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THE
LEGISLATIVE ASSEMBLY DEBATES

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THIRD SESSION

OF THE

**FOURTH LEGISLATIVE ASSEMBLY,
1932**



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Legislative Assembly.

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MR. B. SITARAMARAJU, M.L.A.

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LEGISLATIVE ASSEMBLY.

Monday, 15th February, 1932.

The Assembly met in the Assembly Chamber of the Council House at Eleven of the Clock, Mr. President in the Chair.

QUESTIONS AND ANSWERS.

WITHHOLDING OF RESOLUTIONS FROM THE MEETING OF THE LAHORE CANTONMENT BOARD.

351. *Sirdar Sohan Singh: (a) Will Government be pleased to state whether it is a fact that three elected members of the Lahore Cantonment Board sent three resolutions to the Executive Officer for inclusion in the agenda of the December meeting of the Cantonment Board?

(b) Is it a fact that the Executive Officer wrote back saying that as they were unnecessary they would not be included?

(c) Is it a fact that it is the inherent right of every member of a Board to send in any resolution he likes, and that the Government of India have already issued instructions that even the President of the Cantonment Board cannot withhold any resolution?

(d) If so, what action do Government propose to take to stop such acts on the part of the Executive Officer of the Lahore Cantonment Board?

Mr. G. M. Young: With your permission, Sir, I will answer questions 351 to 355 together.

The information has been called for, and replies will be laid on the table in due course.

REFUSAL OF THE EXECUTIVE OFFICER, LAHORE CANTONMENT BOARD, TO CONVENE A SPECIAL MEETING OF THE BOARD.

†352. *Sirdar Sohan Singh: (a) Will Government be pleased to state whether it is a fact that the elected members of the Lahore Cantonment Board sent in a requisition under section 37 (2) of the Cantonments Act, for calling a special meeting of the Cantonment Board on the 19th December, 1931?

(b) Is it a fact that the Executive Officer, *vide* his letter No. T./63/E. O., dated the 17th December, 1931, wrote back saying that as the President was out of station, no action could be taken, although the Vice-President was in the station?

(c) Is it also a fact that the Vice-President, in exercise of the duties devolving upon him under section 23 (b) of the Cantonment Act, convened the meeting, and issued instructions to the Executive Officer, Lahore Cantonment, to circulate the necessary agenda and notice of the meeting?

†For answer to this question, see answer to question No. 351.

(d) Is it a fact that the said Executive Officer, *vide* his letter No. T./63/O. E., dated 18th December, 1931, informed the Vice-President that his request could not be complied with?

(e) If so, are Government prepared to take necessary steps in the matter?

LICENCES OF MEAT SELLERS IN LAHORE CANTONMENT.

†353. *Sirdar Sohan Singh: (a) Is it a fact that the Lahore Cantonment Board sanctioned the grant of a licence to three meat sellers in Sadar Bazar in order to break up the pool of Cantonment market lessees, who had raised their prices?

(b) Is it a fact that the shops, in which such trade was to be carried on, were made sanitary as required by the Cantonment Health Officer?

(c) Is it also a fact that the cattle for the meat to be sold in such shops was under Cantonment Law to be slaughtered under Cantonment sanitary supervision in the Cantonment slaughter house only?

(d) Is it a fact that the President withheld the grant of such licence under section 51 (1) of the Cantonment Act, as affecting the health of the troops?

(e) Is it a fact that the Sadar Bazar meat shops are only used by civilian people, and do Government propose to issue instructions that the exercise of powers under section 51 are not to be resorted to?

REJECTION OF AN APPLICATION FOR CONSTRUCTION OF A BUNGALOW IN LAHORE CANTONMENT.

†354. *Sirdar Sohan Singh: (a) Will Government be pleased to state whether it is a fact that one Sh. Rahmat Ullah Khan sent a notice under section 179 of the Act to the Lahore Cantonment authority for constructing a bungalow in the area south of St. John Road?

(b) If so, is it a fact that the same was not placed before the Cantonment Board, but was rejected by the Executive Officer directly after getting instructions from the Northern Command?

(c) If so, what action do Government propose to take in the matter?

(d) Is it a fact that under section 210 of the Cantonment Act, it is the Cantonment Board, Lahore, and not the Executive Officer, who is competent to sanction or reject applications?

(e) Is it a fact that the Executive Officer of Lahore disposes of such applications without reference to the Board?

(f) If so, do Government propose to issue necessary instructions for stopping such an action of the Executive Officer?

REFUSAL OF PERMISSION TO HOLD A MEETING IN CAWNPORE CANTONMENT.

†355. *Sirdar Sohan Singh: (a) Is it a fact that the Cantonment authority, Cawnpore, published some new proposals of taxation on the 11th January, 1932, and invited objections from the people to the same within one month from the date of the publication?

†For answer to this question, see answer to question No. 351.

(b) Are Government aware that the Cawnpore Cantonment Association intended to hold a public meeting for that purpose in the Faithfull Ganj (Cawnpore Cantonment Bazar Area) on Sunday, the 24th January, 1932, and applied to the District Magistrate for permission in view of his having applied section 144 to that area?

(c) Is it a fact that the District Magistrate, Cawnpore, refused to give permission for the meeting in spite of his being assured that the meeting was being arranged by an affiliated Branch of the All-India Cantonments Association having "co-operation" as its creed and that no other matter except the "taxation proposals" would be allowed to be discussed in that meeting?

(d) Do Government propose to instruct Local Governments not to restrict ordinary routine meetings called by the Branch of a constitutional body like the All-India Cantonments Association and ask the Cantonment authority, Cawnpore, to extend the time for inviting objections?

INTRODUCTION OF ELECTED CANTONMENT BOARDS IN THE NORTH-WEST FRONTIER PROVINCE.

356. *Sirdar Sohan Singh: (a) Did Government write to the All-India Cantonments Association on the 12th October, 1929, that steps were being taken to create elected boards in those Cantonments of the North-West Frontier Province, which have nominated boards at present?

(b) What steps have Government taken so far in that direction and when will the creation of those elected boards be an accomplished fact?

(c) Are Government aware that in view of the impending reforms in that Province, the people of the Cantonments of that Province are anxious to have elected boards simultaneously with the introduction of those reforms?

(d) Do Government propose to meet this desire of the people?

Mr. G. M. Young: (a) No, Sir. The Government never made any such statement.

(b) Does not arise.

(c) No, Sir; Government have no reason to suppose that this is the case.

(d) Does not arise.

EXTENSION OF THE HOUSE-SCAVENGING TAX IN AMBALA CANTONMENT.

357. *Sirdar Sohan Singh: (a) Is it a fact that the Ambala Cantonment Board has by a majority of votes submitted to the Local Government a proposal to enlarge the scope of the house-scavenging tax and to extend it to "offices", shops, godowns, religious and charitable institutions that are so far exempt from it?

(b) Is it a fact that public meetings have been held at Ambala and a public representation signed by about 2,000 people has been sent to the Northern Command and to the Local Government, protesting against the unjustifiable imposition of the above tax on the buildings named above?

(c) Will Government please state the financial necessity for the above proposal?

(d) Is it a fact that the Ambala Cantonment Board has about 1½ lakhs in investment about Rs. 80,000 as cash balance and submitted a balanced budget in September, 1931?

(e) Is it a fact that in its Circular No. 50300/L.C.-2, dated 17th December, 1931, the Northern Command has distinctly instructed the Cantonment authorities under its jurisdiction not to submit any "proposal of increased taxation"?

(f) Do Government propose to issue instructions that the proposal for enhancement of house-scavenging tax be withdrawn by the Cantonment authority, Ambala, or rejected by the Local Government?

Mr. G. M. Young: The matter is within the competence of the Local Government, with whose authority the Government of India do not propose to interfere.

STANDARD PLANS FOR HOUSES UNDER THE EASTERN COMMAND.

358. ***Sirdar Sohan Singh:** (a) Is it a fact that the General Officer Commanding-in-Chief, Eastern Command, has issued orders under section 181 (4) of the Cantonments Act, 1924, that permission to re-erect a bungalow should be given, only if it conforms to any of the "Standard Plans" approved for the purpose by the Command?

(b) Are Government aware that if the design and plan approved by the Eastern Command are to be followed, the lowest cost on a bungalow will come up to Rs. 30,000 according to the Military Engineering Service's estimate?

(c) Are Government aware that as a result of this restriction house-owners in the Cantonments of that Command are unable to re-erect such of their bungalows as are now lying in a dilapidated condition?

(d) Will Government explain how the provisions of section 181 (4) cover such an order? Is it a fact that this section empowers a Command to prohibit the construction of a building in some congested area to prevent over-crowding and not to prescribe the type and design of buildings to be constructed?

(e) Are Government aware that the order of the Eastern Command is greatly resented by house-owners in these days of economic depression?

(f) Do Government propose to direct the Eastern Command to withdraw this order or in the alternative to explain its necessity and the object which it is intended to achieve?

Mr. G. M. Young: (a) Government have no information except that the General Officer Commanding-in-Chief, Eastern Command, sanctioned a scheme for the erection of bungalows in Cawnpore Cantonment in pursuance of section 181 (4) of the Cantonments Act, 1924.

(b) No, Sir. Government understand that various types of plans have been approved by the Cantonment Authority, Cawnpore, and that the cost of the construction of buildings in the cantonment ranges from Rs. 7,000 to Rs. 15,000.

(c) No, Sir.

(d) and (f). Government were of the opinion that the matter should have been dealt with by bye-laws under section 186(b) of the Cantonments

Act, and have communicated this opinion to the General Officer Commanding-in-Chief, Eastern Command.

(e) No objections to the promulgation of the above orders have so far been received from any house owners in Cawnpore.

RECOVERY OF A HOSPITAL FEE IN ALLAHABAD CANTONMENT.

359. *Sirdar Sohan Singh: (a) Has the attention of Government been drawn to an article published on pages 15—17 of the *Cantonment Advocate* of December, 1931, under the heading 'Abuse of Section 259 at Allahabad Cantonment'?

(b) Is it a fact that action was taken by the Cantonment Authority of Allahabad under section 259 to recover through the District Magistrate from one Mr. Brij Mohan Dass a certain amount said to be due to the Sub-Assistant Surgeon in charge of the Cantonment General Hospital as his fee for testing the blood of Mr. Brij Mohan Dass's wife?

(c) Was the amount so received credited to the Cantonment Fund? If not, how did the Cantonment Authority come in, to recover it from Mr. Brij Mohan Dass?

(d) Are Government aware that the All-India Cantonments Association regards it as a flagrant abuse of section 259? If so, do Government propose to take steps to stop this abuse in the future?

Mr. G. M. Young: (a) Yes.

(b), (c) and (d). The allegations furnished, in the opinion of Government, no *prima facie* ground for supposing that the treatment was received otherwise than in accordance with section 174 of the Act: that section 259 was illegally invoked to secure payment of the fee: or that the sum recovered was not properly credited. Government are not prepared to interfere therefore on the information at present before them.

EXEMPTION OF CANTONMENT BOARDS FROM AUDIT CHARGES.

360. *Sirdar Sohan Singh: (a) Are Government aware that according to the scale of audit fee recently sanctioned by Government, a Cantonment Board has to pay a fairly large amount every year as audit charges from the Cantonment Fund?

(b) Has the attention of Government been drawn to an article headed 'Exemptions of Local Bodies from Audit Charges', published on page 20 of the *Cantonment Advocate* for December, 1931?

(c) Is it a fact that Bombay Government has exempted all local bodies from audit charges?

(d) If so, do Government propose to extend this concession to the Cantonments?

Mr. G. M. Young: (a) The scale of audit fees represents as nearly as possible the actual cost of audit as conducted by the prescribed authority.

(b) Yes.

(c) The Government of India have no information.

(d) No, Sir.

HEAVY TAXATION IN DEHRA DUN CANTONMENT.

361. *Sirdar Sohan Singh: (a) Has the attention of Government been drawn to an article headed 'Heavy Taxation and Poor Amenities in Dehra Dun', published in the *Cantonment Advocate* for January, 1932?

(b) Will Government please state the income of the Cantonment Authority of Dehra Dun, as also how much of it is spent on education, and what schools are maintained or aided by the Cantonment Authority?

(c) Are Government aware that the existence of three taxes, viz., the terminal tax, the profession tax and the License fee, is weighing down the small trade of that Cantonment and there is great dissatisfaction among the trading people on that account?

(d) Do Government propose to ask the Cantonment Authority of Dehra Dun to revise its taxation?

Mr. G. M. Young: (a), (c) and (d). Government have seen the article. It appears that the matter has been represented to the Local Government in accordance with the correct procedure.

(b) The information has been called for, and a reply will be laid on the table in due course.

SALE PRICE OF BYE-LAWS AND REGULATIONS IN CANTONMENTS.

362. *Sirdar Sohan Singh: (a) Have Government received a representation from the All-India Cantonments Association, requesting that instructions be issued to Cantonment Authorities that the sale price of bye-laws and regulations framed by a Cantonment Authority under the various sections of the Cantonments Act, be fixed very low and should in no case exceed the cost of printing the same?

(b) Are Government aware that in some Cantonments full 'copying fee' is charged for supplying a copy of a particular set of bye-laws?

(c) Is it a fact that the policy of Government is that these bye-laws be known to the people as widely as possible?

(d) If so, do Government propose to issue instructions for the carrying out of that policy?

Mr. G. M. Young: (a) Yes, Sir.

(b) Government have no information.

(c) Yes, but the bye-laws are published in the local official Gazette, and a copy of all rules and bye-laws made under the Cantonments Act, 1924, is kept in the office of the Cantonment Authority, for inspection, during office hours, by any inhabitant of the Cantonment without any payment.

(d) No, Sir. The sale price of copies of rules and bye-laws is a matter within the discretion of the Cantonment Authority.

TRANSFER OF LIEUT.-COLONEL M. DOCKRELL FROM PESHAWAR CANTONMENT.

363. *Sirdar Sohan Singh: (a) What is the ordinary term of the appointment of an Executive Officer in a Cantonment?

(b) Is it a fact that Lt.-Col. M. Dockrell has held that post in Peshawar Cantonment for a number of years and that the Cantonment Association and the *Anjuman Himait Islam* of Peshawar have passed resolutions, requesting the transfer of Lt.-Col. M. Dockrell?

(c) Have Government been also approached on the subject by the All-India Cantonments Association?

(d) What action have Government taken on the reference of the All-India Cantonments Association on the subject?

(e) Are Government aware that there is a growing feeling of discontent with the treatment and conduct of cantonment administration by Lt.-Col. M. Dockrell, both among the Hindus and Muhammadans of Peshawar Cantonment?

(f) Is it a fact that Lt.-Col. M. Dockrell's transfer is due in the ordinary run of official affairs?

(g) Do Government propose to allay public feeling in the matter by hastening the transfer of Lt.-Col. M. Dockrell from Peshawar as far as possible?

Mr. G. M. Young: (a) There is no fixed term.

(b) and (c). Lieutenant-Colonel Dockrell has held the appointment since 29th March, 1928. Representations were received from the All-India Cantonments Association in regard to his transfer.

(d) The Association was informed that his immediate transfer from Peshawar was not desirable, and that he would be proceeding on leave in March next.

(e) No, Sir.

(f) The answer is in the affirmative. The officer is shortly proceeding on leave.

(g) The answer is in the negative.

ACTION TAKEN UNDER SECTION 25 OF THE CANTONMENTS ACT BY THE EXECUTIVE OFFICER, AMBALA CANTONMENT.

364. ***Sirdar Sohan Singh:** (a) Are Government aware that the Executive Officer, Ambala Cantonment Board, purchased a lot of material required for the tarring of roads, demolished a large number of alleged unauthorised buildings, issued licences to three travelling cinemas and ordered a new construction work by a recourse to section 25 of the Cantonments Act, in the months of October, November and December, 1931?

(b) Is it a fact that this recourse to section 25 was thought by some elected-members to be unnecessary and unjustifiable and a virtual move on the part of the Executive Officer to supersede the Cantonment Board?

(c) Will Government please state how the doing of the above acts is covered by the provisions of section 25? If there be no justification for such a use, what action do Government propose to take against the erring Executive Officer and stop this abuse in the future?

Mr. G. M. Young: The information has been called for, and a reply will be laid on the table in due course.

EXECUTIVE OFFICERS IN INDIAN CANTONMENTS.

365. *Sirdar Sohan Singh: (a) Will Government please state the total number of Executive Officers in the Cantonments of India? How many of them are Indians?

(b) Are Government aware that there is general dissatisfaction in the Cantonments about the capability of the Indian Executive Officers as at present recruited to perform their duties?

(c) Is it a fact that these officers are generally Indian officers of regiments holding the Viceroy's commission?

(d) Has the All-India Cantonments Association made a suggestion in this respect that the posts of Executive Officers reserved for Indians be in future filled up by an open competitive examination to be held by the Public Service Commission, in such subjects the knowledge of which may be essential for the proper discharge of the duties of an Executive Officer?

(e) What action have Government taken on this suggestion? If no action has been taken so far, do they propose to take any, and if so, what?

Mr. G. M. Young: (a) The total number of whole-time Executive Officers at present in the Cantonments is 59, of whom 16 are Indians.

(b) and (c). There are two grades of Executive Officers; Grade I officers holding the King's Commission and Grade II Indian officers holding the Viceroy's Commission. The latter class was inaugurated experimentally a few years ago; and the experiment has proved so successful that Government contemplate increasing gradually the number of Grade II officers and reducing the number of Grade I officers proportionately.

(d) Yes.

(e) The whole question is under consideration in connexion with the recommendations of the Army Retrenchment Sub-Committee.

REPRESENTATION OF THE PEOPLE OF CANTONMENTS ON THE ROUND TABLE CONFERENCE AND ITS COMMITTEES.

366. *Sirdar Sohan Singh: (a) Are Government aware that the All-India Cantonments Association has consistently urged, in every constitutional manner, the need for giving the people of the Cantonments of India, separate representation on the Round Table Conference and its Committees?

(b) Will Government please state the reasons that led them to ignore the Cantonments claim as far as the Round Table Conference was concerned?

(c) Do Government propose to have a representative of the Cantonments on the Franchise Committee of the Round Table Conference?

(d) Are Government aware that the Cantonments people number about a million and have special interests of enormous magnitude and a special law governing the cantonment administration?

(e) How do Government propose to secure a representation and consideration of the special problems of the Cantonments people, if no representative of theirs is taken in the Franchise Committee?

The Honourable Sir George Rainy: (a) and (b). I would invite a reference to the reply which I gave to Mr. Bhuput Singh's unstarred question No. 18 on the 26th January, 1931.

(c), (d) and (e). I have already explained in reply to Mr. Bhuput Singh's question No. 178 on the 10th February that the nominations to the Franchise Committee were made by His Majesty's Government; that the desirability of making the Committee as far as possible representative of important interests and of responsible public opinion was recognized, and that subject to the limit of numbers which was necessary if the Committee was not to become of unmanageable size, every effort was made to secure this result. I might add that it is always open to the Committee to receive representations from any interests not actually represented on it.

RESUMPTION BY GOVERNMENT OF SITES OF BUNGALOWS IN NOWSHERA.

367. Sirdar Sohan Singh: (a) Is it a fact that Government resumed last year the sites of four bungalows at Nowshera, with the buildings standing thereon, by a forced entry into the bungalows at the expiry of a month's notice to the owner?

(b) Did the All-India Cantonments Association protest against this method of resumption and urge the re-transfer of the land to the owner?

(c) Is it a fact that the owners of the bungalows contested the right of Government to resume the sites and protested against the forcible occupation of the site and the building?

(d) Will Government state:

(i) if the land under the above four houses was an old freehold or leased land;

(ii) if the former, how Government appropriated to themselves the right of resumption; if it be a case of leased land, whether Government will refer to the particular term or terms of the lease under which the resumption proceedings were taken;

(iii) why no compensation was paid for the buildings standing on the sites;

(iv) how Government justify resumption by force; and

(v) why Government did not file a suit of ejectment and establish its right of resumption?

(e) Are Government aware that there is great resentment and discontent among the house-owners at this way of taking possession of land and property in private possession?

(f) Will Government please state in how many cases land has been resumed by the above method of 'forced entry' since 1924?

(g) Is it a fact that one of the objects, stated at the time, the new House Accommodation Act was enacted in 1923, was the protection of the interests of the house-owners?

(h) Are Government aware that the present feeling of the house-owners is that their rights are being trampled on every possible plea and the resumption of sites in the way stated above is cited as a typical example?

(i) Do Government propose to reconsider their policy in this connection and to direct that no land be resumed by force as mentioned above?

(j) Will Government state the purpose for which resumption has been decided upon in the case of these four bungalows?

Mr. G. M. Young: (a) Government resumed the four sites and the derelict buildings standing on them. There was no forced entry.

(b) Yes.

(c) One of the proprietors disputed the legality of the resumption.

(d) (i) The land was held on lease.

(ii) The resumption was made under clause 27 of the lease.

(iii) The buildings were derelict.

(iv) No force was used.

(v) The right to resume was clearly stated in the lease.

(e) and (f). Government have no information.

(g) Yes.

(h) Government have no information.

(i) No.

(j) The sites were required for the construction of accommodation for military officers, the housing situation at Nowshera being acute.

LISTS OF CONDONED PLATFORMS ANNULLED BY THE NORTHERN COMMAND.

308. *Sardar Subhan Singh: (a) Is it a fact that the Northern Command has in a recent letter annulled the lists of condoned platforms prepared by the Cantonment Board of Ambala in 1926 and 1928 and in force since those years and has directed that body to recognise only such platforms as are given in the General Land Register?

(b) Is it a fact that the All-India Cantonments Association brought to the notice of Government by a resolution discussed with the Army Secretary in June 1929 that the Special Land Officer, Ambala, who was responsible for the preparation of the General Land Register placed arbitrary restrictions in the condonement of platforms in opposition to the spirit and meaning of the Government of India Circular No. 3102/1 (A.D.), dated 16th February, 1926, on the subject?

(c) Is it a fact that the Army Secretary gave a definite assurance on that discussion, that the Lists of the condoned platforms prepared by a Cantonment Authority would stand as that authority was the only authority empowered to interpret and apply the Government of India circular referred to above?

(d) Do Government propose to ask the Northern Command to withdraw its letter annulling the lists prepared by the Cantonment Authority of Ambala, in pursuance of the assurance mentioned in part (c)?

Mr. G. M. Young: (a) and (d). The information has been called for, and a reply will be laid on the table in due course.

(b) and (c). Yes.

APPOINTMENT OF AN ASSISTANT SECRETARY TO THE AMBALA CANTONMENT BOARD.

369. *Sirdar Sohan Singh: (a) Is it a fact that the Cantonment Authority, Ambala, has by a majority of votes decided to create the post of an Assistant Secretary in Ambala Cantonment involving an additional expenditure of about Rs. 5,000 a year and has applied to the Northern Command for a formal sanction of the new post?

(b) Will Government please state what has necessitated the creation of the post?

(c) Are Government aware that Executive Officers in the past eight years since the introduction of the new Act have been conducting the cantonment administration without any assistant?

(d) Is it a fact that when the proposal to create the post was originally brought forward, there was no report of the present Executive Officer as to his requiring an assistant for carrying on his duties?

(e) Will Government be pleased to state if in Cantonments of similar size and income, an Assistant is provided to the Executive Officer, and if so, which are those Cantonments?

(f) Is it a fact that the Ambala Cantonment Authority is seriously considering the project of its own water works which would entail not only a considerable expenditure at the outset but an appreciable increase in recurring expenditure?

(g) Is it a fact that the Northern Command, at the instance of the Government, issued a Circular on the 17th December, 1931, that the expenditure should be curtailed and posts should be reduced as far as possible?

(h) How do Government reconcile the proposal to create the post of an Assistant Secretary with the instructions conveyed in the above Circular?

(i) Is it a fact that the people of Ambala have through their representative bodies protested against the creation of the post as unnecessary and unjustifiable and such protests have already been submitted to the Northern Command?

(j) Do Government propose to issue instructions to the Northern Command not to sanction the post or at least to keep the proposal in abeyance till the present economic conditions improve?

Mr. G. M. Young: The appointment of an Assistant Secretary is a matter within the discretion of the Cantonment Board subject only to the financial sanction of the General Officer Commanding-in-Chief. Government do not propose to interfere.

AGE-LIMIT FOR APPOINTMENT OF CANTONMENT FUND EMPLOYEES.

370. *Sirdar Sohan Singh: (a) Will Government please state if there is any age-limit fixed in the case of the appointment of Cantonment Fund employees?

(b) Is it a fact that in the absence of this limit, proposals to appoint persons of more than 40 years of age are brought forward before the Cantonment Authority and are not unoften sanctioned by those Authorities?

(c) Do Government propose to fix a certain age-limit in the case of new appointments in Cantonment Fund Service and to direct that appointments of persons exceeding that limit be made only with the previous and special sanction of the Government in exceptional cases?

Mr. G. M. Young: (a) The answer is in the negative.

(b) Government are not aware of the practice of individual Cantonment Authorities in this matter.

(c) As no age-limit is prescribed for non-pensionable Government servants, Government do not propose to impose any restriction in this respect in the case of Cantonment Fund servants.

CHARGES OF BRIBERY AND CORRUPTION IN AMBALA CANTONMENT.

371. ***Sirdar Sohan Singh:** (a) Have Government received a representation from the "Residents Association", Ambala Cantonment, bringing to their notice the acts of a certain member of the Cantonment Board of Ambala which apparently bring him within the purview of section 34 of the Cantonments Act?

(b) Is it a fact that a request has been made therein for an early and independent enquiry into the alleged charges of corruption and bribery made therein?

(c) Is it a fact that the said Association is willing to co-operate with Government in the conduct of the above enquiry?

(d) What action have Government taken on this representation?

(e) Do Government propose to avail themselves of the assistance offered by the said Association in the matter; if so, have Government written to the Association to that effect; if not, do Government propose to do so?

Mr. G. M. Young: (a) and (b). Government received an anonymous pamphlet followed by a letter purporting to come from an association of the name mentioned. Government have no knowledge of any such association.

(c) Government have no information. Action under section 34 of the Cantonments Act can be taken only by the Local Government.

(d) None.

(e) The answer is in the negative throughout.

RESOLUTIONS PASSED BY THE ALL-INDIA CANTONMENTS CONFERENCE.

372. ***Sirdar Sohan Singh:** (a) Are Government aware that the All-India Cantonments Association has made a request to the Army Secretary, Government of India, for an informal discussion of the resolutions passed in the session of the All-India Cantonments Conference held in October, 1931 at Lahore Cantonment?

(b) Is it a fact that a similar discussion was arranged with very useful results in June, 1929 with regard to the resolutions passed in the preceding session of the Conference held in April, 1929, at Jubbulpore?

(c) What reply have Government sent to the Association about this request? If no reply may have been sent, do Government propose to fix early dates for this discussion?

Mr. G. M. Young: (a) and (b). Yes, Sir.

(c) No reply has yet been sent but Government will in due course invite the Association to send representatives to a discussion.

SUPPLY TO THE ALL-INDIA CANTONMENTS ASSOCIATION OF IMPORTANT GOVERNMENT CIRCULARS.

373. ***Sirdar Sohan Singh:** (a) Is it a fact that Government were pleased to hold out an assurance to the All-India Cantonments Association that they would supply copies of the important circulars of the Government of India about Cantonment Administration to the Association?

(b) Is it a fact that copies of very few circulars, if any, have been supplied to the Association so far, in pursuance of the above assurance?

(c) Is it a fact that a large number of circulars of far-reaching importance with regard to the determination of the respective rights of the house-owners and the Government in Cantonment land and about Cantonment administration generally, have been issued by Government, since the introduction of the new Cantonments Act of 1924?

(d) Is it a fact that action in various directions is being taken by the officers of Government in giving compliance to the above circulars and are Government aware that the house-owners and the Cantonments people in general are seriously handicapped in meeting the references of Government officers issued under those circulars, for want of knowledge of the contents and the true implications of those circulars?

(e) Do Government propose to codify the circulars so far issued and make them available for the people of Cantonments or at least to supply copies thereof to the All-India Cantonments Association on payment or free as Government may think desirable?

Mr. G. M. Young: (a) Yes.

(b) The Association is supplied with copies of all important non-confidential communications issued in connection with Cantonment administration, especially those concerning amendments to the Cantonment Act and the rules framed under it.

(c) The number of such communications is not very large.

(d) and (e). Government are not aware of any inconvenience caused to residents in Cantonments by the want of copies of such instructions. Government do not accordingly propose to codify them.

PETITIONS RELATING TO THE HINDU MARRIAGE DISSOLUTION BILL.

Secretary of the Assembly: Sir, under Standing Order 78, I have to report that twenty-seven petitions, as per statement laid on the table, have been received relating to the Bill to remove certain doubts regarding the dissolution of marriages of persons professing the Hindu religion which was introduced in the Legislative Assembly on the 27th January, 1931, by Sir Hari Singh Gour.

STATEMENT.

Petitions relating to the Bill to remove certain doubts regarding the dissolution of marriages of persons professing the Hindu religion which was introduced in the Legislative Assembly on the 27th January, 1931.

Number of signatories.	District or Town.	Province.
11	Monghyr	Bihar and Orissa.
1	Sholapur	Bombay.
11	Do.	Do.
7	....	Madras.
18	Muttra	United Provinces.
13	Do.	Do.
3	Kamrup	Assam.
9	Do.	Do.
12	Benares	United Provinces.
1	Kathiawar	Bombay.
12	Benares City	United Provinces.
1	Bhuleshwar	Bombay
2	....	Do.
12	Lakhimpur	United Provinces.
11	Agra	Do.
9	Pakur (District S. P.)	...
17	....	Bihar and Orissa.
16		Do.
15		Do.
10	....	Bombay.
5	....	Do.
73	Monghyr	Bihar and Orissa.
1	Shahabad	Do.
6	Do.	Do.
3	Do.	Do.
5		United Provinces.
2	Kathiawar	Bombay.
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THE INDIAN INCOME-TAX (SECOND AMENDMENT) BILL—*contd.*

Mr. President: Further consideration of the following motion moved by the Honourable Sir George Schuster on the 9th September, 1931:

"That the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, be referred to a Select Committee consisting of Mr. R. K. Shanmukham Chetty, Sir Hari Singh Gour, Sir Cowasji Jehangir, Mr. S. C. Mitra, Mr. Md. Anwar-ul-Azim, Mr. L. V. Heathcote, Mr. N. N. Anklesaria, Sir Abdullah Suhrawardy, Raja Bahadur G. Krishnamachariar and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Mr. L. V. Heathcote (Nominated Non-Official): Sir, may I ask if Sir Hugh Cocks's name can be substituted for mine in the Select Committee on this Bill?

Mr. President: Does the Honourable Member in charge agree to the substitution?

The Honourable Sir George Schuster (Finance Member): I have no objection, Sir.

Dr. F. X. DeSouza (Nominated Non-Official): Sir, I ask permission to intervene in this debate at this late stage because on such a technical subject as the Indian Income-tax law I did not care to rush in where much wiser people were chary to tread. As I understand the Bill, Sir, it embodies some very desirable features, and one very highly objectionable feature. The Bill has the effect, as I understand it, of penalising foreign enterprise by Indian nationals. By making residence alone the source of liability foreign incomes are made liable to income-tax whether arising from securities, stocks, shares or rent or from profits of business, and whether the income is brought into British India or not. That, Sir, is the result of this Bill. On the other hand the English Act has engrafted one exception to the rule of making residence alone the test of liability by providing that in the case of a person ordinarily resident in the United Kingdom, income arising from business wholly carried on abroad which is technically known as income from foreign possessions is made liable only to the extent that it is brought into the United Kingdom. The result is this Bill discourages while the English Act encourages foreign enterprise. The enterprise of Indian traders such as "Sindwarties" will decidedly receive a check if this Bill becomes law.

An Honourable Member: We want capital ourselves.

Dr. F. X. DeSouza: My Honourable friend says we want the capital ourselves but if there are better outlets for our traders abroad, we should avail ourselves of these outlets. The English Income-tax Act, as I understand it, has not discouraged the trade of English nationals because, as I have said, the income derived from foreign possessions is exempted from income-tax. If therefore the Bill is amended in Select Committee so as to engraft this exception provided by English law on the Indian law also, then I shall have no objection to vote for this Bill. But if this provision is allowed to stand in this Bill as it is, then I reserve to myself the right to vote against the Bill on the third reading.

[Dr. F. X. DeSouza.]

In other respects I think the Bill is an admirable one. There is no doubt in my mind that there has been a flight of capital from this country for several years past. Last year it was computed that as much as 30 crores of rupees had been sent away from this country. There is undoubtedly a great dearth of capital in our country. The vast resources of this country have got to be developed. Foreign capital is shy, whatever it may be due to, either political disturbances or to any other reason; and most of our Indian capital, what little there is, is hoarded. And I do not think that what little fluid capital there is in this country should be allowed to go to foreign countries. It should be retained in this country for the purpose of fructifying the resources of our own land.

It was said that the real reason for the flight of capital from this country is not to evade income-tax but that there were other causes, such as a gamble in exchange or the political disturbances that arise in this country which do not make the retention of capital safe. I do not say that the intention to evade income-tax is the only reason why capital has fled from this country. I may inform the House, however, that a leading banker in London informed me in 1928 that in consequence of the civil disobedience movement the 5 per cent. tax-free English War Loan had very great attractions for the Indian investor, and I must say that I myself fell a victim to the allurements of the 5 per cent. War Loan. And if this Bill is passed into law, I myself stand to lose a certain amount of money. But that certainly is not the consideration which weigh with me, nor do I think it is a consideration which will weigh with any Honourable Member of this House, as we come here not to consult our own personal interests but the larger interests of the country. But so long as the present law continues, that is, income invested abroad is free from income-tax, then obviously as long as there is a chance of evading foreign income-tax as well as the income-tax of this country, the tendency of the capital will be to remain outside and not to be brought back to this country.

There is one remarkable feature of this debate, Sir, which I do not know if Honourable Members have properly appreciated and it is this, that the Members of the Government Benches, and more especially of the front Treasury Bench, stand to lose a great deal of money if this Bill becomes law. I take it that most of them have savings invested in their home country and one of them, I believe, has a colossal fortune invested there. They will be taxed very heavily on incomes arising from these investments if this Bill is passed into law. And if they support it, it is obviously because they think it is in the best interests of the country. At a time when the selfishness and cupidity of the British official is the topic of the hour, I think this aspect of the Bill should be brought to the notice of the Assembly and through the Assembly to the notice of the country.

Sir, I shall come now to one or two of the objections which were raised against the Bill by several Honourable Members who have previously spoken. The first objection was that incomes derived abroad may be liable to double taxation. My Honourable friend the Finance Member has explained that so far as investments in the United Kingdom are concerned, section 49 of the Income-tax Act provides that refunds would be easily obtainable, and in this respect I have no doubt that the Inland

revenue authorities would co-operate with the Finance Member to see that the Indian income-tax is not evaded; and so far as Indian States are concerned, it appears from a notification issued by the Government of India under section 60 of the Act, that similar arrangements have also been made with certain Indian States also. If a person chooses to deal with a State which does not grant such a relief, of course it is for the investor himself to take his chances of investing money there.

After all it is inevitable that when you have dealings with foreign States, you are liable to double taxation. British subjects owning lands in Indian States—and I am in that unfortunate position—habitually pay double taxation; they have to pay agricultural assessment to the Indian States and they have to pay income-tax to the British Government on the profits of agriculture, whether those profits are received in British India or not; and if the Honourable the Finance Member is going to pay heed to the plea of double taxation, I would respectfully urge that he should take cases like these into consideration before he acts on such a plea.

My Honourable friend, Mr. Arthur Moore, in his very able and illuminating speech referred to the injustice of making a British officer serving in India pay income-tax on income from his own private means invested in England and not brought out to this country. But Mr. Arthur Moore forgot to bring to the notice of the House that the British officer by residing in India escapes British income-tax altogether. Is it too much to ask a British officer to pay his quota to the Indian Government for maintaining the *Pax Britannica* of which he himself is the greatest ornament?

Mr. Arthur Moore (Bengal: European): I think the Honourable Member is incorrect.

Sir Cowasji Jehangir (Bombay City: Non-Muhammadan Urban): He has been incorrect right through the speech.

Dr. F. X. DeSouza: I think if the British officer does not reside in the United Kingdom he escapes liability to English income-tax.

An Honourable Member: No.

Dr. F. X. DeSouza: He certainly does escape liability to the English income-tax: for instance, take the 5 per cent. War Loan. Most decidedly he does.

Sir Cowasji Jehangir: That is the one exception for everybody; do you not know that?

Dr. F. X. DeSouza: It is one of the best investments going. Then. Mr. Arthur Moore said that this legislation should not be enacted at a time when we are on the eve of constitutional reforms and that we should wait till the question of whether income-tax should be a local tax or a State tax or a Federal tax is determined. I believe the Federal Finance Committee is now sitting and is considering the question. But if we wait till the Federal Constitution begins to function, a good deal of the capital of this country would have fled away and it will be very much like shutting the stable door after the steed is stolen.

[Dr. F. X. DeSouza.]

One aspect of Mr. Arthur Moore's speech I could not quite follow. He said that at an earlier stage of this Bill when Europeans domiciled in England but resident in India were to be exempted from the tax, he opposed it, not indeed on the ground of its manifest unfairness but because it would be an embarrassing privilege gratuitously thrust upon him, which would disable him from fighting against unfair discrimination at the Round Table Conference. That is a very frank expression of his attitude and I can quite understand it. But now that the Finance Member has taken away this privilege and has made Europeans resident in this country liable as any other Indian capitalist; he says he is going to oppose it on the same grounds as the Indian capitalist. All that I need say is that adversity has made very strange bed-fellows in this case.

I am not an expert in income-tax law; I know very little of finance; but I have done my best to study the provisions of this Bill in the best interests of this country; and although, as I have said I stand to lose a certain amount of money by supporting this Bill, I shall vote for it, provided of course the Finance Member gives an undertaking that the law will be assimilated to the English law by providing that income from "foreign possessions" will be exempted from income-tax. That is all I have got to say.

Diwan Bahadur T. Rangachariar (South Arcot *cum* Chingleput: Non-Muhammadan Rural): Sir, it is with great regret that I rise to oppose this motion before the House. The regret is that I very strongly approve of the principles underlying the Bill, but I consider it is my duty on this occasion that I should not give support to this measure before the House on altogether different grounds. I consider the Government have awakened at last to the necessity of bringing in a measure of this sort in not allowing people to escape just taxation: There are many rich people who have escaped this just taxation for many a long year. All the same I consider this is the opportunity for us to give a warning to Government, a Government which indulges in the very happy expression of dogs barking and the caravan moving. Sometimes dogs bark and warn us of grave danger, and many a time I am sure my Honourable friends opposite who led a camp life have been warned of grave risks by the barking of dogs. I consider this the only occasion on which this House will exercise its constitutional right of refusing supplies to a Government where it feels honestly that it is wanting in moral sense, or rather that its moral sense has become blunt. I thought that since the years 1922 and 1923 we had so far progressed that the mentality of issuing crawling orders had disappeared. But that expectation appears to be in vain. I am convinced that the moral sense of the Government of this country is getting blunt, if not actually disappearing, and that is why I warn the Government of the grave danger they are running in the policy they are pursuing—at any rate if they are not pursuing it, they are allowing their agents to pursue it. I consider it is my duty to record my vote against this Bill, as I told you already, not because I condemn it on its merits, although I have a party mandate placed before me that I should vote against the Bill—I do not do so on that ground—I do not know on what ground my party has decided to vote against this Bill—but I have decided for myself that I should give a warning to Government. Sir, I come from a province where grave instances have occurred,—I will not say excess of use of authority under the Ordinances, but gross

abuse of authority has occurred under the very nose of the Government, and the Government have not taken steps to set right the wrong, if that wrong can be set right at all. I have two instances in view, though I can quote numerous instances. Any person who hears or reads of those instances or witnesses those instances cannot but burn with anger and indignation and hang down his head in shame,—such instances have occurred in a Government of which we have been hitherto proud. I refer to the cases of Dr. Paton and also the case of the *thali* incident in Malabar. Sir, persons belonging to these parts of India perhaps do not know the significance of the *thali* as much as we do in the South. The *thali* is considered so sacred that even professional robbers, the Kallars, Marwars and Thewars consider it part of their code of honour that when they denude the woman in the house of everything she possesses, they will leave the *thali* alone. We have heard of tyrannical Dravidian kings in the South; even they used to dread to remove the *thali* without substituting something for it at any rate. Those of us who have lived in the South will be familiar with the expression "*Marathali Ketti Adithan*"; that is to say, they would substitute the wooden *thali* for the golden one; but they would not remove the *thali* altogether; they would rather put a wooden *thali* and make the woman wear it. Now, Sir, that an officer should have dared to remove the *thali* of a married woman and yet hold office for weeks together so far passes one's comprehension. It is not as if the Government were not unaware of this wrong; it is not a wrong which can be set right. It is a crime of the worst kind which can be committed. Sir, when a woman has the misfortune to lose her husband and her *thali* is to be removed, this thing is done when all people are dead asleep, and children leave the house. This ceremony takes place in the early hours of the morning between 2 and 3 on the 10th night after the husband's death. This *thali* is removed by the hand of another widow; at that time all married women leave the house, and the *thali* is removed very quietly because the wall of a woman who parts with that *thali* is so deep that one dare not hear it. Now, Sir, what has the Government done, a Government which is not an ignorant Government, which is composed both in the Government of India and in the Madras Government of Indian Members, to set right this wrong? I should have expected the Home Member to have gone to the spot, held an inquiry on the spot and made an example of the officer who dared to commit this crime. Sir, what are the Government doing? They are calling for a Report; it is now more than a month.

Mr. K. Ahmed: What has this got to do with the Income-tax Bill?

Diwan Bahadur T. Rangachariar: I have a soft corner for the Finance Member, but I am sorry I have to oppose this measure, though perhaps for this crime he is not so much responsible as other Members of Government; but still he belongs to a system which I am condemning. It is not a question of the Finance Member's Bill or any other Bill; it is a question of supplies to a Government which is wanting in moral sense. And, Sir, as I was saying, the Government are calling for a Report. This is what they have done. It is not a case in which the public will be satisfied with any private censure which may be conveyed to the officer concerned. That noble service which has constructed the edifice of the Government of this country ought to rise with one voice against an officer belonging to that service who has been bold enough to commit a crime of this sort, but they

[Diwan Bahadur T. Rangachariar.]

will not do so because they are afraid. Government would have taken steps earlier if we had a Sir James Thompson here. Although he belonged to the Civil Service, when he was head of the Madras Government, he had no hesitation, when another member of the Civil Service misbehaved, in calling him to account and making him apologise for it publicly. We want men of that sort to take note of conduct of that sort. Sir, my friends over there are urging for a strong Government. No Government which is not strong is entitled to hold the reins of Government. I quite agree, but what is a strong Government? A strong Government is one which can govern itself in the first place; in the second place which can govern its own household before it chooses to govern the rest of the country. I ask this Government to govern its own household. I quite realise the difficulties of the Home Member over here or in Madras in dealing with a situation like this where they have to depend upon thousands of agents who have to discharge their very unpleasant functions. But, Sir, that itself is a reason why they ought to be more careful, and when they find abuses of this sort, they ought to come down on such officers with a tremendous force so that such things may not be repeated. I do not believe that a Government which is afraid of its own officers, which is afraid of punishing its own officers, is a strong Government. I rather guess that is the real reason why they have not taken steps in the way in which they should have done.

Sir, I refer to Dr. Paton's case. He is not my countryman; he does not belong to my community; he is a humane worker in the villages of Madras. He saw some accounts of the way in which things were being done in Madras, and he came to see for himself what was going on. He walked down the street known as the Rattan Bazar Street, and he was accosted. I do not know whether he is a Scotchman or Englishman, but he put on sandals or *chappals* as we call them, and walked along the street to see things for himself. He had a hat on; but he had other clothing also which indicated that he either belonged to some missionary body or to the Salvation Army. He is a missionary doing village work. He was accosted by the police sergeants, and he was beaten. Beaten, he walked home lame; immediately the whole matter was reported to the Chief Secretary. This happened in the city of Madras. Then the very next day they foisted a false case upon him, a deliberately false case, before the Magistrate. Afterwards the case was withdrawn. And yet what is done? What is done to the people who maltreated him like that? If such a thing could happen to a European British subject in this country and that goes unpunished, you can as well imagine what can happen to poor Indians. What have the Government done? Their moral sense is lacking, is getting blunt. Such a Government do not deserve supplies; that is the short straight ground on which I refuse to vote for this Bill. This is the only occasion on which any Finance Bill will be coming before this Assembly. The usual Finance Bill will not come up before this Assembly. So, while I do so with regret, I have no hesitation in voting against this measure on the short straight ground that a Government which can allow things to go on like this does not deserve any financial support. On that ground I oppose this motion which is before the House.

Mr. Abdul Matin Chaudhury (Assam: Muhammadan): Sir, I want to take this opportunity to explain why I have decided to remain neutral on this occasion. I am perfectly satisfied that the principle of the Bill is

essentially sound. In spite of the barrage of smoke screen that was raised by the heavy batteries that were fired the other day, the issue before the House is very clear, simple and plain. This Bill aims at bringing under the provisions of the Indian Income-tax Act the income derived from foreign investments. This is a simple proposition, a sound proposition and a reasonable proposition. Still there has been considerable opposition in this House against this measure. I can understand the opposition of a certain section of this House, the section that is represented by the European capitalists and the Indian capitalists. Dodging the income-tax collector is considered a legitimate game according to the superior ethics of high finance but I do not understand why the general body of Members of this House should be a party to helping these people to evade income-tax. My Honourable friend Mr. Mody may accuse me, as he accused my Honourable friend Mr. B. Das the other day, of expounding crude economics, but my belief is that to starve India of the capital that she needs for her development and to export it to foreign countries is unpatriotic. It accentuates unemployment in the country. It deprives Indian workers of the means of earning their bread, and I do not want to be a party and the House will not like to be a party to aiding and abetting these foreign investors in their unpatriotic adventures. There is another consideration. To the extent that these commercial magnates and their Indian allies are made to pay from their inflated pockets

Mr. H. P. Mody: Are there any inflated pockets left now?

Mr. Abdul Matin Chaudhury: Still they are bulging.

Mr. H. P. Mody: There are big holes in the pockets. They are not inflated.

Mr. Abdul Matin Chaudhury: To that extent, there is the possibility of the poor taxpayers in the country being relieved of their burden or at least their burden not being added to. If you prevent the Finance Member from taxing the rich, you cannot turn round and blame him when, because of that, he is forced to tax the poor. I have nothing but admiration for the splendid tenacity with which the Honourable the Finance Member is carrying on this lonely fight. He has antagonised the European Group, several Local Governments are opposed to him; and I have a suspicion that even among those Honourable Members who are sitting behind him, he does not carry their hearty support, but still as against the combined opposition of his own compatriots he is stoutly defending, on this occasion, the interests of the general Indian public, and I think it is the duty of every one who has got the interests of the general public at heart to stand by him at this juncture. Unfortunately, I have got to be neutral because my party has decided otherwise. Few Members are more reluctant to walk into the official lobbies than myself, but on this occasion I would have done so most gladly, but my party decision stands in the way and I have been forced much against my will to remain neutral, not from conviction but by the tyranny of party majority.

Sir Abdur Rahim (Calcutta and Suburbs: Muhammadan Urban): This Bill has been very fully debated, and I do not think I should feel justified in taking up much of the time of the House. I may say incidentally, if you will permit me and the House will permit me, that we are very glad to find my Honourable friend Diwan Bahadur T. Rangachariar again in his seat, and we hope that he will continue to add to the value of our debates by his weighty words.

[Sir Abdur Rahim.]

Sir, as regards the merits of the Bill, I do consider, speaking for myself, that the proposition that income derived by Indian nationals from their investments or business abroad should be liable to taxation like all other incomes of men residing in this country, is a sound one, and in ordinary circumstances I should have been perfectly willing to give my whole-hearted support to this measure. There are no doubt other considerations, for instance, whether it is advisable for us to handicap our own men in doing business in other countries. So far as business in England is concerned, and also possibly in Indian States, I believe there is an arrangement for refund in case of double taxation, but as regards other countries I do not think any such arrangement has yet been arrived at, and it may be very difficult to conclude such an arrangement. So far, therefore, as business with foreign countries is concerned, Indians, whatever little business they are doing at present, will be extremely handicapped if this Bill is passed. At the same time, the principle of the Bill to my mind is perfectly all right, but what is troubling me at present and a great many other members of my party is that we have just recently allowed the Finance Member to add very largely to the taxes and tariffs, and we are not persuaded that there is any necessity for adding further to the taxation of the people. I do not think—and I listened to the speech of the Honourable the Finance Member when he introduced the Bill with great care—that he sought to make out a case for adding to the taxes of this country. That to my mind is a very weighty consideration for not giving our support to the passing of such a measure at the present moment. Sir George Schuster was unable even to give us a fair estimate of the amount of revenue he sought to derive by this Bill. He could not, he told us in his speech, make a proper estimate. I think he said it was impossible to make an estimate of what would be the proceeds of a measure like this. Nor has he told us, as I have already stated, whether there is need for further taxation, and I do not think he has assured us that if this Bill was passed into law that the scale and level of taxation in other directions would be reduced proportionately. I do not see therefore that he is justified at present in bringing forward this measure.

As regards the flight of capital from India, it is quite easy to speak of it in general terms, but I do not think we have been given any data by which we can arrive at any accurate estimate of the flight of capital that has been taking place. No doubt as an Indian, I should be strongly concerned to see that all the capital that is available here is invested in the country and that India and Indian Labour, as my friend Mr. Abdul Matin Chaudhury has pointed out, should derive full benefit from investments in the country. But at the same time it may not be desirable for any country to put obstacles in the way of its nationals doing business in other countries. No other country attempts that. (*Sir Hugh Cocke* "Hear, hear".) I am very glad to hear my friend Sir Hugh Cocke say "Hear, hear". I believe it was one member of his group in this House that pressed the Honourable the Finance Member very strongly to extend the basis of taxation in this country. I wonder if he contemplated this sort of extension of the basis of taxation because, I understand, the European Group is opposed to this measure and very naturally so, because they are likely to suffer. At the same time, having regard to the fact that we are not convinced of the necessity of a Bill of this sort at the present juncture, having regard to the fact that the Finance Bill was passed in spite of opposition and in spite of the amendments we sought to make to it in this House, we as a party would oppose the passing of this measure to the Select Committee.

Mr. C. C. Biswas (Calcutta: Non-Muhammadan Urban): The House may remember that in March last when the Honourable the Finance Member introduced this Bill, I was one of the first to raise my voice of protest against it, and I moved for circulation of the Bill for opinions. I gladly acknowledge that my Honourable friend Sir George Schuster, when he noticed the volume of feeling which the Bill had evoked, readily acceded to the request for circulation. The Bill has since been circulated. Opinions have been received, and I think, Sir, it is a striking vindication of the attitude which we had taken up then that the opinions so far received disclose but a very few persons who have blessed this Bill. It was an obnoxious measure in every way, and if I may say so, it still remains an obnoxious measure, notwithstanding an assurance which I understand the Honourable the Finance Member gave in September last at Simla regarding one particular feature of the Bill, which did look like introducing a principle of unfair discrimination. I refer to the discrimination between persons resident and domiciled in India and persons resident but not domiciled in India. Sir, I was not present when Sir George Schuster gave that assurance, nor have I before me the terms in which that assurance was conveyed, but I gather that what he said was that he would agree not to treat this particular provision of the Bill as a question of principle, and that it would, therefore, be open to the Select Committee to amend or delete that provision, if it so desired. We must be thankful for small mercies, and it is a matter for thankfulness that we have at last succeeded in persuading Sir George Schuster that there is real injustice involved in the seemingly innocuous provisions of clause (c) of the proposed new section 4 (I), as distinguished from clause (b). Assuming for the moment that assurance is given effect to in Select Committee, what would be the result now? No doubt members of the European community who were sought to be exempted before, would now come within the mischief of the Bill but while you are trying to remove the exclusion of one class of persons, you would be at the same time bringing in another class of persons, and quite a large class, within its provisions. I refer to the thousands of subjects of Indian States residing in British India. I find, Sir, that my friend, Sir Cowasji Jehangir, went very fully into that aspect of the matter, and I do not propose to traverse the same ground. As to whether or not, in view of the assurance of the Finance Member the Bill can now go to Select Committee, is a question of procedure on which you, Sir, are alone competent to give a ruling, but apart from that, whether it can go to Select Committee or not, you cannot get away from the fact that the Bill, if it is amended in the way indicated by Sir George Schuster, would certainly not be the Bill which was before the House when it was introduced. The Bill would have been altered in a very material particular and it would affect a large class of persons who had no notice about it who had so far regarded themselves as perfectly safe, and who had no opportunity given to them of expressing their views upon the measure as it would touch them. That I do not consider to be fair. Therefore, Sir, the least which my Honourable friend the Finance Member can do is at any rate to agree to re-circulate the Bill for opinion, if he will not drop it outright. If I might venture to make an appeal to my Honourable friend, I would really ask him to drop the Bill altogether (Hear, hear), and I put my case on broad grounds. What, after all, is the purpose of the Bill? Is it additional revenue, or is it to stop or check the flow of capital out of the country, or both? The Statement of Objects and Reasons appended to the Bill refers to both these considerations.

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without laying any special emphasis on one aspect rather than on the other. But, Sir, we need not be in any uncertainty as to what Sir George Schuster really meant, and we might turn to another quarter for surer light. Sir, in his Budget speech of 1931, the Honourable the Finance Member was pleased to foreshadow this legislation, and in paragraph 89 this is what he said:

"I will only say that we intend to introduce legislation this session for the taxation of income from foreign investments on the lines of the law now prevailing in the United Kingdom. This legislation, if passed, may bring in some additional revenue, but I have not made any allowance for this in the budget estimates. Our *primary purpose* will be to remove an incentive towards the export of capital, which is extremely detrimental to Indian interests."

Sir, that, then, is the primary object of the Bill—to remove an incentive towards the export of capital which is extremely detrimental to Indian interests. Sir, I do not pretend to speak with authority on the subject, but speaking as an ordinary man of common sense, it seems to me that if it is sought to achieve such a purpose by means of an additional impost, it has got to be shown that the flight of capital out of India has been stimulated or encouraged by reason of the absence of such impost so far. Has that been done? Where is the evidence in support of that? What have we got before us except an *ipse dixit* of the Honourable the Finance Member that this possibility of escaping the payment of income-tax has been the chief influence which has led to the outflow of capital from India? Sir, my Honourable friend knows much better than any of us here what are the real factors operating either to coax or to force capital out of the country. Not this non-payment of income-tax, surely. I say, take the real measures which will help to improve the situation in that respect. I say, try and steady exchange, try and tone up your gilt-edge market, try and create confidence in your investors that they may stick to their holdings in India. Embark upon open market operations, not merely in respect of your Indian rupee securities here, but also in respect of your sterling loans in London; try and improve your ways and means position. But my Honourable friend is not inclined to take any action on those lines, action which alone can successfully keep capital in India. Sir, if you are really anxious that capital should not fly out of the country you ought to take such steps as will bring about that result. If you do that, then you will also be getting in additional revenue, and that without having recourse to this dubious expedient of levying a tax on foreign investments. You will be getting that revenue under your existing income-tax law. That would be a more certain way of getting in revenue, if revenue be one of the objects of the Honourable the Finance Member.

Sir, I do not suppose that my Honourable friend, Sir George Schuster, with all his love and partiality for this new measure, is a supporter of double taxation. I did not hear his speech delivered in the Simla session, but from the report of the debate which took place this session here the other day, I find that the Finance Member was at some pains to explain how double taxation could be avoided. That shows he does not favour double taxation. If I am correct in my assumption, then may I ask him how his Bill will secure the object which he is supposed to have in view? Is it suggested that in nearly all the countries to which Indian capital is now emigrating, there is no income-tax payable at all? I find Sir George

Schuster was interrogated by some friends on that question, and he mentioned Kenya as one of such countries. I do not know how many other countries have advanced to that degree of enlightened progress that no income-tax has got to be paid, but I believe I am not far wrong in saying that in most countries to which Indian capital is now finding a way, there is income-tax payable, and in some countries the incidence of taxation is perhaps higher than the Indian rate of tax. Sir, if that be so, how is your new taxation going to act as a check or as a deterrent? I should have thought that, to be effective as a check and as a deterrent the proposed taxation should be not in lieu of, but in addition to, the taxation which is levied in the foreign country. If Indian capital has to pay income-tax in the foreign country, and if payment of such tax there secures relief from the payment of another tax in this country, where, then, would be the check, where would be the inducement not to send out capital? The assessee pays the tax once only whether here or in the other country. Sir, I say therefore that if the object which the Finance Member has in view is to be achieved then the income-tax must be an additional burden; otherwise it will not have at all a deterrent effect. But, Sir, if you are going to grant relief against double taxation, I fail to see how you can possibly use this Bill as a means to prevent capital going out of the country. Sir, I do not suppose that the Finance Member will say that he does not propose to grant such relief. In the Statement of Objects and Reasons he says that in introducing this legislation he has been attempting to follow the lines of the English law on the subject. I have not made a careful study of the English Income-tax law, but from the little that I have read about it, I gather that double taxation relief is a part of that law. It is recognised in section 27 of the Finance Act of 1920. My friend in fact knows much better than any of us about the elaborate provisions which exist there for relief against double taxation, in respect of the Irish Free State as well as of the Dominions. Therefore, I say, Sir, that you do not gain anything whatsoever by levying this new impost if, at the same time, you are going to give relief against double taxation. Do not for a moment think that I suggest that double taxation relief should, therefore, not be given. As a matter of fact, I am sure my friend himself will not adopt that view, because that would be contrary to the English system itself which he has set up as a precedent for himself. The object not only in England but in all other countries where you have income-tax laws is to mitigate the hardship to the tax-payers as far as practicable. Sir, speaking about this relief against double taxation, I must, however, point out that there is an ominous silence in the Bill itself regarding the provisions which it is intended to make for such a purpose. The only section you have now is section 49 of the existing Act, but it is limited to United Kingdom taxation. The Finance Member, I hope, will inform the House what arrangements he has in view in order to ensure similar relief in the case of other countries.

Then, Sir, there is just one other point in this connection. If you are going to, as you must, grant relief from double taxation, consider if it be not a wasteful expenditure of time and money in trying to collect a tax, the whole of which or the greater part of which will have to be repaid in due course. My friend will possibly reply that the refund will be granted in the foreign country, and not here. But there are also bound to be cases in which, on the analogy of the principle which you find in section 49 of the present Act, the Income-tax authorities in India will have to

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grant such relief. So, I say from this point of view one has got to consider whether or not all this time and money will not be thrown away for nothing. I do not desire to refer to some of the administrative difficulties, because the matter has been discussed very fully in this House. Those difficulties have been very forcibly pointed out by some of the previous speakers who have taken part in this discussion at some stage or other. They have been pointed out by experienced officers of the Income-tax Department in different parts of the country. It will not do to brush aside those difficulties with a wave of the hand. It is always dangerous to prophesy, but I do not think one would be a rash prophet if one were to say that it might turn out at the end of the day that we are after all out on an illusory chase, and that if we are trying to get some additional revenue, we should probably be losing very much more than we can ever hope to get. On abstract grounds I should be quite prepared to concede that there cannot be much objection to making residence the basis of taxation. That basis is already recognised in the Indian system though to a very limited extent, *viz.*, in section 11 sub-section (3). I am also prepared to concede that is likewise the basis recognised in England. But what is suggested here is this that residence will be a basis of taxation in addition to source or origin; that is, the place where the income accrues or is received. My friend may say that the same is the case in England as well but there is this difference, that if your Bill is passed into law, then the result will be that residence and origin will both equally be the basis of taxation here, but without those compensating advantages which the English law gives to non-residents. That point, I find, has already been made by Sir Cowasji Jehangir in his speech, although my friend Sir George Schuster tried to switch him off his line of argument by suggesting that he was speaking of non-resident, whereas this Bill was concerned only with resident. That is not the point, Sir. The point is that if you have residence and origin equally as your basis of taxation, then, as in England, we have a legitimate right to ask, what are you going to do to provide these compensating advantages which the English law gives to a certain class of persons? The English law does contain provisions giving substantial relief to non-resident. But you do not find either in your existing Indian Income-tax Act or anywhere in the proposed Bill any indication that in your attempt to assimilate the Indian law to the English law, you propose to provide for similar relief to non-resident. It is a case of "heads I win, tails you lose". I submit that is not fair.

There are so many other points arising out of this Bill that one feels tempted to deal with them, but they have been referred to by my friends already, and I do not wish to tire your patience further by enlarging on them. But there is just one remark which I shall venture to make, and that is with reference to the suggestion made by some Members that this Bill is meant for the protection of capitalists only. That is not so. As a matter of fact the capitalist will be very little touched because he has got to pay income-tax in other countries and he will not have to pay the tax over again: for he can obtain a refund in due course. The large class of persons who will be affected will be the small Indian traders who have been carrying on business abroad in different parts of the world; the profits they are making may not be large enough to come within the income-tax law in those countries, but they would now be hard hit by this Bill if it

becomes law. The case of the Sind traders has been referred to by more than one speaker. Then, look at the Indian insurance companies, which stand to suffer very much, if you have these provisions. It is not the European community who will suffer so much, it is the Indians who will suffer most. That is what I feel. It is well known that the Indian insurance companies re-insure with British companies. It is not your intention to stop that. If that is stopped, that means that the Indian insurance companies will collapse, and that is a thing which none of us desire. Therefore, if we want to save the Indian insurance companies, we ought not to fasten this new additional burden on them. Sir, I oppose the motion.

The Honourable Sir George Schuster: Sir, I think that there is one point on which all sections of this House will be agreed, and that is that the course of the discussion on this Bill has been an unfortunate one. The Bill in a sense has received rather step-motherly treatment from the Assembly. It is unfortunate that the discussion should have had to be extended over a period of something like five months with very long intervals between the different stages of the debate. I am sure that my Honourable friends opposite will appreciate that it makes my task in replying somewhat more difficult, than it would have been if I could have wound up the debate on the same day when all the speeches had been made. But I would like to point out that this very fact of the unfortunate course through which the discussion of this Bill has gone is in a sense evidence of the Government's desire that it should not be rushed through the Assembly, but that there should be the fullest possible opportunity for debating its most important provisions. For we do recognise that this Bill is one of fundamental importance, which deserves the most careful consideration, and that it should be fully discussed and that when the time comes to vote upon it, it should, if possible, be voted upon by a representative gathering of this Assembly.

The fact that one has to reply now at the end of a debate which has extended over five months makes one's task rather a cold-blooded affair, but in a sense that is an advantage, because I think that the matters which have to be considered in connection with this Bill should be considered in a calm and cool atmosphere. It is not a matter for passion, it is a matter for careful thought, and I must ask the House to bear with me some time this morning if I go somewhat fully over the various points which have been raised. Possibly the fate of the Bill to-day may be such as to terminate its life before its purpose comes to any sort of fruition, but I am certain of one thing, and that is that if the House refuses to let this attempt go any further to-day, this is not the last which will be heard of measures of this kind. Therefore, I want to leave on record some answer to the various points which have been made, and if I weary the House, I hope they will excuse me in view of the importance of the subject.

Now, Sir, before I go into the details, I do want to remind the House of the broad issues which arise in connection with this measure. I want to ask them to keep the main objects which we had in view before them, and not to be distracted by side issues or incidental practical difficulties. Much has been made in the course of the debate by, what I am afraid I

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must call, a misrepresentation of the objects which I had in view in introducing this measure. The objects were two-fold, to remove what I maintain, and this I must specially emphasize to the House, to be an unnatural inducement to movement of capital from this country. That was our first object. The second object was to produce revenue. Now, as regards the first object it has been argued very frequently in this debate that what I had in mind was to stop an unnatural flight of capital, an exceptional flight of capital which was going on during the months when it happened that this measure came forward; and I was told that to remove this particular inducement of freedom from income-tax would have no sort of effect on the causes which were operating to encourage that particular form of flight of capital. Sir, I entirely agree with that line of argument, but it is not an answer to anything which I myself ever said. This measure was conceived in normal times; it was not conceived as a hurried measure to deal with the particular emergency. It is the result of very long discussions which, I can inform the House, have been going on practically ever since I myself took over my present office. It is a measure, as I say, conceived in normal times and designed to operate on normal forces. If any one in this House can stand up and say that the possibility of escaping income-tax especially when income-tax has attained the level which it unfortunately has attained in this country,—if any one can get up and say that the possibility of escaping that burden is not a powerful influence upon the way in which a man invests his money, then I would respectfully reply that he is turning his back on the truth and wilfully or unintentionally throwing dust in the eyes of the Assembly. If that were true, 99 per cent. of every argument which is ever used in any debate on income-tax in any parliament of the world is nonsense. We all know that the desire to escape income-tax has, in countries where the income-tax has become heavy, been a most powerful force operating on the way in which business is done and on the forms in which people invest their money. The fact that it is easy now for anybody in India to escape income-tax merely by sending his money abroad, whether he uses that income in this country or not, *must* operate as a most powerful inducement to attract money out of this country. That, Sir, is the factor, the main factor which weighed in my mind in introducing this Bill.

Then, I turn to the second main object, the question of revenue. As to this I freely admit I cannot give any figures. I deliberately refrained from giving any figures because we have no accurate evidence on what the amount involved might be and no means of obtaining accurate evidence on that subject. But we do know, we all of us know, individual instances which, even if one looked only to those individual instances, would have a powerful effect on our revenue. We all of us know those instances. I do not believe that there is a single man opposite who is familiar with business conditions who does not know of cases where, if this measure became law and the law were effectively applied, it would not produce substantial sums of additional revenue to the Indian exchequer. We did make some provisional calculations,—I refrained from quoting them because I considered them to be based on insufficient evidence—but in our own minds we thought that this measure in the first year might produce something like 50 lakhs of additional revenue. At any rate I am convinced of one thing—that if it is passed and if it is

effectively applied, it will have a substantial effect on our revenue position.

Now, in that connection I should like to refer to the remarks made by my Honourable friend the Leader of the Independent Party. His remarks I think were very much to the point. He said, Government have already come before the House and put before them what they consider to be a complete and adequate programme of taxation; why therefore should they come now with a new measure of taxation which was not included in that programme, and why,—to turn to the question which was asked by an Honourable Member of the European Group at the last stage of the debate—why should they do it just at the time when His Excellency the Governor General has given an assurance that Government contemplated no further Finance Bill or no further measure in the nature of a Finance Bill in this session? Well, Sir, I would remind the House that this measure was put before the House long before the emergency Finance Bill at the last session. The House knew perfectly well that it was before it, and that we intended to proceed with it, and we have always had it in mind as part of our proposals. But I freely admit to my Honourable friend that we have not included any estimate of revenue from this measure in our proposals, and therefore if it is passed, and if we derive revenue from it, it will be something extra to the programme which we put before the House. Now, on that subject I would say this. As things stand at present, in the present uncertainty which is really affecting all the operations of every Government in the world, no Government would refuse a measure which would give it an additional margin of safety; and I should very much like to have the possibility of an extra 50 lakhs or so as a margin of safety standing behind the programme which we put before the House. But, if it proves that that margin is not required, then most certainly it will have an effect on our general plan of taxation. And I would ask the House to look on this measure in this way—not as a new additional burden of taxation as something to be added to what is already imposed, but as a measure which is based on principles of justice, which if it were passed would put a burden upon shoulders that can well bear it, and which might put us in the position of reducing other burdens which bear much more heavily on the country's activities and the country's prosperity. It is not in our power to control the actual facts; it is not in our power to dictate whether we shall have a surplus revenue or not, but I will give the House this assurance—that if this measure were passed and if we found that we had more revenue than we required, we should certainly use that amount to reduce other and more objectionable forms of taxation.

Then, Sir, I would make one other point in this connection. My Honourable and learned friend Diwan Bahadur Rangachariar, whom we are all so glad to welcome back among us, justified his own attitude,—which I must say I listened to with the same regret which he himself expressed in disclosing it to the House,—by saying that to a Government such as we are he felt it his duty to refuse supplies at present. Well, Sir, I would ask him to consider what is the actual motion before the House. The motion before the House is for the reference of a measure, of the principle of which he himself has clearly told us he approves, to a Select Committee. Now, if the measure were referred to that Select Committee, it is not for me to say how long they will take to consider it and to render their report; but I do venture to say this—that they would take at least a

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sufficient time to make it quite impossible for us to introduce this measure in a form which would mean that the taxes would be levied in the next financial year. Much as I regret it, I think one has to face that as a necessity conclusion. We are considering something which does not really concern supplies for the next year. We are considering a principle which—I hope to develop this point further—the House really cannot reject without deliberately neglecting what are the true interests of India.

Now, Sir, as regards the main object of the Bill, I would only refer to what I myself said in introducing it. I fully recognise the force of many of the arguments that we have heard against it, but I would ask the House to consider the simple question which I put before them when I introduced this measure. Can any one possibly justify the present state of the law, the state of the law according to which if a man has money to invest in a business or to invest in securities, and if he considers how he is to invest it,—the state of the law under which now he will find that by sending it abroad either to England, the United States, Germany, France or anywhere else in the world he will be able to draw the dividends on his investment and bring them back to India the very next day and use them for his expenditure here without paying a penny of the income-tax to the cost of governing his country, whereas if he puts it in Indian securities he will have to submit to the unfortunately heavy burdens of our present tax?—Can any one possibly justify that state of affairs? I would ask the House to keep that simple point before them and not to be distracted by the difficulties and complications which will arise, I freely admit, in devising a practical measure to give effect to a change in the law. I will say no more about that at the present moment, but will turn to a consideration of some of those practical difficulties which have been so ably brought out in the course of this long debate.

Now, Sir, when I turn to the practical objections which have been raised, the first kind of objection is one of a general nature. I am told that my Bill will not achieve its objects, that it will not stop the flight of capital and that it will not be effective for raising revenue because we shall not be able to stop evasion. I have already dealt with the question of the flight of capital, and I think I need say no more on that subject. But, as a matter of interest I would like to take the House back over the course of the debate just to show them how, if I may say so, superficial and inconsistent some of the speakers have been in attacking my measure. I would like to remind my Honourable friend, Mr. Mody, of something which he said on the subject. This is what he said, as reported in the official report:

“My Honourable friend the Finance Member this morning stated that one of the reasons why textile mills were going out of British India and were locating themselves in Indian States was that there is no income-tax to pay. I hope I am not doing him any injustice when I state the position so badly;”

He has let the word “badly” stand, but perhaps he said “baldly”, (Mr. H. P. Mody: “Yes, ‘badly.’”)

“but if he really did say this and no more, then I am afraid he does not know the facts of the case. It is notorious that mills, and for the matter of that other industrial concerns, are going out of British India purely because labour conditions are much more favourable, labour is cheaper, *taxation is much lighter.*”

I am quoting my Honourable friend's own words. In the very same sentence in which he had given me lie he proceeds to advance the very causes on which I had based my argument

Mr. H. P. Mody: Surely my Honourable friend knows that I was referring to municipal taxation which is very heavy in all towns of any importance.

The Honourable Sir George Schuster: I think if my Honourable friend once admits that taxation has any bearing on the course of investment of capital, he has admitted my point.

Then, there was this second point, that we should not be able to stop evasion, that we should have no means of checking the honesty of returns. That point, I think, was very ably answered by my Honourable friend, Sir Muhammad Yakub, who said that if we were to be deflected from the proper course of policy of taxation by considerations of that kind, we should never get anywhere at all. That argument applies to every form of income taxation. If you are going to refuse to pass legislation because dishonest people may evade some of your provisions, I maintain that that is an attitude which will land the Government of this country in complete impotence. Moreover I do not admit the force of the argument. It may be more difficult to check the honesty of returns of income received from investments abroad, but that it will be altogether impossible to check it I entirely deny. Nor am I prepared to take my stand on the position that the public with which we are dealing will be so dishonest that our measures will be entirely valueless. I suggest that for an Indian Assembly to take that view is hardly doing justice to the people of India.

Then I turn to more technical points. We have heard much of the special hardships that would be imposed by the operation of double income-tax; and here I would like to refer to one of the earliest speeches in the debate, the speech of my friend, the Deputy President. He is one of those who accepts the principle of the Bill, but he took the rather curious stand that although he was whole-heartedly in favour of the principle of the Bill, he would only consent to its imposition as legislation subject to the fulfilment of a condition precedent. This is what he said:

"If I oppose this Bill even at this stage, it is not because I refuse to subscribe to the principle and a very healthy principle too, enunciated by my Honourable friend, that no encouragement should be given to an Indian citizen to invest his money abroad and thereby escape taxation—it is not because I refuse to subscribe to that principle—I whole-heartedly subscribe to the principle—but, Sir, I oppose this Bill at this stage, and I would have no hesitation in advising my Honourable friends to throw out this motion, because there are not existing those conditions precedent which alone can justify the enactment of a measure of this nature and so long as those conditions precedent are not satisfied, it will not be justice on the part of the Government to impose this additional burden on the trade, commerce and industry of this country."

Now, the conditions precedent on which my Honourable friend insisted were that, before we asked the House to pass this legislation, we should have entered into reciprocal arrangements as regards double income-tax relief with every country of the world. That, he told us, is what the British Government had done, and he told us further that we were not justified in asking the House to pass such a measure unless we had put India in the same position. The actual facts of the matter are that the United Kingdom has reciprocal arrangements only with the Dominions and

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not with a single foreign country; and if we had to wait until all foreign countries entered into reciprocal arrangements with us we should have to wait till doomsday. I maintain it is an entirely impracticable suggestion. If we are to look upon the British Government as a model in this matter—and many speakers have told me that they are quite prepared to take that course—then I say we can follow the British Government and introduce this measure before we have entered into those reciprocal arrangements which my Honourable friend claims to be made conditions precedent.

As a matter of fact the whole of this argument about double taxation is grossly exaggerated. I confess that my main objective in this measure is to get at the investment of funds in foreign securities. I shall deal with the question of people who put their money into businesses abroad later, but the main object which we have in mind is to get at the ordinary investor, the man who buys dollar bonds or South American bonds rather than Indian investments. As every man knows, who does that sort of business with his own money, there is practically not a single investment with which the ordinary man deals on which income-tax is deducted at the source; he can buy any New York investment; he can buy any South American bond, any foreign loan even sterling loan on which interest is paid in the London market and he can draw his interest on those investments without deduction of income-tax at the source at all

Sir Cowasji Jehangir: Every sterling loan?

The Honourable Sir George Schuster: All the Government of India sterling loans; any South American sterling loan; any Japanese bond, anything which the ordinary investor buys, he can buy as I say in London and draw the interest without the deduction of income-tax. He does not have to go through the trouble of claiming double income-tax relief, it is the easiest process in the world. He can even buy a great many British Government securities if he wishes to do so. He can buy the 5 per cent. War Loan or the 4 per cent. Funding Loan and one or two others without having income-tax deducted at the source. So that I maintain that the whole of this argument about double income-tax is, as I have said, grossly exaggerated. I wish in fact that it was not so easy—but it is almost fatally easy to escape income-tax for an Indian who wishes to invest his money abroad.

Now, I would like to turn to one of the most substantial points which has been made in the course of this debate about the treatment of business profits. One of the main lines of attack from those who have taken this measure seriously and really tried to deal with it in a practical way has been that, although we have claimed that we have followed the principles of the British law, we have in fact departed from those principles in one very important particular. And that whereas in England a man who has money invested in a business abroad is entitled to treat his profits on that business as income from foreign possessions and therefore not liable to tax unless remitted to this country, we, according to our proposals will make the whole of those profits liable to tax whether they are remitted to this country or not. Now, Sir, on that subject I venture to say that some of the statements which have been made in this House as to the position under the English law are not strictly accurate. It seems to have been supposed in those statements that under the second

part of Case V of Schedule D of the United Kingdom Act, a resident in the United Kingdom who has a foreign business is liable to income-tax only on so much of the profits as are remitted to the United Kingdom in the previous year. That is not correct; that is not really the position under the English law. The second part of Case V of Schedule D relates to income from other possessions arising outside the United Kingdom. Now, so far as businesses are concerned, this applies only to a business that is wholly conducted outside the United Kingdom, in which for example the man who is resident in England is only a sleeping partner. If a resident takes any part in the control or conduct of a foreign business, such business will be regarded under the English law as one carried on partly in the United Kingdom and partly outside the United Kingdom, and it will then fall under Case I of Schedule D, and the tax will be payable by a resident on the entire income whether remitted or not. I would also like to remind the House that even as regards the position of the sleeping partner, although I believe there has been no change yet made in the British law, it is not regarded in England as a just provision. I would like to quote from the Report of the Royal Commission on Income-tax of 1920 where they say the following:

"We understand that there is at present some diversity of practice in assessing the income of a British resident who is a sleeping partner in a foreign firm controlling and carrying on business entirely abroad. In our opinion no distinction should be drawn between a sleeping partner in these circumstances and a British shareholder in a foreign company, and we consider that the partner should pay the tax from the amount of his share in the firm's profit. If the law does not impose liability to this extent, we recommend that the necessary alteration should be made."

Now, Sir, in stating what is the actual position under the British law, I must say, that it is extremely difficult always to be exactly accurate, because a great deal depends on the practice adopted by Income-tax Commissioners, and as a matter of fact their practice varies considerably in actual fact from place to place. I am not, therefore, claiming that under the English law at present a sleeping partner in a foreign business is liable to income-tax on the whole of his share in the profits of a foreign business, regardless of the fact whether they are remitted to England or not. The point I am making is, that if there is any exception in England at all, it only extends to the sleeping partner

Sir Hugh Cocke (Bombay: European): I think, Sir, the Honourable Member is rather confusing this matter; if I may say so. Income from foreign possessions is not confined to business profits; it also includes Bankers' interest abroad; it is not confined under that particular case—Case V of Schedule D—to business profits abroad, but also to Bankers' interest abroad.

The Honourable Sir George Schuster: I am quite willing to take it from my Honourable friend that that is correct, but I was dealing with the argument that our proposals as regards *business* profits were much harsher than the British proposals, I will not dispute his point as regards Bankers' interest, because that does not touch my real point. My point is that, as regards business profits, there is in England only one very limited class of case in which business profits are treated differently to ordinary income from investments, and that is the case of a sleeping partner in a foreign business which is entirely managed abroad, as regards which I am prepared to take the statement of the position of the British

[Sir George Schuster.]

law to be that the sleeping partner in England is not liable to tax on his share of the business profits unless they are remitted to England. Now, although I have stated quite clearly what is the position as regards the English law, and although I think I have shown that a good deal that has been said in the course of this debate is incorrect, I do not wish to say that we should absolutely insist on adopting the principles of the English law. If in the Select Committee it was felt that the case of foreign business does deserve special treatment, that is most emphatically a point which could be dealt with there. I am perfectly willing, speaking for myself, to have that whole question fully discussed, and it is just one of those points which ought to be thrashed out in Select Committee. In any case, to base the opposition to the Bill on the fact that it is treating businesses much more harshly than the British law treats them, that is a point which I say is incorrect, and no one would be justified in voting against this motion to send the Bill to Select Committee on that ground.

But, Sir, before I leave that subject, I would like to ask the House to come to a proper sense of proportion as regards the interests involved here. We have heard the most eloquent pleas on behalf of the small man who is engaged in business abroad, and we have been told that it ought not to be the policy of any Government to discourage its nationals from going abroad to trade. But what are we doing in this matter? All that we are seeking to do is to put those people on a parity as regards taxation with people who do their business and trade in India. Why should this House be influenced by arguments, which as far as I can see, are based on the principle that it is much better to encourage a man to go and trade abroad, than to encourage him to trade in India. I should have thought that if there was any national interest involved in the matter it was far better for Indian business to be developed in India than that it should be developed in Kenya, China or in any other part of the globe.

Sir Cowasji Jahangir: Provided he can do some business; but if he cannot then he starves in India.

The Honourable Sir George Schuster: Well, I would like to answer my friend by saying that there are ample opportunities for business in India, and if India is suffering from anything, it is the lack of business enterprise and capital for developing possibilities that lie within her own doors.

Then, Sir, there is another special point which has been made about the case of Insurance Companies. Here again—I do not wish to take the time of the House by going into complicated details,—I think I may dispose of the point quite shortly by saying that that again is essentially a point for the Select Committee. We are quite prepared to adopt the same principle which has been adopted in the United Kingdom as regards the life insurance funds of Insurance Companies, and I am perfectly certain that the Select Committee, particularly a Select Committee composed of the Members whose names are down in the motion which I am putting before the House, are quite capable of devising machinery which will protect all legitimate interests of Insurance Companies.

Then another point has been raised about agricultural incomes. We are told that agricultural income in India is exempt from income-
 1 P.M. tax, and asked, will the same apply, if this Bill is passed, to-

receipts from agricultural income earned in Indian States? There again my answer is that that is a point which can be dealt with in Select Committee. There is not the slightest difficulty in introducing some special provision as regards agricultural income if the Select Committee thinks on full consideration that that is just. I think myself that there is a great deal to be said on the other side, but it certainly would not vitiate the principle of this Bill or create an insurmountable obstacle to Government if the Select Committee took the view that agricultural income should, wherever it is earned, be exempted from tax.

Then, another point that has been made is the question of the general reactions of this measure on the Indian States. There I was rather interested at the sort of point which was developed in the course of the last speech that we heard. The speaker seemed to think that whereas a European who resides for his business life in India should be subjected to income-tax on the whole of his income wherever it was earned, a subject of an Indian State, a Marwari for example, who settles down for his business life in Calcutta should not be treated in the same way. I do not know on what ground my Honourable friend can support that contention.

Mr. C. C. Biswas: On a point of personal explanation. That was not the point I made. What I said was this, that by reason of the assurance which the Honourable the Finance Member gave in Simla, the aspect of the Bill had changed materially and a new class of persons who were so far safe were going to be hit. I was not suggesting for one moment that I approved of the taxation of the European community or of the Marwari community.

The Honourable Sir George Schuster: I am very glad to learn that my Honourable friend was consistent. I was afraid he was not. It does not affect the main course of my argument at all, and I shall deal with his particular point later. I was dealing with the question of the possible reactions on Indian States, and particularly on subjects of Indian States who reside for business purposes in British India. There again I freely admit that many complicated issues arise, and I would give the same answer that that is an aspect of the matter which should be studied in Select Committee. I think the Select Committee will have to deal with the whole question of residence, what constitutes residence for income-tax purposes, how far you should go in taxing a man who spends only part of his time in India, at what stage you should say he must be treated as a resident who owes economic allegiance to British India. That is a very complicated question, and I feel it is one which, as I have already said in the course of this debate, would have to be dealt with by the Select Committee.

Then, another point which was raised by my Honourable friend Diwan Bahadur Harbilas Sarda—he in the very early stages of this debate said that he was perfectly willing to support the principle of this Bill and to vote for my motion provided that we were prepared to subject to Indian income-tax salaries and pensions of Indian officials paid abroad. I would put it to my Honourable friend that that is an irrelevant point. That has nothing whatever to do with the principle of this Bill, and I would ask him, not, on the ground that he cannot get everything that he wants by this Bill, which is dealing with quite a different subject—not on that ground to reject the Bill which otherwise is I maintain necessary in the interests of India.

[Sir George Schuster.]

The last point which I wish to deal with specially is the question of the principle of discrimination. I think I explained very fully to the House that when we came to consider this measure, we realised at once that we were up against a very difficult point here, as to whether there should be any discrimination between the man who is domiciled and resident in India and the man who is only resident in India, and we felt that the only way, the best way in which we could put the issue before the House,—always with the idea that we should leave ourselves in the hands of the House in this matter—that the best way in which we could put the issue before the House would be to incorporate as nearly as possible in our original Bill the provisions of the English law on the subject. I was perfectly frank about the matter, and in introducing the Bill I acknowledged that there was a class of people doing business in India but not domiciled in India, to which there is really no parallel in England and that therefore special considerations in India did arise. And I think the House may congratulate itself on the frankness with which this very difficult question has been treated in debate, and I should like, if I may, to congratulate my Honourable friends *on the right on the frank and public spirited way* in which they have themselves treated this question in which their own interests are so much involved. It has often been said in the course of the debate that I, by making the statement which I did, have altered the Bill. I have done nothing of the kind. I have merely stated what the Government's attitude would be if the Select Committee proposed to alter the Bill in that way. I think again that it is not an easy point. When you come to consider it in a practical way, there are very many extremely hard cases which will arise if the so-called principle of discrimination is entirely done away with, and I think the Select Committee, if it comes to them, would have to go most carefully into the whole question. I have only said that we would place ourselves entirely in the hands of the Select Committee in that matter.

I have only one more special point to deal with before I finish and that is this. It was argued by my Honourable friend Sir Cowasji Jehangir—and the point has again been made this morning—that by admitting the possibility of doing away with the so-called principle of discrimination in the Bill, we have really opened the door to a complete alteration of the Bill, and that if the Bill came out from the Select Committee with that significant change, there would be before the House a measure entirely different to that which was originally introduced and which was circulated for opinion, and, as my Honourable friend Mr. Biswas has just pointed out, that there would be large classes of people in India, particularly subjects of Indian States, who are resident in British India for the purposes of their business, who, if that principle of discrimination is taken away, would be liable, just as domiciled subjects of British India would be, to full income-tax—that they have not had before them the provisions of a Bill of that kind, and therefore if the House were asked to consider it now it would be unfair to large classes of people in this country. I think there is a great deal in that point, but my answer to that is very simple. It is perfectly open to the Select Committee to say that the Bill has been so altered that it requires re-publication—there is a special provision to that effect under the Standing Orders. It is also perfectly open to the Select Committee to recommend that the Bill has been so altered that it should be re-circulated for opinion, and if I might express a personal opinion, I should myself say that that would be the right course for them to take. It will involve lengthening the consideration of this measure, but that is a thing

which I think should be willingly faced. The measure is of such importance that it ought not to be killed outright now, and it ought to receive the fullest possible consideration from the whole country. Therefore I would ask all those who feel any hesitation about voting for this motion,—which I would again remind them is not a motion for passing the Bill but merely for referring to Select Committee and which merely involves the approval of a general principle which most of those who have opposed the Bill and the present motion have told me they approve of,—I would ask all those who are in that position to reconsider their attitude and to look at it in this way and say to themselves, “Here is a measure which we all of us feel on broad grounds is right. There are practical difficulties in the way. We do not like it exactly as it stands. We object particularly to the principle of discrimination which in the Bill as originally introduced is included. But all the practical points on which we feel difficulty are points which can be dealt with in Select Committee, and if the Select Committee alters the Bill in such a way as to make a substantial change in the interests of various people who would be affected, then that Bill can again be circulated for opinion. We can in that way ensure, on the one hand, that no sort of injustice can possibly be done to any class of people in the country, and, on the other hand, that at the same time we shall not involve ourselves in what may be described as the odium of having rejected this principle which is really necessary in the national interests of India”.

Sir, I would come back at the end to my main point—Is there a single man in any part of this House who can get up and with his hand on his heart, and speaking with a full sense of truth and honesty say he can justify the present state of the law, according to which a man can send his money abroad and pay no income-tax, whereas if it is invested here he is subjected to his full burden as a citizen of India? Is there a single man in the House who can really get up and justify that position? If the answer is “No”—and I feel convinced that in his secret heart everybody must say “No”—then I say the House will be absolutely wrong if it rejects this motion. I have put the position very clearly and frankly. I have put it to the House that, in passing this motion, they will not be committing themselves to any dangerous step, whereas in rejecting this motion, I would put it to them that they will be appearing before India in a light in which none of them can desire to appear.

Sir, we have been asked—and the point has been made frequently in this debate—“Why do you, the Government, go on with this measure? Your own people do not want it. Your officials do not want it. You are getting into serious embarrassments with your friends, the Europeans, Your Provincial Governments have told you that they do not like it, and yet you go on with it. Why do you do it?” Sir, the answer is a very simple one, although my Honourable friends opposite may find it difficult to believe. We are going on with it because we feel it to be right. We cannot, I cannot, reconcile it with my conscience not to take the opportunity to alter the present state of the law which I am convinced is doing great harm to India. If that principle is not to be accepted, then this House must take the responsibility. Speaking for myself, I should be saved a great deal of labour in the Select Committee and a great deal of my own money, but, Sir,—and I hope the House will believe that I am honest, when I say so,—I shall be the loser of something which, while I am serving India, I value more, and that is my pride in being a Member of this House and my respect for my Honourable friends opposite.

Mr. President: The question is:

"That the Bill further to amend the Indian Income-tax Act, 1922, for certain purposes, be referred to a Select Committee consisting of Mr. R. K. Shanmukham Chetty, Sir Hari Singh Gour, Sir Cowasji Jehangir, Mr. S. C. Mitra, Mr. Muhammad Anwar-ul-Azim, Sir Hugh Cocke, Mr. N. N. Anklesaria, Sir Abdullah Suhrawardy, Raja Bahadur G. Krishnamachariar and the Mover, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The Assembly divided:

AYES—41.

Acott, Mr. A. S. V.	Macqueen, Mr. P.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.	Muazzam Sahib Bahadur, Mr. Muhammad.
Allison, Mr. F. W.	Mukherjee, Rai Bahadur S. C.
Azizuddin Ahmad Bilgrami, Qazi.	Parsons, Sir Alan.
Bajpai, Mr. R. S.	Rafiuddin Ahmad, Khan Bahadur Maulvi.
Banerji, Mr. Rajnarayan.	Raghubir Singh, Kunwar.
Bhore, The Honourable Sir Joseph.	Rainy, The Honourable Sir George.
Brown, Mr. R. R.	Rajah, Rao Bahadur M. C.
Clow, Mr. A. G.	Rama Rao, Diwan Bahadur U.
Cosgrave, Mr. W. A.	Rastogi, Mr. Badri Lal.
Crerar, The Honourable Sir James.	Ryan, Mr. T.
Dalal, Dr. R. D.	Sahi, Mr. Ram Prashad Narayan.
DeSouza, Dr. F. X.	Santos, Mr. J.
Dutt, Mr. Amar Nath.	Sarma, Mr. R. S.
French, Mr. J. C.	Schuster, The Honourable Sir George.
Gidney, Lieut.-Colonel Sir Henry.	Seaman, Mr. C. K.
Graham, Sir Lancelot.	Sheer Muhammad Khan Gakhar, Captain.
Gwynne, Mr. C. W.	Wajihuddin, Khan Bahadur Haji.
Howell, Sir Evelyn.	Yamin Khan, Mr. Muhammad.
Jawahar Singh, Sardar Bahadur Sardar.	Young, Mr. G. M.
Joshi, Mr. N. M.	

NOES—47.

Abdur Rahim, Sir.	Mitra, Mr. S. C.
Azhar Ali, Mr. Muhammad.	Mody, Mr. H. P.
Bhuput Sing, Mr.	Moore, Mr. Arthur.
Biswas, Mr. C. C.	Morgan, Mr. G.
Chaudi Mal Gola, Bhagat.	Murtuza Saheb Bahadur, Maulvi Sayyid.
Chetty, Mr. R. K. Shanmukham.	Pandit, Rao Bahadur S. R.
Chinoy, Mr. Rahimtoola M.	Puri, Mr. B. R.
Cocke, Sir Hugh.	Puri, Mr. Goswami M. R.
Das, Mr. A.	Rajah, Raja Sir Vasudeva.
Dumasia, Mr. N. M.	Ranga Iyer, Mr. C. S.
Fox, Mr. H. B.	Rangachariar, Diwan Bahadur T.
Gour, Sir Hari Singh.	Sarda, Diwan Bahadur Harbilas.
Gunjal, Mr. N. R.	Scott, Mr. J. Ramsay.
Hari Raj Swarup, Lala.	Sen, Pandit Satyendra Nath.
Heathcote, Mr. L. V.	Sitaramaraju, Mr. B.
Ismail Ali Khan, Kunwar Hajee.	Studd, Mr. E.
Isra, Chaudhri.	Sukhraj Rai, Rai Bahadur.
Jadhav, Mr. B. V.	Sykes, Mr. E. F.
Jehangir, Sir Cowasji.	Tait, Mr. John.
Krishnamachariar, Raja Bahadur G.	Thampan, Mr. K. P.
Lahiri Chaudhury, Mr. D. K.	Wilayatullah, Khan Bahadur H. M.
Liladhar Chaudhury, Seth.	Wood, Sir Edgar.
Maswood Ahmad, Mr. M.	Ziauddin Ahmad, Dr.
Misra, Mr. B. N.	

The motion was negatived.

The Assembly then adjourned for Lunch till Twenty Five Minutes to Three of the Clock.

The Assembly re-assembled after Lunch at Twenty Five Minutes to Three of the Clock, Mr. President in the Chair. .

THE WIRE AND WIRE NAIL INDUSTRY (PROTECTION) BILL.

PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Sir George Rainy (Member for Commerce and Railways): Sir, I lay on the table the report of the Select Committee on a Bill to provide for the fostering and development of the wire and wire nails industry in British India.

THE BAMBOO PAPER INDUSTRY (PROTECTION) BILL.

EXTENSION OF TIME FOR PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Sir George Rainy (Member for Commerce and Railways): Sir, I move:

“That the time appointed for the presentation of the report of the Select Committee on the Bill further to amend the law relating to the fostering and development of the bamboo paper industry in British India be extended to the 17th February.”

The Committee has found it impossible to complete its report in time to present it to the House. Therefore, I move this motion.

The motion was adopted.

THE SUGAR INDUSTRY (PROTECTION) BILL.

EXTENSION OF TIME FOR PRESENTATION OF THE REPORT OF THE SELECT COMMITTEE.

The Honourable Sir George Rainy (Member for Commerce and Railways): Sir, I move:

“That the time appointed for the presentation of the report of the Select Committee on the Bill to provide for the fostering and development of the sugar industry in British India be extended to the 22nd February.”

The motion was adopted.

THE INDIAN PARTNERSHIP BILL.

Sir Lancelot Graham (Secretary, Legislative Department): Sir, I move:

“That the Bill to define and amend the law relating to partnership, as reported by the Select Committee, be taken into consideration.”

The report of the Select Committee, Sir, was laid by me on the table of this House on the 26th January, and I think that Members have had sufficient time to examine it, and we are extremely gratified to find so very few notices of amendment. Before I go further, I should like to express the gratitude of Government to those members of the Committee who made it possible at a considerable sacrifice of their private time to attend in Delhi for a full fortnight before the deliberations of this House began and to devote a very large portion of their time to the examination of this Bill and the reports upon it. It is not usual to go into details as to what happened in the Select Committee, but I wish particularly to acknowledge the services of my friend, Diwan Bahadur Harbilas Sarda as Chairman. He

[Sir Lancelot Graham.]

fulfilled that role at a very short notice owing to the lamentable absence of my other friend Diwan Bahadur Rangachariar. The changes made in the Bill by the Select Committee are not, as one would have expected, changes of substance, but very great care was taken by the members of the Select Committee to understand all the points which arose out of the opinions which have been received by Government. I think those changes are sufficiently noted upon in a somewhat full report of the Select Committee. The measure of our work is not necessarily to be estimated by the amount of what appears in the report of the Select Committee, because in many cases, after a great deal of argument, we decided to leave the provisions of the Bill as they stood at introduction. For example, we spent a great deal of time on the definition of "partnership" and we came to what I consider a very satisfactory conclusion, but only after a great deal of argument, that the definition as contained in the Bill as introduced could not be bettered. Then, Sir, we gave very great attention to questions arising out of clause 19 of the Bill. It is a very difficult question relating to implied authority, and after giving special attention to the opinion received from Calcutta, we decided materially to alter the form of that clause so as to provide for the extension of the implied authority of a partner. For that purpose we have inserted the words, "In the absence of any usage or custom of trade to the contrary" and thereby I think we have supplied a measure of elasticity which should be found very valuable indeed. The next provision on which we spent considerable time was a provision dealing with the position of minors and, I think, what we have done is not of a controversial nature at all. It was solely intended to be by way of elucidation. Again, we spent a great deal of time on it. Although, perhaps, what actually appears from the Bill may not appear to be a very great change, the members of the Committee are convinced that these changes entirely clear up the position as regards the minors when admitted to the benefits of the partnership. On other alterations, Sir, I do not propose to speak in detail. It is a matter of some regret that this Committee which laboured so amicably for so many days did not produce an entirely unanimous report as the Chairman has appended a minute of dissent. I am happy, on the other hand, to say that that dissenting minute does not raise questions of what I may call vital importance. It deals with matters of degree. I do not propose therefore at this stage to anticipate what I may say later when the Honourable Member moves his amendments. I would conclude, then, by saying that, I think, we may say that this is a non-controversial measure and that, if passed by this House, it will effect a very great improvement in a very important branch of the law.

Sir, I move.

Diwan Bahadur Harbilas Sarda (Ajmer-Merwara: General): Sir, I rise to make some observations on this Bill and show how I am opposed to it. A separate Act dealing with partnership is now for the first time being framed. Up till now provisions in various Acts, principally the Indian Contracts Act, contained the law governing the partnerships. This Bill is based principally on the English Partnership Act of 1890 and several clauses of it have been bodily taken from that Act. The only important new feature of this Bill and which really has nothing to do with the law governing partnership is contained in Chapter VII which deals with provisions regarding registration of firms. As I shall show later on, the partnership law is complete without any provisions regarding registration of firms being made a

part of it. The real and pure law of partnership embodied in the Act is unobjectionable and is nothing but the existing law. No case however has been made out for the enactment of the new law as embodied in Chapter VII. The English law provides for compulsory registration of partnership, but as I have said in my Note of Dissent:

"trade and commerce in India have not always followed the same line of development as trade in England has done, and as conditions of life differ materially in certain respects in the two countries, I think that the means employed in England to achieve an object are not always suitable to be employed in India to achieve the same end. In view of this difference, I am apt to think that the provisions contained in Chapter VII of the Bill should be very cautiously and very gradually applied to India. The framers of the Bill, in enacting sub-clause (3) of clause 1 have recognised the difference between the business conditions in India and those in England by providing that clause 68 of the Bill shall come into operation 12 months after the rest of the Bill comes into operation, in other words, after people in India have to some extent become familiar with the principles underlying the Bill.

Clause 68 is not only the most vital clause in Chapter VII—the most important Chapter in the Bill—but it introduces a provision on which serious difference of opinion exists."

This Bill has a little history of its own and is really the outcome of the demand made by the mercantile community, the foreign merchants in India, trading chiefly in Bombay, Madras and Calcutta. The Honourable the Law Member has been advocating the enactment of a measure complying with their request for a long time. In 1918, giving evidence before the Industrial Commission, he supported their claim by advocating that a measure like this should be enacted. But now, after a long period of incubation, this measure has been brought into being. It has been carefully nursed by my Honourable friend the Law Member during 1930 and 1931 and is now presented to you to be fully endowed to govern and control all partnership business in this country. He knew that it was difficult to persuade the country to adopt his child if its real character was clearly and fully unfolded to the view. He has therefore decided, past master of the art of advocacy that he is and skilful in putting facts to suit the objective in view, not to provide in a plain straightforward manner what he wants to be enacted and which has been demanded by the European mercantile community in India, but to make such provisions in the Bill as to compel achievement of the same object. Instead of providing in the Bill that every partnership shall be compulsorily registered, while he tries to show that firms are at liberty to register or not, and they can start business without registration, he makes provision in the Bill which would bring all partnership business to a stop if the firms are not registered. All business ultimately rests on the protection of judicial courts for its continuance. No business is possible if courts refuse to give relief. This Bill refuses relief if a firm does not do what my Honourable friend wants it to do. Is this not compulsion? What is the difference between dragging a man along a particular road or holding a pistol to his head and warning him that he would be shot if he took any other road than the one pointed out to him to take. The report of the incubating committee, the special committee, says:

"It has been pointed out repeatedly with much force that to require small or ephemeral joint ventures to be registered would produce little public benefit and would act as a clog on petty enterprise; and such ventures are so numerous that any small benefit to be derived from registration would be counterbalanced by the clerical labour involved. Hence, there have been proposals, like that of the Civil Justice Committee, that firms with less than a certain capital should be exempt, or that the disability to sue arising from non-registration should apply only to suits above a certain value; but none of these proposals have survived examination."

[Diwan Bahadur Harbilas Sarada.]

We do not know what that examination is: The report goes on:

"The capital of a firm may be an elusive quantity and it is frequently a fluctuating quantity; and to use the valuation of a suit in order to determine whether the suit lies or not is likely to lead to improper devices and to perjury."

Nobody has ever advocated that and nobody ever said that the valuation of a suit should be taken as such:

"The Bill seeks to overcome this class of difficulty by making registration optional, and creating inducements to register which will only bear upon firms in a substantial and fairly permanent way of business."

Creating inducements is only a paraphrase of holding threats, holding over the head of firms a Damocles sword. The honest course would be to do what has been done in England as mentioned in para. 12 of the report, Para. 12 says:

"In addition to the *pure law* of partnership the Bill contains an important new Chapter on the registration of firms—Chapter VII. The history of the proposals for some measure of this kind in India goes as far back as 1867, when the Bombay Chamber of Commerce first made the suggestion that legislation should be undertaken for the compulsory registration of firms. The step was then deemed to be impracticable, but ever since at frequent intervals various mercantile bodies, sometimes supported by Local Governments, have pressed for some such legislation in the interests of the trading public. The movement was strengthened by the passing of the Registration of Business Names Act, 1916 (5 and 6 George V. c. 58), which furnished a useful precedent. This Act *inter alia* makes the registration of all firms compulsory, attaches a penalty to failure to register, and renders persons who are in default incapable of bringing a suit to enforce their claims as partners, whether against their co-partners or against third parties."

This, as I have said, fully proves my point that Chapter VII is not a necessary or an essential part of the law of partnership, and the framers of the Bill admit in this paragraph that this chapter is not a necessary part of the law of partnership. I will here say a word or two as to why the mercantile bodies have asked for registration of firms and who these mercantile bodies are. The mercantile bodies mean European mercantile bodies who deal with Indian firms. Now, the difficulties experienced by foreign firms were chiefly experienced in dealing with Hindu joint family firms. Ostensibly this Bill does not apply to those firms and absolutely no material has been placed before the Select Committee on which I had the honour to serve, nor before the House, to show what real, practical and serious difficulties arise by partnership firms, as distinct from Hindu joint family firms, remaining unregistered. Allegations have been made and we are asked to accept them on the experience of the Honourable the Law Member and other gentlemen. The report says:

"The details of the scheme are briefly as follows. The English precedent in so far as it makes registration compulsory and imposes a penalty for non-registration has not been followed as it is considered that this step would be too drastic for a beginning in India and would introduce all the difficulties connected with small and ephemeral undertakings. Instead it is proposed that registration should be entirely within the discretion of the firm or partner concerned; but, following the English precedent any firm which is not registered will be unable to enforce its claims against third parties in the civil Courts:"

Of the three elements going to make that provision, only one has been taken which is the most vital and which makes the other two unnecessary so far as the enforcement of that thing goes:

"and any partner who is not registered will be unable to enforce his claims either against third parties or against his fellow partners. One exception to this disability is made. Any unregistered partner in any firm—registered or unregistered—may

sue for dissolution of the firm. This exception is made on the principle that registration is designed primarily to protect third parties and the absence of registration need not prevent the disappearance of an unregistered or imperfectly registered firm. Under this scheme a small firm or firm created for a single venture not meeting with difficulty in getting payments need never register; and even a firm with a large business need not register until it is faced with litigation. Registration may then be effected at any time before the suit is instituted; the rights of third parties to sue the firm or any partner are left intact."

Now, the ostensible reason for foisting on the partnership law the provisions regarding compulsory registration of partnerships is given **3 P.M.** as the protection of third parties. If this is so, why should the Bill bar the institution of all suits between partners themselves? And then how does it protect the third parties? An unregistered firm is allowed unrestricted liberty to deal with third parties. It is not enacted that no unregistered firm shall deal with third parties; it only says that no suit shall be filed by an unregistered firm. How does that protect the third party? It only imposes a disability on unregistered firms. An unregistered firm may deal with third parties, and when it has to file a suit against them it gets itself registered. In what does the protection then lie? In what respect and in what way are third parties protected from injury? Not a word has been said as to the injury, which third parties are saved from, by clause 68. If the object of registration is purely to provide for disclosure of all the partners in a firm and nothing more, then that purpose is fully served already by rules 1 and 2 of Order XXX of the Civil Procedure Code. Rule 1 of Order XXX says:

"Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct."

Rule 2 says:

"2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the same suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct."

These Rules are quite sufficient to secure disclosure of the names and addresses of the partners of a firm. These rules also show why registration is not an integral or a necessary part of a partnership law which is now embodied in this Bill. The whole object of the Bill, Sir, is not to protect any one, neither the partners themselves against one another,—and such a claim has not been advanced even by the framers of the Bill,—nor third parties, but to comply with the demand of the mercantile bodies named above. Big Indian firms are mostly Hindu joint family firms and in the nature of things and also for other reasons difficulties were sometimes experienced in following all the members of those firms when recovery of money from them was concerned, and the European firms through their Chambers demanded registration. But the fact that Hindu joint family business is governed by Hindu law raised an insuperable difficulty in giving the relief demanded by these merchants. These difficulties were voiced before the Industrial Commission and the Civil Justice Committee and elsewhere. A tentative effort to tackle the matter has therefore been

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made by the Honourable the Law Member by initiating this measure. The report of the Special Committee in paragraphs 13 and 14 says:

"All the proposals made at various times were considered by the Government of India, but owing either to lack of unanimity among the proposers or to difficulties in the proposals themselves, no conclusions were come to which could form the basis of a Bill which held any promise of a successful passage through the Indian legislature.

These difficulties related to—

- (1) Hindu undivided families,
- (2) short-lived partnerships, and
- (3) firms in a small way of business.

and a short discussion of these will disclose the reasons why nothing so far has been done and will help to explain the present proposals.

A Hindu undivided family may carry on a family business exclusively for its own benefit, or it may carry on a business with one or more outsiders as partners with the family. To require that each member of such a family should have his name registered in a register of firms has all along been deemed to be an impracticable step. Every male child born would have to be registered and every death or partition that occurred would involve changes in the register. It has been recognised that such a proposal would be resented by the Hindu community and probably would not be effective. However, this difficulty may be avoided, as was pointed out by the present Law Member in his evidence before the Industrial Commission in 1918."—(*I do not know that it can in any way be avoided*)—"A Hindu undivided family carrying on a family business may have many of the characteristics of a firm, but it is not a firm. Partnership arises only from contract and is not created by status or obtained by birth. The law of partnership has no application to these families, whose internal relations and liabilities for the acts of members are governed entirely by the Hindu Law. Even in the case where a trading family enters into partnership with outsiders no special provision for the registration of its members is needed. As partnership arises only from contract, only that member who makes the contract of partnership with outsiders can be considered to be a partner. He may or he may not represent the whole family, and only his interest or the whole joint family property may be liable for the debts of the firm;"—(*and here comes the smoke screen*)—"but these are questions of fact mainly, or, where they are mixed questions of fact and law, the law is not that of partnership but is the Hindu law. If the partner member does represent the family and if his share of the profits of the firm goes into the family stock, then the whole of the joint family property will be liable for the debts of the firm. But if the partner member is trading on his own responsibility and keeps the profits to himself then the creditors of the firm cannot realise their claims against the firm from the joint family property, beyond the extent of the interest of the partner member. It will be seen that the principles of law involved are principles of the Hindu law, and that they are the same principles which are applied to all dealings by the manager or representative of the joint family."

This is all done by representing a wrong view of the Hindu joint family system and without openly subjecting the joint Hindu family to the provisions of this Bill, that is, the provisions of Chapter VII. But in order to accomplish the same thing in an indirect manner the Honourable the framer of the Bill is trying to carry out the idea of which

Diwan Bahadur T. Rangachariar: You say that Chapter VII applies to a joint Hindu family?

Diwan Bahadur Harbilas Sarda: It does not ostensibly; but in effect it will apply because as he says if the partner member gives his profits or shares the losses with the joint family, every member of the joint family will be liable. That just shows that is the law, but the present law does not require registration. In order to bring all those into the law plainly now without giving them, as I will show later, the safeguards which they can get if there were registration of all the members, is not right. In 99 cases out of 100, a member of the joint Hindu family acts as *karta* of the family when he forms partnership with an outsider, and according to the

Honourable the Law Member in all essentials of legal requirements, the whole family of all the co-parceners become liable for partnership business and therefore in all essentials are given the status of partners in that partnership firm. If the law is to be honestly applied in a straightforward manner all members of the joint Hindu family must from the very start be held as members of the partnership firm and as such must be registered as such. But the Honourable the Law Member, seeing what a storm it will raise in the country and finding that no legislature would pass such a Bill if he did not keep away from them the real objective of the Bill, has, in an indirect manner embroiled a Hindu joint family and made them subject to this Act without giving them or their co-parcener opportunities to safeguard themselves which they are rightfully entitled to have. You will see that the Honourable the framer of the Bill has, thus by ignoring the characteristics and rights of co-parceners under the Hindu law, set at naught the Hindu law and has subjected members of the joint Hindu family to the liabilities imposed by Chapter VII without corresponding safeguards, by simply forgetting their existence and taking a member of a family who joins partnership with an outsider as the whole family. This will make it clear that the object of the Bill is to satisfy by some means or other the demand of the foreign traders.

Mr. S. C. Mitra: Why of the foreign trader?

Diwan Bahadur Harbilas Sarda: I will show you how.

Diwan Bahadur T. Rangachariar: They wanted registration of Hindu joint families.

Diwan Bahadur Harbilas Sarda: Yes, they do, and that has been accomplished now without ostensibly doing so. This is from the Madras Chamber of Commerce:

"We have carefully considered the reasons for excluding joint Hindu family firms from the operation of the Bill and although there is a great deal to be said in favour of the view that the legal incidents relating to such firms should be governed by the Hindu law and such provisions of the partnership law as may not be inconsistent therewith, there is, in our opinion, no reason why joint Hindu family firms should not be registered in the same way as other partnership firms under the provisions of Chapter VII of the Bill.

Judgments of the Privy Council, e.g., '30 Indians Appeals' lend support to the view that when there is partition in a joint Hindu family the members of which carry on an ancestral business, the mere severance in status would also effect a severance of the joint status of the family with regard to the business and that the business would thereafter be a contractual partnership business.

We are therefore of opinion that the present opportunity may be taken to obviate such frauds by making it compulsory that joint Hindu family firms should equally with partnership firms be subjected to the operation of the registration provisions of Chapter VII of the present Bill."

This is what they demand and it has been accomplished not by registering every member but by registering the *karta* of the whole family as a partner:

"In the case of joint Hindu family firms, the particulars of registration would be somewhat as follows:

- (1) Names of all the members constituting the joint Hindu family and their age.
- (2) The names of all the members of the family actively participating in the business.
- (3) the birth of a new member or the death of any existing member.
- (4) any partition effected and the particulars of such partition."

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As I have shown, Sir, and as rules 1 and 2 of Order XXX of the C. P. C. lay down, the enactment of this Bill as far as the rest of the Bill—with the exception of Chapter VII—is concerned, is quite unnecessary, if the disclosure of the names of the parties to a partnership firm is the real objective, Honourable Members will have seen that the real object of the Bill is not to protect the third parties but to satisfy the demand of a certain section of the mercantile community. But, Sir, at what cost is this done? How business people will be handicapped, how terribly small traders and shopkeepers in villages and in mofussil towns will be handicapped can better be imagined than described. What an amount of discontent would spread in the country when business is already suffering so much.

I shall now show to the House that the opinion of the Indian business community is almost unanimously against it. It is true that many of the Judges and practising lawyers, whose work will be facilitated by the enactment of the whole of this Bill, support it. The European Chambers of Commerce also support it, because it is at their suggestion that this measure has been initiated. This Bill has been circulated to 12 bodies of Indian traders and business men. I have carefully counted the opinions and examined the opinions circulated, and I find that so far as the Indian business men and traders are concerned, only 12 bodies have been consulted. Ten of these twelve oppose Chapter VII of the Bill

Mr. S. C. Mitra: Not the whole Bill.

Diwan Bahadur Harbilas Sarda: It is Chapter VII which is the whole Bill; the rest is nothing but putting together in the form of a separate enactment all the provisions that at present govern the Partnership law; it is only Chapter VII which is a new feature which is objectionable, and which is practically the whole Bill we are discussing. Now, in counting these 12, I leave out of account of course the Country League of Simla and the Bangalore Traders' Association, which I believe are dominated either by European traders or anti-Indian influences. Out of the 12, ten, as I have said, oppose the measure. Even the remaining two regard the measure as a harsh one, and one suggests that the measure should be amended. Now the 12 bodies are:

1. The Delhi Piece-goods Association.
2. The Cloth Merchants' Association, Nagpur.
3. The Indian Merchants' Chamber, Bombay.
4. Bombay Piece-goods Association.
5. Karachi Indian Merchants' Chamber.
6. The Seed Traders' Association, Bombay.
7. Bombay Shroff Association.
8. Grain Merchants' Association, Bombay.
9. The Marwari Chamber of Commerce, Bombay.
10. The Sholapur Merchants' Chamber.
11. Indian Chamber of Commerce, Coimbatore.
12. Burma Indian Chamber.

Apart from these, Sir, there are also others who have expressed their disagreement with the enactment of Chapter VII. The Secretary, Indian Merchants' Chamber, Bombay, says :

"In the opinion of the Indian Merchants' Chamber, having regard to the conditions prevailing in India and to the fact that capitalists are shy to invest their monies in adventures, such a provision would be detrimental to the interests of the commercial community as a whole, and would prevent capitalists from coming forward to help small firms in their adventures. It will also be seen that a firm constituted for a single adventure is also bound to be registered; otherwise it is liable to similar consequences resulting from non-registration."

The Bombay Piece-goods Native Merchants' Association say this :

"The most objectionable innovation that my committee find in the Bill is the chapter relating to the registration of firms. My committee are of opinion that it is not only unnecessary, but inadvisable to make any attempt directly or indirectly to secure the registration of firms for reasons which are set forth below.

It is remarkable that the desire for making registration of firms compulsory has emanated only from European Chambers of Commerce in India, and it is at the same time singular that as far as my committee are aware no recognised Chamber of Commerce of Indian Merchants, or Individual, or Trade Association has ever approached Government with a similar request. It seems the European Commercial Community in India have taken up the matter to require registration of firms with a view to introduce *in toto* the provisions of similar legislation in England, but it is obvious that the conditions prevailing in India and England are so dissimilar that any attempt in this direction is bound to lead to great hardship to the Mercantile Community. The chief difficulties that will have to be faced are referred to by the Special Committee in their report in paragraphs 12 to 14 of their report. The reasons which the committee have, however, found to ignore these difficulties carry no conviction. It is true that in so far as the Joint Hindu Family system is concerned, the provision of registration will not be applicable to those who take a share in the Joint Family Firm by birth, but still in regard to those partnerships in which a Joint Family is a partner with outsiders, there is always likely to be difficulty in deciding as to who should be registered as a partner in his representative capacity. Besides, the questions in regard to the representative character or otherwise of a person are likely to arise so often that the purpose of Registration is bound to be nullified at any rate so far as the Hindu Joint Family firm is concerned. My committee are therefore of opinion that though these matters are pertaining to the Hindu Law, they are so much inextricably connected with the Law of Partnership that it is not possible to ignore them.

My committee are also of opinion that the hardships for small traders and members of short-lived partnerships are still greater. In regard to the latter, the number of such ephemeral partnerships and ventures is so large that if the Chapter on Registration is made applicable to them, a very large number of such partnerships will be very adversely affected. In most cases, these ventures are embarked upon at the spur of the moment, and if the Law were to insist upon their registration, the purpose for which they are started are likely to be frustrated. In big commercial towns like Bombay and Calcutta, it is not unusual for a number of merchants to join in partnership for a single venture in trade instantaneously. The amount of business that is done through these agencies is quite considerable so that the requirements of Registration of these partnerships is likely to make this important and legitimate trade activity almost impossible. The consequences arising out of these are so serious that in the opinion of my committee the Commercial Community of India is bound to oppose them.

My committee feel that Government are surely not unaware of the hardships to which the small trading firms are likely to be put. Most of them do business in a small way and are quite ignorant of the complicated machinery of registration. The result will be that in spite of very elaborate organisation, many of the firms will remain unregistered to the great detriment of the partners who will run the risk of unknowingly losing their money.

In this connection, my committee have noticed that though the Special Committee on the Bill were aware of all these difficulties, they have tried to pass over them by imagining that Registration is only optional. As a matter of fact, the penalties imposed are so heavy that it is straining the language too far to say that the provisions are merely optional."

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The Karachi Indian Merchants' Association say:

"Registration is rendered compulsory by section 68. These two drastic provisions and the provisions of Chapter VII ought to be modified so as to reduce disabilities on unregistered firms."

The Seed Traders' Association, Bombay, say:

"Under the provisions of the Bill even casual partnerships which are formed for single transactions are liable to be registered. In the nature of things it is impossible to effect their registration, inasmuch as most of these ventures have to be embarked upon at the spur of the moment. My Committee therefore feel that if these ephemeral partnerships have to be registered such legitimate ventures are likely to be adversely affected.

But the most adverse effect of necessity for registration will be felt by small trading firms."

The Bombay Shroff Association say this:

"My committee are of opinion that as interest on trading capital is taken as an item."

Sir Lancelot Graham: Sir, I do not wish to interrupt the Honourable Member. I appeal on behalf of the Reporters because it is of very great importance that the reports should be accurate. Could you, Sir, suggest to the Honourable Member that, in reading selections from opinions, he should read them at such a pace as we can understand and the Reporters also can take them down?

Mr. President (The Honourable Sir Ibrahim Rahimtoola): Please read it a little slowly so that the House may be able to follow.

Diwan Bahadur Harbilas Sarda: I will try to cultivate the habit which has been cultivated by Members on the opposite Benches of replying to questions so slowly and in such a low tone as not to be heard on this side of the House so that no supplementary questions may be put. The Grain Merchants' Association, Bombay, say:

"Although the registration is stated to be optional the disabilities arising out of the non-registration are such as to make registration almost compulsory. . . . My Committee suggest that the Chapter on registration should be entirely dropped from the Bill."

I want to read this

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Honourable Member is quite welcome to read as long as he likes. The idea is that he should read it in such a way that Honourable Members may be able to follow.

Diwan Bahadur Harbilas Sarda: I am only reading from the papers circulated by Government, and I know that it is not necessary for my object, if this Bill can be considered thoroughly, to read all these

Mr. President (The Honourable Sir Ibrahim Rahimtoola): No one has objected to the Honourable Member reading. It is suggested that he should read slowly to enable the House to follow what he is reading.

Diwan Bahadur Harbilas Sarda: Very well, Sir. The Marwari Chamber of Commerce, Bombay, say:

"While therefore nominally it is optional for a firm to get itself registered or not, in practice either every firm will sooner or later be compelled, by force of circumstances, to embrace registration or business in partnership will be discouraged and business enterprises will be materially crippled as a result. This is a very radical and sweeping change from the existing position. . . . If this clause is not cut out, serious harm will be caused to Indian trade and commerce. In rural areas throughout the country there are innumerable, little partnerships formed for small ventures or undertakings from time to time in course of the year and particularly during the movement of crops. It is simply absurd to suggest that the illiterate, simple-minded folk who enter into these partnerships should go through the troublesome process of registration and conform to the elaborate rules of intimating changes in their firms, places of business, etc. . . . Besides, such a sweeping change cannot be justified except on the ground of a general and widespread dissatisfaction with existing conditions. My Board are not aware of any general complaint in respect of disclosure of composition of partnerships. In view of this my Board strongly recommend that clause 68 should be deleted."

The Sholapur Merchants' Chamber say:

"Section 68 of the Act would be a great hindrance to the progress and development of trade in India."

The Indian Chamber of Commerce, Coimbatore, say:

"In respect of the registration of firms, the provisions are likely to create a lot of complications and uncertainty. Any firm need not register except when faced with litigation and if a suit has to be filed to-morrow, the firm may, in view of the suit to be filed, make several statements regarding its constitution and register itself to-day, especially as the matter stated therein is to be 'conclusive proof' as against the persons making it. If such a procedure is possible as has been stated in page 5, paragraph 17 of the report of the Select Committee, where is the necessity for registration at all and what is the benefit to be derived therefrom? At the outset it is clear that the one important factor which can be said in favour of registration of firms is that there can be no uncertainty with regard to the constitution, terms of working of the firm, and any third party wishing to deal with the firm can with security do so as the constitution, etc., is preserved by registration which is conclusive proof of the matter registered. . . . If the third parties do not require the firm to register, then a suit can be filed by the firm against third parties, and third parties cannot in such a suit take any objections. . . ."

The Burma Indian Chamber of Commerce, Rangoon, say:

"Having regard to the conditions now prevailing in India, my Committee believe that the proposed disability would be regarded as a hardship."

Thus, it is clear that practically the entire business community of India which has been consulted—and it has to be remembered that the business community of India alone is affected by this Bill—opposes it. Will the Government now withdraw this Bill if, as my Honourable friend Sir Lancelot Graham said the other day that in order to get support to a measure it must be shown that there is an overwhelming support in its favour? If that principle holds good, I wonder whether, after what I have shown that not only is there no overwhelming support to the Bill but that the overwhelming opinion of the community affected by it opposes it,—I wonder whether they will withdraw the Bill.

Mr. L. V. Heathcote (Nominated Non-Official): Mr. President, as this Bill is a Bill which is mainly concerned with re-stating the law on partnership, I would not ordinarily wish to take part in a debate on the motion that the Bill be considered. But as my Honourable friend Diwan

[Mr. L. V. Heathcote.]

Bahadur Harbilas Sarada has made several references to the British mercantile community in India and their claims, I think perhaps it is up to me to make a few remarks in regard to this motion.

It was suggested that Chapter VII of the Bill which deals with the registration of firms was inserted by the Government of India to meet the claims of the British mercantile community. Now, the claims of the British mercantile community are that registration should be compulsory on the same lines as it is compulsory in England, which has the effect of preventing a partnership firm from instituting a suit unless the cause took place after they were registered. Consequently that is definitely compulsory registration. Another claim that has been advanced by a large part of the British mercantile community is that the Hindu undivided family should be made to register in the same way as an ordinary partnership. Now, neither of these provisions which have been claimed by the British mercantile community finds any place in this Bill. So, it seems to me an altogether wrong suggestion that my Honourable friend has just made, that this chapter of the Bill finds its place there because the Government wished to meet the claims of the British mercantile community. The last speaker made reference to the fact that there was no advantage to the third party from the registration of a partnership, and endeavoured to lead the House to believe that because this Bill does not attempt to alter the rights of a third party to institute a suit against an unregistered firm, therefore the third party was in no better position than without this measure. That surely is hiding from the House the obvious underlying feature of the need for registration, namely, that there can be very few firms trading for any length of time and to any considerable extent who sooner or later will not be confronted with the necessity for instituting a suit themselves, and because they will never know at what time that necessity may come upon them, it will be inevitable that such firms of standing will take care to register themselves and thus enable them to institute a suit whenever the necessity arises. That will therefore provide the security for the third party who wishes to know whom he is dealing with. At present there is no means of ascertaining whether a person who appears to be a partner in a private firm is in fact a partner and when a suit comes to be instituted it appears that that man who has considerable wealth behind him and upon whose known reputation as a wealthy man credit was given to the firm, when that suit comes to be instituted it is found that he is merely a creditor of the firm who has lent money upon perhaps onerous terms of interest but still is not a partner and therefore not liable to share in the debts proved against the firm. I feel therefore that all that was said by my Honourable friend Diwan Bahadur Harbilas Sarada in regard to this chapter not providing what it sets out to provide was a very considerable misrepresentation of what it actually does. One might also be led to suppose from what we have just heard that registration was a very arduous and difficult process to go through and that consequently small firms, of which there are many thousands in this country, managed by people not ordinarily expected to know the details of the law on such subjects as partnership, would find the process of obtaining registration such an arduous and difficult one that it will be impossible for them to carry out the provisions of this Bill if it were passed. That surely is a very gross exaggeration of exactly what is involved by this

measure which gives inducements to firms to register. There is no necessity to register in the first place until the actual need to institute a suit arises. When that need arises it must surely be always necessary or so often as to make it practically correct to say, always for the firm wishing to institute a suit to go to somebody in the legal profession and asks him to start the ball rolling, and the first question that that legal professor or advocate or vakil or solicitor will put is, "Are you registered?" If the firm is not registered, it will surely be a very simple matter, in fact it is a very simple matter, for the firm to become registered and then the court will admit the suit and there will be no difficulty to the small firm to carry out the provisions of this Bill when the need arises.

To refer for a moment again to the claims of a large section of the British mercantile community that the Hindu undivided families should be brought within the scope of this measure, it was made very clear to me during the discussions in the Select Committee that this was a matter which would find no proper place in a Bill dealing with partnerships, and whatever may be the views of those Chambers who have asked for protection in the matter of Hindu undivided families, whatever their opinion may be as to the desirability of having a measure which will enable traders to ascertain with whom they are dealing, whether it is with a Hindu undivided family or with a particular member of that family, it is obvious to me that this is not the proper place in which to carry that measure into effect. The last speaker referred to the allegation that the existing law was adequate to enable a third party to ascertain who were partners of a firm, but surely he omitted to draw the attention of the House to the fact that it is only when a suit is instituted that that information becomes available. One wants to know beforehand with whom one is dealing, whether the fortune of the people in the firm is sufficient to justify one in giving them that measure of credit for which they are asking, and although we have heard a long list of names of bodies who have objected in a greater or lesser degree to this chapter on registration, the fact remains that the other members of the Select Committee had no complaints to make of the unfairness or harshness of the provisions under this chapter. Consequently I have to support the motion now before the House.

Diwan Bahadur T. Rangachariar (South Arcot *cum* Chingleput, Non-Muhammadan Rural): I have great pleasure in supporting the motion before the House, and I congratulate the special committee and the Select Committee on the way in which they have discharged the arduous task they have undertaken. The Bill, as produced by the special committee, composed as it was by the ex-Advocate General of Calcutta and my Honourable friend the present Advocate General of Madras, is a worthy one. They examined the law on the subject with great care and detail and as regards my Honourable friend Sir Lancelot Graham, although we have quarrels with him for his political sagacity and ingenuity in framing Ordinances, we have no quarrel with him so far as this Bill is concerned. We must also congratulate him on the way in which he has discharged the task which he has undertaken. Sir, it was a very difficult subject which they had undertaken to legislate upon, and a separate Act was long needed in regard to partnership law. The provisions of the Contract Act dealing with partnership were insufficient and in many cases required to be clarified, as has been admittedly acknowledged by all authorities who

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have had to deal with the subject. In all Presidency towns where these questions of partnership law come frequently into play, such difficulties have been met very often, and therefore I think the trading community should congratulate itself that they can now look to a particular Act for finding out the rights and liabilities for themselves and as between themselves and also between themselves and third parties codified in one single Act instead of their having to look at various portions of the Contract Act. There is not much to be said, Sir, by way of criticism of the Bill. The whole thing has been thoroughly investigated but there are one or two points which require some examination at the hands of this House, which I will mention at once before I proceed to deal with the points taken by my learned friend to my left. There is one portion of the Bill making the minor personally liable for contracts and liabilities entered into even before he becomes a partner of the firm, when he attains majority. I can quite understand the justice of enforcing all claims against his assets in the firm, but I do not see what justice there is in giving a personal right against the minor when the minor elects to continue the partnership of the firm into which he was taken as a partner as a minor, or rather to the profits of which he was admitted to a share. So long as he enjoyed the profits and those profits formed the assets of the firm, let the assets be held liable, but why make him liable for liabilities incurred from the date of his being admitted to the benefits of the partnership, which may be long before he elected to become a partner? It is very difficult for a minor, when he elects to continue a partnership the benefits to which he has been admitted, to investigate all the accounts and find out how they stood and what real liabilities he was undertaking when he elected to become a partner

The Honourable Sir Brojendra Mitter (Law Member): The law of limitation is a safeguard.

Diwan Bahadur T. Rangachariar: That is true. Still, my Honourable friend knows there may be acknowledgments, there may be payments, there may be various other ways in which the law of limitation may be extended and it would be no use invoking the law of limitation because the acknowledgment of partnership by the managing partner would be quite sufficient to keep the debt alive and all these other things, so that it will not be real protection. I therefore have serious doubts as to the justice of making the minor personally liable and making his other properties liable for contracts entered into before he entered the partnership. I do not see any comment on this point in the Select Committee's Report. I looked for it in vain, although my friend, Mr. Varadachariar, a leading lawyer of my Presidency, took the objection in his opinion on the Bill. I should like to be enlightened on this point as to how the Honourable the Law Member proposes to justify the insertion of such a clause. The persons who enter into contract with such a business, when they know there are minors entitled to the profits, do not look to the minor's person to enforce their claims which arise, and they do so with their eyes open. Here is a man entitled to profits, and they know perfectly well that he is not a partner and that therefore he may or may not elect to become a partner later on, and they never enter into a contract with any idea of enforcing any claim they may have against the person of the minor who afterwards chooses to become a partner, and therefore it appears to me that it is an injustice to make the minor

liable personally and to hold all his other properties liable and not merely the assets of the firm. I think, Sir, some method should be found of easing the burden on the minor, as such a burden would make his task very difficult after he attains majority. Otherwise, Sir, the provisions of the Bill are very reasonable. I cannot help feeling that much of the opposition to chapter VII of the Bill is based on some real misapprehension as to the scope of that chapter. My Honourable friend has been confusing the issue by saying that this change has been made at the request of the European firms and so on. He should consider the question on its own merits. After all, we are dealing with a trading business. A Hindu joint family business may be a trading business or mere agriculture. A joint family business is not touched by this Bill or by that Act: a joint family business arises out of status, not out of contract. This partnership law deals with what is secured by way of contract, by way of agreement between parties, so that a Hindu joint family trading business is not affected by this Bill. The ordinary Hindu law governs it. Therefore, let there be no misapprehension on that point. What is it that the European firms wanted? They wanted to know the varying changes in a Hindu family when they wanted to trade with that family, and they wanted the compulsory registration of each Hindu joint family, to which of course there are numerous objections and these have been recognized as valid by the Special Committee, and I am glad to learn that the Select Committee also agreed in that objection, notwithstanding the very strenuous representations made to the Select Committee by those European Chambers of Commerce, who wanted such registration. The question is different when a Hindu joint family as such joins third parties in a business, and enters into contract with third parties in conducting the business. Now there is no Hindu joint family without the *Kartha* or manager. The whole of the business is carried on, whether it is a family trading or doing agriculture—mostly agriculture—or any other business with the family *Kartha* or manager; he will not be the eldest member necessarily but he does the business for the family, and therefore if a Hindu joint family enters into a contract of partnership with third parties, we must assume that the *Kartha* does so or that the managing member does so. The managing member has got the power under the Hindu law to do various things for the benefit of the family, and all those acts are binding on the family in other respects. Similarly when the *Kartha* deals with third parties and enters into business transactions with them, then the Bill makes the provision that he alone shall be looked to as the person liable. I do not see what injustice there is in enacting such a provision. On the other hand you must look at the matter from this point of view. Our people are very shy of trading, you must encourage them to trade, and make it easy for them to trade with these foreigners as we call them, with these exploiters as some call them. When some of our people have to trade with them, why not make it easy for them to do so? Why throw difficulties in the way of trading with these people? There are thousands of people who are so dealing with them, and if there are difficulties which one class of people feel, unless the remedy proposed is injurious to the interests of the people, why should we stand in the way of such facilities being given? My Honourable friend has not really produced any instance of hardship or injustice which will be inflicted upon a Hindu joint family when it enters into a contract with a third party. If the manager is the party who enters into the contract, he must have authority to discharge that contract; he must have authority to get the enforcement of that contract; he must have

[Diwan Bahadur T. Rangachariar.]

the authority to deal with it in the usual way he does. I do not see what injustice there is in that. If a member of a joint family misbehaves or if he defrauds the members, then you have got the remedy against him and against the share of his property. Otherwise you will be throwing difficulties in the way of the Hindu joint family which is really transacting valuable business.

I am really unable to see what difficulties there are which are created by this registration process. On the other hand, registration is not made compulsory from the very beginning. As my Honourable friend himself has pointed out, this registration is absolutely useless so far as parties dealing with it are concerned because you may register the previous day and bring the suit the next day. Persons may enter into a contract and then at the time the suit is brought, just a day previous registration is made and deemed enough to enable the firm to sue. The Committee have made a provision in that way against which we need not object. I can say this, that it is not in compliance with the demand of the European community who wanted registration even before the contract was entered into. Now, there is really one difficulty which I feel in the matter of registration. I see that clause 10 provides for what is known as partnership for particular ventures or adventures or undertakings. Now, apparently under section 68 even such a partnership would have to be registered before members can enforce their rights under such a partnership. For instance, take the case of building a hall. A and B may enter into a contract. Or it may be for supplying a particular article. There, again, A and B may enter into a partnership for the same purpose. I do not understand the necessity of compelling them to register before they can enforce their rights against each other or against third parties. I understand that the object of registration is to conduct partnership where business is carried on for a sufficiently long period. But where it is limited for a short time—and in this connection I must appeal to business men,—and where it is limited for a single purpose, why should you compel them to register in order to enforce their rights? Although clause 10 provides for partnerships of that sort, still I do not see any provision in the Bill dealing with such partnerships. All partnerships are treated *en bloc*, and I do not see any particular provision being made for this limited or particular partnership. Apparently, they are all treated on the same footing. That, I should think, is a real hardship. I know of many cases where partnership is entered into for one transaction only. Such cases ought to be properly dealt with. They are partnerships pure and simple, but at the same time I do not see what reason or logic there is in enforcing the registration of such partnerships. I also sympathise with my Honourable friend to my left and also with many of the representations made by some of the Indian Chambers and Indian Associations as regards the small outlying firms which may enter into transactions. But the difficulty is, where are we to draw a line in such cases? At any rate, speaking of my province, I can say that the people are not so ignorant as perhaps in other provinces. There
 4 P.M. may be outlying areas where people do not know the law of partnership and other things or the method of registration. But people living in towns are quite accustomed to registering documents and to registering companies. I do not think much hardship is inflicted in such cases in the case of advanced provinces. Possibly in Bombay, too, they may claim greater credit for the knowledge of these things than Madras.

can. But where there are such provinces as do require exemption, power should be taken to exempt them. I believe power is taken under this chapter to exempt areas from the operation of that chapter. I think it is a highly essential provision which the Committee have made. On the whole, I endorse the measure which is before the House and I strongly support the motion that the Bill be taken into consideration.

Mr. S. C. Sen (Bengal National Chamber of Commerce: Indian Commerce): Sir, I would not have intervened at this stage of the debate had not Diwan Bahadur Harbilas Sarda to a certain extent criticised and rather abused the Law Member and his department for having, as he said, indirectly brought in the joint family partnership into the purview of this Bill, although in the provisions it is stated that such a partnership would not form part of the Bill. I was a member of the Select Committee and we had long discussions over everything connected with this Bill but not a single word was said in the Committee by the Chairman of the Committee, namely, Diwan Bahadur Harbilas Sarda, regarding the charge which he has now thought fit to make. As a matter of fact, such a charge cannot be made in law. He says that a partnership by a member of a joint family with a third person must, if registration is to be completed, disclose names of all the members of the joint family, and thereby the joint family is brought into the purview of this Bill.

Diwan Bahadur Harbilas Sarda: I never said that.

Mr. S. C. Sen: I am sorry to note that a gentleman of Diwan Bahadur Harbilas Sarda's abilities, who says that he was a member of the judiciary for over 35 years, should show so much ignorance of the law regarding partnership and also regarding joint family. We expected something better from him. For his edification I would ask him to read an elementary book on Hindu law by Sir D. F. Mulla. On page 252 he says:

"It is competent to the manager of a joint family business acting on behalf of the family to enter into a partnership with a stranger, but such a contract does not make other members of the joint family partners."

That is an elementary proposition of law which every law student is supposed to know, not to say of Diwan Bahadur Harbilas Sarda who has spent his life, as he says, in the judicial department. Sir, I am surprised that on the basis of his ignorance of the law he should throw on the devoted head of the Law Member abuses and criticisms which were absolutely unjustified. Of course, the Law Member is quite capable of taking care of himself in these matters, but as a member of the Select Committee I take strong exceptions to the aspersions made.

Then, Sir, he also spoke with regard to Order XXX of the Civil Procedure Code relating to suits by a firm. A partnership firm can file a suit in the name of the firm and if any party in the suit wants the plaintiffs to disclose the name of the partners, they are to do so, and he says, as we have got this provision it is not necessary for you to have registration. The simple answer to that is that whereas you have got a register of partnership which is open to the public and which you can inspect at any time, you may not know whether any particular suit has been instituted in any court and it would be difficult for any stranger to go through and inspect the records so long as the suit is pending. As a matter of fact under the rules of the Calcutta High Court a stranger to a suit cannot

[Mr. S. C. Sen.]

inspect the records of a pending suit. The register is a public document and will be open to the public and therefore it affords a medium through which you could know the names of the partners of any firm.

As regards his criticism regarding not making the provision for registration obligatory, I do not think he said anything about that in the Select Committee. Moreover, as the Bill was drafted, the Government of India did not want to make the provision of registration obligatory for various reasons. It is a new innovation in this country and it may not be known to many persons that such a thing has been made obligatory. But what they say is that it is not obligatory on you to have the partnership registered so long as you do not want to bring a suit. If you want to bring a suit you should register before that date. For the purpose of bringing a suit even an ordinary small trader will have to go to his pleader in the mofussil and be advised by him, and any pleader worth the name should advise him or should enquire whether the partnership has been registered or not. I do not see where the hardship comes in. He says, and that was discussed in the Select Committee, that small partnership should be excluded. It was pointed out that there was difficulty in defining what was meant by a small partnership. We thought he was satisfied with that difficulty that there was an insurmountable difficulty as to the definition of small partnership. He has now put in an amendment that a partnership, the capital of which as disclosed is Rs. 1,000 or Rs. 2,000, ought to be excluded. That means that even in the mofussil the small traders who do not know the provisions of the Partnership Act, would be presumed to know the law so as to make a partnership deed themselves and to pay a stamp duty of Rs. 10 in a place where no stamp can be obtained. I do not think the Diwan Bahadur thinks that these are hardships, but he thinks that there is hardship for a firm to register. He was the Registrar I understand for sometime and he knows the difficulties of parties.

Diwan Bahadur Harbilas Sarda: Not a Registrar of firms.

Mr. S. C. Sen: Probably he is referring to the difficulties which he experienced at the time when he was Registrar. But these are times when people know their rights more or less and therefore the difficulties which he imagines were still in existence probably no longer exist. With these remarks I support the motion.

Mr. S. G. Jog (Berar Representative): I am very thankful to the Chair for the opportunity that is given to me. The Bill on partnership which is meant to settle the law has created a sort of confusion between the classes which belong to the legal profession. We find on the floor of the House how it has caused misunderstanding between a gentleman who had been for over 35 years in the judicial service and a gentleman who is an active solicitor of the Calcutta Bar. If this sort of measure is likely to cause confusion between two such legal luminaries, I would like the House to realise what sort of panic and confusion it will create in the villages and in small business concerns to whom it is intended to apply. The Members of the Select Committee, including Mr. Sen and Mr. Heathcote, only know about big business concerns. I doubt very much whether they have got any idea about the business ways of small

concerns in villages and in small towns with a population of 5,000 or 6,000. These people look at the provision from a different point of view. None of them have approached the question from the villager's point of view or from the point of view of the small business men. That sort of difficulty which will be created in the way of these people in carrying on their small business, I doubt very much whether these people have realised at all. I can perfectly understand the panic of small traders in places like Calcutta, Bombay or Madras and in some such Presidency towns. I, for one, see the difficulty and also the necessity of improving the present law so as to bring it into line with the improving conditions of trade and commerce in all those places. But the trade is still in its infancy in the outlying stations, and if you make a stringent law which may be useful for some such Presidency or business towns, it would be very hard for small town people and people with small concerns. Out of the Members of the Select Committee I find only my friend Mr. Sarda who has applied his mind to the difficulties of the village people. I take this opportunity of congratulating him over the pains he has taken and for giving out the view of the small concern people. I must also congratulate him on the fact that he can apply his mind to these technical questions of partnership with the same zeal and enthusiasm with which he has applied his mind to questions of widows' rights and inheritance. Apparently there is a difference of opinion between these two people as regards the small traders in Calcutta and other Presidency towns and the small traders in other stations.

I am in general sympathy with some of the provisions of the Bill but as I have already stated it is necessary, as trade and commerce progress and as commercial ideas progress, the law should be brought into line with the modern notions of the trading community. But so long as such provisions are not made as to exempt small concerns and people in the villages, I, for one, am not prepared to lend my support to this Bill. I think my Honourable friend has explained that there are some difficulties and if these small concerns are to be excluded, I think those who are well versed in law should find no difficulty in finding out suitable words for making the necessary provision in the Bill. If the idea is, as declared by my Honourable friend, Mr. Heathcote, that the small trading community should have an idea as to with whom they are trading so that they can fix their credit or liability, if that is the idea underlying this question, then I cannot understand how that object can be served by getting that firm registered only the day previous to the filing of the suit. Supposing they carry on business for a number of years and there is no occasion for any litigation, or if no occasion arises for bringing a suit, when they go to court for filing a suit and if only the day previous they get the names of the partners registered, how does that serve the purpose of getting a list of those with whom they are trading or know what fee should be paid and so on? I cannot for a moment understand how that purpose will be served by getting it registered a day before, unless you introduce some such provision that as soon as a partnership is formed, it should be registered within three or six months and its actions will be effective only from that time; just as in the case of registration of documents there is a provision that it should be registered within such and such a time, or if any effect is to be given to the document it will be given if it is registered within a certain time. But in this particular case, for years together they may go on doing business and you only want

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to block the way for the institution of a suit. That in no way serves the purpose for which the provision is meant.

Then I was told that there is some difficulty in the execution of decrees in the case of these partnership firms, and as regards that we find, as quoted by Diwan Bahadur Harbilas Sarda, that there is already a provision in the Code of Civil Procedure that if there is any difficulty about proceeding against them in execution, the plaintiff can call upon the other side to disclose the names of the partners. In that case there is absolutely no difficulty about the execution of the decree which ultimately will be passed. But if the object of the provision is to give the idea, as I said already, of giving the other party with whom he is dealing the names of all the partners, then it should be done long before and it should not be done only a day previous to the filing of the suit. That frustrates the object for which it is meant.

As regards the position of the joint Hindu family, so far as I can see there is nothing to take any objection to in the provisions of the Bill as framed now. My real difficulty, as I have explained, is as regards the small concerns, and I think if this Bill is passed as it is, instead of encouraging business on lines of partnership, it will be a sort of clog and it will go a great way to discourage partnerships which are coming into existence in villages and small towns.

Sir, with these observations I submit that unless the Bill is improved on the lines I have suggested, I for one am not prepared to lend my support to it in its present form.

The Honourable Sir Brojendra Mitter: Sir, with regard to Diwan Bahadur Rangachariar's point that a minor when he elects to join a firm as a partner undertakes, under the Bill, personal liability for all the debts of the firm, that is a matter which the Special Committee considered with very great care. It is based upon the principle that a person who retains a share in a partnership cannot retain it without its incidental obligations. Under the Bill he gets six months' time after attaining majority to make up his mind and elect whether to come in as a partner or to go out. Six months' time is long enough for him to know the affairs of the firm. If he elects to join with his eyes open, why should he not be put in the same position as all the other partners? If he comes to the conclusion that it is beneficial for him to join the firm and yet not undertake the liabilities of the firm, all he has to do is not to join, then, as an outsider, come to a separate agreement with the partners. In that case he can get rid of the previous liabilities of the firm. He does not join on attaining majority under the terms of this Act but he joins as a stranger. First of all he makes up his mind that he will not join; then he enters into an agreement with the partners, if they are all willing, and he comes in as a new partner. If he comes in as a new partner, of course the old liabilities would not fasten on him. If the minor on attaining majority elects to join by undertaking all liabilities, the Bill provides for that; if he elects to join without the previous liability, he can still do so by the other method which I have just now mentioned. Therefore there is really no hardship. It is not the case that a minor jumps into a position without knowing the dangers of that position. We took all this into consideration and we thought that the only case that ought to be provided for was the continued connection of the minor with the firm after he attains majority.

The only case which required specific provision was the case where the minor on attaining majority, continues his connection with the firm. In the first stage he got only the benefits of a partner and in the second stage after attaining majority he is a partner.

Then, Sir, I may also draw Diwan Bahadur Rangachariar's attention to the fact that sub-clause (7) of clause 30 was in the original Bill as introduced. It was not introduced for the first time by the Select Committee.

Sir, I want to say a word or two about small partnerships about which we have heard so much. First of all, what is the definition of a small partnership? We do not know any such expression in legal literature. It is a popular expression. If you say it is a partnership of which the capital is below Rs. 2,000 or below Rs. 1,000, if that be the conception of a small partnership, I shall deal with that when we come to the amendments. I need not say anything more about that at this stage. But with regard to the alleged hardship to small partners, it is well known that if any man, however ignorant or illiterate he may be, buys immovable property worth Rs. 110, he has got to register it. Is there any hardship there? If people start business in partnership they need not register, under this Bill, but if in the course of that business they have to enforce any rights in a court of law, they must register. Mr. Jog asked, how does it help one? What he argued was that if registration is effected immediately before the suit, it cannot help the third party, because he never knew the names of the partners or the other matters which are provided for. The answer is simple. These provisions are permissive, optional. When a third party enters upon business relations with a firm, and if that third party wants to know to whom he is giving credit or with whom he is dealing, the first thing he will ask is "Are you registered?" They say "No". He says "I cannot deal with you unless you get registered." In that way it protects the third party, although for the benefit of the partners we have provided that they may register any time before they go to court to enforce a right.

That brings me to the other argument which has been adduced on the basis of Order XXX of the Civil Procedure Code. It is said that Order XXX serves the purpose of disclosure of the names of the partners. Sir, that does not protect a trader who trades with the firm, because Order XXX says that, when a firm sues a third party, the defendant can insist upon knowing who the partners are.

What is the every-day experience of any man who knows anything about partnership cases? In such cases the issue of partner or no partner frequently arises. Supposing a firm called X & Co. brings a suit against A. A makes an application to court saying "I want to know who X & Co. are." X & Co. say that X and Y are the two partners of X and Co. But A says "No; Z also was a partner of X & Co." The question immediately arises whether Z is a partner of X & Co. or not. It is in order to avoid the determination of the issue whether Z is a partner or is not a partner that registration will be extremely useful; it is to meet such cases that provisions of the Bill are necessary. Order XXX does not avoid the issue.

In many cases of partnership what happens is this: that the substantial man stands back and the impecunious men are put forward as the partners; and in all such cases there is an issue whether the substantial

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man is a partner or is not a partner. Money and time are wasted and perjured evidence, both oral and documentary, is produced in court in support of the one contention or the other

Mr. R. K. Shanmukham Chetty: Supposing that in the particular case of X & Co. that has been mentioned, before bringing a suit, X & Co. register themselves as only consisting of X and Y as partners, omitting one man, what happens?

The Honourable Sir Brojendra Mitter: We have provided for penalty for that: if the fraud is discovered there is a penalty—the sanction provided in clause 69:

“Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine or with both.”

I was dealing with Order XXX. That Order really comes into play in the execution stage. But Order XXX is no protection to the third party who deals with a firm. It is for the protection of the honest third party that chapter VII has been devised; and not merely for the honest third party, but for the honest partner also. Very often, as lawyer Members of this House know, when there is a suit for dissolution and accounts as between partners, a man who wants to deceive his co-partners says “I was never a partner; I was only a creditor of the firm.” Here again, for the protection of the honest co-partners, provision for registration would be extremely useful. It is not merely for the protection of the honest third party dealing with the firm, but also for the protection of the partners themselves. The sanctions which are provided in the Bill are sanctions which are available not merely to the third party but to the partners also. The only case in which we do not insist upon registration is the case of dissolution. If a firm breaks up, the necessity of registration as a condition precedent to the maintenance of a suit has not been insisted upon because as the firm was breaking up we allow them to adjust their affairs as best as they can.

That deals with practically all the points which have been raised in the course of the debate, except those raised by Diwan Bahadur Harbilas Sarda

Diwan Bahadur T. Rangachariar: May I ask what about partnership for a particular purpose?

The Honourable Sir Brojendra Mitter: Those may be single ventures; and if Diwan Bahadur Rangachariar will go through the Bill he will find that we have provided for single venture partnerships. The Diwan Bahadur is aware that it is always a question, whether a single venture is a syndicate or joint ownership or what the exact relationship is. On that there is a good deal of controversy. In order to set all controversy at rest we have placed them on the footing of partnership.

Sir Abdur Rahim (Calcutta and Suburbs: Muhammadan Urban): Will that have to be registered—partnership in a single venture?

The Honourable Sir Brojendra Mitter: Registration is not compulsory, but if they have occasion to go to court for any relief, they will have to register it and they can register it any time before suit. I will give an instance. Supposing three people buy a colliery with a view to run a mine in co-partnership

Diwan Bahadur T. Rangachariar: That will be a going business; it will not be a single venture.

The Honourable Sir Brojendra Mitter: No; it has got a bearing on single venture, if after buying this colliery they give up the idea of running the colliery. What is it? Is it a partnership or is it not? It was a single venture in so far as the acquisition of the colliery was concerned. But then they contemplated doing further business in raising coal and selling coal. It has been held in some cases that that is not a partnership, but co-ownership of the colliery; only when they actually begin raising coal and selling coal that the partnership begins; but before that up to the point of the acquisition of the colliery it is merely co-ownership.

Sir Abdur Rahim: What would be the advantage in registering it before suit—partnership in a single venture.

The Honourable Sir Brojendra Mitter: The advantage is this: supposing there are five people in a single venture and one of them finding it is a losing business says, "I was never a partner: I only advanced money." In registration you will have to disclose the names of partners.

Sir Abdur Rahim: Whether it is a partnership or not is to be gathered from the terms of whether they are to share profit or loss—not merely by using a word: the nomenclature is not of any consequence at all.

The Honourable Sir Brojendra Mitter: The Bill does not purport to say that what is disclosed before the Registrar is conclusive evidence against third parties of who the partners are. It is only, as I have tried to explain, meant for the protection of third parties; to know with whom they are dealing. It binds the declarants. If there be any false statement made at the time of registration, then there are penalties provided for in the Bill itself. Now, that is the sanction to ensure correct statements for the protection of third parties.

Diwan Bahadur T. Rangachariar: May I ask how by punishing a man who gives false particulars you can compensate the third party or the third party can enforce his rights? He will be losing all his capital.

The Honourable Sir Brojendra Mitter: It is only a sanction; penalty is provided against false particulars, because then the inducement will be not to give false particulars; not that it is a direct protection to third parties in the sense of any kind of compensation. As the Penal Code is protection to the whole of the community not by way of compensation . . .

Diwan Bahadur T. Rangachariar: The Honourable Member will see that by making this register conclusive evidence, the third party cannot prove the truth that the person omitted was himself a partner. . . .

The Honourable Sir Brojendra Mitter: It is not conclusive evidence.

Diwan Bahadur T. Rangachari: It is not registered; the person omitted cannot enforce his rights

The Honourable Sir Brojendra Mitter: I am afraid I cannot follow the Honourable Member's point. We do not suggest for a single moment that it is conclusive proof of anything as against third parties. As a matter of fact, we have provided that a third party may sue an unregistered firm, but the unregistered firm cannot enforce any rights against third parties nor can any partner enforce any right as against his co-partners, unless it is a registered concern; but so far as the third party is concerned, it does not matter whether a firm is registered or unregistered; he can always sue

Sir Abdur Rahim: Supposing A and B enter into partnership in order to buy a certain quantity of jute sharing profit and loss. Do you mean to say that without establishing any permanent business or anything of that sort, in a single transaction, it is the intention of this Bill that before two persons can enter into a single transaction like that as partners they must go to the registration office and register

The Honourable Sir Brojendra Mitter: That is exactly what this Bill is not doing. Registration is not necessary in that case. It is not compulsory; it is optional. A and B buy jute in order to sell it and make profit. In that case, supposing they quarrel and they have to go to court, it means practically dissolution. Is not that dissolution? They started as partners, then they quarrel, and one sues the other for accounts; it is dissolution, and in that case registration is not necessary, and we have specifically provided for that. I would refer my friend Sir Abdur Rahim to clause 68, sub-clause (3) (a) which says this:

"The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect—

(a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realize the property of a dissolved firm. . . ."

Mr. R. K. Shanmukham Chetty: Sir, without raising the question of dissolution or winding up of the business in the particular case mentioned by Sir Abdur Rahim, suppose B dishonestly gets hold of all the assets of that single transaction, then A cannot file a suit for the recovery of money in the hands of his partner

The Honourable Sir Brojendra Mitter: He can, because if it be a single venture partnership, what is he suing for? He is suing for final accounts and for his share of the profits and assets. That is tantamount to dissolution of the relationship of partners which existed between A and B. After that, their relationship as partners will not subsist. That being so, it comes expressly within sub-clause (3) which says that, it:

"shall not affect the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm. . . ."

If they constituted a firm, that firm is either dissolved or is about to be dissolved because it is a single venture. If it is dissolved, then sub-section (3) comes in. If it has not been dissolved, then the mere suing for accounts is a suit for dissolution, because, after all, what is a suit for dissolution? A suit for dissolution is that in which accounts are adjusted finally and decree made directing payment.

Sir Abdur Rahim: Supposing they quarrel before the transaction is completed, then what happens?

The Honourable Sir Brojendra Mitter: If it is a single venture, if one of them has to go to court, he must sue for dissolution; there is no other remedy open to him.

Sir Abdur Rahim: Should that single venture be registered or not?

The Honourable Sir Brojendra Mitter: No, it is not necessary to register that. That is precisely what we have provided in the Bill.

Sir Abdur Rahim: What clause is that please?

The Honourable Sir Brojendra Mitter: Clause 68 (3) (a) which says:

"The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm."

It must be a dissolved firm. Now, that takes me to the definition of "firm", and clause 4 defines a firm thus:

"'Partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individual 'partners' and collectively a 'firm'."

Now, when there is a single venture between A and B unless they are partners, this Bill does not apply to them. We assume that A and B are partners, and as partners they embark upon a single venture. Before the profits are distributed amongst them, they quarrel, and one of them has to go to court to have their quarrel adjudicated upon. What will be the nature of the remedy which he will seek in that case?

Sir Abdur Rahim: Suppose one partner wants to enforce his right and make the other pay the amount which he promised to pay

Diwan Bahadur T. Rangachariar: Or his right of access to books; supposing one wants to enforce his right of access to books?

The Honourable Sir Brojendra Mitter: In that case registration will be necessary. We say that if the firm is to go on, if one wants to inspect the books and so on, he has got to go to the Registrar's office and register, if he wants to file a suit

Sir Abdur Rahim: Will not that affect their daily business a lot?

Mr. President: Order, order: From the way questions are put and answers given, it appears to the Chair that the Bill is not properly understood by the Honourable House.

The Honourable Sir Brojendra Mitter: My feeling is this that Honourable Members have not taken the trouble to read the Bill. They have not read it, and that is my trouble.

Diwan Bahadur T. Rangachariar: I think the Honourable Member himself may read it again so that we can come to a satisfactory conclusion.

Some Honourable Members: Let the question be now put.

The Honourable Sir Brojendra Mitter: I have dealt with most of the points. As regards the last point which my Honourable friend Sir Abdur Rahim put to me, the provision of the Bill is this, that if the partnership is to go on and if during the continuance of the partnership any suit is necessary, not with a view to dissolution, not with a view to final accounts, in that case registration will be necessary, but if it be for the purpose of dissolution or for final accounts, then no registration will be necessary. That is the scope of the Bill. You may like it or you may not like it, but I am explaining that that is the scope of the Bill. So far as Diwan Bahadur Harbilas Sarda's criticisms are concerned, they are so puerile that I do not want to take up the time of the House in dealing with them.

Sir Hari Singh Gour: I think the Honourable Member perhaps has permitted himself to use an expression which on second thoughts he would not have used. He says that Diwan Bahadur Harbilas Sarda's criticisms were "puerile". I think that is not a parliamentary expression.

The Honourable Sir Brojendra Mitter: If that has given offence, I withdraw that unreservedly.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 16th February, 1932.