chosen ought to be the shortest route which is that *via* Farakka.

(*d*) The building of a barrage will not only provide irrigation facilities and flush out the port of Calcutta, both of which, in the opinion of the Chamber, are most important in the interest of the country, but will also shorten the river route, both to stations on the Ganga itself and to Assam by avoiding the expensive detour through the Sunderbans, and will in fact provide an

all the year round all-India river route from Calcutta to the centre of India. While the route to Assam will still be to some extent through Pakistan the shortening of the route will, in normal times, add considerably to India's transport potential.

By combining the Barrage project with the Bridge project, the benefit to transport will be very much greater than by building a bridge only and possibly the expensive necessity of doubling the track on the Assam rail-link will be avoided.

(*e*) In order to secure these additional benefits the Chamber considers that it would be worthwhile to commence the combined scheme now rather than spend the sum of 10—15 crores of rupees on the Bridge project only, the expenditure of which must delay the country's ability to finance the Barrage project. In the meantime the interests concerned can continue to be served as at present by the Assam Rail Link combined with the Railway ferries and the normal Steamer services.

(*f*) The Chamber agrees that a rail and road bridge at Patna would also be of substantial benefit to India as a whole as well as to the State of Bihar in particular. It considers, however, that the scheme to build such a bridge should rank second in priority to the Farakka/Rajmahal combined project.

(*g*) The Mokameh site would not adequately serve the needs of North Bengal and Assam. It would involve a haul of an additional 200 miles over and above the distance by the Farakka route, which would substantially reduce the capacity of the metre gauge system north of the river. This can be made up only partially by increase in rolling stock.

It is admitted that the Mokameh site is important for the carriage of coal to North Bihar but once this route is relieved of the additional traffic which it is now carrying on account of Assam and North Bengal, the Chamber considers that the ferry will be adequate to carry all the traffic required by the area which is naturally served by that route. It would appear, therefore, that a bridge at this point is either not required or should rank in importance after the Farakka/Rajmahal project and the Patna project.

The only points in favour of the Mokameh site are :—

(a) its comparative cheapness, and

(b) the comparatively short delay which would be involved before completion.

These points, however, have not yet, so far as the Chamber is aware, been established by precise estimates and the Chamber would welcome further information.

(*h*) A bridge at Sakrigali will not be required if there is a bridge at Farakka/Rajmahal and, since the Chamber considers that the Barrage Scheme must be completed at some time or another, it is of the opinion that to build a bridge on the Sakrigali site would ultimately be a waste of money.

It is admitted that in theory there could be a bridge at Sakrigali and also a barrage at Farakka/Rajmahal but as noted in (a) and (b) above the combined scheme will be cheaper for the country and more convenient for navigational purposes.

For these reasons the Chamber has expressed its preference in favour of the combined Barrage and Bridge

project at Farakka and would urge upon Government the desirability of undertaking this project at the earliest possible date.

The Chamber would also like to take this opportunity of bringing to attention the fact that wherever a bridge is built, in order that it may not be a barrier to inland navigation it should provide for :—

(i) a headway throughout its entire length between the permanent banks of the Ganga of 40 feet above highest known flood level. If at Patna or above, the headway could be 30 feet.

(ii) A navigable channel of 345 feet between piers.

MARINE

GANGA BARRAGE PROJECT

Letter No. 5337 (2)-I dated 19th December, 1932.

From—The Deputy Secretary to the Government of West Bengal.

To—The Bengal Chamber of Commerce & Industry.

I am directed to say that the Ganga Barrage Project which is now under consideration of the Government of India and the State Government envisages the construction of an all-season navigational route for steamer traffic connecting Calcutta with Bihar and Uttar Pradesh along the Bhagirathi and the Ganga lying entirely within the Indian territory saving a detour of about 450 miles by the existing steamer route through the Sundarbans and East Pakistan. This all-India perennial navigation route when set up will be invaluable in many respects, particularly in solving to a great extent the increasing traffic problem relating to the trade blocks of Calcutta, West Bengal, Bihar and Uttar Pradesh.

It is now necessary to consider in this connection the tollage that might be charged on the traffic using the waterway which will be provided by the Project so as to ensure a reasonable return on the Capital investment. The Project comprises a very costly barrage and locks to make navigation possible over a length of 131 miles of the Bhagirathi river which is not navigable at present above the tidal reach. It will further provide navigation facilities in the Farakka-Jangipur Canal covering a length of 27 miles which will be excavated in this connection. Thus, toll will be leviable on a length of 158 miles. Considering the fact that all traffic from Calcutta proceeding beyond Farakka and vice versa will be saved a detour of 450 miles resulting in the saving of time and money, Government feel that it will be justifiable on completion of the Project to base the tollage on traffic at 6 pies per ton mile or about Rs. 5/- per ton for the entire length of 158 miles of the Bhagirathi—Jangipur—Farakka waterway. It is felt that in view of the circumstances mentioned above this toll rate will not disturb the equilibrium as between Railway and Steamer traffic to the prejudice of navigation interests. The considered views of the Chamber of Commerce on the proposed tollage in respect of the proposed waterway will however be very much appreciated.

In view of the importance of the Project a very early reply is requested.

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Letter No. 718 dated 31st January 1953,

From—The Secretary, The Bengal Chamber of Commerce & Industry

To—The Deputy Secretary to the Government of West Bengal, Department of Irrigation and Waterways, Irrigation Branch.

I am directed to refer to your letter No. 5337 (2) I of the 19th December.

So far as the Chamber can judge from the views expressed up to the present by its member interests and connected Associations, the proposed levy of 6 pies per ton mile, or about Rs. 5/- per ton, on traffic using the Bhagirathi-Jangipur-Farakka Waterway is reasonable in view of the distance which would be saved by this route. This opinion must however be a tentative one in the absence of information concerning the facilities to be offered.

Government would do well to remember however that if, as seems to be the case, the proposed tollage is related to capital investment, there is still the question of maintenance costs to be considered. A considerable amount of dredging etc. will be entailed. There are canals in Orrissa, for instance, on which little or no maintenance is done, with the result that traffic is at a standstill for a great part of the year.

Should the Chamber have any further views to offer in the near future, I will let you know.

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Letter No. 1225 dated 18th February 1953.

From—The Secretary, The Bengal Chamber of Commerce and Industry.

To—The Deputy Secretary to the Government of West Bengal, Department of Irrigation & Waterways.

In continuation of my letter No. 718 of the 31st January I am sending you the full text of the views of the Inland Steamer

Companies connected with the Chamber on the question of tollage charges in respect of the Bhagirathi-Jangipur-Farakka Waterway Project.

The Chamber thinks that the Government of West Bengal would be well advised to give these views their careful attention as the interests submitting them have had long and extensive experience of river and rail traffic in this part of India.

Extract from letter referred to

1. In view of the fact that the present circuitous route via the Sunderbans for approximately 11 months in the year will be eliminated by the Ganga Barrage Project resulting in an approximate saving of 450 miles, there is, *prima facie*, justification for the application of a toll charge but, in our view, there are factors present which indicate that the proposed charge is too high and that it will be an impediment to the free movement of traffic, thereby tending to defeat one of the facilities which the Project is intended to provide.

2. There is not at present a large volume of river borne traffic between points south of the proposed barrage, particularly Calcutta, and stations in Bihar and Uttar Pradesh north of the Barrage, although the potential in this respect is great provided costs are kept at an attractive level in comparison with those by rail. The reasons for this small movement are (a) navigational difficulties due to low river levels in the Bhagirathi for 11 months in the year, (b) the long transit through Pakistan *via* Sunderbans involving passage through customs barriers (two each at the point of entry and exit, plus intermediate checks) and the necessity to conform with Passport regulations, (c) alternative rail transport which, by reason of shorter route mileage, makes it impossible to attract traffic by river at other than uneconomical rates. The vast bulk of the traffic (probably 95%) between Calcutta and stations which the route *via* Bhagirathi is intended to serve is at present carried by rail.

3. It follows that, if traffic is to move freely *via* the proposed Bhagirathi route, the costs must compare favourably with corresponding costs by rail. In order to offset the disadvantages of slower transport by river, higher delivery incidentals at terminals etc., it is our opinion from long experience that for the route *via* Bhagirathi to be at all attractive, the river rates must be at least 7½% lower than the costs by rail.

4. The point we wish to make is that our present Steamer rates for traffic to and from stations are wholly uneconomical and that, despite the reduction in the river mileage which will be effected by opening the Bhagirathi to traffic, it will still be an uneconomical haul from the point of view of I. W. T. if the proposed toll charge of Rs. 0-3-0 per md. is imposed.

5. The position may be illustrated by taking the 1st class rate between Calcutta and Patna (although the Railway has lower Wagon Load Scale Rates in force for many commodities).

CALCUTTA TO PATNA.

1st Class Freight only per md. without incidental charges.

By Rail Rate Basis		Miles	Freight Rate Per Md.
	Pies per md./mile		
1 to 300 miles	·49	325	0.13.3
301 to 600 ,,	·45		
Over 601 ,,	·40		

By River	Miles	Rate per Md. Mile.
Present rate per md.		
Rs. 1.0.8	919	·217 pies

Approximate mileage *via* the Bhagirathi route = 217 pies

In order to be competitive with the railway rate, the rate by river would require to be :—

Rail Rate		Rs. 0.13.3
Less 7½% favourable margin required	= Rs. 0.1.0	
Less proposed Toll charge	= Rs. 0.3.0	Rs. 0. 4.0
		Rs. 0. 9.3

Rate per md. equals $\frac{\text{Rs. } 0.9.3}{469}$ = ·237 pies

It will be seen, therefore, that in order to attract traffic to the river *via* the proposed Bhagirathi route, the rate per md./mile will require to be in the region of ·237 pies md. which we contend is an unremunerative rate as compared with the Railway average of ·41 per md. While, therefore, the saving in mileage *via* the Bhagirathi route for 11 months in the year is appreciable, I. W. T. carriers will be unable to bear the proposed toll charge, nor can the owners of the goods be expected to use water transport while railway rates are lower.

If, however, it is the object of Government to provide an alternative all-India route which will be fully utilised this could never materialise to any appreciable extent if a toll charge is imposed. Even without it I. W. T. will find it difficult enough to compete since, if they are to maintain their favourable margin, their average rate will be only .31 per md. as against the Railway rate of .41.

6. It may be argued that since the current rate per md./mile by river is approximately .217 pies *via* Sunderbans, we should be agreeable to accept .237 *via* the Bhagirathi but as we have pointed out earlier, practically no traffic moves by river from Calcutta to Patna and none at all in the reverse direction. Quite frankly, we cannot work at these low rates and the service is maintained solely as a matter of policy because of the interest shown in it by the respective Governments and at a financial loss to ourselves.

7. A further point which is important is that the completion of the new Railway Bridge across the Ganga at Mokameh, will further adversely affect the position of I. W. T. on the Ganga by reason of the added facilities by rail.

8. We contend, therefore, that, advantageous as the position would seem to become by the opening of the route *via* Bhagirathi to traffic all the year round, I. W. T. is in no position to bear the burden of a toll charge of Rs. 0. 3. 0 per md.

9. Further it seems to us that I. W. T. are being asked to bear a disproportionately heavy proportion of the cost of the Project in view of the benefits which will be derived by other parties and that a greater spreading of the cost to the relief of I. W. T. may be worthy of examination.

In particular, we have in mind the benefits which will doubtless accrue in respect of :—

(a) Strategic considerations.

(b) Improved irrigation/cultivation of the land adjacent to the Ganga and Bhagirathi.

(c) The flushing of the Hooghly for the benefit of ocean vessels and ocean trade said to be urgently needed and upon which the livelihood of Calcutta largely depends.

(d) Consequent upon (c) the benefit to the railways serving Calcutta, the Port Commissioners and to the many public services dependent upon the efficiency of Calcutta as a port being maintained.

(e) The advantage of greater fresh water supplies for Calcutta and environs.

(f) The dependence of the proposed new port at Geonkhali on an increased flow of water from the Bhagirathi.

(g) The benefit to the provinces of West Bengal, Bihar and Uttar Pradesh in having alternative means of river transport, the latter two Provinces being particularly desirous of encouraging and extending the sphere of I. W. T. operations.

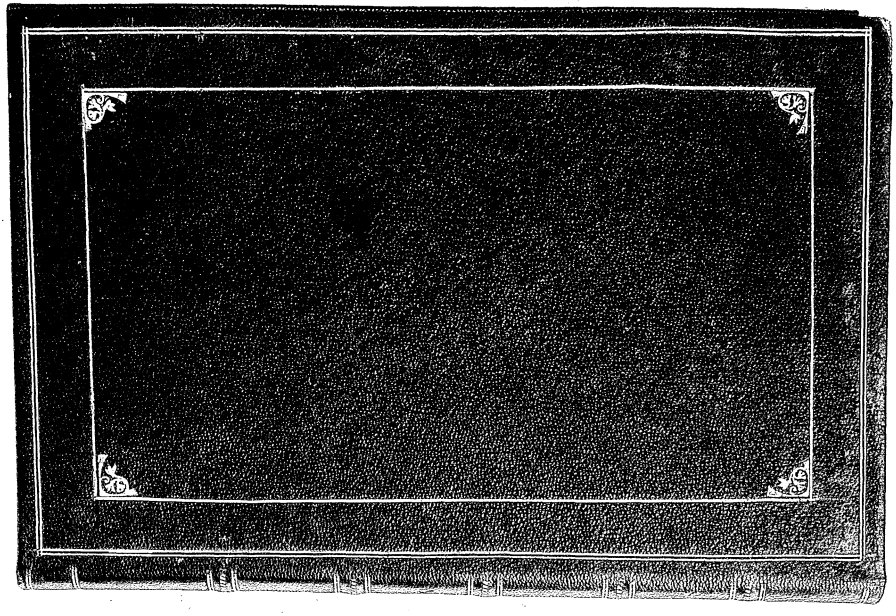
We cannot help but feel that the benefits are so widespread as to suggest that I. W. T. should not be asked to bear a burden which it is not in a position to carry.

We understand that the economic development of Inland Water Transport has been assisted considerably in other countries by the absence of such canal tolls as now envisaged. We refer particularly to the canals and shiplocks on the Rhine and Rhone rivers where we believe no tolls are levied for passing I. W. T. In the United States of America, as far back as 1882, the River and Harbour Act stated that :—

> "No tolls or operating charges whatever shall be levied upon or collected from any vessel, dredger or other water craft for passing through any lock, canal, canalised river or other work for the use and benefit of navigation etc."

The tremendous development of I. W. T. in these various countries would appear to justify this policy.

R., P. W—500—10-53



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