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THE

LEGISLATIVE ASSEMBLY DEBATES

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(25th January to 17th February, 1932)

THIRD SESSION

OF THE

FOURTH LEGISLATIVE ASSEMBLY, 1932

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Legislative Assembly.

President:

THE HONOURABLE SIR IBRAHIM RAHIMTOOLA, K.C.S.I., C.I.E.

Deputy President:

MR. R. K. SHANMUKHAM CHETTY, M.L.A.

Panel of Chairmen:

SIR HARI SINGH GOUR, Kt., M.L.A.
MR. ARTHUR MOORE, M.B.E., M.L.A.
SIR ABDUR RAHIM, K.C.S.I., Kt., M.L.A.
SIR COWASJI JEHANGIR (JUNIOR), K.C.I.E., O.B.E., M.L.A.

Secretary:

MR. S. C. GUPTA, C.I.E., BAR.-AT-LAW.

Assistants of the Secretary:

MIAN MUHAMMAD RAFI, BAR.-AT-LAW.
RAI BAHADUR D. DUTT.

Marshal:

CAPTAIN HAJI SARDAR NUR AHMAD KHAN, M.C., I.O.M., I.A.

Committee on Public Petitions:

MR. R. K. SHANMUKHAM CHETTY, M.L.A., *Chairman.*
MR. ARTHUR MOORE, M.B.E., M.L.A.
SIR ABDULLAH SUHRAWARDY, Kt., M.L.A.
DIWAN BAHADUR HARBILAS SARDA, M.L.A.
MR. B. SITARAMARAJU, M.L.A.

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LEGISLATIVE ASSEMBLY.

Wednesday, 17th 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.

FORMATION OF FRANCHISE COMMITTEES OF THE CENTRAL LEGISLATURE

398. *Mr. **Gaya Prasad Singh** (on behalf of Mr. T. N. Ramakrishna Reddi): (*a*) Will Government be pleased to state whether it is a fact that the Franchise Committee is co-operating with the Franchise Committees formed in the provinces and whether it is the intention of Government to form similar committees of the Central Legislature?

(*b*) If so, when will such a committee be formed, what will be its function and in what manner is it proposed to be formed?

The Honourable Sir George Rainy: (*a*) and (*b*). Provincial Franchise Committees have been set up in eight Governors' provinces and in the North-West Frontier Province in accordance with the procedure laid down by His Majesty's Government. The question of making arrangements whereby the Franchise Committee would be placed in touch with representatives of the Central Legislature is under consideration, and I am about to place myself in communication with Party Leaders on the subjects.

USE OF THE VERNACULAR PRESS FOR RAILWAY PUBLICITY.

399. **Haji Chaudhury Muhammad Ismail Khan** (on behalf of Khan Bahadur H. M. Wilayatullah): (*a*) Has the attention of Government been drawn to a note appearing on page 2, column 3 of the daily *Hamdard* of Lucknow, dated the 31st December, 1931, under the caption "Wonderful Ways of Railway Publicity"?

(*b*) Is it a fact that most of the Railways publish their notices of auction sales, contracts, etc., only in English newspapers? Is it a fact that the class of people who usually tender for such contracts do not know English?

(*c*) Are Government prepared to direct that in future the Publicity Department of Railways should use the medium of the vernacular press also with the English press when advertising for their auction sales, contract tenders, etc.?

Sir Alan Parsons: (*a*) No. I have not been able to obtain locally a copy of the paper referred to.

(*b*) Government have no reason to think so. Railways have been advised in connection with notices of changes in time tables to consult their Local Advisory Committees as regards suitable newspapers in which to advertise, and this applies equally to other notices.

(c) No. If railway notices do not receive as wide a publicity as is desirable, the matter is one which can suitably be brought up for discussion at a meeting of the Local Advisory Committee.

MODIFICATION OF THE ORDINANCES.

400. ***Mr. Badri Lal Rastogi:** (a) Is it a fact that some representations have been made recently to His Excellency the Viceroy with regard to the Ordinances being administered in various parts of the country?

(b) Is it a fact that the Viceroy has been informed that the Ordinances in some cases have not been applied fairly and discriminately?

(c) Is it a fact that some of the Provincial Governments have also reported to the Government of India that in the interest of the general public it is essentially necessary that some of the clauses of some of the Ordinances should be modified?

(d) Is it a fact that His Excellency the Viceroy is consulting the Secretary of State for India about modifying some of the Ordinances which have been working all over India?

The Honourable Sir James Crerar: (a) and (b). Some representations have been received by the Government of India protesting in general terms against the promulgation of the Ordinances. Alleged instances of individual hardship were cited on the floor of the House in the course of the debate on the 1st and 2nd February. I would refer the Honourable Members to the assurances given by Members of Government in this connection during the debate.

(c) and (d). No.

SUB-POST OFFICES IN THE DEHRA DUN DIVISION.

401. ***Khan Bahadur Haji Wajihuddin:** (a) Has the attention of Government been drawn to the article published in the *Postal Advocate* December issue on page 8 (Urdu section)?

(b) Will Government please state the total number of the sub-offices in Dehra Dun Division in each District, Saharanpur, Dehra Dun and Mussoorie?

(c) Will Government please state the number of Muslims and Hindus placed in charge of the Sub-Offices in Dehra Dun Division in each of the above Districts mentioned in part (b) separately?

The Honourable Sir Joseph Bhore: (a) Yes.

(b) and (c). The information has been called for and will be placed on the table of the House in due course.

NUMBER OF MUSLIM AND HINDU POSTMEN IN CERTAIN SUB-DIVISIONS.

402. ***Khan Bahadur Haji Wajihuddin:** (a) Will Government please state:

(i) the total number of the postmen and inferior servants in Dehra Dun and Saharanpur Sub-Divisions (Dehra Dun Division);

(ii) the total number of Muslims and Hindus separately in each of the two cadres mentioned in part (*a*) in Dehra Dun and Saharanpur Sub-Divisions; and

(iii) the total number of Hindus and Muslims employed as postmen and inferior servants, permanently or temporarily, in Dehra Dun and Saharanpur Sub-Divisions during the last five years (each year separately)?

(*b*) Are Government satisfied that in making the appointments mentioned in item (iii) Government instructions regarding communal composition were adhered to by the appointing officers?

(*c*) If the reply to part (*b*) be in the negative, will Government please state whether the omission on the part of the appointing officers was noted by the authorities?

The Honourable Sir Joseph Bhore: (*a*), (i) and (ii). The information is being called for and will be placed on the table of the House when received.

(iii) Government do not propose to call for this information, as its collection would involve an expenditure of time and labour not commensurate with the advantage to be gained.

(*b*) Government have no reason to doubt that their orders are being carried out. The Honourable Member's attention is invited to the reply given by Sir Hubert Sams to Rao Bahadur M. C. Rajah's starred questions Nos. 930 and 931 in this House on the 24th September, 1931.

(*c*) Does not arise.

COMMUNITIES OF POSTMEN AND INFERIOR SERVANTS IN MUSSOORIE POST OFFICES.

403. ***Khan Bahadur Haji Wajihuddin:** (*a*) Will Government please state the total number of the postmen and inferior servants in Mussoorie H. O. and its town sub-offices?

(*b*) Is it a fact that all the posts mentioned in part (*a*) above have been given to Hindus and not a single Muhammadan has been employed?

(*c*) If the reply to part (*b*) be in the affirmative, are Government prepared to take steps to see that due regard is paid to the communal composition by the authorities at the time of the season arrangements commencing from 1st April, 1932?

Mr. T. Ryan: The information asked for in parts (*a*) and (*b*) has been called for and a complete reply will be placed on the table of the House in due course.

APPOINTMENT OF A MUHAMMADAN AS TOWN INSPECTOR OF POST OFFICES, MUSSOORIE.

404. ***Khan Bahadur Haji Wajihuddin:** (*a*) Will Government please state when the post of a Season Town Inspector was sanctioned for Mussoorie H. O.?

(*b*) Is it a fact that since the post was sanctioned no Muhammadan has so far been allowed to act as Town Inspector, Mussoorie, and junior Hindu clerks have all along been acting?

(c) If the reply to part (b) be in the affirmative, are Government prepared to take steps to see that in the seasonal arrangements commencing from 1st April, 1932, this complaint is removed?

The Honourable Sir Joseph Bhore: (a) In April, 1927.

(b) The information has been called for and will be placed on the table of the House in due course.

(c) Does not arise; such appointments are not made on a communal basis.

DISSATISFACTION AMONGST RAILWAY STAFF OF THE HOWRAH GOODS SHED.

405. ***Mr. Lalchand Navalrai:** (a) Are Government aware of the dissatisfaction prevailing amongst the East Indian Railway staff of the Howrah Goods Shed Outward owing to the withholding of certain privileges which were being enjoyed by them so long?

(b) If not, do Government propose to enquire into the matter? If not, why not?

(c) If the reply to part (a) be in the affirmative, will Government be pleased to state what action they have taken in the matter?

Sir Alan Parsons: (a), (b) and (c). Government received a representation alleging certain grievances and purporting to have been signed by one of the Goods Clerks and by others of the Howrah Goods Shed. The representation was transferred to the Agent, East Indian Railway, who is the authority competent to deal with it and the Goods Clerk was informed of this. On receiving this intimation, he replied that he was not aware of having submitted any such representation.

GRIEVANCES OF RAILWAY STAFF OF THE HOWRAH GOODS SHED.

406. ***Mr. Lalchand Navalrai:** (a) Is it a fact that the grade increase of the staff of the East Indian Railway, Howrah Goods Shed Outward, is being withheld?

(b) Is it a fact that compulsory leave on half pay is being granted to the staff?

(c) Is it a fact that the Sunday allowance in lieu of presidency allowance of the staff is being stopped? If so, will Government be pleased to state the reasons for taking such action?

Sir Alan Parsons: With your permission, Sir, I propose to answer question Nos. 406 and 407 together. Government have no information concerning the matters referred to by the Honourable Member. They are within the competence of the Agent, East Indian Railway, to deal with and will be brought to his notice.

GRIEVANCES OF RAILWAY STAFF OF THE HOWRAH GOODS SHED.

†407. ***Mr. Lalchand Navalrai:** (a) Are Government aware that in meting out punishments to the East Indian Railway Howrah Goods Shed Outward staff different treatment is accorded between the Anglo-Indian and the Indian staff?

†For answer to this question, see answer to question No. 406.

(*b*) If not, do they propose to inquire into the matter? If not, why not? If the answer to part (*a*) be in the affirmative, will Government be pleased to state whether any action was taken against the officials concerned for showing racial bias? If not, why not? Do they now propose to take any action against them?

INJUSTICE IN RETRENCHMENT OF MEN OF ACCOUNTS AND AUDIT OFFICES.

408. ***Mr. Lalchand Navalrai**: Are Government aware that injustice is being done to the men of the Accounts and Audit offices under the Central Government in selecting men for being retrenched under the recent retrenchment scheme?

The Honourable Sir George Schuster: With your permission, Sir, I will deal with questions Nos. 408 and 410 together.

Enquiry is being made.

ORDERS REGARDING RETRENCHMENT OF STAFF.

409. ***Mr. Lalchand Navalrai**: (*a*) Is it a fact that Government passed orders that men with 25 to 30 years' service should first be retrenched and if by that method the full quota of the sum to be retrenched in an office be not reached, thereafter temporary men are to be retrenched?

(*b*) If the answer to part (*a*) be in the negative, will Government be pleased to place on the table a copy of the orders of Government that are being enforced in retrenching men?

The Honourable Sir George Schuster: (*a*) The position is not as stated. I would refer the Honourable Member to my reply to starred question No. 1215 asked by Mr. Jog on the 5th November, 1931. The general principles embodied in the instructions issued by Government, which are subject to the maintenance to the nearest practicable figure in each category of the ratio between the various communities represented by their present numbers, specify the order of selection for retrenchment as follows. First, officials volunteering to resign or retire; secondly, those whose work has been consistently unsatisfactory; thirdly,—and this category is divided into various classes—those who have reached the age of superannuation or have nearly completed their service; fourthly, those who have to their credit only short periods of service. Temporary staff are treated separately from permanent staff and as regards the main order of selection *inter se* on much the same lines. It must however be recognised that there are various kinds of temporary staff. As regards this temporary staff I would add this—that the general implication behind all the retrenchment orders is to execute them in the way which will produce the greatest economy compatible with the least hardship to individuals. For this reason, in the generality of cases, all temporary staff must first disappear before parallel permanent staff, to which they are supplementary, are retrenched.

(*b*) I would refer the Honourable Member to my answer to part (*a*) of Mr. Jog's question to which I have already referred.

MEN RETRENCHED IN ACCOUNTS AND AUDIT OFFICES.

†410. *Mr. Lalchand Navalrai: (a) Are Government aware that in several Accounts and Audit offices and other offices under the Central Government men with 2 to 10 years' permanent service are being retrenched, retaining higher salaried men with 25 to 30 years' service, who have earned full pension?

(b) If the answer to part (a) be in the negative, do Government propose to inquire into the matter? If not, why not?

(c) If the answer to part (a) be in the affirmative, will Government be pleased to state what action they have taken or propose to take to stop such treatment in retrenching men?

NON-RETRENCHMENT OF LOW-PAID CLERKS AND TYPISTS.

411. *Mr. Lalchand Navalrai: Do Government propose to issue a circular to all heads of departments and offices drawing their attention not to retrench low paid clerks and typists who have not earned any living pension of at least Rs. 40 per mensem? If not, why not?

The Honourable Sir George Schuster: No. Retrenchment are being effected wherever possible in all classes of Government servants and Government cannot agree to the exemption of certain grades if the posts held by them are capable of abolition.

RE-EMPLOYMENT OF MEN RETRENCHED FROM OFFICES UNDER THE CENTRAL GOVERNMENT.

412. *Mr. Lalchand Navalrai: Do Government propose to maintain a register of all retrenched men under the control of the Central Government including the offices under the Auditor General in India and to recruit such men, whenever vacancies occur in future till they are all provided with suitable appointments? If not, why not?

The Honourable Sir James Crerar: In so far as the clerical staff of the Government of India's offices at headquarters is concerned, it is proposed to maintain a register of suitable retrenched personnel of offices which recruit through the Public Service Commission and of offices which do not recruit through the Commission, but who are qualified for employment in the former offices. The claims of persons on the register to re-employment will receive careful and sympathetic consideration, but as the Honourable Member will no doubt realize, I cannot give the general assurance for which he asks since in filling vacancies due regard must be paid to the duties of the post and the qualifications required to fill it efficiently. I have not complete information regarding other services and offices, but am making enquiries and will intimate the result to the Honourable Member in due course.

INDEBTEDNESS AMONG RAILWAY EMPLOYEES.

413. *Lieut.-Colonel Sir Henry Gidney: (a) Are Government aware of the appalling condition of indebtedness which exists in the ranks of their servants, particularly among subordinate employees on the various railways?

†For answer to this question, see answer to question No. 408.

(*b*) Will Government please state what action they have taken or propose to take on the recommendations made by the Royal Commission on Labour in the matter of indebtedness among railway employees?

(*c*) Will Government please state whether they have taken any action to prevent the attachment of salaries of employees for meeting the employees' debts as recommended by the Royal Commision on Labour? If not, why not?

The Honourable Sir Joseph Bhore: (*a*) Government understand that the amount of indebtedness among certain grades of Government servants, and particularly subordinate railway employees, is considerable.

(*b*) and (*c*). The Royal Commission on Labour made a number of recommendations relating to indebtedness. Steps have been taken to bring to the notice of Railway Administrations and other employers such of the recommendations as require action on their part. The remaining recommendations mostly involve Central legislation. Some of these, including the one referred to in part (*c*) of the question, are under examination, but Government have not yet been able to formulate their conclusions thereon. The remaining recommendations will be taken into consideration as soon as possible.

Indebtedness among Railway Employees.

414. ***Lieut.-Colonel Sir Henry Gidney:** (*a*) Will the Honourable Member in charge of Railways please state whether he received a scheme proposed by me with a view to combating the scourge of indebtedness among Railway employees?

(*b*) If the answer to part (*a*) be in the affirmative, will the Honourable Member please state what action he has taken or proposes to take on the scheme?

Sir Alan Parsons: (*a*) and (*b*). The Honourable Member apparently refers to a communication dated the 9th October, 1930, which he addressed to the Railway Board. The proposals in that communication have been examined by the Railway Board who intend to discuss them with the Agents of Railways in April next after which the Board will make their recommendations to Government.

Accelerated Promotion for Officers of the Indian Medical Department.

415. ***Lieut.-Colonel Sir Henry Gidney:** (*a*) Will Government please state whether accelerated promotion is granted to officers of the Royal Army Service Corps and Indian Medical Service who have either passed a high professional examination or undergone a special course of studies, irrespective of whether the officers concerned obtained any special qualification or degree in that particular subject?

(*b*) If the answer to part (*a*) is in the affirmative, will Government please state whether similar treatment is afforded to officers of the Indian Medical Department who have either obtained a British medical qualification in medicine or surgery or a specialist's qualification or have undergone a special course of study in public health, tropical diseases, etc., in India or abroad? If not, why not?

Mr. C. M. Young: (*a*) A Captain of the Indian Medical Service may receive six months' accelerated promotion provided he produces satisfactory evidence of progress in any branch of knowledge which is likely to increase his efficiency. This privilege is not granted to officers of the Royal Army Medical Corps.

(*b*) Officers of the Indian Medical Department do not receive accelerated promotion in the circumstances stated, but are exempted from appearing at the next departmental examination for promotion, and receive special consideration when vacancies occur on the civil side. Government do not consider it necessary to offer any further inducement to members of the Department to obtain special qualifications.

FLY NUISANCE IN NEW DELHI.

416. ***Lieut.-Colonel Sir Henry Gidney:** (*a*) Are Government aware of the fact:

(i) that the city of New Delhi, especially the Western Hostel, Queensway, is at present visited with a plague of flies; and

(ii) that this scourge is causing a great deal of sickness and inconvenience?

(*b*) Will Government please state whether they are prepared to take immediate action to remedy this nuisance and danger to public health?

Sir Frank Noyce: (*a*) (i). Yes.

(ii) Government have received no information that the nuisance from flies is causing sickness, but it is doubtless causing inconvenience.

(*b*) The matter is receiving the attention of the Medical Officer of Health, New Delhi.

Mr. B. Sitaramaraju: Have the Government considered the advisability of issuing an Ordinance against flies?

(No answer.)

Lieut.-Colonel Sir Henry Gidney: In regard to the health of New Delhi, will the Honourable Member inform the House whether Government has recently indulged in a retrenchment fox-trot and if the answer is in the affirmative will the Honourable Member inform the House "Where do the flies go in the winter time?".

Sir Frank Noyce: The answer to the second part of the question appears to be the Western Hostel.

As regards the first part of the Honourable Member's question, the General Purposes Sub-Committee of the Retrenchment Committee have recommended that the Assistant Public Health Officer should be retrenched. That recommendation is at present under the consideration of the Government.

Mr. Gaya Prasad Singh: Is there any connection between the visit of flies in the Western Hostel and the residence of the Honourable Members therein? (Laughter.)

Lieut.-Colonel Sir Henry Gidney: Will the Honourable Member inform the House whether there is a Municipality in the Imperial Capital city of New Delhi and whether there is a Health Officer attached to that Municipality?

Sir Frank Noyce: The Health Officer of New Delhi is also the Health Officer for the Delhi Province, including New Delhi, the Notified area and the rural part of the province. I may mention for the information of the Honourable Member that there is a Municipality in New Delhi and that there is little doubt that the fly nuisance has been caused to a large extent by the lack of adequate bye-laws to deal with cattle. The number of cattle in New Delhi is steadily increasing. The attention of the Local Administration will be drawn to the necessity for the framing of bye-laws to deal with the question of cattle at a very early opportunity.

Lieut.-Colonel Sir Henry Gidney: Does the Honourable Member consider this state of affairs satisfactory for this Imperial Capital? Is the Government aware of the fact that the dustbins are scarcely ever emptied, roads especially those least used are very often full of refuse, that complaints have frequently been made to the Municipality of which no notice has been taken and that every member of Government from the highest to the lowest servant possesses one, two or three cows whose excreta is thrown on the streets or used as fuel and that no precaution is taken to bury the excreta and that this nuisance is very noticeable at the various Tonga stands, especially the Tonga stand near the Western Hostel? That under such insalubrious conditions residents of New Delhi are dangerously exposed to epidemics of all kinds? Will Government state whether this is a fact and if it is what steps do they propose to take to remedy it especially with regard to the appointment of the Health Officer of New Delhi.

Sir Frank Noyce: Sir, I gather from the Honourable Member's statement that every member of the Government from the highest to the lowest has cattle in his compound. I can assure him that there is none in my compound. As regards the remainder of his question, I am thankful to him for bringing the matter to notice. The attention of the Local Administration will be drawn to it at once with a view to steps being taken to improve matters if, as I have no reason to doubt, the facts are as he has stated.

Dr. Ziauddin Ahmad: Has the Health Department of the Government of India made any research to find out the method for the destruction of flies?

Sir Frank Noyce: That is a question of which I should like to have notice.

THE INDIAN PARTNERSHIP BILL—*contd.*

Mr. President: Further consideration of the motion that the Bill to define and amend the law relating to partnership, as reported by the Select Committee, be taken into consideration.

Sir Lancelot Graham (Secretary, Legislative Department): Sir, my task appears to me to be a light one. I was expecting to hear more speeches this morning, and I would remind the Honourable Members that the last speech was delivered by the Honourable the Law Member,

[Sir Lancelot Graham.]

who with very great skill faced a fusillade of questions from Honourable Members seeking information about the Bill. I gather that those Honourable Members were fully satisfied from the mere fact that no more speeches are being made this morning. As regards my Honourable frined, Diwan Bahadur Harbilas Sarda, I think, without speaking unsympathetically, I would say that his speech would have been of more value on the motion that the Bill be referred to a Select Committee. It appeared to me to come rather late in the proceedings after the House was definitely committed to the principle of the Bill, including the registration on an optional basis of partnerships. I note that he was a little harsh on Government when he described our conduct as mean and deceitful and indulging in subterfuges. Sir, there are no subterfuges at all in our procedure, and our record is perfectly clear. We say that registration is optional, and at the same time we say quite plainly that there are advantages to be gained by registering and disadvantages in the event of not registering, so that there is no subterfuge about that, because in modern political parlance we have laid all our cards on the table. We have told Honourable Members exactly what the position will be if they register, and exactly what the position will be if they do not register, and I must resent the suggestion that we have been guilty of subterfuges and have behaved in a mean and despicable fashion. As regards my Honourable friend, Diwan Bahadur Rangachariar, he raised two points, and he is raising them again on amendments of which he has given notice and they will be dealt with on that occasion. I think the course of my Honourable friend Mr. Jog is clear: he should vote for the motion and move his amendment and hear what is to be said on the other side before, on these mere points of detail, he decides to wreck the Bill. I think no other points have arisen in the debate, and therefore I leave the motion before the House.

Mr. President: The question is:

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

The motion was adopted.

Clauses 2, 6 and 9 to 11, 11-A, and 12 to 18 were added to the Bill.

Mr. President: The question is that clause 19 stand part of the Bill.

Diwan Bahadur T. Rangachariar (South Arcot *cum* Chingleput: Non-Muhammadan Rural): May I ask for some information? Reading clauses 19 and 22 together, I wish to know whether it is a deliberate departure from the English law. In clause 22 all acts done or instruments executed should be stated to be on behalf of the firm in order to bind the firm, although under clause 19 a partner is the agent of the firm for the purpose of the business of the firm, and subject to the provisions of clause 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. Clause 22 says: in order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm's name, or in any other manner expressing or implying an intention to bind the firm. So that every act done will be

in the name of the firm. If my Honourable friend, Sir Hugh Cocke, does anything in the usual course of business as the partner of a firm, in order to bind the firm, he should do so in the name of the firm or in any other manner expressing or implying an intention to bind the firm. Apparently if a man is the managing partner, or if he is an agent, he is ordinarily doing business. If he goes to a firm or place of business and orders goods in the usual course of business, he has to say under clause 22, "I am doing this on behalf of the firm". Apparently that seems to be the necessary result of the language of clause 22. Everything he does, every single act he performs should be specifically stated to be on behalf of the firm. My Honourable friend, Sir Hugh Cocke, being a member of a partnership, if he goes to a firm and orders goods, he will have to tell them although they know perfectly well that he is the managing partner of the firm, he has to tell them: "I do this on behalf of my firm", although he may have done thousands of cases like that. Apparently clause 22 makes it compulsory in every act although clause 19 contemplates acts done in the usual course of business, still every time he will have to say, "I do so on behalf of the firm". I do not know whether this is the real intention of the clause.

The Honourable Sir Brojendra Mitter (Law Member): Sir, may I explain this? If the Honourable Member had looked at the notes to clause 22 annexed to the Bill when introduced, he would have found the explanation:

"Clause 22 represents section 6 of the English Act but is expressed differently. The English model says that certain acts if done in a certain way bind the firm. This clause says that those acts do not bind the firm unless they are done in a certain way. This seems to be the intention of the English model and to be the law in England."

Then we give reference to the pages of Lindley and Underhill. Lindley's criticism is this, that the positive way in which the English section is framed is not so satisfactory as the negative way would be, and in pursuance of Lindley's observations, we have redrafted the same thing in the present form. That is the only difference between the English law and our law. Clause 22 deals with the mode of doing an act to bind the firm. Clause 19 is the general clause. It says that a partner is an agent of the firm. But when can a partner as agent of the firm bind the firm? It is only when he acts in a particular manner and what that manner is is set out in clause 22 which says:

"In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm."

One is substantive law that a partner is an agent and the other is the mode in which the agent has to work so as to bind the firm. That is the explanation.

Diwan Bahadur T. Rangachariar: In stating the substantive law my Honourable friend will notice that it is subject to the provisions of clause 22. Therefore he can only do so in the manner provided by clause 22. That is my difficulty.

The Honourable Sir Brojendra Mitter: If he does in that manner, then the firm will be bound.

Mr. President: The question is that clause 19 stand part of the Bill.

The motion was adopted.

Clause 19 was added to the Bill.

Mr. President: Clause 19A.

Sardar Sant Singh (West Punjab: Sikh): Sir, referring to the phraseology used in clause 19A, we find that the words used are:

"Subject to the provisions of section 22, the act of a partner which is done to carry on in the usual way, business of the kind carried on by the firm, binds the firm."

Here the expression used is "in the usual way" while in clause 23 the expression used is the same as was used in the Indian Contract Act:

"An admission or representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made *in the ordinary course of business*."

May I know if, in using these two terms, it is intended to create some distinction between these two terms, or do they carry the same meaning? If they carry the same meaning, will it not be advisable to retain the expression which is already used in the Contract Act, instead of introducing a new expression?

The Honourable Sir Brojendra Mitter: There are two entirely different conceptions,—they are not the same. Under clause 19A the carrying on of the business is by the firm. That is the usual way of carrying on business. But in clause 23 we are talking of the agency of the partner. "Admission by a partner" binding the firm involves that he must make the admission in the ordinary course of business and not otherwise. Clause 23 deals with the act of the agent and clause 19A deals with the act of the firm.

Mr. President: The question is that clause 19A stand part of the Bill.

The motion was adopted.

Clause 19A was added to the Bill.

Clauses 20 to 24 were added to the Bill.

Mr. President: Clause 25.

Sardar Sant Singh: Sir, clause 25 reads like this:

"Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner."

Here the liability of the individual partner is confined to the acts done by the firm and not by the individual partner of the firm. What I want to understand is, does this mean that the individual partner is not liable for the acts of his co-partners though done in the usual way? Instead of the phrase "for all acts of the firm", will it not be better to say "for all acts of the firm or of the individual co-partners"?

Mr. C. C. Biswas (Calcutta: Non-Muhammadan Urban): Sir, if my friend will refer to the definition clause he will find "act of a firm" defined there.

The Honourable Sir Brojendra Mitter: Sir, may I explain? We say here "act of the firm" and not "by the firm". If we had said "act by the firm" that might have excluded an act by any particular partner. But it is an act "of the firm" and the expression "act of the firm", as my friend Mr. Biswas has just now pointed out, is defined in the definition clause as:

"any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm."

So in clause 25 the expression "act of the firm" is used in the sense of the definition.

Mr. President: The question is that clause 25 stand part of the Bill.

The motion was adopted.

Clause 25 was added to the Bill.

Clauses 26 and 27 were added to the Bill.

Mr. President: Clause 28.

Sardar Sant Singh: Sir, in sub-clause (2) of clause 28 it is said:

"Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death."

Now this "act of the firm" may mean mortgaging or alienating the property or any act in order to wind up the firm or to settle the accounts of the firm or to carry on the dissolution of the firm. Will that be included in this expression or does it only mean the liabilities of the firm incurred after the death of the partner?

The Honourable Sir Brojendra Mitter: Sir, the definition clause makes it quite clear. An "act of a firm" means "any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm"; so unless it be such an act, it would not be an act of the firm.

Mr. President: The question is that clause 28 stand part of the Bill.

The motion was adopted.

Clause 28 was added to the Bill.

Clause 29 was added to the Bill.

Mr. President: Clause 30.

Diwan Bahadur T. Rangachariar: Sir, I have an amendment to sub-clause (6) of clause 30. I am sorry I could not give notice earlier. That sub-clause provides:

"At any time within six months of his attaining majority, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm. . . . . ."

[Diwan Bahadur T. Rangachariar.]

Till now, Sir, the law has been that a minor has to do so within a reasonable time. Now the Select Committee has altered that provision to a definite period of six months after attaining majority. I quite agree with the principle, and it is a wholesome departure which the Select Committee have made, but they have overlooked one little point which may work a little hardship in certain cases. There may be cases where an infant has been admitted to the benefits of a partnership, and there may be cases where the partnership is such that it gives no profits, or no profits, even if they have been earned, have been given to the infant, or such profits may have been merely carried on in the books of the firm, and the infant may not have been aware that he had been admitted to the benefits of partnership either. If it stood as before, *i.e.*, "within a reasonable time", that imports knowledge on his part that he had been admitted to the benefits of partnership, and then of course no court will say that he has not given notice within a reasonable time if he does so as soon as he acquires knowledge. But it is not inconceivable that minors, infants, may have been admitted without their knowledge by their uncles or other near relations to the benefits of a partnership, and the minors may have had no knowledge of it at all, in which case we require him to give notice at any time within six months of his attaining majority. It is an absolute rule as it is enacted, and it may work a hardship in cases where the infant is not aware of it. Therefore, I propose that the clause to sub-clause (*6*), namely:

"In sub-clause (*6*) of clause 30 after the word 'majority' the words 'or of his knowledge that he had been admitted to the benefits of a partnership whichever date is later' should be added."

That will provide for such cases as I have in mind which are not unlikely. Therefore, as we are here to do justice, we should not do injustice to a minor and make it obligatory on him to give notice whether or not he was aware of it, because by his failure to give notice, he at once becomes a partner of the firm, and will be saddled with all the responsibilities and liabilities. Therefore, such a thing will work hardship in such cases. I have also added a clause if a man wants to take advantage of such a provision, namely that he had no knowledge at all, that:

"For the purpose of this sub-clause the burden of proving that the person who was a minor had no knowledge of his having been admitted to the benefits of a partnership shall be on the person claiming the benefit of extended period of limitation beyond six months of the minor's attaining majority."

Therefore, I throw the burden of proof on him; he has to show that he had no knowledge, because ordinarily one would expect that he had knowledge in ordinary cases, but there may be cases in which he had no knowledge, and in such cases the provision I have made will be ample. No injustice is done to any party. I am sorry I was not able to discuss this amendment with the Law Member yesterday as I was not able to meet him, and I do think that it will be a case where hardship may be avoided by accepting this clause. So I move my amendment.

The Honourable Sir Brojendra Mitter: I think, Sir, that Sir Lancelot Graham should accept this amendment, subject to drafting changes.

Sir Lancelot Graham: Sir, the position as regards that is, that although the Honourable Member had put in two amendments last night, he has supplemented those amendments at a somewhat late stage, and I quite agree that he has not tried to vex us; any way he would not be himself if he were to do it; but I would accept this amendment provisionally, that is to say, it is quite possible to accept this amendment, but we may have to redraft it in the Council of State and bring it back here. But just as a small precaution I might suggest the addition of the word "obtaining" before "knowledge". If the Honourable Member will accept this insertion of the word "obtaining" before the word "knowledge", we have no objection to accepting his amendment. The words in his amendment are "or of his knowledge" and so on. If he would accept the insertion of the word "obtaining" before the word "knowledge", we will be in a position to accept the amendment.

Mr. President: Does the Honourable Member agree?

Diwan Bahadur T. Rangachariar: Yes, Sir; I quite agree.

Mr. President: The amendment is amended by adding the word "obtaining" between the word "his" and "knowledge".

Mr. C. C. Biswas: Sir, I do not quite appreciate why Sir Lancelot Graham and the Honourable the Law Member have accepted this amendment. Is it intended to provide for cases where a minor is admitted to the benefits of a partnership without his knowledge or in spite of him? Now, suppose partners A, B and C agree among themselves that X, a minor, shall be admitted to the benefits of a partnership without the knowledge of X or of his guardian; everything is done behind his back. In such a case is it suggested that under the Bill as it stands the minor would be liable, even if he does not give notice?

Sir Hari Singh Gour (Central Provinces Hindi Divisions: Non-Muhammadan): Yes.

Mr. C. C. Biswas: I should like the Honourable the Law Member kindly to explain this point, as to how it will be possible for A, B and C to admit X to the benefits of a partnership without X wishing it or anybody wishing it on his behalf, or in spite of X's protest. Although X is a minor, he might say he would not like to be admitted to the benefits of a partnership. Minority extends to 18 and in some cases to 21. Up to that stage it may be quite competent for a person to have sufficient knowledge to be able to decide what he should do. Suppose at the age of 17 a minor says that he does not want to be admitted to partnership. Is it suggested that such a minor would be liable? If that be so, I quite appreciate the object of the amendment that is before the House. Otherwise I do not see the point. On the other hand, the introduction of this amendment will suggest that the Bill does contemplate a position like that, that it is possible for A, B and C by their concerted action to thrust a benefit upon X, although X does not want it and X's guardians do not want it. I do not think that is a position which the framers of the Bill did contemplate or should contemplate. If that be so, the matter ought to be made clearer, not merely by this amendment, but by expressly providing that it will be open to a minor, where a minor has been admitted to the benefits of a partnership without his knowledge or consent or the knowledge or consent of his guardian, at any time to repudiate, because it would be an act of fraud on him, and there is no

[Mr. C. C. Biswas.]

authority in any body of persons to perpetrate such an act against his interests. This clause as it is framed, taken along with the rest of the Bill as I read it, contemplates that a minor is to all intents and purposes treated as a partner: but because the Judicial Committee has held in 49 Calcutta,—Sannyasicharan's case—that a minor, because he cannot enter into a contract, cannot be regarded as a partner, partnership implying agreement, it is said that a minor, although not a partner, may still be "admitted to the benefits of partnership". That is the object with which this expression is used, but to all intents and purposes as I have said, he is regarded as a partner. There is the saving of course that he will not be personally liable in certain circumstances; but I do not think it is suggested or intended, or it was suggested or intended at any stage by any one, that a minor should be treated as a partner or should be admitted to the benefits of partnership, even if he did not wish it or even if his guardians did not want it. So I think if there is this danger, it ought to be clearly safeguarded against.

The Honourable Sir Brojendra Mitter: May I explain the position? In the rare case contemplated by Diwan Bahadur Rangachariar, when a minor is admitted to the benefits of a partnership without his knowledge of it, some provision like that will be an additional safeguard to him. With regard to Mr. Biswas' point, probably he has overlooked the fact that when a minor is admitted to the benefits of a partnership, it is only his interest in the firm which is liable—he is not personally liable during his minority. There is no occasion to give him a right to repudiate, during his minority, because he is not liable. His liability comes in six months after he attains majority, if he does not give notice in the terms of clause 30. It may conceivably happen that four persons are carrying on a business: one of them dies leaving an infant son, and the surviving partners feel that the benefits of the one-fourth share which the deceased had should be given to the minor, without the minor knowing anything about it. The minor may be wealthy and year after year the profits are credited to an account started in the name of the minor without the minor knowing anything about it. The minor attains majority and after six months, he is automatically saddled with personal liability for the antecedent debts of the firm. In that rare case the minor, I think, is entitled to some protection. Diwan Bahadur Rangachariar's amendment does not introduce any complications but affords an additional protection to the minor, who had no knowledge.

Mr. President: The question is:

"That in sub-clause (*6*) of clause 30 after the word 'majority' the words 'or of his obtaining knowledge that he had been admitted to the benefits of a partnership whichever date is later' be inserted."

The motion was adopted.

Diwan Bahadur T. Rangachariar: I have already mentioned, Sir, the reasons for my moving this amendment. I formally move:

"That to clause 30 the following new sub-clause be added:

'(6) (*a*). For the purpose of this sub-clause the burden of proving that the person who was a minor had no knowledge of his having been admitted to the benefits of a partnership shall be on the person claiming the benefit of extended period of limitation beyond six months of the minor's attaining majority'."

Sir Lancelot Graham: On a very small point of drafting, Sir, would you kindly substitute the words "For the purpose of sub-section (*6*)" for the words "For the purpose of this sub-clause"? The renumbering of the sub-sections will be done on a general motion which will be moved on the third reading; but this actually comes into the text.

Diwan Bahadur T. Rangachariar: I accept the suggestion.

Mr. President: The question is:

"That to clause 30 the following new sub-clause be added:

'(6) (*a*). For the purpose of sub-section (*6*) the burden of proving that the person who was a minor had no knowledge of his having been admitted to the benefits of a partnership shall be on the person claiming the benefit of extended period of limitation beyond six months of the minor's attaining majority'."

The motion was adopted.

Diwan Bahadur T. Rangachariar: Sir, I beg to move the next amendment:

"That in sub-clause (7) (*a*) of clause 30 the words 'but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership' be omitted."

This is not such an easy matter as the former amendment, and so I shall have to explain at some length the necessity for this provision which I am making. Honourable Members will notice that under sub-clause (*3*) of the same clause when a minor is admitted to the benefits of a partnership, sub-clause (*3*) provides that such minor's share is liable for the acts of the firm, but the minor himself is not personally liable for any such act. That is a sound principle. To the extent of his property in the firm, to the extent of any profits which he may have derived from the firm when a man is admitted to the benefits of the firm, certainly it is right and just that he should be saddled with liability. That is the general law everywhere. Now we come to the case of a man after he attains majority and he elects to become a partner. It may be that when a person was an infant only, six months or two years old, he was admitted to the benefits of a partnership by an uncle of his. This infant or minor may have been sent to England for education, he may have received his education there, and at the age of 18 or 21, as the case may be, he has to elect whether he will become a partner or not. In the meanwhile, the business has been going on. Of course, he is given the right of access, not to all the books of the firm. Honourable Members will notice that the Select Committee have restricted the scope of access only to accounts and not to all the books of the firm. The minor has got a right to look into the accounts of the firm and not into all the books of the firm. It is only right, he is not a partner, and he is not entitled to look into all the books of the firm and therefore the right is limited only to looking into the accounts of the firm. I am not a business man myself, but I have had to deal with cases on behalf of other persons where business matters are concerned. I know also the habits of my people. They take many things on trust, they do not take the trouble to go into all the details, they take statements on trust, they do not go into the books and find out for themselves what is the liability they are saddling themselves with by electing to become a partner. I quite recognise that under

[Diwan Bahadur T. Rangachariar.]

sections 247 and 248 of the Contract Act as it stands, it is open to the contention—I do not know that any case has so decided—it is open to the construction, that the law as it at present stands makes a minor personally liable also for all acts of the firm done since he was admitted to the benefits of the partnership. But I am not aware of any case where the law has been so enforced. It is certainly not the English law. Under the English law an infant can be a partner of a firm, that is not our Indian law. Although he is a partner of the firm under the English law, the infant after he attains majority is liable only for all liabilities incurred after he attains majority, for all acts done after he attains majority. To the extent of his property in the firm he is liable, but his personal liability arises only after he becomes a major—because the Indian law is even more severe in respect of infants than the English law. The infant is not entitled to enter into any contract, and in fact, in the case in 30 Calcutta it was declared that contracts by a minor are void altogether. Therefore, a minor is more protected than in England, and I think we ought to see what justice is there in imposing this personal liability, which means and includes that not only can you send him to a civil prison for not paying the debt, but you can also take hold of his other properties unconnected with the firm. You may conceive of cases, for instance, where the minor may have been admitted to a hundredth share in a partnership, and after he becomes a major and elects to become a partner, what happens? He may have received Rs. 500 in all these years in the shape of profits, but the liabilities of the firm when investigated thoroughly may amount to thousands of rupees, and by this man electing to become a partner, you impose a personal liability on him, because it is joint and several liability under the Bill. Under clause 25 every partner is liable, jointly with all the other partners and severally for all acts of the firm done when he is a partner. So that it is a joint and several liability which will be imposed on him. He may have other property of his own which the creditor may seek to seize in enforcing this liability. My Honourable friend the Law Member suggested the other day that he has six months within which he could examine the books and find out whether he should become a partner or not. In some cases he may say, "Very well, I close my accounts with the firm", and some time afterwards he may apply to be made a partner which he cannot become unless the other partners agree. The partnership may have been a losing concern for years together, and at the time he chooses to become a partner, as it happened during the War—many of these firms which were not paying anything began to pay, and the man may have been dazzled by what happened during the time when he is asked to decide whether he will elect to become a partner or not. He may find it so dazzling and attractive that he may decide to elect to become a partner. So that, after all, you must do justice between the partners. Third parties enter into a contract with the firm, knowing that a particular person is not a partner at all. He only elects to become a partner later on. At the time third parties enter into contracts—the persons who deal with the firm deal only with the credit which A, B, C who are already partners command. This D becomes a partner only afterwards. This gives retrospective additional credit to the persons dealing with the firm by throwing this personal liability on the minor who elects to become a partner. There is no justice in giving this retrospective credit to third parties. They were content to deal with the

firm relying on the credit of the people who were then partners of the firm. My Honourable friend spoke of compensation, incidental liabilities which he has to take. I quite agree that he ought to take incidental liabilities. What are the incidental liabilities when you become a partner, when you have been admitted to the benefits of a partner? The incidental liability can only extend to his share in the partnership property, to the share which he may have received in the profits of the firm. Beyond that where is the incidental liability? Incidental liability cannot extend beyond that, and therefore this is imposing on him an unjust obligation for which I can find no justification whatever. Of course, a careful man who can go into the whole of the accounts, say, for 20 years,—he may have to examine the accounts and see what liability he is really taking, and all that. There may be things which may be sprung upon him. There may be contracts which may end in a loss afterwards. Therefore, I consider that this additional advantage given to third parties is uncalled for, likely to be unjust to the minor, and imposing on him an obligation for which there is no necessity at all. Of course, after he becomes a partner, he becomes a partner liable like the rest. We are now dealing with what had happened before he became a partner. The essential point to remember in dealing with this question is this, that before he became a partner certain things had been done and certain liabilities had been incurred, and now why give retrospective operation of liabilities to this man, a new partner? When he becomes a partner he becomes liable only for acts done after he joins as a partner. Similarly also is the case with minors. If he has received any benefits out of the firm, to that extent he must reimburse, he must pay back what he has received in order to pay off the debts of the firm. To that extent the partners will be entitled to seize hold of the whole of his share in the partnership property, the whole of the profits which he had earned. To that extent I consider it is a just claim, but to go and lay hold of his other properties and of his person for past liabilities incurred at a time when he was an infant for which he was not personally liable, seems to me to be unjust, uncalled for, unnecessary, even in the interests of third parties on whose behalf this provision is herein made. I think it is not a right obligation which has been imposed. I quite concede it is a matter possibly open to construction under section 248 of the Indian Contract Act as it stands. The law at present imposes that liability. Now, that we are modifying the law, let us see what justice there is even if that is the law. I know no case in which retrospective obligation like this has been imposed, but now you make it clear by a special provision saying that when he becomes a partner he is liable to third parties for all acts of the firm done since he was admitted to the benefit of partnership. The benefit may be infinitesmal, the liability may be very large, and I do submit that there is no justice in this, and therefore I move that all these words be omitted.

12 NOON.

The Honourable Sir Brojendra Mitter: I ask the House not to accept this amendment. It is a matter of vital principle, and I shall deal with the Diwan Bahadur's points both on the basis of law and of equity. He has drawn a doleful picture of the minor's plight when on attaining majority he joins the firm as a partner. Let us deal with it firstly on the basis of law. One of the principles which we in the Special Committee and in the Select Committee kept steadily in view was that no change should be introduced unless called for. Now, Sir, what is enacted in

[Sir Brojendra Mitter.]

this sub-clause has been the law of this country for 60 years, and no complaint, to my knowledge, has ever been made that this clause operates harshly. It only re-enacts section 248 of the Indian Contract Act which was passed in 1872. The section says this:

"A person who has been admitted to the benefit of partnership under the age of majority becomes on attaining that age liable for all obligations incurred by the partnership since he was so admitted unless he gives public notice within a reasonable time of his repudiation of the partnership."

The Diwan Bahadur himself admitted that, notwithstanding his extensive practice, he had not come across any case of hardship. If a law has been in operation for 60 years without causing any hardship why change it?

Diwan Bahadur T. Rangachariar: You are now following the English law.

The Honourable Sir Brojendra Mitter: I am coming to the English law. The English law with regard to minors is quite different from the Indian law because in the English law a minor may become a partner. Under the Indian law, section 11 of the Contract Act says that a minor may not be a partner. There is, thus, a vast deal of difference between the Indian law and the English law. Now, look at the alleged injustice of the provision. Where is the injustice? The minor is admitted to the benefits of the partnership. He has access to the accounts of the firm. He can take copies of the accounts of the firm. On attaining majority, he gets six months to make up his mind, with full knowledge of the accounts. If at the end of six months, he makes up his mind to join the firm as a partner, he joins the firm with his eyes open, knowing what the liabilities of the firm are, knowing what obligations he is incurring. If that be so, where comes the necessity of extending protection to him? I can well understand protection to a minor, but the minor is no longer entitled to protection when he has attained majority. He has had full opportunities to examine his position, and he joins the firm with eyes open and therefore there is no need to give him further protection. Then, the Diwan Bahadur said it was unjust Why should it be unjust when during his minority he incurred no obligation whatsoever? He did not incur any of the obligations of a partner during his minority. Partners have to give their time, labour and skill to the firm. Partners have to do various other things under the law. The minor is excused all that. Nevertheless all through his minority he was getting the benefits of the partnership. That being so, he was in a much better position than an adult partner. When he attains his majority, he chooses to become a partner with full knowledge of all the facts. On the ground of equity, therefore, I do not see any injustice in adhering to the old law, which has obtained in this country for 60 years.

Mr. President: The question is:

"That in sub-clause (7) (*a*) of clause 30 the words 'but he also becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership' be omitted."

The motion was negatived.

Clause 30, as amended, was added to the Bill.

Clause 31 was added to the Bill.

Mr. President: Clause 32.

Diwan Bahadur T. Rangachariar: As Honourable Members will notice, clause 32 deals with the retirement of partners, with the consent of other partners. Sub-clause (*3*) of that clause runs as follows:

"Notwithstanding the retirement of a partner from a firm he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement until public notice is given of the retirement."

Third parties dealing with a firm are not affected by the retirement of a partner unless they had knowledge of the retirement of the partners. That is the principle but this law as now sought to be framed gives him more than that protection. Now, as Honourable Members will see, public notice is given in a particular way, by a gazette notification, and also a notification in a vernacular paper. Under the English law, the retiring partners continue to be liable until third parties have notice—not public notice. This corresponds to section 36 of the English Act, under which, until he has notice, the liability continues. The moment he gets notice of it, the liability ceases. Notice may be in any way—by knowledge acquired, by writing, by speaking, by various ways,—and one of the clauses provides, as a safeguard, that although he may have no individual notice, a public notice shall be deemed to be a notice. That is the English law. If a man gives public notice in the London or Edinburgh or Dublin Gazette, it shall be deemed to be notice although he may have no individual notice. What my Honourable friend proposes is that even if a man has notice, even if it be his own brother who has retired and he knows that from the moment of his retirement, until public notice is given, the liability continues. That seems to be quite uncalled for. When they know that such and such partners have retired, why go on imposing on them this benefit of saying that, notwithstanding your knowledge, until public notice is given, you shall have the advantage? I do not know why they do it: and until therefore a man has notice, a public notice shall be deemed to be a notice to everybody; but if a man has otherwise knowledge of the retirement, why should he have this benefit? Therefore, I think it is a departure from the English law which is uncalled for, and therefore I move, Sir:

"That in sub-clause (*3*) of clause 32 after the words 'before the retirement' the words 'until they have knowledge of, or' be inserted,"

because if they have knowledge of the retirement, then there is an end of it until that moment. That knowledge may be obtained by notice, individual notice or otherwise, and therefore, I think the object of the Bill would be best served, and it would be in keeping with section 36 of the English Act and certainly with common sense that a man who has knowledge should not be protected and given an extended period of protection even if he has knowledge until that public notice is given. The amended sub-clause would then read as follows:

"Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until they have knowledge of, or until public notice is given of the retirement: . . . . "

Then I also want to add at the end of the foregoing amended sub-clause the following words: "whichever is the earlier date"; that is my next amendment:

"In sub-clause (*3*) of clause 32 after the words 'public notice is given of the retirement', the words 'whichever is the earlier date' be added."

[Diwan Bahadur T. Rangachariar.]

If the date of the notice is earlier, that will then prevail: whichever is the date shall prevail, so that he will have the advantage of imposing the liability on all partners whether they have retired or not till he has knowledge either by means of public notice or his own knowledge of the retirement. That is the object of my amendments, and I hope the Honourable Member will accept them.

The Honourable Sir Brojendra Mitter: Sir, I ask the House not to accept this amendment. I stated a little while ago that one of the principles which we have kept steadily in view was to adhere to the existing law if the existing law had operated without hardship. Another principle which we also kept in view was to minimise litigation. Now, the addition of these words will open the floodgates of litigation. I shall explain how. There is no doubt that we have departed from the English law, and why we have done so is fully explained in the Notes to the Clauses. This is what we say:

"The clause covers the liability of the retiring partner for acts of the firm and the liability of the firm for acts of the retiring partner. As regards giving notice to customers, the English law is that separate notices must be given to old customers but public notice to new customers is sufficient. This may be a serious undertaking for a partner leaving a firm which deals with numerous customers in India, and we propose to dispense with separate notices to old customers and to make public notice sufficient in all cases."

What would be the effect of this amendment? The Diwan Bahadur wants to stiffen the law in favour of the third party. The public notice as described in section 71 is wide enough for all the needs of protection. It says this:

"A public notice under this Act is given—

(*a*) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 62, and by publication in the local official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business, and (*b*) in any other case, by publication in the local official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business."

All that we want is this, that if a partner who is retiring or who has retired, wants to avoid a liability incurred subsequent to his retirement, all he has got to do is to give public notice. The Diwan Bahadur says, "Well, what about those who have got actual knowledge of the fact?" We say, "Well, we do not care whether the man has got actual knowledge or not; the man who wants to avoid a liability must do something, he must take the trouble and give public notice." If he does that, nothing further is required. If you introduce this element of knowledge, then in every case an issue will arise. The Diwan Bahadur's proposal is to insert the words "Until they have knowledge of or until public notice is given". Therefore, public notice need not be given, and the issue will be, "Had that man knowledge?". There will be perjured evidence on both sides—a thing which we want to avoid. I submit that the House should not accept this amendment which will not improve the position of anybody; on the contrary, it will introduce an element of litigation which is avoidable.

Sir Abdur Rahim (Calcutta and Suburbs: Muhammadan Urban): Sir, I support the amendment. My Honourable friend, the Diwan Bahadur, made his position quite clear, namely, the object with which he has moved his amendment, and I am afraid the Honourable the Law Member has not met the objection put forward by him. If a partner retires and the question arises how far he will be liable for acts of the firm after he has retired, then, if a third party goes on dealing with the firm after the partner's retirement, if he has no notice that the man has retired, how can he in conscience hold that man liable knowing that he was dealing with a firm of which this man was no longer a partner? The public is entitled to hold every partner in the firm liable until they have notice that such and such man no longer belongs to that firm. That is the well established principle of the English law. Now, if public notice is given by presumption of law, that becomes notice to all. Then, no doubt, anyone dealing with the firm after retirement of the partner who has given public notice of the fact of his retirement cannot turn round and say that he will hold that partner liable. Supposing public notice is not given, but the third party dealing with the firm knows in fact that the man has retired . . . .

The Honourable Sir Brojendra Mitter: We want to avoid that issue of knowledge.

Sir Abdur Rahim: Why should it be so? Supposing it is proved, as Diwan Bahadur Rangachariar has put it, that a brother knows that his brother has retired, why should he hold him liable for dealing with a firm when he is dealing with a firm of which he was a partner but from which to his knowledge he has retired? There is no sense of justice in that. This goes far beyond what is the established law in England in this case as well as in similar cases. It is not justice; it is injustice. I submit the amendment of my Honourable friend is perfectly right and just and I think the Government should accept it.

Sir Hari Singh Gour: Sir, I also rise to support the amendment on the following grounds. Honourable Members, if they turn to section 36 of the English Partnership Act of 1890, will find that the language of that section is perfectly clear and free from ambiguity. It says:

"Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still the members of the firm until he has notice of the change."

And then comes the next clause which lays down as to how such notice can be given by publication in the London Gazette and so on.

The Honourable the Law Member will find, if he does not accept this amendment, that there will be one set of laws in England and another set of laws in this country. Now, it is conceivable that a firm may consist of partners who live both in England and in India. As a matter of fact, such partnerships are not unknown. And if a partner was to retire in England, the mere fact that he has given notice—not the public notice but given notice—would immediately determine his liability as a partner. But the very same partner or another partner in India exactly in similar circumstances will continue to be liable though he may have given notice of the same kind; indeed the notice that he may have given may be a

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duplicate notice of the one which his Solicitor in England had issued for the information of the public at large. But because of the rigidity of the law in this country, that notice would not be sufficient. Now, I submit that the law of partnership in this country should, as far as possible, assimilate the general principles of the English law, so that there may be no disparity between the English law of partnership and the Indian law of partnership. Honourable Members who have no acquaintance with company law and with the Negotiable Instruments Act will find and the Honourable the Law Member will admit that fact, that in all these domains of company law and negotiable instruments, the laws of the two countries are as similar as they possibly can be. The law of partnership stands on the same footing, and therefore, I think that we should not make a departure from the English law. There is really no reason at all why there should be a departure. Now, the Honourable the Law Member is perfectly right when he says that cases are conceivable if we were to add the word "knowledge" but I would prefer to follow the English law and not add the word "knowledge" but "until he has notice of the change". That is the language I would suggest. I would add another clause saying that notice given in the official Gazette and so on in accordance with the provisions of the section will be deemed sufficient.

The Honourable Sir Brojendra Mitter: If my learned friend will excuse my interruption: if notice is to be given, what is the objection to a public notice?

Sir Hari Singh Gour: The point is this and my Honourable friend knows it as fully as I do, that the word "notice" under its definition in the Transfer of Property Act and elsewhere means not merely a formal written notice, but also it means the conveyance of knowledge otherwise. That is the meaning. If the knowledge of a certain fact, namely, that a partner has retired, has been communicated to the other party, then in the eye of the law, both English and Indian, it amounts to notice as it is defined in the Transfer of Property Act. Therefore, my learned friend has for the moment forgotten that principle of Indian law. Notice is only a technical term and it implies conveyance of knowledge, of information, either directly or indirectly received, or even the information which a party was bound to inquire into and which he has by his negligence failed to obtain. This is the meaning of the word "notice" under the Indian law as well as the English law. It is a word which has very definite connotations both in the English and the Indian law. But let us not quarrel about that. We are here dealing with a principle, and if that principle is accepted, I have not the slightest doubt that the Honourable the Law Member will be able to reduce it to a suitable draft. It matters little whether he calls it "knowledge" or follows the terminology of the English Act and uses the expression which is there used, *viz.*, "He has notice of it". But the point I am making and the point which, I think, the Honourable the Mover of this amendment has made out is this. You have got, say, four partners in a firm. Two of them are resident in England and the other two are resident, let us say, in Calcutta. One of the partners in England gives notice under the English Partnership Act—and we will say that the partnership is registered both in India and in England, but that is a technical matter which need not trouble us—but it is not a public notice. He sends a letter to all the partners and says that from this

moment he does not belong to that firm. That will determine the partnership so far as the English law is concerned. But that very letter which was held to be sufficient in England would be insufficient in Calcutta because the formalities of a notice under the provisions of section 71 have not been gone through. That is a dissonance between the English law and the Indian law which I deprecate. The Honourable the Law Member will find a discussion of this very subject at page 82 of Lindley on Partnership. This is what was laid down by the House of Lords. Let me read to you a passage, because it is a passage of the highest court of justice in England:

"It often occurs that on the retirement of one partner, a new partner is taken into the firm, the firm name remaining unchanged. In these cases the doctrine of holding out must be applied with care. Suppose A and B carry on business under the name of X and Co. Neither A nor B holds himself out as member of that firm to any one who does not know their connection with it. If, therefore, A retires from the firm, and gives no notice of his retirement, he will still be liable to old customers who knew of his connection with X. and Co."

That is perfectly elementary:

"and who continue to deal with it on the faith that A is still a member of it; but A will incur no liability to new customers of X and Co. who never heard of him. Further, if on A's retirement C joins B and B and C carry on business as X and Co., even an old customer of X and Co., who goes on dealing with it without notice of A's retirement or C.'s admission, cannot truly say that A ever held himself out as partner with C or with both B and C; and consequently, even an old customer cannot maintain an action against A, B, and C jointly for a debt contracted by X and Co., after A's retirement."

Let me give a simple case. X and Co. is a firm of which the partners are A, B, C and D and their names are disclosed. You write on your letter paper X and Co., partners A, B, C and D. D retires from the partnership and you change the name into Y & Co., and say, Y and Co., late X and Co., partners, A, B and C. You do not give notice as required by section 71, but you have given the amplest notice to the whole world that the partnership has been reconstituted, that D has retired from the firm, that the very name of the firm has been altered from X and Co., into Y and Co. This is an extreme case, but extreme cases are sometimes instructive and prove the points we have in view. Now, in such a case the Court of Equity sitting in England would not have the slightest hesitation in holding that D from the date of retirement and change of the name of the firm has ceased to be a member of that firm and *in foro conscientiæ*, "in the court of the ordinary conscience", every man whom you meet, whether he is a trader or not, will immediately say, "Here you are, he has done the very best thing he could have done. He knew all about it, the name of the firm has been changed, the name of the partners altered and that was a notice given to everybody". But if under the Indian law we pass this clause and clause 71 alongside of it, this would be no notice at all. The Indian law would say, "I do not care whatever declaration you made. I do not even care if you change the name of the firm and said it was late X and Co., now Y and Co. You even disclosed the fact on your letter heads and by other documents that A. B. C and D are now converted into a firm of A, B and C,—D retiring". Because no public notice has been given in the strict sense in which clause 71 is worded, and to which the Honourable the Law Member has just now referred, therefore, there has been no dissolution for determining the rights and liabilities of D *vis-a-vis* the third party concerned. That, I submit, is carrying technicality to a very extreme verge and to an absurd limit. I, therefore, think that the Honourable the Law Member should

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really reconsider this point, because a legitimate ground for asking him to reconsider it is firstly that the law should be, as far as possible, assimilated to that obtaining in England, and secondly, because it is just and equitable that the person, who has given notice, not necessarily notice in the exclusive form provided for by clause 71, should be held to be sufficient. I, therefore, think that this is a case in which the Honourable the Law Member should not oppose the amendment. I quite realise what the Honourable Member said that it will lead to litigation. But after all it is worth taking that risk. When you want justice to be done, we do not mind if some unscrupulous person launches the firm into litigation. We have to look to justice first, and if that justice is to be vindicated in a court of law, then I submit that is a peril which we must assume and must be provided against. Therefore the objection which the Honourable the Law Member has taken, with due respect to him, is, I think, insufficient to overcome the objections we have raised and I would, therefore, ask the House to vote for the amendment.

Mr. Jagan Nath Aggarwal (Jullundur Division: Non-Muhammadan): I support this amendment for the very simple reason that it will promote honest dealings. I wish to reduce the discussion from technicality to the layman's point of view and in order to be able to appreciate this point, I will give you an illustration. Three persons, A, B and C, are partners and after some time, C withdraws from the partnership, takes his share of the partnership assets and goes away to England or to some other place of retirement. In a moment of folly, he does not take any further trouble, does not advertise in the gazette as he is required to do under clause 71. He may disappear from the scene for a few years and have no connection with the partners and their business. After five years, what do we find? A creditor may very conveniently proceed against this man, who, say, is living in Mussoorie or some other place in retirement, for acts of the company, for the simple reason that though every one in the world knows that he has withdrawn from the partnership, because public notice has not been given under clause 71, saying that the man is not liable and the other partners are able to foist the liability on to this man who has nothing to do with the firm for the simple reason that we, the law-makers, with the help of my Honourable friend, the Law Member, insist that though all the world knows the fact of that man having ceased to be a partner, yet because of the accident of his not having given notice, he should suffer. With due respect to the Honourable Member, I think we would be promoting dishonesty of the worst kind, and what is more, it would depend not so much on what a man's intentions may have been but on the mere accident of a certain notice not having been given at a particular time. We are told that the only reason, if I may say so with due respect, that is supposed to be in support of the attitude taken up by the Law Member is that it will open the floodgates of litigation, the one thing for which I, as a lawyer, have no terror. I certainly assure the House that it is not from that point of view that I support this amendment. I can assure the House that the reason is if a dishonest person has got to go to the law and if an honest person is forced to go to court and defend his person, it is a very bad proposition indeed of the present state of the law. Every creditor of the partnership firm will immediately proceed against the man who has gone away from partnership and he will have to invoke the aid of the

law to protect himself. But if we amend the law in the sense that has been recommended by Diwan Bahadur Rangachariar, then the position would be that this man may have to go to court. Therefore this idea of letting loose the floodgates of litigation does not frighten me at all. Where is the point in not allowing a person when he is brought to a law court to prove that the other man has no equity in his favour but knew it all along. I submit this is not only good law but it would be good common sense law.

Mr. S. C. Sen (Bengal National Chamber of Commerce: Indian Commerce): I am sorry I cannot support this motion. In the first place the Bill has provided a particular mode of notice being given. That can easily be proved in a court of law when a suit is filed. Moreover we have to look at it from two different points of view, from the point of view of the retiring partner and also from the point of view of the old customers of the firm. If so far as we have seen, exception has been taken from the point of view of the old customers of the firm, I can quite anticipate that a partner would have sent a public notice. But as regards the objections from the point of view of the retiring partner, all that he has to do is to put in a notice in the Gazette, or a notice as provided in the Bill, and there his responsibility ceases. If he does not do that and he relies upon personal notice being given, or upon knowledge of the man, that would mean an issue in a court of law and evidence on both sides which is very inconvenient and would be very costly, although by a mere notice which would cost him only Rs. 5 or Rs. 10 he can avoid all these difficulties. In these circumstances as this amendment has been proposed mostly on behalf of retiring partners, I should think that the provision as made is ample and sufficient for his purposes.

Mr. C. C. Biswas: Sir, I think we might arrive at a compromise. This clause has been inserted mainly for the protection of the retiring partner, and it is provided that if the retiring partner gives public notice, he is safe and is not to be held liable for the obligations of the firm incurred after the date of his retirement. The point has been raised, suppose such public notice has not been given by such retiring partner for some reason or other, but the customers of the firm have knowledge all the same of the fact of such retirement; would it be just in such a case to hold the retiring partner liable in spite of such knowledge on the part of the customers? Sir, I think where the retiring partner has omitted to give such public notice, if the law requires that it will be upon him to prove that the customers had knowledge, then the situation will be amply met. You do not throw the burden upon the customers of proving that they had no knowledge. The retiring partner is given the option. If he elects to fortify himself completely, he must give public notice. In that case it is conclusive, and no further question arises. No man would be entitled to come and allege that he still continued as a partner or that he did not inform all the customers that he had retired. But in cases where he omitted to give such public notice, then the law may cast upon him the burden of proving that in any individual case the customer had notice of such retirement.

The Honourable Sir Brojendra Mitter: But is not the burden always on the person who alleges the affirmative?

Mr. C. C. Biswas: The point is this. As a matter of fact if public notice is given, the question of burden does not arise. Therefore what I suggest is this Where public notice has not been given, the retiring partners will have to prove that the customers had knowledge. I do not see why we should not accept the same principle as we have in the existing section 264 of the Contract Act. I will slightly amend the words suggested by the Diwan Bahadur, and say, "until public notice is given of the retirement, or the retiring partner proves that the third parties had notice of such retirement". The burden is of course always upon the retiring partner, but we should make that perfectly clear, so that there can be no question of any grievance raised by anybody. The retiring partner wants protection. He can give himself that protection either by following the provision laid down, *i.e.*, the giving of public notice, or if he does not do it, then by having to prove affirmatively that the individual customer with whom he was dealing had actual notice of his retirement. To make it perfectly clear, I would suggest the addition of the words, "until the retiring partner proves that the third party had notice of such retirement".

Sardar Sant Singh: Sir, in this connection I should like to invite the attention of the Honourable the Law Member to one fact which has not been discussed so far, which is that reading clause 71 wherein the mode of giving public notice is defined, we find:

"Where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the *election to become or not to become a partner* in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to the Registrar of Firms under section 62, and *by publication in the local official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.*"

From this it is clear that the date of giving notice will be the date when the official Gazette has been published. Now these Gazettes are published weekly. Supposing during the week that expires between his retirement, and publication of the Gazette, any liability is incurred, will it be the fault of the retiring partner or will you take it from the date when he sends the notice to the Gazette about his retirement?

The Honourable Sir Brojendra Mitter: It must be the date which the notice bears.

Sardar Sant Singh: But that is not clear from the wording of the clause.

The Honourable Sir Brojendra Mitter: That is the existing law. When you talk of notice and the question is about the date of the notice, it is not the date of publication in the official Gazette but it is the date of the notice itself.

Sardar Sant Singh: Then may I draw your attention to the word "publication"? Publication means when the Gazette is published. It may not be, when you actually receive the Gazette when it is really published for the outside world. Although the retiring partner has taken due diligence in sending the notice, he has to suffer because the Gazette is published late. So the best course would be to accept the amendment proposed by Diwan Bahadur Rangachariar.

Mr. R. K. Shanmukham Chetty (Salem and Coimbatore *cum* North Arcot: Non-Muhammadan Rural): Sir, we have had the opinion of the lawyers on the issue before the House. I daresay that from the point of view of the lawyer it would suit admirably to leave the clause as it is in the English law, and then for the issue whether notice has been given or not to be raised in the court when the dispute arises. But looking at the question from the point of view of the business man and the persons who will be affected by this clause, I am afraid that the amendment proposed by my Honourable friend, Mr. Rangachariar, does not really improve matters for the business community. What the clause is seeking to provide is for cases where a partner retires from a firm, and to determine the relation between such retiring partner and third parties. Now, if a man chooses to retire from a partnership, knowing full well the obligations imposed upon partners, it is up to him to take the necessary steps to enable the world to know that he has retired from the partnership. To safeguard my interest when I retire from my partnership, I would certainly take very great care to publish to the world in a recognised form the fact of my having retired from the partnership. Now, Sir, so far as the protection of that right given to me is concerned, I would rather have a clear and well-defined method of giving that notice rather than leave it to the courts to determine when the issue is raised whether constructive notice has been given, whether legal notice has been given or whether illegal notice has been given. So from the point of view of the person who primarily has to be protected in business concerns, the clause as it is amply safeguards the person who retires from partnership by saying that he must publish in the local Gazette and at least in one vernacular newspaper of the province in unambiguous terms the fact that he has retired from the partnership, and when that is done I think it will not be in the interests of business to allow this question to be left open and to be raised again when a suit comes on. I therefore support the section as it stands.

Sir Lancelot Graham: Sir, my task has been made easy by the intervention in the debate of two of the previous speakers—Mr. Sen, whom I may call a practical man of law, he being a solicitor, and my friend, Mr. Chetty, the Deputy President. What we have tried to do and what we are going on trying to do, because we stand against this amendment, is to make the position of the law perfectly clear, and to lay a definite obligation on the retiring partner; and it is after all a very small obligation. We are not asking him to incur a great deal of trouble. A man does not retire from business every day; we are not asking him to visit an office every day; we are not putting any irksome duty upon him. On a single occasion of his retirement from partnership we ask him to take a very simple action. My friend, Mr. Aggarwal, said a retiring partner in a moment of folly might neglect to give public notice; and then he proceeded to say that some years after something might happen. It is not a question of a moment of folly—it is a question of days, and weeks, and months and years of folly; and in such a case I think the fool should pay for his folly. Really I have nothing more to add, except that we are convinced that our proposal will make for simple working of the law.

Mr. President: The question is:

1 P.M.

"That in sub-clause (3) of clause 32, after the words 'before the retirement' the words 'until they have knowledge of, or' be inserted.

The Assembly divided:

AYES—16.

Abdul Matin Chaudhury, Mr.	Raghubir Singh, Kunwar.
Abdur Rahim, Sir.	Rangachariar, Diwan Bahadur T.
Aggarwal, Mr. Jagan Nath.	Sant Singh, Sardar.
Azhar Ali, Mr. Muhammad.	Sarda, Diwan Bahadur Harbilas.
Biswas, Mr. C. C.	Sitaramaraju, Mr. B.
Gour, Sir Hari Singh.	Thampan, Mr. K. P.
Jog, Mr. S. G.	Uppi Saheb Bahadur, Mr.
Pandit, Rao Bahadur S. R.	Ziauddin Ahmad, Dr.

NOES—59.

Abdul Qaiyum, Nawab Sir Sahibzada.	Jawahar Singh, Sardar Bahadur Sardar.
Acott, Mr. A. S. V.	Lal Chand, Hony. Captain Rao Bahadur Chaudhri.
Allah Baksh Khan Tiwana, Khan Bahadur Malik.	Macqueen, Mr. P.
Allison, Mr. F. W.	Misra, Mr. B. N.
Anklesaria, Mr. N. N.	Moore, Mr. Arthur.
Azizuddin Ahmad Bilgrami, Qazi.	Morgan, Mr. G.
Bagla, Lala Rameshwar Prasad.	Mukherjee, Rai Bahadur S. C.
Bajpai, Mr. R. S.	Noyce, Sir Frank.
Banerji, Mr. Rajnarayan.	Parsons, Sir Alan.
Bhargava, Rai Bahadur Pandit T. N.	Puri, Mr. Goswami M. R.
Bhore, The Honourable Sir Joseph.	Rafiuddin Ahmad, Khan Bahadur Maulvi.
Bhupat Sing, Mr.	Rainy, The Honourable Sir George.
Brown, Mr. R. R.	Rajah, Rao Bahadur M. C.
Chetty, Mr. R. K. Shanmukham.	Rama Rao, Diwan Bahadur U.
Clow, Mr. A. G.	Rastogi, Mr. Badri Lal.
Cocke, Sir Hugh.	Ryan, Mr. T.
Cosgrave, Mr. W. A.	Santos, Mr. J.
Crerar, The Honourable Sir James.	Sarma, Mr. R. S.
Dalal, Dr. R. D.	Schuster, The Honourable Sir George.
DeSouza, Dr. F. X.	Scott, Mr. J. Ramsay.
Dudhoria, Mr. Nabakumar Sing.	Seaman, Mr. C. K.
Dutt, Mr. Amar Nath.	Sen, Mr. S. C.
Fox, Mr. H. B.	Studd, Mr. E.
French, Mr. J. C.	Sukhraj Rai, Rai Bahadur.
Gidney, Lieut.-Colonel Sir Henry.	Sykes, Mr. E. F.
Graham, Sir Lancelot.	Tait, Mr. John.
Gwynne, Mr. C. W.	Wajihuddin, Khan Bahadur Haji.
Heathcote, Mr. L. V.	Wood, Sir Edgar.
Howell, Sir Evelyn.	Young, Mr. G. M.
Ismail Khan, Haji Chaudhury Muhammad.	

The motion was negatived.

Mr. President: Does the Honourable Member wish to move his next amendment*?

Diwan Bahadur T. Rangachariar: No, I don't wish to move it.

Mr. President: The question is that clause 32 be added to the Bill.

The motion was adopted.

Clause 32 was added to the Bill.

Clauses 33 to 43 were added to the Bill.

*"In sub-clause (3) of clause 32 after the words 'public notice is given of the retirement' the words 'whichever is the earlier date' be added."

Mr. President: Clause 44.

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

"That in sub-clause (*e*) of clause 44 for the words 'share in the property of' the words 'interest in' be substituted."

This, Sir, is a purely drafting amendment.

Mr. President: The amendment proposed is:

"That in sub-clause (*e*) of clause 44 for the words 'share in the property of' the words 'interest in' be substituted."

The motion was adopted.

Clause 44, as amended, was added to the Bill.

Mr. President: Clause 45.

Diwan Bahadur T. Rangachariar: I do not wish to move it. It is similar to 32.

Mr. President: You don't wish to move either of the two amendments† ?

Diwan Bahadur T. Rangachariar: No, Sir.

Mr. President: The question is that clause 45 be added to the Bill.

The motion was adopted.

Clause 45 was added to the Bill.

Clauses 46 to 53 were added to the Bill.

Clause 53A was added to the Bill.

Clauses 54 to 56 were added to the Bill.

Mr. President: Clause 57.

Diwan Bahadur T. Rangachariar: Sir, in clause 57, sub-clause (3) Honourable Members will notice it is stated that a firm shall not contain any of the following words for registering it, namely: "Crown", "Emperor", "Empress", "Empire", "Imperial", "King", "Queen", "Royal", etc., unless they obtain the consent of the Governor General in Council for the use of such words as part of the firm's name. Sir, I consider it is rather hard that a person should be deprived of using his own name by virtue of this clause. I know of a well known firm of Solicitors in Madras known as King & Patridge, and they will not be entitled hereafter, unless they register themselves and unless they obtain the consent of the Governor General in Council, to use their own name. There are several such names, Sir. King is a very common name among Englishmen. and I think we ought to preserve the right of every person

†"In sub-clause (1) of clause 45 after the words 'before the dissolution' the words 'until they have knowledge of, or' be inserted."

†"In sub-clause (2) of clause 45 after the words 'public notice is given of the dissolution' the words 'whichever is the earlier date' be added."

[Diwan Bahadur T. Rangachariar.]

to use his own name, however, confiscatory the Legislature might like to be. Surely a person has got a right to use his own name; he ought to be entitled to use it.

Another thing which is of more vital importance is, there are several firms which have acquired a goodwill under any one some or other of these names. For instance, I have in mind the case of the Imperial Tobacco Company, the Imperial Film Company, the Empress Theatre or the Empire Printing Works or the Crown Bakery and various other things which are existing firms who have acquired a goodwill under those names. It is a very valuable property. Those firms are expected to register if they are to enforce their rights and file suits, and they will have to apply to the Governor General in Council for his consent to the use of that name. Even existing firms have to do it. It is a hardship. I see the Bengal Chamber of Commerce throw themselves on the goodwill of the Government of India and expect that they will not refuse registration of these names. I am not prepared to place so much faith in the Government of India and rely on their goodwill in order to continue my goodwill which I have already earned by my own honest exertions. It is very unsafe to rely upon executive goodwill. It depends upon so many factors at to how you please them in various ways, or how you displease them in some other ways. I do not see why persons should be deprived of their property and the property placed at the mercy or goodwill of the Government of India. So this is trying to confiscate property, for we have got property in a name, and this is an indirect method of confiscation of property. I can understand its limitation being imposed on new names or new firms which have to come into existence. Therefore, I move:

"That in sub-clause (3) of clause 57 before the words 'A firm name shall not contain' the following be inserted:

'Except in cases where the name of a partner happens to be king and also in cases of firms which are now carrying on business under such names'."

It will save the rights of persons which are already existing. By all means give the privilege to the Government of India to sanction the use of these names for future firms. Sir, I move my amendment.

The Honourable Sir Brojendra Mitter: I am obliged to the Diwan Bahadur for introducing an element of humour into this rather dry business of partnership. I was expecting all the time that, after making his speech, he would say he did not wish to move the amendment. It is difficult to take this amendment seriously because, after all, this clause is taken from section 11 of the Indian Companies Act. In that section "King" means the Sovereign and not the gentleman who bears the name of King. No difficulty has been experienced and no difficulty is likely to be experienced. If the use of the word "King" by a person who is known as "King" creates no difficulty the second part of the amendment does not arise.

Mr. President: The question, which I have to put, is:

"That in sub-clause (3) of clause 57 before the words 'A firm name shall not contain' the following be inserted:

'Except in cases where the name of a partner happens to be king and also in cases of firms which are now carrying on business under such names'."

The motion was negatived.

Mr. President: The question is that clause 57 stand part of the Bill.

The motion was adopted.

Clause 57 was added to the Bill.

Clause 58 was added to the Bill.

Mr. President: The question is that clause 59 stand part of the Bill.

Sardar Sant Singh: I want to draw the attention of the Honourable the Law Member to one expression in this clause. Sub-clause (1) says:

"Where an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar.. . ."

Here only the principal place of business is mentioned. Supposing after the registration of the firm the firm opens other branches or closes one branch and opens another, will it not be necessary to get it registered with the Registrar?

The Honourable Sir Brojendra Mitter: We considered this point and we thought that it would be rather oppressive to require notice of all changes which may be made from time to time. So we confined the requirement of law only to change in the principal place of business.

Mr. President: The question is that clause 59 stand part of the Bill.

The motion was adopted.

Clause 59 was added to the Bill.

Clauses 60 to 67 were added to the Bill.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. President in the Chair.

Mr. President: The question is that clause 68 stand part of the Bill.

Diwan Bahadur Harbilas Sarda (Ajmer-Merwara: General): Sir, I move that clause 68 of the Bill be omitted. Clause 68 is the most important part of the new feature of this Bill. It attaches a very grave disability to a firm which is not registered. The disability is so great that almost every firm of partnership at some time or other will have to register itself. Therefore I take it that under this clause every firm will be registered, even though that firm is a small one and only engaged in a single undertaking. Registration would be necessary in order to save it from further troubles. In my speech on Monday I gave reasons at length as to why this portion of the Bill dealing with registration of firms was not necessary and was likely to prove a clog on business and affect it adversely. From the opinions which I read out such as those of Justice Niamatullah and Justice Jailal of Lahore and others, I showed that some of the highest judicial authorities also took the same view of the matter as I did. I also showed that the Indian business bodies and trade

[Diwan Bahadur Harbilas Sarda.]

associations who were consulted by Government in this matter were unanimously against compulsory registration and against the enactment of clause 68 of the Bill. I do not want to repeat what I said, but I only draw the attention of the House to what I then said about this disability and the grave consequences which this disability will entail. I speak subject to correction, but I think that till 1916 compulsory registration of every firm of whatever kind was not necessary under the law in England. The Partnership Act of 1890, on which this Bill is based and from which as I said clauses have been bodily taken into this Bill, did not enact that every partnership firm, however small, whatever the business it transacted, should be registered. It was only in 1916, after a very long course of business, that they found it necessary in England to enact that law, and if that is correct, I think the time has not come in India when at the very beginning of enacting a partnership law, this provision regarding compulsory registration of every small undertaking should be registered. Sir, I move.

The Honourable Sir Brojendra Mitter: This is an extraordinary motion because the Diwan Bahadur himself says that this is the most important clause in the whole of this Chapter and it deals with the effect of non-registration. The House has passed the provisions relating to registration, what is to be registered, how it is to be registered and so on. Having done that, the House is now invited to say that it does not want to give effect to all that it has approved and not provide any sanction for registration. That is the effect of this motion. The Diwan Bahadur says that clause 68 imposes disabilities. Of course it does and that is the purpose of clause 68. This clause deals with the effect of non-registration. What is the good of registration unless some effect follows non-registration? It is inconceivable that you should provide for registration and not provide for cases where registration is not effected according to law. The Diwan Bahadur said that there was no such provision in the Partnership Act of 1890. But in 1916 an Act was passed in England, which is called the Registration of Business Names Act, 1916, which provides for registration and what they say in that Act is this:

Section 8:

"Where any firm or person is in default in sending in the particulars required by the Act (*which is the same thing as non-registration*) the rights of that defaulter under or arising out of any contract made or entered into by him or on his behalf in relation to the business in respect of which the particulars ought to have been furnished shall not be enforceable at any time while he is in default by action or other legal proceeding either in the absence of the name or otherwise."

It is no use providing for anything unless you also provide the sanction, and clause 68 provides the sanction. I hope the House will not entertain this amendment.

The motion was negatived.

Mr. S. G. Jog (Berar Representative): I rise to move the amendment which stands in my name:

"That to clause 68 the following new sub-clause be added:

'(5) This section shall not apply to firms or to partners in firms whose capital is less than two thousand rupees'."

Diwan Bahadur Harbilas Sarda proposed the omission of clause 68. The Honourable the Law Member said that it was unreasonable, and I also thought that it was a bit unreasonable, after having passed the other provisions. I think that section 68 is essential, but I think my amendment is more reasonable. The other day when discussing the general provisions of the Partnership Bill, I said that it will work as a sort of hardship upon small business people living in small towns and villages, who will not be able to know exactly what to do and who will find difficulty in going to towns where the registration offices will be located, and the difficulty of getting legal help and all these difficulties will come in their way and thus, instead of encouraging the partnership enterprise, as I said the other day, it would go a great way towards discouraging and hampering the progress of partnership. Therefore, I suggest that to small concerns whose capital is below Rs. 2,000, this clause should not be made applicable. As I said the other day, it may be absolutely necessary for a commercial community doing business in presidency towns, but so far as villages and other small towns are concerned, I do not think this will in any way prove beneficial. The other day when I spoke on this subject, I had not gone through the opinions, but now I find that one Additional Judicial Commissioner and many others in my province have lent support to the view which I am propounding now. As regards Chapter VII this is what W. F. H. Staples, I.C.S., Bar.-at-Law, Judicial Commissioner, Central Provinces, says:

"I am of opinion that this chapter is too much of an advance for the greater part of British India outside the presidency towns. Further, if the suggestion that partnership can only be constituted by a registered deed be adopted, the necessity of registration of firms will disappear at any rate to a great extent. If, however, it is decided to retain this chapter, I am of opinion that it should not be brought into force in the mufassil for some time and that section 68 should not come into force for at least one year after the other provisions of the chapter have been applied. Further, I am of opinion that section 68 should not apply to firms with a capital below Rs. 1,000."

Even then, I am not exactly satisfied. According to my idea and the notions of the village people, I think all firms with a capital below Rs. 2,000 should be exempted from the operation of this hard and rigid rule of registration. If it is made applicable to all firms and then suits are brought by those firms which are not registered, then in every case the defendant will come and say, if a single man brings a suit saying that he owes so much and so much, then the defendant will in every case come forward and say, "No, this is not his individual dealing; there is a partner with him in this dealing" and with a view to delay the proceedings in every case where there is a partner, the issue will be raised whether this dealing is one of partnership or not, and whether the constitution is a bogus one or not. The other day the Honourable the Law Member said that he was not in active practice now. I can certainly accuse him that he does not know the practical difficulties of lawyers in the mofussil and the delaying tactics of the defendant for prolonging litigation. In every case lawyers will come forward and litigants will come forward and say that this is a dealing of partnership and there are partners, real or bogus, and in that case the preliminary issue will arise whether this dealing refers to a partnership, and the evidence will be gone into even in a suit of Rs. 200 or Rs. 500, or even of Rs. 50 value, and the litigation may be protracted, with the result that the plaintiff, even with a good and honest claim, may be prevented from bringing the case to an issue, and the case may be protracted for a long time so that I am afraid, this measure,

[Mr. S. G. Jog.]

instead of remedying an evil or doing good to a particular community or facilitating the business of a particular community, will do a great deal of mischief and harm rather than good. Therefore I submit that something must be done which will go a great way towards exempting these small dealings, and therefore I have suggested that in the case of all small firms where the capital is below Rs. 2,000, this compulsory registration should not be enforced. In the proceedings they say that the provision for registration is optional, but I cannot understand in what sense it can be said to be optional when you say that if you do not do a particular thing, you cannot bring a suit. That means practically you compel the man in another way but at the same time you nominally say that the provision is optional. Suppose you say to a man, "Well, you are allowed to go to Delhi and to sit in the Visitors Gallery of the Legislative Assembly Chamber at Council House" but you give instructions to the Station Master at Calcutta not to issue a ticket to him. Although here you intend to make it voluntary, in effect it is made compulsory. Therefore, this compulsory nature of the measure is extremely objectionable, as it will certainly discourage trade and small business concerns in the mofussil. Therefore I hold that the House should agree to my amendment and take away a good deal of the element of the rigidity of registration for small concerns. Sir, I move.

Mr. Jagan Nath Aggarwal: Sir, I have great pleasure in supporting this amendment because, as was pointed out with regard to the last amendment, because, if we had enacted that firms must register, then there must of course be some sanction behind it, but for this amendment there is this additional merit that it will leave out the small trader and it will keep him out of the courts. The whole point of registration is that large issues are involved; the question arises whether somebody is a partner in it and that has got to be debated in that laborious way which is very expensive to the litigant and hardly does credit to anybody. The whole point underlying this amendment is that you may be penalising the small partnerships too much. A small partnership may last for a short time or there may be a partnership in a very small kind of way in the mofussil and in the village and it would be really hard for such a partnership to be registered and to be visited with penalties for failure to register, which big firms might very well suffer. The question, Sir, whether the small firms should be left out is a matter which is agitating the minds of several of my friends in the House, as the number of amendments clearly shows, and I submit, whether we look to the amount of capital involved, or whether we look to the amount of claim involved, some relief must be afforded to the small trader. As an alternative to this, one might as well throw out the suggestion that it would be very difficult to say whether the capital is really Rs. 2,000, because that would involve elaborate inquiries in individual cases, and it might be contended that various attempts may be resorted to in order to show that the capital is below this figure, and whether a concern is a small business concern or a large one. I do not know whether my Honourable friend would accept the suggestion, but if you limit it to the value of the plaint, I should be quite satisfied, so that the whole point underlying this amendment is that the small trader should not be put to the worry and expense of having all this legislation, and you should afford relief to him either by looking to the amount of the capital involved or the amount of the claim involved. This would give him a much needed relief.

Mr. S. C. Sen: Sir, I rise to oppose the amendment. If this amendment is accepted, then, instead of remedying the defect, we would be doing injustice to small traders. If we say that the capital is less than Rs. 1,000 or Rs. 2,000, then in every case there will be an issue as to whether the capital is less than Rs. 1,000 or Rs. 2,000. That would mean at least one or two days' hearing in the court, and so much expense incurred by the small traders. So instead of doing that, if we leave them as they are but leave out or make an exception in respect of a certain class of suits of a small cause court nature, where the amount will not be more than Rs. 200, the same thing can be easily effected and the small traders who have very seldom to file a suit of more than Rs. 200 will be protected. I do not know whether the Treasury Benches will accept this view and agree to an amendment to that effect. As regards the contention raised by my friend Mr., Jog that this will be a means of protracting the litigation by enabling the defendant to raise the question of partnership in every case, supposing this amendment is not here what would be the effect? I, as a defendant, can always say that the plaintiff is not entitled to file a suit as there are other persons who ought to be the plaintiffs to the suit. It is a well known principle of law that if three persons are entitled to a claim and one of them files a suit, the whole case is bad. If I can prove that there are other persons interested in the suit . . . . .

Mr. S. G. Jog: In that case the defendants will have a right to costs if they can get the case dismissed on any ground.

Mr. S. C. Sen: I do not understand this. In the case of mofussil courts it often happens that the period of one month, which is the period of limitation, is often allowed to expire. What would be the effect of that? And, as a matter of fact, such a contention can be raised in every suit irrespective of the provisions contained in this Bill. Under these circumstances, instead of giving relief to the small traders, this amendment will increase their difficulties. I therefore oppose this amendment.

Mr. Amar Nath Dutt (Burdwan Division: Non-Muhammadan Rural): Sir, after hearing my Honourable friend Mr. Sen I am not convinced why my Honourable friend Mr. Jog's amendment should not be accepted. I come from the mofussil and the Honourable the Law Member, I think will excuse me if I say that he has not as much experience of the mofussil law courts as Mr. Jog. It may be that Mr. Sen has got some experience of the mofussil, but our experiences differ. I have spent the whole of my life in a mofussil station and know fully well all the difficulties of registration in the case of small matters. I think my friend, Mr. Sen, the income of whose firm borders on 6 or 7 figures, cannot realise the difficulties of those people who live in villages and carry on small trade. I feel sure the Honourable the Law Member, who is the sponsor of this Bill, will remember what difficulty I had at one time to convince him and Mr. Jinnah about the difficulties of registration when we were amending the Transfer of Property Act. If he remembers that and also the concession that he then made to the views of those who have more intimate knowledge of mofussil life, then I think he will have no hesitation in accepting the amendment of Mr. Jog. I appeal to him once more from our personal experience that this is a very reasonable amendment and he should accept it.

Sardar Sant Singh: Sir, though I sympathise with my friend Mr. Jog in his laudable object to protect the interests of the small firms, I am afraid I cannot support his amendment. My Honourable friend, Mr. Jagan Nath Aggarwal, who supported the amendment, raised an important issue which he did not pursue further. What is the meaning of the capital of the firm? By asking the courts to define the word "capital", will he save the small firms from the inconvenience, or will he be adding to the difficulties of the firm on that account? The courts will be led into an entirely irrelevant issue to find out what was the capital of the firm, whether it required registration and whether it fell within the limit of Rs. 2,000 or beyond that limit? Then, Sir, "capital" itself is an expression which can hardly be defined. Therefore my submission is that, though we all feel sympathy with the small trader and small firm, we will not be helping the small trader or firm by accepting this amendment. Therefore, I oppose it.

The Honourable Sir Brojendra Mitter: Sir, when drafting this chapter on registration, we were constantly mindful of the difficulties of the small tradesman and we tried to examine the question from all points of view. We could not find a solution which would meet the case of the small trader by limiting the amount of capital in the manner which Mr. Jog and Diwan Bahadur suggest. A suggestion was made to us this morning by Mr. Sen on the basis of the claim in suits of a small cause courts nature, that such suits might be usefully excluded from the operation of this Chapter. I am inclined at the moment to accept that suggestion, but it will have to be carefully considered; and I can assure the House that if we are convinced that that is practicable, then, we shall have an appropriate amendment in the other House and bring the Bill back to this House. Sir, so far as Mr. Sen's suggestion is concerned, the promise I make now is that I shall examine the matter which, off-hand, seems to me to be practicable, and, if on full consideration we find it practicable, we shall do the needful.

As regards the amendment itself, when I explain the effect of it, the Honourable the Mover and those who have supported him will see that it is not practicable. Sir, the suggestion is that where capital is of a certain value, say, Rs. 2,000 or under, then this chapter will not be applicable. That is the suggestion. Now, who is to say when capital is Rs. 2,000 or under? What is capital? There are very big firms which carry on business without any capital. For instance, firms of stock brokers. Then, there are firms which carry on business with a certain amount of capital and a large amount of credit. Now, will they come under the exclusion or within the scope of the chapter? Who is to decide that? Then, there may be cases where capital was a certain amount and in course of business it either increased or decreased. Now, what is the point of time when you are to find this capital whether it is Rs. 2,000 or more or less? Is it at the time when the business was started, or is it at the time when the cause of action arose, or is it at the time when the suit is brought? Which is the relevant point of time when the amount of capital is to be ascertained? In the amendment no light is thrown upon it. I will examine this case from any of these points of view. I was trying this morning to work it out. Supposing, when the business started the capital was less than Rs. 2,000, when the cause of action arose, the capital was still less than Rs. 2,000 but when the suit was actually brought it was more than Rs. 2,000. What is the

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suggestion? Is registration necessary or not? We do not know; the amendment does not help us. Take the other case, when the partnership was formed, the capital was less than Rs. 2,000, when the cause of action arose it was more than Rs. 2,000 but at the time of the suit, it was less than Rs. 2,000. How will the amendment work? It is absolutely unworkable. Again, who is to decide whether money employed in the firm is capital or loan or advance. If you have a provision like that which is suggested in the amendment, then, the court will have to go into the question whether the amounts appearing in the books of the firm are capital or loan to the firm, and a difficult issue will arise in every case. Look at the implication of it. In every case books of account will have to be examined in order to find out capital. That is precisely the thing which we want to avoid. If Honourable Members will look at section 57 they will find the particulars of which we want disclosure. We want disclosure of the firm name, the place or principal place of business of the firm, the name of any other places where the firm carries on business, the date when each partner joined the firm, the names in full and permanent addresses of the partners, and the duration of the firm. The disclosure we want is of matters which the outside trader ought to know for honest trading. We do not want disclosure of the internal affairs of the firm. This amendment will necessitate in every case an inquisitorial enquiry into the private affairs of the firm. The firms, on whose behalf this amendment is moved, will hardly welcome that in every case their internal affairs should be examined in court, what capital is employed in the firm, what the nature of the business is, how much is capital, how much is loan and what was the original capital and what is the present capital. In order to know the internal affairs of a trader, a rival trader will always take that plea in order to examine the books of the other firm. That is a position which would be intolerable for the purpose of honest trading. That is a difficulty which I do not think the Mover of the amendment took into consideration.

Then consider the other difficulties. Supposing the capital is over Rs. 2,000 and then a partner withdraws a part of the capital with the consent of his co-partners. How will this amendment work in such a case—Rs. 2,000 capital and Rs. 500 withdrawn? Will registration be necessary or not? How is it to be worked out? Then, take the case of capital in the shape of good debts. A partner does not contribute cash, but what he says is this, "I have got to get a sum of Rs. 50,000 from such and such a firm, it is a good debt and that is my contribution towards the capital of this firm". Will that be taken into account in ascertaining whether the firm is registrable or not? All these questions will arise if you have any limit put upon capital as the determining factor for registration. It is impracticable and not only impracticable but in every case an issue will be raised which will require for its determination a thorough enquiry into the books of the firm, a disclosure of the internal affairs of the firm which no trader will welcome. My Honourable friend Mr. Jog said, a similar difficulty might arise in the case of a man who is carrying on business by himself, and the plea is taken that he has a partner. In that case the issue will arise whether the business is carried on in partnership or by a single individual. For that purpose the books of the firm need not be examined at all because it will be for the defendant to prove in the first instance that the plaintiff has a partner and the defendant, in order to prove his own case, will not be entitled to look into the books of the plaintiff.

Mr. S. G. Jog: The plaintiff can be summoned as a witness for the defendant.

The Honourable Sir Brojendra Mitter: What? Plaintiff to be summoned as a witness for the defendant! That is a procedure which is not known in the Civil Procedure Code, and it will not be tolerated by any competent court.

An Honourable Member: Some courts do it.

The Honourable Sir Brojendra Mitter: I remember a case when the prosecution, unable to prove its case, cited one of the defence witnesses from whose mouth it sought to prove its case, but the court said, "No". That is a sort of procedure which no court would allow.

Diwan Bahadur Harbilas Sarda: That is criminal law and not civil law.

The Honourable Sir Brojendra Mitter: So far as the civil law is concerned, that is a procedure which no civil court will allow.

Mr. S. G. Jog: The defendant can call the plaintiff to the witness box and cross-examine him in any way he likes regarding the firm of which the plaintiff is the partner.

The Honourable Sir Brojendra Mitter: The onus is upon the defendant in that case, and unless the defendant discharges that onus or shifts that onus on to the plaintiff, the plaintiff does not go into the witness box for the purpose of that issue, so that the plaintiff need not produce any of his books.

Diwan Bahadur T. Rangachariar: The Honourable Member will permit me to say that we are not all dealing with High Courts who know the rules about discovery and inspection. Often times in the mofussil, I know of cases where the defendant, even before filing his written statement, calls upon the plaintiff to produce books for something or other. One case recently came to the High Court in which the High Court ordered a modified discovery even before the written statement was filed. I quite agree that in the case of the High Courts, they know the rules about discovery and inspection but in the mofussil courts, these sections are not known to legal practitioners, and much less to the judges.

The Honourable Sir Brojendra Mitter: If the law of discovery is liable to abuse, it is for the courts to prevent the abuse.

Mr. Amar Nath Dutt: I can give you a particular suit on the file of the Subordinate Judge of Burdwan, which happened only a few weeks ago. The Subordinate Judge allowed the prayer for discovery and inspection. That has been the practice in the mofussil till now.

The Honourable Sir Brojendra Mitter: It is a wrong practice. We cannot go by wrong practices. Then, my Honourable friend Mr. Jog raised another point. Well, you say that registration is optional but in practice it will be compulsory because no one can bring a suit without

registration. From that he concludes that trade will be hampered, particularly small trade will be hampered. Do I understand Mr. Jog to suggest that litigation is a normal part of trade? I think it is rather an exceptional incident of business, not a normal part of the business itself. There are thousands of firms which carry on business,—how many of them go to court? When a tradesman has to go to court all we say is that he is to treat fairly by those with whom he deals and must disclose by means of registration who his partners are, when they joined and so on. So, unless the House takes the view,—which is certainly a view very favourable to my profession—that litigation is a normal part of every business in the country, then there will always be a distinction between the optional character of registration and compulsory character of registration. Sir, that reminds me that once I went to my friend Mr. Amar Nath Dutt's district in a case, and, when I got down at the station, I saw a very large number of people coming by that train. It was an early train, and I asked the gentleman who was instructing me in the case, a leading pleader of that place, if there was any particular industry in that place as so many people were coming by that train. He said, "Yes, a very prosperous industry; the industry is litigation". Registration will be necessary only in the case when the tradesman unfortunately has to seek the advice of a member of my profession and redress in court.

Sir, Mr. Aggarwal admitted that if you allow this amendment, books of account will have to be looked into, otherwise you cannot settle the issue. And I appeal to the experience of every lawyer friend of mine here whether or not in every case of a suit by an unregistered firm, that issue will not be raised, so that in every such case you will have an inquisition. That will be an intolerable state of affairs. Therefore my submission to the House is that this is not a practical proposition, that a limit should be put on the basis of capital. But in so far as small claims are concerned, claims of a small cause court nature, I shall certainly consider that with sympathy.

Diwan Bahadur T. Rangachariar: Sir, I welcome the disposition of the Honourable Member to consider the question of small traders. I quite recognise the difficulty which he has shown with regard to capital, and therefore I do not support the amendment as it is. May I also throw out a suggestion for his consideration to avoid the many difficulties which have been claimed by him at length? Why not confine the disability to sue to cases of firms who have paid income-tax in the year preceding that in which the suit is brought for a sum of Rs. 2,000 and upwards? There is no question of no information being available or being looked for there. It is my friend Sir George Schuster's department who are always ready with their books, and there will be no difficulty about ascertaining whether the firm has been assessed to income-tax or not. That will be the test of a small firm which will be easily available and therefore it may be considered in order to avoid all these troubles.

The Honourable Sir Brojendra Mitter: Sir, in the profession it is well known that certain classes of business people keep three sets of books, one set for their business, one set for the income-tax authorities and the third set in view of possible insolvency. (Laughter.)

Diwan Bahadur T. Rangachariar: I said assessed income-tax.

Mr. C. C. Biswas: Sir, with reference to the suggestion which fell from my friend Mr. Sen and to which the Honourable the Law Member referred, I find from the Report of the Expert Committee that this had been considered by them and was found equally unpracticable. If you look at paragraph 16 of their Report, you will find that short-lived partnerships and firms in a small way of business are dealt with. The difficulties are recognised, but it is pointed out that the suggestions which had been made for the purpose of meeting those difficulties were not workable in practice, and among the suggestions two are expressly referred to. One was the suggestion made by the Civil Justice Committee that firms with less than a certain capital should be exempted. But the Expert Committee pointed out that capital is something elusive and fluctuating; the same objections which the Honourable the Law Member pointed out are in fact mentioned there, and therefore it will not do to proceed upon that basis. Then, as regards the other suggestion that disability to sue arising from non-registration should apply only to suits above a certain value, this is what the Expert Committee says:

"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."

The Honourable Sir Brojendra Mitter: Sir, may I explain? The suggestion which has now been made is not valuation of a suit but the actual money claimed, of a small cause court nature. So that disposes of the question of valuation or any inquiry as to valuation.

Mr. C. C. Biswas: No doubt it will be some improvement, but that again does not avoid the objection which will help to prolong litigation. The question may be raised as to whether or not it is a suit cognisable by a small cause court or of a small cause court nature, and questions of valuation may be brought up in order to oust the jurisdiction of the small cause court. So you cannot avoid these difficulties altogether. So what I was saying is this. These points had been all carefully considered, and it is only because difficulties of a practical nature were found to stand in the way that the Expert Committee found it impossible to give the relief which was asked for. No doubt a Committee like the Civil Justice Committee, whose recommendations are entitled to great weight, did make that recommendation that firms in a small way of business should be exempted, but we must not forget that what they were contemplating at that stage was compulsory registration. The very fact that the Expert Committee decided to have optional and not compulsory registration is, I think, quite enough to mitigate all the hardships that have been spoken of. After all, what is the hardship? A firm is not called upon to register unless it finds that it cannot realise its dues in the ordinary way. It is only when it is faced with litigation and has to bring a suit that it registers, and what does that mean? It means only this that all the partners have got to sign a statement and pass it on to the Registration Office. No doubt there is a small fee imposed. I can quite understand my friend suggesting that in certain cases the fees may be reduced, but the fees perhaps in themselves are not excessive. So a fee of Re. 1 or Rs. 3 need not stand in the way, if you are going to enforce a claim of Rs. 1,000 or so. You might, if you like, add that the court might in such a case, if the suit is successful, compel the defendant to pay the cost of registration. In that way if the payment of fee is a hardship, you can provide that the

court which passes a decree will add the cost of registration to the claim. That ought to meet the situation. So I do not think that anything is gained by re-examining the question as to whether or not you can put in that clause to which my friend referred.

Sir Lancelot Graham: Sir, I have nothing to add to what has already been said on this side of the House.

Mr. President: The question is:

"That to clause 68 the following new sub-clause be added:

'(5) This section shall not apply to firms or to partners in firms whose capital is less than two thousand rupees'."

The motion was negatived.

Diwan Bahadur Harbilas Sarda: Sir, I move (*Cries of* "Withdraw"):

"That to clause 68 the following proviso be added:

'Provided that the provisions of this section will not apply to partnership firms which can disclose the capital and which have a capital of Rs. 1,000 or under'."

The fate of the last amendment does not encourage me to hope that my motion will meet with any better fate. I know that, but I want to clear a few points which have been raised as objections by the Honourable the Law Member. The principal objection that has always been raised to basing any exemption on capital is that capital cannot be defined, that there are firms with no capital, and therefore it is difficult to exempt them. In order to overcome that difficulty, I have here said "firms which can disclose the capital". If a firm can disclose capital in terms of £. s. d. or Rs. a. p., there is no question that it is difficult to determine what the capital of a particular firm is. I limit exemptions only to those firms which can disclose their capital in terms of £. s. d. or Rs. a. p., and when that capital is Rs. 1,000 or under; those firms which have no capital, which only trade on the strength of loans or in some other form, or whose capital consists of some other things, they will not be exempted. The idea is to protect small traders in villages and towns who are working in a small way. For that purpose this provision makes the whole thing clear. They must have a capital which can be disclosed in terms of Rs. a. p. and that capital should be less than Rs. 1,000. Therefore that objection vanishes.

The Honourable the Law Member said that there are firms which have got a very small capital and which trade on the strength of large loans; with the assistance of money which they borrow they carry on large business. May be true. But at the same time we have to remember that where the capital is Rs. 75 or Rs. 100 or Rs. 200, you cannot suppose that that partnership firm will be able to borrow Rs. 10,000 or Rs. 20,000. Any man who will lend money to a partnership firm will see what the actual strength of the capital which they have subscribed is. It is only then that they will lend money. To a company whose capital is very small, unless there are very large reserves, nobody would lend large amounts. Therefore the question of loans does not arise. We are going to protect only those small firms whose capital is very little and such firms will not be able to borrow large sums of money; consequently that difficulty would not arise.

[Diwan Bahadur Harbilas Sarda.]

Then, the second objection which the Honourable the Law Member raised was that in order to find out what the capital is, books of accounts will have to be examined and the private accounts of these firms will have to be gone into. Sir, where parties go to court, where disputes with regard to a business arise, it is impossible to hold back books or to see that account books are not pried into. In the first place, the disability under this law attaches not to the third parties, but to the partnership firm which is not registered. Whether a firm which has to be sued is registered or not, a third party can always file a suit against that firm. The disability is only attached to the partnership firm which sues. Consequently if that firm goes to court, it has no right to complain that its books are being examined. The books of the defendants are not going to be examined; the books of the plaintiff are going to be examined; and if that firm goes to court and asks for relief, certainly that firm must be prepared to show its books and accounts to the court . . . .

Sardar Sant Singh: Even of those who are not party to the suit?

Diwan Bahadur Harbilas Sarda: That does not arise. These account books are to be examined simply for one purpose, to find out the capital; and if that is the object, then the examination of account books of others does not arise. It is only the account books of the suing firm that are concerned.

Another objection raised was more hypothetical than positive. It was this; a partnership has a capital of Rs. 2,000; one partner withdraws, his capital is, say, Rs. 500; what will happen? Where is the difficulty? If the partner has withdrawn before the cause of action arose there is an end of it; the capital is only Rs. 1,500; if the partner withdraws after that, that does not matter. This question of the withdrawing of a partner does not affect the thing at all. Whenever a cause of action arises to a firm to file a suit, if on that date the capital of that firm is such and such, the suit can be filed or not and there is no more trouble. You have no further inquiry to make. Withdrawal of a partner does not make any difference.

A suggestion was made by my Honourable friend, Mr. Sen, which the Law Member thinks is one which requires consideration and upon which he looks with a favourable eye. I quite agree that even if that suggestion is adopted, it will to a great extent help the small trader because the small traders as a rule have very small suits to file, of very small value, and therefore in a way that will be very helpful. About that there is no doubt, and we have to be thankful for small mercies. But its operation will not be limited to small traders. A big firm with a capital of Rs. 50,000 may have to file a suit against a man for Rs. 50; and if that firm is not registered, it will be protected under this new amendment, and it can file a suit without going to registration; so that this actually means that it is not the small trader who is protected but the small claim that is protected. As I said, that will protect not only the small traders but big traders in a way in certain respects in certain matters; but because that will be done it is no argument that small traders should not be protected. Therefore though it will go much further than the object in view, still I think we will welcome the acceptance by the Honourable the Law Member of that suggestion.

As I have said, by disclosing the capital in terms of Rs. a. p. and by limiting the exemption to firms with a capital of Rs. 1,000 or under, many of these objections which were raised are answered. I therefore move my amendment.

The Honourable Sir Brojendra Mitter: Sir, the difficulties which I pointed out in regard to Amendment No. 3 also apply to this amendment, and I have nothing further to say.

Mr. President: The question is:

"That to clause 68 the following proviso be added:

'Provided that the provisions of this section will not apply to partnership firms which can disclose the capital and which have a capital of Rs. 1,000 or under'."

The motion was negatived.

Mr. President: The question is . . . . .

Sardar Sant Singh: Sir, I want to say only one word on the whole clause 68 as it stands. I should like to submit for the consideration of the Honourable the Law Member one point. The wording of sub-clause (1) reads thus:

"No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any Court or on behalf of any person"

and so on. Nobody can control the institution of a suit in a civil court. Anybody can go and file a suit on payment of the requisite court fee. I think instead of the words "shall be instituted", we should put in the words "no suit shall be entertained or no suit shall be maintainable", etc.

The Honourable Sir Brojendra Mitter: No, Sir, we have used the correct wording. There are two things—the presentation of a plaint and acceptance of the plaint. It is the acceptance of presentation which constitutes institution.

Mr. President: The question is that clause 68 stand part of the Bill.

The motion was adopted.

Clause 68 was added to the Bill.

Mr. President: Clause 69.

Diwan Bahadur Harbilas Sarda: Sir, I move that clause 69 be omitted. Clause 69 reads thus:

"Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particulars 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."

This clause makes provision for two matters; first it makes punishable filing false statements, and secondly, it makes punishable filing incomplete statements. Now, if a man files an incomplete statement or if he files a false statement, he is to be punished, and the penalty is provided under

[Diwan Bahadur Harbilas Sarda.]

clause 69. This, Sir, I say is superfluous. If a person signs a false statement there is provision in the Indian Penal Code to deal with such person. Under the law he has to file a statement before a Registrar giving certain particulars, and the law provides that those particulars shall be conclusive evidence against the person filing the statement. Those particulars are therefore filed for the purpose of confirming evidence. Now, Sir, section 199 of the Indian Penal Code provides a penalty for making false statements. This is what it says:

"Whoever, in any declaration made or subscribed by him, which declaration any court of justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, or does not believe to be true, touching any point material to the object for which the declaration is made or used shall be punished in the same manner as if he gave false evidence."

Therefore, Sir, it is not necessary to have a separate provision here.

As regards the second part, *i.e.*, "whoever makes an incomplete statement or makes a statement which he does not believe to be complete" shall be punishable. Now, Sir, in the first place this is a very drastic treatment of a person who, owing to some misinformation or something, makes a statement which is not quite complete, but the remedy for that is provided even in this very Bill. Clause 57 of this Bill gives the particulars which a firm or a partner has to furnish to the Registrar for the registration of the firm, that is to say, all particulars have to be supplied, the firm's name; the place or principal place of business of the firm, the names of any other places where the firm carries on business, the date on which each partner joined the firm, the names in full and permanent addresses of the partners, the duration of the firm and so on. Then clause 58 says that:

"When the Registrar is satisfied that the provisions of section 57 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement."

Therefore, the remedy is there. If full and complete information is not furnished to the Registrar, if the statement given by a firm or a partner does not contain full particulars which are required by section 57, the Registrar will not accept the thing and will not register it. That is quite sufficient. Therefore, Sir, without prolonging my speech I say that the provision is in the Bill itself and also on account of the existence of other provisions elsewhere to deal with people who make false statements, it is not necessary to have this penal clause which is numbered 69.

Mr. S. G. Jog: Sir, I have given notice of a similar amendment. Now, this clause 69 is a penal provision for a supposed optional measure. This penal provision of punishing a man not only for giving a false statement but also for giving an incomplete statement, I think, is another way of making the provision compulsory and making it optional only in name.

As regards the incompleteness, if the particulars that are required are found to be incomplete by the Registrar or any other authority empowered to collect such particulars, then the firm or the partner can be called upon to furnish all the other necessary information to make the statement complete, and in that case after serving him with notice, a statement can be taken and the information can be made complete. Since this law is already too drastic, I think the provision for punishing people for filing

incomplete information should be deleted for the present and powers may be given to the Registrar to call upon the man to make the particulars complete if such powers are wanting in the existing law. I therefore support the amendment for the deletion of the words "or containing particulars which he knows to be incomplete or does not believe to be complete" in clause 69.

Mr. President: The amendment now before the House is for the deletion of the whole clause. That Amendment has not yet been reached.

The Honourable Sir Brojendra Mitter: Sir, this is the usual provision. Wherever you provide for registration there must be some penalty for furnishing false particulars. This is taken from the Indian Companies Act and from English Acts with slight variations. There is nothing novel about the provision of clause 69. It is said that clause 58 provides the remedy. The Registrar may refuse to register if the particulars are not complete. But how is the Registrar to know? One of the particulars to be given is places of business. The principal place of business is at one place and there are several branches. Supposing there are five branches and only two are disclosed, how is the Registrar to know that there are three other branches? That is an incomplete statement. So, section 58, which says that the Registrar may refuse to register, does not cover a case where the Registrar has no means of knowing the particulars. Therefore provision has to be made for default in the matter of submitting complete particulars.

Diwan Bahadur Harbilas Sarda: But it will have to be proved that it was incomplete before the man could be punished. Somehow or other that information has to be obtained.

The Honourable Sir Brojendra Mitter: The man who wants to prove that the particulars were incomplete will have to prove it, but it is not the function of the Registrar.

Diwan Bahadur Harbilas Sarda: It is the function of the prosecutor. In order to get that man punished he will have to prove this, and therefore the burden lies on him. That is quite sufficient.

Mr. President: The question that I have to put now is that clause 69 be omitted.

The motion was negatived.

Mr. S. G. Jog: As regards the penalty for false information, I have nothing to say. I think that a man who deliberately gives false information should be penalised, but as regards incomplete information, I think that portion of the clause which relates to that should be deleted. As I have already said, the law as it is is sufficiently drastic, and this is a sort of innovation. I think for the present it should not be made very rigid, but if after some experience it is found that there are cases where deliberate incomplete information is given, measures may be taken to amend the law if considered necessary. With these observations I move:

"In clause 69 the words 'or containing particulars which he knows to be incomplete or does not believe to be complete' be omitted."

The Honourable Sir Brojendra Mitter: As Honourable Member will see, it is not inadvertence which is sought to be penalised. What is sought to be penalised is deliberate misleading. The words are "containing particulars which he knows to be incomplete or does not believe to be complete". Therefore there is deliberateness in it; it is not inadvertence which is sought to be penalised.

Diwan Bahadur T. Rangachariar: May I ask the Honourable Member, taking clause 57 for instance, as to what particulars are to be given for registration—what he would consider as incomplete in that?

The Honourable Sir Brojendra Mitter: I have illustrated that about branches. I have given one illustration.

Mr. President: The question which I have to put is:

"In clause 69 the words 'or containing particulars which he knows to be incomplete or does not believe to be complete' be omitted."

The motion was negatived.

Mr. President: The question is that clause 69 stand part of the Bill.

The motion was adopted.

Clause 69 was added to the Bill.

Clauses 70 to 73 were added to the Bill.

Mr. President: The question is that Schedule I stand part of the Bill.

Diwan Bahadur Harbilas Sarda: This Schedule lays down the maximum fees payable on registration and alterations in the registration of firms as occasion arises. The idea of levying some fee is to cover the cost of registration. This Bill is not a revenue measure. It is not intended that Government should derive any revenue by enacting provisions to regulate registration. That being so, and as this is the first time that firms are required to be registered I think that the amount of fee provided for filing statements under clause 57, that is, when application for registration is made by a firm, which is given here as three rupees—that may very well be reduced to one rupee. If it were a question of revenue, then different considerations would apply, but as this is not a question of revenue but it is solely intended to encourage firms to register, a very small fee should be levied. It should be large enough to cover the expense which Government will incur, but as a number of firms will in course of time come forward to register themselves, the fee collected from these firms will be large, but as it is not apprehended that a very large amount of expenditure will have to be incurred, I propose that, to begin with, it should be one rupee and not three rupees. If you permit me, Sir, I will also add one word with regard to the next amendment because these two go together . . . .

Mr. President: You may move it separately. Amendment proposed:

"In column 2 of Schedule I to the Bill for the words 'Three rupees' the words 'One rupee' be substituted."

Sir Lancelot Graham: In the Bill as introduced it was left to the Local Government to prescribe all fees which may be prescribed under this Chapter. The Select Committee thought that it was giving too free a

hand to the Local Government and the amendment was accordingly made. Having gone so far to meet the Honourable Member, I confess I am disappointed that he should not have been satisfied with the concession which we made in Select Committee. He is now quarrelling with me over the maximum of three rupees. He knows quite well that it is a maximum. We cannot say precisely what it is going to cost. It is quite obvious since we fixed the fee as low as three rupees, that we were not out for revenue, and I think the Honourable Member might trust us to the extent of believing that our figure is as near as we can get to a correct estimate. I am not proposing to haggle or bargain with the Honourable Member. I say we put a figure which we think is reasonable as a maximum. It is a maximum and it does not follow that that figure will be imposed. In these circumstances, I would suggest to my Honourable friend that he might withdraw the amendment.

Diwan Bahadur Harbilas Sarda: I won't press for it.

Mr. President: The question, which I have to put, is:

"In column 2 of Schedule I to the Bill for the words 'Three rupees' the words 'One rupee' be substituted."

The motion was negatived.

Diwan Bahadur Harbilas Sarda: I do not propose to move amendment No. 9† because it is connected with the previous one and that has fallen through.

Diwan Bahadur Harbilas Sarda: I move:

"That in column 2 of Schedule I to the Bill for the words 'Four annas for each hundred words or part thereof' the words 'Four annas for every page of the copy' be substituted."

I am moving this amendment in order to remove an anomaly. When copies of documents are given by courts, the general rule is four annas a page, and a page contains about 300 words. Where copies are required urgently, double fees have got to be paid, but ordinarily they pay only 4 annas. The rate now put down in the Schedule works out at 12 annas a page. If there are 300 words in a page, it will work out to 12 annas a page. I think that four annas a page is ordinarily quite enough. That is why I move this amendment.

Sir Lancelot Graham: I find it difficult really to say anything except that I cannot accept this amendment on behalf of Government. The form which we have used is a common form and I see no reason for departing from it.

The motion was negatived.

Mr. President: The question is that Schedule I stand part of the Bill.

The motion was adopted.

Schedule I was added to the Bill.

Schedule II was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

†"In column 2 of Schedule I to the Bill for the words 'One rupee' wherever they occur the words 'Eight annas' be substituted."

Sir Lancelot Graham: I move that the Bill, as amended, be passed.

The Honourable Sir George Rainy: With your permission, Sir, I wish to move a purely formal amendment as follows:

"That the clauses of the Bill be renumbered and the references to sections consequentially corrected throughout the Bill."

Ordinarily before a Bill leaves the Select Committee, if new clauses have been inserted or clauses left out, the renumbering is done there. But in this case, I understand, it was felt that if the attempt was made at that stage to renumber the clauses, it would have led to difficulty and confusion. For this reason the old numbers were left and when new clauses were inserted, they were numbered 26A or 26B and so on. But it now becomes necessary, before the Bill is passed, that the renumbering should be carried out. It is a purely formal amendment.

The motion was adopted.

Mr. C. C. Biswas: In accepting the motion that the Bill be passed, I think the House will wish to have an opportunity of expressing its congratulations to the Honourable the Law Member and the Legislative Department upon this very satisfactory piece of legislation which was long overdue. It was only the other day that it was the privilege of my Honourable friend the Law Member to have placed upon the Statute-book the Sale of Goods Act, which has been welcomed by the mercantile community and the profession in unstinted terms of approval. Sir, the Partnership Bill represents the second in the series of self-contained enactments, which had been foreshadowed by the framers of the Indian Contract Act, but which did not for some reason or other come for so long. Sir, it was an excellent idea of my Honourable friend the Law Member to have an Expert Committee to go into this matter, before the Bill was placed before the House. It was very satisfactory and it was more satisfactory that my Honourable friend the Law Member was able to invite to that Expert Committee such eminent persons as Sir Dinshah Mullah, Sir Alladi Krishnaswami Ayyar, and Mr. Arthur Eggar. The work of the Expert Committee, which was embodied in the draft Bill, accompanied as it was by illuminating notes, explaining the whole position, rendered the labours of the Select Committee much easier. The Indian Contract Act contained but a very few simple and elementary rules on the subject of partnership. It never pretended to be an exhaustive treatment of the subject. As a matter of fact, the framers of that enactment did contemplate that further special chapters should be added to that Act later on on different branches of the Law, but the hope was not fulfilled for many a long year. Some action, however, was called for. What might have been suitable for 1872 naturally becomes out of date today, and it is a matter for congratulation, Sir, that we have now got before us a piece of legislation which is in entire accord with modern needs and conditions. Trade and commerce do not remain stagnant, and if we are to keep abreast of the times, we have got to mould our legislation in accordance with the changing needs and circumstances. That has been done in regard to two important branches of the Law of Contract, and I do not wish to say more except to express the hope that the Honourable the Law Member may find time to take up some other branch of the same Law and deal with it in the same way as he has done in the case of the Sale of Goods Act and the Law of Partnership. I refer particularly to the Law of Agency. I once more take the opportunity on behalf of the House to offer our congratulations to him and to his department.

Mr. President: The question is:

"That the Bill to define and amend the law relating to partnership, as amended, be passed."

The motion was adopted.

THE WORKMEN'S COMPENSATION (AMENDMENT) BILL.

The Honourable Sir Joseph Bhore (Member for Industries and Labour): I move for leave to introduce a Bill further to amend the Workmen's Compensation Act, 1923.

The motion was adopted.

The Honourable Sir Joseph Bhore: I introduce the Bill.

The Honourable Sir George Schuster (Finance Member): Sir, the next business on the Order Paper for the day refers to the Report of the Public Accounts Committee, and I have received a request from certain Honourable Members opposite who were engaged in a Select Committee and who wished to take part in the discussion on the Report of the Public Accounts Committee, to apply to you, Sir, to allow me to move the Demands for excess grants in advance of the motion relating to the Report of the Public Accounts Committee, if you should approve that procedure. I place myself in your hands in the matter.

4 P.M.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): The Chair takes it that Government will provide another day for the consideration of the Report of the Public Accounts Committee?

The Honourable Sir George Schuster: It is not in my power to say what time will be available for the House, but I take it that if we get through the Demands for excess grants, we might possibly get on to the Report of the Public Accounts Committee either this afternoon or some other day.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): There is hardly any time for that this afternoon. This is the next business on the Order Paper for the day and I am quite agreeable, if no objection is taken, to meet the suggestion of the Honourable Member and allow this item to be held over either for today at a later hour if there is time, or to a subsequent day. But I wanted an assurance that Government will provide a day to enable the House to discuss this matter.

The Honourable Sir George Schuster: Sir, I think the position is that, if it is not reached today, it will certainly be put down on the List of Government business the next official day.

Mr. President (The Honourable Sir Ibrahim Rahimtoola): That is the assurance I wanted. I take it that there is no objection to allowing the Public Accounts Committee's Report to stand over and to take up the Demands for excess and supplementary grants.

DEMANDS FOR EXCESS GRANTS FOR 1929-30.

CIVIL.

IRRIGATION, NAVIGATION, EMBANKMENT AND DRAINAGE WORKS.

The Honourable Sir George Schuster (Finance Member): Sir, I beg to move:

"That an excess grant of Rs. 3,21,754 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Irrigation, Navigation, Embankment and Drainage Works'."

The motion was adopted.

INTEREST ON ORDINARY DEBT, AND REDUCTION OR AVOIDANCE OF DEBT.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 78,98,225 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Interest on Ordinary Debt, and Reduction or Avoidance of Debt'."

The motion was adopted.

PUBLIC SERVICE COMMISSION.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 411 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Public Service Commission'."

The motion was adopted.

FINANCE DEPARTMENT.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 2,973 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Finance Department'."

The motion was adopted.

ADMINISTRATION OF JUSTICE.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 644 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Administration of Justice'."

The motion was adopted.

LIGHTHOUSES AND LIGHTSHIPS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 2,78,423 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Lighthouses and Lightships'."

Diwan Bahadur T. Rangachariar (South Arcot *cum* Chingleput: Non-Muhammadan Rural): Sir, may I trouble the Honourable Member for information as to this large disparity between the Budget estimates and the actual expenditure?

The Honourable Sir George Schuster: Sir, I had refrained from giving any detailed explanation in moving these excess grants because the whole matter is very clearly explained in paragraph 7 of the Report of the Public Accounts Committee on the accounts for 1929-30. I would refer my Honourable friend to that paragraph which, I think, he will find clearly states what the position is. The item on which he has now asked for information is item 6 in paragraph 7 which runs as follows:

"The original amount provided for transfer to the General Reserve Fund of Lighthouses and Lightships was Rs. 1,26,800. The actual surplus realised and transferred during the year was Rs. 5,57,518, the excess being due to an increase in receipts and some decrease in expenditure."

I would point out to my Honourable friend that there is an automatic provision according to which the surplus receipts in respect of fees which were realised for meeting the cost of lighthouses and lightships have to be transferred to a reserve fund. The principle on which this service is run is that it should not be run at a profit but that the fees should be adjusted in order to cover the actual cost. Therefore, if a surplus is earned in any year, it is transferred to a reserve fund. If it was found that the reserve fund was attaining to more than reasonable figures, the fees would be reduced. In this particular instance, therefore what appears as a vote for meeting excess expenditure does not really represent any expenditure at all. It merely has to figure as expenditure because it has to be transferred from revenue to the reserve fund. I am glad in one way that my Honourable friend has raised the point, because it enables me to point out that although anyone who looks at these excess demands might get the impression that a large amount of expenditure had actually been incurred in excess of the voted grants, nevertheless in many cases they really only represent adjustments. In certain cases, for instance, the expenditure under voted heads has been exceeded while expenditure under non-voted heads has been less than was anticipated. None-the-less, in order to meet that sort of excess, we have to come before the Assembly to approve an excess grant. In other cases, as in the case to which my Honourable friend has referred, the excess demand does not really represent expenditure at all but merely provides for a certain method of dealing with receipts which were more than were anticipated.

Mr. President: The question is:

"That an excess grant of Rs. 2,78,423, be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Lighthouses and Lightships'."

The motion was adopted.

MINT.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 1,03,746 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Mint'."

The motion was adopted.

RAJPUTANA.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 1,199 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Rajputana'."

The motion was adopted.

CAPITAL OUTLAY ON LIGHTHOUSES AND LIGHTSHIPS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 4,821 be voted by the Assembly to regularise the expenditure chargeable to Capital actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Capital Outlay on Lighthouses and Lightships'."

The motion was adopted.

DELHI CAPITAL OUTLAY.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 1,22,295 be voted by the Assembly to regularise the expenditure chargeable to Capital actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Delhi Capital Outlay'."

The motion was adopted.

LOANS AND ADVANCES BEARING INTEREST.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 8,95,936 be voted by the Assembly to regularise the expenditure actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Loans and Advances bearing Interest'."

The motion was adopted.

POSTS AND TELEGRAPHS.

INDIAN POSTS AND TELEGRAPHS DEPARTMENT.

The Honourable Sir George Schuster: Sir, I beg to move:

"That an excess grant of Rs. 17,74,774 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Indian Posts and Telegraphs Department'."

Diwan Bahadur T. Rangachariar: I am sorry to trouble the Honourable Member again. I have not got my copy of the Public Accounts Committee Report. I do not know if there is any explanation in respect of this item also. Will the Honourable Member kindly explain this item also?

The Honourable Sir Joseph Bhore (Member for Industries and Labour): Sir, the explanation is furnished on page 4 of the Report of the Public Accounts Committee and, if my Honourable friend likes it, I will read it.

Diwan Bahadur T. Rangachariar: Yes, please. I have missed my copy.

The Honourable Sir Joseph Bhore: It is just as well that I should read it. Item 12 on page 4 runs thus:

"The excess was chiefly due to an under-estimate of the requirements under 'Stamps, Post cards, etc.' and under 'Stationery and Printing' and to an inadequate appreciation of the effect of revisions of pay and other concessions sanctioned in recent years. We are assured that estimating has now considerably improved and that sufficient experience has now been gained to make it possible for the estimating officers to make a fairly accurate allowance for the effect of revisions of pay and other concessions."

Mr. President: The question is:

"That an excess grant of Rs. 17,74,774 be voted by the Assembly to regularise the expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Indian Posts and Telegraphs Department'."

The motion was adopted.

RAILWAYS.

RAILWAY BOARD.

The Honourable Sir George Schuster: I beg to move:

"That an excess grant of Rs. 2,196 be voted by the Assembly to regularise the railway expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Railway Board'."

The motion was adopted.

WORKING EXPENSES—ADMINISTRATION.

The Honourable Sir George Schuster: I beg to move:

"That an excess grant of Rs. 12,62,820 be voted by the Assembly to regularise the railway expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Working Expenses—Administration'."

Dr. Ziauddin Ahmad (United Provinces Southern Divisions: Muhammadan Rural): Sir, I read very carefully the Report of the Public Accounts Committee in connection with railway expenditure, and I found that they have given a balance sheet only for the N. W. Railway. The balance sheets for other railways are not given in this Report and even in this one balance sheet, I notice that in N. W. Railway, the net loss is Rs. 1,03,75,356. I notice that the ratio of working expenditure to the total is 64 per cent., which I think is rather excessive. I think the reasonable expenditure would be 50 per cent., and if they reduced the expenditure to 50 per cent., then this additional loss of one crore and odd would not have been incurred. I must say that the Government have not supplied us with sufficient material to judge whether the extra expenditure is justified or not. It is unfair to ask the House to vote on this grant without giving sufficient data.

Sir Alan Parsons (Chief Commissioner, Railways): As is explained in the Public Accounts Committee's Report item 14, page 5, this excess of 12 lakhs odd, which is considerably less than one per cent. of the expenditure, is practically entirely due to the fact that a strike took place on the G. I. P. Railway in the closing months of the year, and that involved us in extra expenditure. Apart from it, our Budgeting was very close. This has no connection with the losses on the N. W. Railway, Commercial and Strategic lines during that year.

Dr. Ziauddin Ahmad: In this appendix supplied to us, the balance sheet only of the N. W. Railway is given and the balance sheet of the G. I. P. Railway is not supplied to us.

The Honourable Sir George Schuster: I might point out to my Honourable friend that these accounts that are supplied with the Report of the Public Accounts Committee do not purport to give a picture of the whole of the railway accounts. My Honourable friend will have to go to the railway accounts for that. He has referred to a particular appendix where a particular form of balance sheet and profit and loss account was furnished by the Railway Department with reference to paragraph 14 of the Public Accounts Committee's Report, on the accounts for 1928-29. That statement was put in there in the appendix with reference to the particular point raised in the previous volume of the Public Accounts Committee's Report.

Mr. President: The question is:

"That an excess grant of Rs. 12,62,820 be voted by the Assembly to regularise the railway expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Working Expenses—Administration'."

The motion was adopted.

APPROPRIATION FROM DEPRECIATION FUND.

The Honourable Sir George Schuster: I beg to move:

"That an excess grant of Rs. 26,18,314, be voted by the Assembly to regularise the railway expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Appropriation from Depreciation Fund'."

The motion was adopted.

APPROPRIATION FROM THE RESERVE FUND.

The Honourable Sir George Schuster: I beg to move:

"That an excess grant of Rs. 1,21,91,706 be voted by the Assembly to regularise the railway expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Appropriation from the Reserve Fund'."

Diwan Bahadur T. Rangachariar: May I know the exact state of the Reserve Fund? Is anything left for appropriation hereafter?

Sir Alan Parsons: At the moment there is a sum of about 4 crores left. But I fear that at the end of this year, no balance will be left.

Dr. Ziauddin Ahmad: May I just point out that the appropriation from the Reserve Fund practically means a net loss and the net loss is to be covered by the appropriation from the Reserve Fund. It was estimated that the net loss would be about 86 lakhs, 30 thousand. But we find that the actual net loss was 2 crores, 8 lakhs, one thousand and seventy. The deficit is rather a big one. I think it is not a good policy for any business to fall back, from year to year, on its reserve. As has been pointed out just now, there will be no reserve left, and this shows really great mismanagement on the part of the administrators of the railways. There was

a net reserve of about 18 lakhs odd three years ago, now practically the whole of that reserve is exhausted. The railway is one of those firms which are really losing money heavily. This is a thing which requires very careful consideration and scrutiny. I have repeatedly pointed out that a good deal of money is misspent on the running line and the Railway Retrenchment Committee, who wanted to look into the expenditure of the running lines, was not allowed to do so. The Retrenchment Committee was clearly given to understand that the Government wanted to appoint an expert committee who would examine the running line in the months of October and November, and since the members of the Retrenchment Committee were Members of the Assembly, they would have no time during those months to visit the head and divisional offices of the railways. On this understanding,—or misunderstanding—the Railway Retrenchment Committee finished the work without examining how the money is being misspent on running lines. I understand that a sum of 36 lakhs a year is given to every Agent to spend in his own way on miscellaneous account for which no regular budget is made and no regular sanction is obtained from the higher authorities. I will expect the Member in charge of Railways to give me the accurate figures. We must be given an assurance that the money is not misspent, but owing to the very fact that there is such a deficit, it is exceedingly necessary that the Railway Administration should not consider these things as their own preserve to be kept confidential from the eyes of the public. Every effort is made to keep the Members of the Assembly in the dark. I have even been given to understand that certain officials have issued instructions to their employees that they are not to see the Members of the Assembly or give them any facts. That is by the way, but we will certainly welcome details at the time of the Budget grant. We the Members of the Assembly are really the Directors of this big concern called the Railways, and I strongly object to anything being kept confidential from us, especially when they come to us with a demand for such a big sum to make up the deficit.

Sir Alan Parsons: Sir, at this late hour of the day I will confine my remarks to those points which are relevant to the excess grant for which we are asking. I may say at once to the Honourable Member that I am afraid I cannot accept the fact that we had in this year to withdraw a sum of rather over 2 crores from the Reserve for payment of our contribution to general revenues as showing that Railways were run at a loss in this year. I have not got the exact figure in my mind, but our total contribution for that year was something between 5 and 6 crores. We actually therefore earned a dividend over and above our interest charges of something like 4 crores. We could not pay the full dividend from earnings in that year to general revenues, and we used the Reserve fund for its proper purpose, the purpose of equalising dividends.

So far as his charges of mismanagement are concerned, the Public Accounts Committee I think took a very fair view when they pointed out that this particular reduction in our profit was due to a fall in our traffic, in the closing months of the year which we had no reason to expect. We originally came before the Assembly for a supplementary grant but owing to the decline in traffic it was not sufficient; we cannot be held responsible for a decline in traffic; and the mismanagement, if any, was a mismanagement by Providence.

Mr. President: The question is:

"That an excess grant of Rs. 1,21,91,706 be voted by the Assembly to regularise the railway expenditure chargeable to Revenue actually incurred in excess of the voted grant in the year 1929-30 in respect of 'Appropriation from the Reserve fund'."

The motion was adopted.

DEMANDS FOR SUPPLEMENTARY GRANTS.

OPIUM.

The Honourable Sir George Schuster (Finance Member): Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 7,48,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Opium'."

The motion was adopted.

STAMPS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 1,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Stamps'."

The motion was adopted.

IRRIGATION, NAVIGATION, EMBANKMENT AND DRAINAGE WORKS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 69,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Irrigation, Navigation, Embankment and Drainage Works'."

The motion was adopted.

INTEREST ON MISCELLANEOUS OBLIGATIONS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 2,30,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Interest on Miscellaneous Obligations'."

Diwan Bahadur T. Rangachariar: Sir, may I ask the Honourable Member whether in the near future he expects to pay a lower rate of interest on Government loans?

The Honourable Sir George Schuster: Sir, I am afraid I must reply to my Honourable friend's question that I do not claim to be able to prophesy with certainty, but if the tendency which we have observed in the course of the prices of Government securities during the last few weeks is prolonged, undoubtedly the rate of interest that we shall have to pay on Government loans will be less than during the last 12 months. If my

Honourable friend has followed the Press reports of the market in Government securities he will have noticed that in the last few weeks and especially in the last few days there has been a substantial appreciation in the prices of Government securities, an appreciation which I myself think is entirely justified.

The motion was adopted.

STAFF, HOUSEHOLD AND ALLOWANCES OF THE GOVERNOR GENERAL.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 44,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Staff, Household and Allowances of the Governor General'.".

The motion was adopted.

COUNCIL OF STATE.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 35,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Council of State'."

Diwan Bahadur T. Rangachariar: May I ask if this figure has taken into account the very generous concessions made by the Members of the Council of State that they will forego first-class compartments?

Sir Lancelot Graham: Yes.

The motion was adopted.

LEGISLATIVE ASSEMBLY AND LEGISLATIVE ASSEMBLY DEPARTMENT.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 1,03,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Legislative Assembly and Legislative Assembly Department'."

Mr. S. G. Jog: Will the Honourable Member say what amount of this is due to the November session?

The Honourable Sir George Schuster: My Honourable friend is himself a Member of the Standing Finance Committee and if he has read the papers which were circulated to the Standing Finance Committee, he would have been able to answer that question himself.

The motion was adopted.

COMMERCE DEPARTMENT.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 17,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Commerce Department'."

The motion was adopted.

PAYMENTS TO PROVINCIAL GOVERNMENTS ON ACCOUNT OF ADMINISTRATION OF AGENCY SUBJECTS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 1,91,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932 in respect of 'Payments to Provincial Governments on account of Administration of Agency Subjects'."

The motion was adopted.

POLICE.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 5,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Police'."

The motion was adopted.

AGRICULTURE.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 2,23,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Agriculture'."

The motion was adopted.

MINT.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 29,41,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Mint'."

Diwan Bahadur T. Rangachariar: Sir, I should like to have some more information on this subject: I find it rather difficult to follow the statement placed before the Standing Finance Committee. Some reference was made to some small coins: I could not understand it and if the Honourable Member will kindly explain what it is due to, I shall be glad.

The Honourable Sir George Schuster: I am sorry, Sir, that my Honourable friend finds it difficult to understand the information which has been supplied. I had hoped that it would have been possible for all Honourable Members to follow it. In this case the excess demand is required because there has been a nominal loss on the circulation of nickel and bronze coins. The nominal loss is incurred when on balance there is a return of those coins from circulation. The coins when issued are taken at the face value of the money which they represent; but when they are returned they have to be taken back at the value of the metal content. There is of course a very large difference between the value of metal content and the face value of the coin. My Honourable friend probably

knows that as a result of the fall in commodity prices which has taken place over the last 24 months, there has been on balance, a very large return of coin from circulation. We felt that first in the return of silver rupees, and recently there has been on balance—an unusual factor for us—a return of small coin, small bronze and nickel coin.

The motion was adopted.

SUPERANNUATION ALLOWANCES AND PENSIONS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 5,32,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Superannuation Allowances and Pensions'."

The motion was adopted.

MISCELLANEOUS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 4,19,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932. in respect of 'Miscellaneous'."

The motion was adopted.

REFUNDS.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 13,65,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Refunds'."

The motion was adopted.

EXPENDITURE IN ENGLAND UNDER THE CONTROL OF THE SECRETARY OF STATE.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary sum not exceeding Rs. 33,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Expenditure in England under the Control of the Secretary of State'."

The motion was adopted.

LOANS AND ADVANCES BEARING INTEREST.

The Honourable Sir George Schuster: Sir, I beg to move:

"That a supplementary grant not exceeding Rs. 6,78,00,000 be granted to the Governor General in Council to defray the charges that will come in course of payment during the year ending the 31st day of March, 1932, in respect of 'Loans and Advances bearing Interest'."

Diwan Bahadur T. Rangachariar: May I ask, Sir, whether this sum represents repayment of loans or repayment of interest alone?

The Honourable Sir George Schuster: It is a capital sum. It represents really the amount which the Central Government has had to find owing to the deterioration of provincial finances for advances to be made to the Provincial Governments. It represents advances against the Provincial Loans Fund which are required in excess of the estimates during this year.

Mr. B. Das: Will the Provincial Governments pay interest on these advances?

The Honourable Sir George Schuster: I am very surprised to get such a question from so well-informed a Member of this House as my friend. He surely is familiar with the procedure governing advances to all Provincial Governments. He knows that under the Provincial Loans Fund procedure the Central Government charges to the Provincial Governments a commercial rate of interest based on the Central Government's own borrowing rate.

Mr. S. G. Jog: Are the Government of India satisfied with the necessity for such loans?

Seth Haji Abdoola Haroon: May I know whether these advances made to Provincial Governments are meant for capital expenditure or for current expenditure?

The Honourable Sir George Schuster: It is difficult to give an accurate answer to that question in a few words. This item represents the sum of all the transactions involved between the Central Government and the Provincial Governments. In certain cases where Provincial Governments contemplated financing capital expenditure out of their own balances, they have had to withdraw those balances; in other cases, it may in the end represent in actual fact, for all practical purposes, advances to cover deficiencies of revenue. I think one has got to acknowledge that fact. If my friend wants a detailed account of exactly how this sum is made up, he will find from other statements published by Governments materials to answer his question.

The motion was adopted.

The Assembly then adjourned till Eleven of the Clock on Thursday the 18th February, 1932.