

Mr. ROBB: Yes.

Section agreed to.

On section 5—Surplus distribution taxable.

Mr. ROBB: The word "had" in the last line should be "has". I move that the section be amended accordingly. It is merely a misprint.

Sir HENRY DRAYTON: Suppose there is an insolvent company which is paying dividends. Is that money to be looked upon as income?

Mr. ROBB: Does my hon. friend mean a company which is paying dividends out of capital?

Sir HENRY DRAYTON: Let us take the case of a company which is being wound up. That company, we will say, has \$1,000,000 of supposed assets. If the company has on hand an undistributed income of \$100,000 and the business is being wound up, will that income be taxable?

Mr. ROBB: Would that \$100,000 be profits?

Sir HENRY DRAYTON: I am supposing that it is on the books as being on hand; and the section refers to the payment of a dividend—

To the extent that the company had on hand undistributed income.

In the winding up of the company, according to this, that income will be taxable?

Mr. ROBB: Yes.

Sir HENRY DRAYTON: It is quite possible that a company may be represented on the books as having on hand an undistributed income which as a matter of fact ought not to be so described. Surely it would not be right, simply because the officials of a company said there was on hand an undistributed amount of income, when in fact there was a large capital impairment, that the shareholders should not only lose their capital to the extent of the impairment but also have to pay taxes on an income they never received. Let us take the case of the Home Bank. I had on the order paper earlier this year a question touching this matter. The Home Bank was taxed on income which was never earned and which never existed; it was entirely a fiction. It was a fiction, the creation of its management for their own purposes, and the government never had any right to tax it. There was never any income, and the question I asked was whether the government had returned the tax to the bank. That is going a good deal further than if the Home

Bank directors at the time they closed down had shown, say, half a million dollars of imaginary income. I should think that the proper and the fair thing would be that, apart from what is declared as income, there should be no taxes on anything except the amount remaining over and above capital in the way of profit.

Mr. ROBB: That is a fair interpretation of the bill.

Sir HENRY DRAYTON: But that is not what the section says.

Mr. ROBB: We must leave something to the discretion of those who administer the law; we must provide for all cases. My hon. friend has cited one case; some other case might develop in which this section as it stands would prove necessary.

Sir HENRY DRAYTON: I do not object to the clause itself but I object to the suggestion that instead of passing proper legislation we should leave the matter to the discretion of the officer who is administering the law. We should know whether we are taxing capital under the name of income or not. The committee can easily put the section into proper shape.

Mr. JACOBS: I do not think that under the law the minister would have any such discretion; he has to interpret the statute as it is.

Mr. BAXTER: The matter might be made perfectly clear I think if at the end of the section there were added the words:

—after the whole of the capital shall have been returned.

I do not think this will express anything else than the section seeks to convey as it stands, but it will put the matter beyond doubt.

Mr. ROBB: I think we would be prepared to accept the suggestion if my hon. friend would write out the amendment.

Sir HENRY DRAYTON: Perhaps "shall have been realized" would be better than "shall have been returned."

Mr. ROBB: The section as it stands is intended primarily to meet the case of companies which are reorganizing and re-appraising their business. I think myself that it might be just as well to leave the section as it is; it would be wise to leave it to some extent to the discretion of the administrator.

Mr. BAXTER: In some recent decisions in England there seems to be some confusion about the subject. I take it we are safe in