

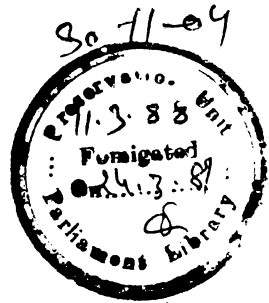
Monday, 29th February, 1932

**THE
COUNCIL OF STATE DEBATES**

VOLUME I, 1932

(25th February to 6th April, 1932)

**THIRD SESSION
OF THE
THIRD COUNCIL OF STATE, 1932**



CALCUTTA : GOVERNMENT OF INDIA
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COUNCIL OF STATE.

Monday, 29th February, 1932.

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

MEMBERS SWORN :

The Honourable Major-General John Wallace Dick Megaw, C.I.E., M.B., K.H.P., I.M.S. (Director General, Indian Medical Service).

The Honourable Khan Bahadur Mian Sir Fazl-i-Husain, K.C.I.E., K.T. (Education, Health and Lands Member).

QUESTIONS AND ANSWERS.

EXPENDITURE ON MILITARY OPERATIONS IN CHITTAGONG.

35. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE : Will Government be pleased to state the approximate amount they have spent up to date for military operations in and around Chittagong for tracking down and suppressing the terrorists and rebels ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : The extra charges incurred upto the 31st December, 1931, amounted to approximately Rs. 66,000. Later figures are not yet available.

COST OF THE TEMPORARY ADDITIONAL GARRISON STATIONED IN BURMA IN CONSEQUENCE OF THE DISTURBANCES.

36. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE :
(i) Will Government be pleased to state :

(a) how many detachments are already in operation in Burma for the suppression of the rising and consequent disturbances in Burma ?

(b) how many detachments are of Indian units ?

(ii) Will Government be pleased to state the amount already spent by them under the head "Military," in connexion with the suppression and quelling of the disturbances in Burma ?

HIS EXCELLENCY THE COMMANDER-IN-CHIEF : (i) (a) and (b). The normal garrison of Burma consists of 2 British battalions, 3 Indian battalions and 1 Mountain Battery, Royal Artillery. In addition to these, 1 British battalion and 5 Indian battalions are stationed temporarily in Burma in consequence of the disturbances. This temporary additional garrison is in process of being reduced to 2 Indian battalions,

(ii) It is calculated that the employment of troops in connexion with the disturbances in Burma will cost the military estimates 27½ lakhs during the current financial year 1931-32 alone. This estimate includes the cost of transporting troops back to India, with the exception of the 2 Indian battalions which are to remain in Burma for the present.

ARMED GURKHAS ON PATROL DUTY IN DACCA.

37. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE :
(i) Is it a fact that an additional detachment of soldiers have been billeted in Dacca since the murder of Mr. Stevens at Comilla ?

(ii) Will Government be pleased to state whether the armed Gurkhas in khaki now on patrol duty in the city of Dacca belong to the Army or to the Armed Police Force of Bengal ?

THE HONOURABLE MR. H. W. EMERSON : (i) No.

(ii) The armed men in khaki on patrol duty in Dacca City are Garhwalis and belong to the Bengal Police.

STATISTICS OF UNEMPLOYED PERSONS IN INDIA.

38. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE :
Will Government be pleased to state whether they have taken any statistics of the unemployed persons of all nationalities in India ? If so, will Government be pleased to lay on the table a statement showing the number of unemployed persons of the different provinces in India, with their nationalities ?

THE HONOURABLE MR. J. A. SHILLIDY : No such statistics of unemployed persons in India have been collected, but an attempt was made at the last Census to collect statistics of the educated unemployed. These statistics will be published in the forthcoming Census Report.

STATISTICS OF THE AVERAGE INCOME AND COST OF LIVING OF A PERSON NOW AND BEFORE THE WAR.

39. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE :
(i) Do Government take any statistics of the average cost of living and the income of a person in the different provinces of India ? If so, will Government be pleased to lay on the table a statement showing the average cost of living and the income of a person in the different provinces of India now and before the war ?

(ii) Will Government be pleased to state which of the provinces in India take the statistics of the average cost of living and the income of a person ?

THE HONOURABLE MR. J. A. SHILLIDY : (i) and (ii). No statistics of the average income and cost of living are compiled in respect of any of the provinces in India, but the Labour Office in Bombay and the Directors of Industries in Bihar and Orissa and the Central Provinces and the Director of Statistics and Labour Commissioner in Burma publish month by month cost of living index numbers for the working classes at certain centres in their respective provinces. These index numbers indicate the rise and fall in the cost of living as compared with a specific pre-war or other period.

GENERAL CONDITION OF TRADE AND INDUSTRY IN INDIA SINCE THE RUPEE WAS LINKED TO STERLING.

40. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: Will Government be pleased to state whether there has been any marked improvement in the general condition of trade and industry in India since the rupee has been linked to sterling? If so, will Government be pleased to state in what items of trade and industry the improvement is tangible?

THE HONOURABLE MR. J. C. B. DRAKE: I presume the Honourable Member's question relates to the course of events since September, 1931. It is too early yet to say that there has been a marked general improvement in the conditions of trade and industry. But if my Honourable friend will refer to the table showing the Index Numbers of Wholesale Prices in Calcutta published on page 424 of the Indian Trade Journal of the 11th February, 1932, a copy of which is in the Library, he will see that the price levels of most of the articles of export from India have risen since last October, while the tendency of gold prices during the same period has been persistently downward.

PRESENT CONDITION OF THE FOREIGN PIECE-GOODS TRADE IN INDIA.

41. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: Will Government be pleased to make a statement about the present condition of the foreign piece-goods trade in India?

THE HONOURABLE MR. J. C. B. DRAKE: The Honourable Member is referred to the monthly accounts relating to the Sea-borne Trade and Navigation of British India, copies of which are in the Library.

CUSTOMS REVENUE OF DIFFERENT PROVINCES IN FOREIGN AND BRITISH PIECE-GOODS TRADE SINCE THE IRWIN-GANDHI PACT.

42. THE HONOURABLE MR. JAGADISH CHANDRA BANERJEE: Will Government be pleased to lay on the table a statement showing the customs revenue of the different provinces in India in foreign and especially, in British piece-goods trade since the Irwin-Gandhi Pact?

THE HONOURABLE MR. A. F. L. BRAYNE: A statement is laid on the table.

Statement showing shares of the different maritime provinces in the amount of duty collected on cotton piece-goods: (a) plain grey and (b) others, of British manufacture and not of British manufacture separately, during the nine months, April to December, 1931:

	Cotton piece-goods— (i) of British manufacture.	(a) Plain grey (ii) not of British manufacture.	Cotton piece-goods— (i) of British manufacture.	(b) Others (ii) not of British manufacture.
	Rs.	Rs.	Rs.	Rs.
Bengal	52,308	19,20,001	23,88,761	30,93,542
Bombay	1,86,100	16,38,081	20,93,326	18,15,807
Sind	37,296	6,86,538	48,20,386	9,56,161
Madras	4,10,281	5,06,556	11,93,594	1,45,962
Burma	1,08,273	6,88,178	8,64,582	25,21,386
Total	7,94,258	54,39,354	1,13,60,649	85,31,758

INDIAN PARTNERSHIP BILL.

THE HONOURABLE SIR BROJENDRA MITTER (Law Member) : Sir, I move that the Bill to define and amend the law relating to partnership, as passed by the Legislative Assembly, be taken into consideration.

Sir, I need not take long in explaining this Bill to the House, because all I have to say is contained in the Statement of Objects and Reasons, which includes the Report of the Special Committee appointed by the Governor General in Council to revise the law of partnership, and it includes also Notes on Clauses which explain every single section when there has been any departure from the existing law. Sir, the only special feature of this Bill is contained in Chapter VII, which relates to registration of partnerships. This question of registration has been before the country for the last 60 years. Various commercial bodies from time to time have insisted upon registration of partnerships. So far back as 1867 the Bombay Chamber of Commerce drew the attention of the Government of India to this matter, and since then from time to time it has been pressed upon the Government. But several difficulties always stood in the way. The two outstanding difficulties which we had to confront were the Hindu joint family business and business in a small way. In 1918 the Industrial Commission took up this question and I had the privilege of appearing before the Commission and providing a solution. That solution is now embodied in this Bill. The Industrial Commission recommended registration but nothing was done. Then came the Civil Justice Committee, over which the present Chief Justice of Calcutta, Sir George Rankin, presided, and I had the privilege of appearing before that Committee again to explain my scheme, and they again recommended my scheme for adoption. But again nothing was done. When I came to the Government of India I took upon myself the task of revising some of the old laws. I had the privilege of revising the Transfer of Property Act and the Sale of Goods Act, and this is my third venture, the law of partnership I took this opportunity of introducing the principle of registration of partnerships into this Bill. For our model we had the corresponding English Act. We had still those two difficulties, the difficulty of Hindu joint family firms and the difficulty of small trades to negotiate. As regards Hindu joint family, I personally felt no difficulty because a Hindu joint family business is not a contractual firm. A member of a Hindu joint family is interested in the business of the family by reason of his status and not by virtue of any contract. We have excluded all matters which are not contractual from the scope of this Bill. Now, the other difficulty was about small trades. Various suggestions were made. The most insistent was exclusion on the basis of capital, that is, if the capital was under a certain figure, then that business should be excluded from the operation of registration. The Special Committee appointed by the Government examined all the various suggestions and they were found impracticable. In the course of the debate in the other House a suggestion was put forward that small claims might be excluded and I promised there that I would examine that suggestion and if found practicable I would move an appropriate amendment in this House. Sir, on examining that suggestion I found that it was feasible and we could give relief in the case of small trades. When I come to the amendment, I shall explain that more fully. Chapter VII, the Chapter on Registration, is the only special feature of the Bill. As regards the rest of the Bill what we have done is to clarify the law and to bring it up to date. The law of partnership at the present moment is contained in Chapter XI of the Indian Contract Act, which

was passed so far back as 1872. Since then it has not been revised. Sir James Stephen, who was then the Law Member, in introducing the Indian Contract Bill contemplated revision. I am reading one passage from the Report of the Special Committee.

“When Sir James Stephen moved the Indian Contract Bill, he admitted that it was not and could not pretend to be, a complete code upon the branch of law to which it related. He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to the several branches of the law of contract which the Bill did not touch. This hope had never been fulfilled. In later years it was found more convenient to have separate enactments for the several branches of the law of contract, *e.g.*, the Transfer of Property Act, the Negotiable Instruments Act, and the Merchant Shipping Act. In our opinion, in view of the complexity of modern conditions, the time has now come when this process should be accelerated by embodying the different branches of law relating to contract in separate self-contained enactments; and we hope that the Bill which we attach to our Report may be passed into law at an early date and may be but the first of the series required to complete the task which we have outlined above.”

That was said, Sir, with reference to the Sale of Goods Bill. This is the second of the series, the Partnership Bill. What we are proposing to do is to repeal Chapter XI of the Contract Act and in its stead to substitute a self-contained Bill relating to the law of partnership. That, Sir, is the scope of the Bill, and, as I said, the only new feature of the Bill is Chapter VII, which deals with registration. The rest of the Bill is the existing law suited to modern conditions. We took as our model the English Partnership Act of 1890, but we took considerable liberty with that Act in view of the criticism to which that Act has been subjected by text writers like Lindley, Pollock and Underhill. We have benefited by that criticism and in shaping our Bill we have tried to improve upon the model and take special note of Indian conditions. Sir, I move.

THE HONOURABLE SIR MANECKJI DADABHOY (Central Provinces : Nominated Non-Official) : Sir, at the outset I should like to congratulate the Special Committee and also the Select Committee in framing this very important Bill and accomplishing a most arduous and difficult task. This Bill replaces Chapter XI of the Indian Contract Act. This piece of legislation in a manner actually codifies the existing law on the partnership subject. The present Contract Act has been found both by judges and lawyers in a great measure incomplete and judges had constantly to depend upon the aid of English rulings for the adjudication and interpretation of many important and intricate questions of law which were involved in suits embodying contractual relations coming before our law courts. The need for codification has been amply justified and it is after a period of 60 years that this Bill has been introduced replacing the original Act that was passed as far back as 1872. The years that have passed since the framing of the Contract Act have revealed many serious defects in that Act and it was thought necessary that the commercial legislation should be put on a system of uniformity. This Act follows the English Act of 1890 for its model and it is a matter for congratulation that the Special Committee that was appointed has adopted the English model. Both the Colonies and Dominions long ago adopted in the matter of partnership law the English model. Even the United States of America copied the example of the British Parliament in the Act which was passed in England in the year 1890 and it is time that after 60 years our Government should have awakened to the necessity of framing a code and putting the law of partnership in India on a basis which will in a way bring the law into a state of uniformity. Of course small deviations have been made in this Bill to meet local conditions, the special conditions prevailing in this country, and, as far as I have been

[Sir Maneckji Dadabhoy.]

able to examine the wording of the various clauses, it follows exactly the wording of the English Act of 1890, which will in many ways obviate the difficulties and permit our judges to depend upon English rulings and follow them as far as possible in their entirety.

Sir, as regards the Bill, Chapter VII introduces a very important principle—registration of all the partnerships that are hereafter entered into; not only that, but this Bill will have retrospective effect inasmuch as all the existing partnerships will also have to go in for optional registration if it is necessary to bring suits *inter se* among partners or even against third parties. Sir, I shall deal with this chapter in the first instance. The history of this chapter can be traced as far back as 1867 when the Bombay Chamber of Commerce moved Government that all partnership should be compulsorily registered. No action was taken by Governments then but this scheme was supported by several Local Governments and especially when the matter was pressed by the mercantile community of Calcutta it was very forcibly brought to the notice of Government. It has been said that the English mercantile community of Calcutta is responsible for the framing of this chapter. If it is so, I do not see any objection to it, because in a big commercial town like Calcutta where people have to deal with thousands of firms having numerous partners, especially in a country which is regulated and bound by the Hindu system of co-parcenary family and also in view of many dormant partners, it is necessary for parties dealing with people to exactly know who the partners in a particular concern or enterprise are, and therefore, though there was a great deal of storm in this connection in the other House, I do not for a moment see that the action taken by the Special Committee in framing this chapter was in any way objectionable. It must, however, be noticed, Sir, that this provision for registration did not appear in the English Act of 1890 and did not find place in the English law till 1916 when the Bill called the Registration of Business Names Act was passed. When that Act was passed it strengthened the position in this country and created a precedent and made the demand for the registration of partnerships necessary. My friend the Leader of the House has already pointed out the action taken by the Industrial Commission as well as by the Justice Committee in making specific recommendations regarding the introduction of a system or a principle of registration into all partnerships. It is probably also known to many Members that this principle, though we are now obtaining it in a general Act of the Government of India, this principle was as a matter of fact introduced by the Burma Legislative Council in 1920 in passing a similar Act on the lines of the Registration of Business Names Act. Sir, Chapter VII in this Act is in my opinion necessary and desirable. The only distinction which the Special Committee have made in this Act, is—and I congratulate the Special Committee on its recommendation—that the registration should not be made compulsory but remain optional with the partnership members belonging to a particular concern or enterprise, and as such it ought not to cause any great inconvenience to the public. I have only referred to this matter as I find a great deal has been said regarding the hardship caused by the registration of partnership not only in the other House but in public newspapers and it is also stated that this registration will create difficulties and prevent the normal existence and performance of trade and business in this country. One thing is certain that this section does not in any way attempt to alter or affect the rights of a third party to institute a suit against an unregistered firm; it only provides that the member of a firm which is not registered will not be competent to bring a suit against his fellow partners or

against the firm or against a third party. Therefore there is no hardship at all in this measure. The argument that small firms will be affected has some significance and I am very glad that the Leader of the House has, in accordance with the pledge given in the other House, agreed to bring forward a small amendment which will prevent small partnerships or what they call single ventures from any hardship in the matter.

The other sections of this Bill more or less proceed on the analogy of the English law. As regards minors, provisions have been made and their interests in partnership have been adequately protected. As regards the very difficult question of implied authority I am very pleased to find that that difficult question which has given considerable trouble during the last 25 years to various law courts in this country has been set at rest by stating certain definite matters or cases in connection with which no implied authority could be legally inferred.

I have carefully gone through the Bill. I find the law very satisfactory. It will put our existing law in consonance with the English law. It will help judges to administer the law more easily and confidently and it will enable the lawyers to plead their cases with precision and accuracy before the law courts.

THE HONOURABLE SIR DAVID DEVADOSS (Nominated Indian Christians): Sir, I welcome this Bill. The codification of the partnership law has been long overdue. As has been said the provisions as to registration are peculiar to the Bill. When the Bill becomes law I think the provisions as to registration will relieve the courts of a lot of unnecessary work and also prevent unscrupulous litigation. Sir, under the present Civil Procedure Code a suit can be brought for or against a firm in the name of the firm and what happens after a decree against a firm is obtained is that the court has to find out in execution who the partners are and this entails a lot of unnecessary work and in many cases the real partners in a firm escape liability by showing that they are not partners. By registering the names of partners before any action is taken this unnecessary labour of the courts will be obviated. I hope that facilities will be afforded for registering partnerships easily. I would suggest in this connection the appointment of an officer like the Marriage Registrar under the Christian Marriage Act who could easily register partnerships. For it is not likely that after the existing partnerships have been registered there would be very many firms to be registered in each year. Probably in every province there may be only a few hundreds, and not more. Then, coming to some of the provisions, Sir, I find that one or two alterations could be usefully made when the Law Member considers the time has come for doing so. I would particularly draw the attention of the House to clause 6, Explanation 2. This provision is a very satisfactory one. In Madras, especially among the Muhammadan merchants, there is a custom obtaining of paying a small share of profits to servants, who are called *kashta kootali*, that is to say, labouring partners but not capitalist partners. Such persons are not partners in the sense in which the word "partner" is used. That is to say, they have not got the rights and liabilities of partners. They cannot ask for dissolution of partnership or for accounts. This provision makes the law on the point clear.

Then, Sir, with regard to clause 19, sub-clause (2), I think the whole of this ought to be deleted, for this reason, that a partner may be obliged at times to come to terms with a defendant without any delay. Suppose a suit is filed in Madras or in Calcutta and the defendant offers to pay a sum of money. Unless the partner is authorised to compromise the case at once, it may be that if he

[Sir David Devados.]

has to wait to get the consent of all the partners, he may lose what he would otherwise get, for by the time he gets the consent of all the partners the defendant may become insolvent or there may arise difficulties in the way of realising the decree. I do trust that this provision would be deleted from the Bill and it would be left to the courts to consider in what circumstances a partner could act for the rest of the partners so as to bind the partnership.

Then, Sir, as regards the effect of insolvency of a partner on a firm, clause 34 makes the effect to operate from the date of adjudication. Under the Provincial Insolvency Act adjudication does not take place soon after presentation of the petition for adjudication, whether it be a creditor's petition or a debtor's petition. Under the provisions of that Act considerable time sometimes elapses before adjudication is made. I would suggest that the date of the operation of the effect of adjudication should be from the date of the presentation of the petition and not as in the English Act from the date of the act of bankruptcy. From my experience I find that it sometimes takes a year or a year and a half for adjudication to be made after presentation of the petition.

Then, as regards clause 42, sub-clauses (c) and (d). I find, Sir, that these provisions are unnecessary and they might work hardship upon partnerships. Suppose there are eight or nine partners and one of them dies, it should not necessarily follow that the partnership is thereby dissolved. The deceased man's interest may be ascertained and his estate may be given the amount that may be due to him. So also in the case of a partner who is adjudicated insolvent. As the sub-clause stands, the whole partnership is dissolved. It will entail a lot of hardship on the other partners if the partnership is dissolved by reason of one of the partners dying or one of the partners becoming an insolvent. I would ask the learned Law Member to consider whether these two provisions could not be deleted from the Bill.

Then, as regards registration of partnerships, I find that clauses 66 and 67 are too wide in their application. The unrestricted power of inspection might cause hardship to people who do not want all their ventures to be known to the public. Allowing any person to go and inspect all the registers of partnerships kept by the Registrar would in some cases lead to unscrupulous dealings by making things public which a partner may not like to be made public. No doubt sub-clause (2) of clause 66 says: "subject to such conditions and on payment of such fee as may be prescribed". But what the conditions are to be should be specified in the Statute itself and not left to any rules to be framed. But even with such safeguards it is not everybody that should be allowed to inspect the partnership registers but only such people who are really interested either as plaintiffs or defendants to an action should have the right.

On the whole, Sir, the Bill is a very satisfactory one and as the Honourable Sir Maneckji Dadabhoj has said, the learned Law Member and the other members of the Special Committee ought to be congratulated upon producing a very satisfactory piece of legislation.

THE HONOURABLE SIR BROJENDRA MITTER: Sir, with regard to the comments made by the Honourable Sir David Devados I want to say one or two words. He said that clause 19 (2) should be deleted and that a partner should have more freedom in the matter. Clause 19 (2) begins with "in the absence of any usage or custom of trade to the contrary". A partner may be given express authority by his co-partners. That will take the matter outside the scope of this sub-clause. We are saving express agreements and

we are saving usages and customs of trade. Subject to these, we thought it desirable to set out the law for the guidance of the subordinate courts to whom the English Law Reports are not easily available. It is for their guidance more than for anything else that we thought it necessary to state the law, and what is stated here is the existing law. We have not departed from the existing law ; only we have taken care to set it out here.

Then, as regards insolvency, if the Honourable Member will look at the Notes on Clauses, he will find that we have considered this matter very carefully. The Special Committee says :

“ Sub-clause (1) states the principle that the insolvency of a partner severs his connection with the firm. The English Act antedates the dissolution back to the act of bankruptcy, but it is considered that this would be impracticable in India, and that section 254 (2) of the Indian Act should be followed in this matter.”

So, what we have done is to adhere to the existing law and not to make any change in it, because the existing law has not been known to operate harshly. That being so, we did not feel justified in effecting any change. Beside, there would be a practical difficulty if you make the presentation of the petition the date on which the partner ceases to have an interest in the business. The difficulty would arise in the case of the petition being eventually dismissed.

[At this stage the Honourable the President vacated the Chair, which was taken by Mr. Chairman (the Honourable Sardar Bahadur Shivdev Singh Uberoi).]

Sir David Devadoss says that in the districts where the Provincial Insolvency Act applies, a long time elapses between the presentation of a petition and adjudication. If that be so, and if the presentation of the petition be taken as the crucial date, then if on the lapse of this interval the petition is dismissed, the position of the partner during the interval will be very anomalous. Taking all these things into consideration we thought that the safest and surest date would be the date of adjudication and not presentation of the petition.

Then, as regards clause 42, Sir David Devadoss says that dissolution of a firm on the death of a partner may operate hardly in certain cases. But that is the law of partnership all over the world. Partnership is an agreement between several people and if one of these people dies, naturally the whole agreement falls to the ground. It is not merely an agreement between some of the people, but an agreement which binds all the people. It is a thread which goes all round and binds all the people. If the thread breaks at any point, the whole of the string falls to the ground. That is the law everywhere. Then, with regard to section 66, what Sir David says is this, that this right of inspection might be used by unscrupulous people and might lead to undesirable disclosure of the internal affairs of a firm. I understood that to be his comment. Sir, we have considered this matter very carefully, and if you look at section 58 you will find that the disclosure we want is not of any of the internal affairs of the firm. We do not want any inquisition into the internal affairs of a firm. In section 58 we provide for the matters of which disclosure is necessary. They are, the firm name, the principal place of business of the firm, the names of any other places where the firm carries on business, the date when each partner joined the firm, the names and permanent addresses of the partners and the duration of the firm—all the matters which concern the outside world, those who are dealing with the firm. These are the matters of which we want disclosure, not of any of the internal affairs of the firm. The inspection or

[Sir Brojendra Mitter.]

disclosure of these matters, as to who the partners are, when the partners joined and whether the partnership is for a fixed period or for an indefinite period, cannot possibly prejudice any firm. If it were a case of the disclosure of any of the affairs of the firm, namely, the amount of capital or the nature of the business

THE HONOURABLE SIR DAVID DEVADOSS : But that is not registered. The amount of capital is not disclosed to the Registrar.

THE HONOURABLE SIR BROJENDRA MITTER : What I say is this. The matters which appear on the register of firms will be matters which the persons dealing with the firm ought to know. Persons dealing with the firm ought to know with whom they are dealing, to whom they are giving credit and when the partners joined and who the partners are at any particular point of time. These are matters which the register of firms will disclose, but none of the internal affairs of the firm. That being so, the risk which the Honourable Member is apprehending is not real.

Sir, there is nothing more that I need say. It is a matter of gratification to me who has worked at this measure for over two years that the Bill has commended itself to this House.

MR. CHAIRMAN : The question is that the Bill to define and amend the law relating to partnership, as passed by the Legislative Assembly, be taken into consideration.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clauses 4, 5, 6, 7 and 8 were added to the Bill.

Clauses 9 and 10 were added to the Bill.

THE HONOURABLE SIR BROJENDRA MITTER : Sir, I move that in sub-clause (1) of clause 11, for the words "The mutual rights and duties", the words "Subject to the provisions of this Act, the mutual rights and duties" be substituted.

This is a drafting amendment which is necessary because a question might arise whether this clause, which is of a general character, overrides specific provisions of the Act or the specific provisions prevail as against the general provision. In order to make this point clear, I propose that the words "Subject to the provisions of this Act" be added. Sir, I move.

The motion was adopted.

Clause 11, as amended, was added to the Bill.

Clauses 12, 13, 14, 15, 16 and 17 were added to the Bill.

Clauses 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 were added to the Bill.

THE HONOURABLE SIR BROJENDRA MITTER : Sir, I move that for sub-clause (6) of clause 30, the following sub-clause be substituted, namely :

"(6) Where any person has been admitted as minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the person asserting that fact."

This is a purely drafting amendment. Sub-clause (6) as appearing on the Bill as passed by the Legislative Assembly was accepted by me subject to drafting changes. We have now made the drafting changes. There is no change of substance. We have used phraseology which we have used all through the Bill instead of the loose wording in which the amendment was suggested in the Assembly. Sir, I move.

The motion was adopted.

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

Clauses 31, 32, 33, 34, 35, 36, 37 and 38 were added to the Bill.

Clauses 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 were added to the Bill.

Clauses 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 were added to the Bill.

THE HONOURABLE SIB BROJENDRA MITTER : Sir, I move for sub-clause (4) of clause 69, the following sub-clause be substituted, namely :

“(4) This section shall not apply—

- (a) to firms or to partners in firms which have no place of business in British India or whose places of business in British India are situated in areas to which by notification under section 55, this Chapter does not apply, or
- (b) to any suit or claim set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim.”

Sub-clause (4) as it stands deals with firms which have no place of business in British India. These firms are excluded from the operation of the registration Chapter. As I said, Sir, when moving the Motion for consideration, a suggestion was put forward in the Assembly that small firms might be excluded from the operation of registration, and I promised in the Assembly that I would examine that suggestion and, if feasible, I would move an appropriate amendment in this House. The result of my examination is this, that small claims of a small cause court nature might easily be excluded from the operation of registration. And I fixed upon one hundred rupee claims on the analogy of registration in the case of immoveable property. As Honourable Members are aware, transfers of immoveable property of the value of one hundred rupees and above are compulsorily registrable, but transfers of properties of a value below that figure need not be registered. Acting on that analogy I have put the limit at one hundred rupees. I think, Sir, that this exemption will be found to be beneficial and the apprehended harassment of small firms will be obviated. Sir, I move.

THE HONOURABLE SIB MANECKJI DADABHOY : Sir, I welcome this amendment, though I must confess I am not quite satisfied with it. The limitation of the amount to Rs. 100 is too paltry and insignificant and would only affect a very infinitesimally small number of partnerships. The reason which has been given by the Honourable learned Law Member is that he has followed the provision of the Transfer of Property Act which provides that all transfers of immoveable property exceeding Rs. 100 would require registration ; and on that analogy this amendment has been made. This Council is aware that the jurisdiction of all the small cause courts in various presidencies extends

[Sir Maneckji Dadabhoy.]

up to Rs. 2,000. There was a great deal said in the other House that this clause will prejudicially affect numerous small partnerships and would cause considerable hardship. I am led to believe that there is much of sense and cogency in that argument and I should have been personally glad if the Honourable Law Member had at least raised his figure to Rs. 500. Though in a way ostensibly this amendment is supposed to give some relief, as a matter of fact in my humble opinion it will not give any adequate or even relief of substantial value. However, as I see that this Act is to be passed to-day I would only request my Honourable friend to reconsider this matter, whether it would not be proper and just to give this measure of relief to partnerships which do not exceed Rs. 500. There are numerous cases in villages, in out of the way towns, where small partnerships enforcing contractual obligations do exist and this amendment, as it is worded, will not give a substantial measure of relief.

THE HONOURABLE SIR BROJENDRA MITTER : Sir, I would ask the House to accept this amendment and I give this assurance. It is a new provision which we are introducing into the law of partnership, that is the provision for registration, and if in actual operation any these clauses are found to be oppressive I shall take the earliest opportunity to bring in an amending Bill. Being a new matter, we have to go by a certain standard. The standard which we have adopted is, to my mind, appropriate. If this standard is found to be too low, I shall have no hesitation in raising it ; but I wish the Act to be in operation for some little time to see its effect.

MR. CHAIRMAN : The question is that the following amendment be adopted :

“ For sub-clause (4) of clause 69, the following sub-clause be substituted, namely :

‘ (4) This section shall not apply—

- (a) to firms or to partners in firms which have no place of business in British India, or whose places of business in British India are situated in areas to which, by notification under section 55, this Chapter does not apply, or
- (b) to any suit or claim set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882, or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887, or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim ’.”

The motion was adopted.

Clause 69, as amended, was added to the Bill.

Clauses 70, 71, 72, 73 and 74 were added to the Bill.

Schedules I and II were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR BROJENDRA MITTER : Sir, I move that the Bill to define and amend the law relating to partnership, as passed by the Legislative Assembly and as amended by this House, be passed.

The motion was adopted.

INDIAN COMPANIES (SUPPLEMENTARY AMENDMENT) BILL.

THE HONOURABLE MR. J. C. B. DRAKE (Commerce Secretary): Sir, I move that the Bill to amend the Indian Companies (Amendment) Act, 1930, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

This Bill, Sir, proposes to make a very slight alteration in the law. The Indian Companies (Amendment) Act of 1930 amended the Indian Companies Act of 1913 in respect of one matter, namely, regulations for the registration and for the grant of certificates to accountants enabling them to audit the accounts of public companies. That Act, Sir, introduced a new provision which enabled firms of accountants to audit the accounts of public companies as firms in their firm names. But as under this law all accountants must hold certificates from the Governor General in Council to enable them to conduct those audits, it was provided that before a firm could be allowed to audit the accounts of a public company all the partners of that firm must hold certificates. While the Government of India were drawing up the statutory rules which have to be framed under this Act it was brought to their notice that certain firms of accountants have partners who never come to India at all. It was never the intention that such firms should be debarred from auditing the accounts of public companies in their firm names, and this Bill therefore proposes to set right what was really an oversight by substituting for the condition that all partners of a firm must hold certificates the condition that all partners practising in India must hold certificates. All I think I need add is that the Act of 1930, which has not yet come into force, will be brought into force very shortly, so that this amendment is being made in good time. Sir, I move.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. C. B. DRAKE: Sir I move that the Bill to amend the Indian Companies (Amendment) Act, 1930, for a certain purpose, as passed by the Legislative Assembly, be passed.

The motion was adopted.

EMPLOYERS AND WORKMEN (DISPUTES) REPEALING BILL.

THE HONOURABLE MR. J. A. SHILLIDY (Industries and Labour Secretary): Sir, I move that the Bill to repeal the Employers and Workmen (Disputes) Act, 1860, as passed by the Legislative Assembly, be taken into consideration.

Sir, it will not be necessary for me to speak at any length about this Bill. Indeed I think the best argument in favour of this Bill will be to recite very briefly the provisions of the Act which we have to repeal. That Act is an old Act of 1860 which can be applied to disputes between employers and workmen employed on the construction of railways, canals and other public works. It is limited to cases where the amount in dispute does not exceed Rs. 200. It enables a specially invested magistrate to decide such cases summarily. It provides that there shall be no appeal against the magistrate's decision. The magistrate is empowered to fine any

[Mr. J. A. Shillidy.]

workman who fails to work in accordance with his contract up to a sum of Rs. 20 or, if a petition to that effect is presented to him to order a workman to perform a work in accordance with his contract, and, if the workman fails to do so, to sentence him to simple imprisonment up to two months. In other words, these civil disputes were taken out of the civil law and brought under the criminal law. The question was examined by the Labour Commission who recommended that the Act should be entirely repealed. It will, I think, be generally agreed that the provisions of the Act are not in accordance with modern methods or modern sentiment. Also, I would remind the House that, so far as disputes on public utility services are concerned, we have in existence the Trades Disputes Act. Sir, I move.

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. A. SHILLIDY : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

WHEAT IMPORT DUTY (EXTENDING) BILL.

THE HONOURABLE MR. J. C. B. DRAKE (Commerce Secretary) : Sir, I move that the Bill to extend the operation of the Wheat (Import Duty) Act, 1931, as passed by the Legislative Assembly, be taken into consideration.

Last September, Sir, in speaking on a Resolution moved by my Honourable friend, Khan Bahadur Chaudhri Muhammad Din, I said that it was the intention of Government that, if no material change took place in the situation, it would be necessary to continue the operation of this Wheat (Import Duty) Act. The Act itself, Sir, I think requires very little explanation from me but the House might possibly like to hear what kind of change in the situation would in the opinion of Government alter that intention of which I spoke. The object of this Act was explained last year to be the preservation for wheat grown in India of a certain market in and near the port areas which, owing to the comparative level in prices, was being supplied by foreign wheat, displacing to that extent Indian wheat. The duty was completely effective in that it kept out all imports of foreign wheat. One change that might conceivably have come over the situation therefore would be that the comparative levels of prices, that is to say of the world price of wheat and the internal price of wheat, had so changed that there was no further fear of any imports of this Australian wheat. But there was also another matter in regard to which Government had to watch the situation and that was, as was explained to this House before, that if the supplies of wheat in India were found to be not so great as was at one time thought and if there were signs of any surplus that did exist being absorbed, there was a danger that with a high import duty upon foreign wheat prices would rise to a point where Government would find it necessary to take action in the interests of the consumer. Well, now, Sir, in regard to these two points, I might just say this. Taking the second one first—what has happened since last September is that, as Honourable Members are no doubt aware, a

considerable improvement has taken place in the internal price of Indian wheat. Taking the price f. o. r. at Lyallpur as the basis, the price was in the neighbourhood of Rs. 1-9-0 a maund at the end of September and had risen to about Rs. 2-10-0 a maund by the end of December. Since then, there has been a slight set-back and the latest quotation which I have seen is about Rs. 2-4-0 to Rs. 2-5-0 a maund. At the same time, the world price has risen, and as an indication of that the price of South Australian wheat in London, which was about 24 shillings a quarter at the end of last September, rose as high as 31 shillings a quarter in the first week of November and, after falling to 26 shillings in January, has again risen to 28 or 29 shillings a quarter. Well, Sir, it is quite unnecessary for me to enter into any discussion of the relation which these two sets of prices bear to one another. The point with which I am concerned is that the price has not risen, in the opinion of Government, to a point where it would be necessary for them to remove or reduce the import duty in the interests of the consumer. The internal price of wheat is still a good deal lower than the pre-war average, let alone the price which obtained in 1929. As regards the other point, Sir, the course of prices has been very carefully watched and it is not possible for Government to say to-day that if this duty were removed there would be no likelihood of Australian wheat being imported into India. Conditions therefore are such that Government consider the continuance of this duty to be necessary.

As regards the details of the Bill, I need only point out that the main clause is clause 2 which extends the operation of the existing Act for one year from the 1st April next. Clause 3 repeals section 3 of the Act, under which wheat imported in accordance with contracts made before a certain date was exempted from the payment of duty. As I informed the House last September, it was never the intention of Government to repeat any exemption of that kind if the operation of the Act were extended and as it is practically certain that all those old contracts made before the 31st March, 1931, are exhausted, the continuance of that provision is no longer necessary. That, Sir, is all I have to say on the Bill. Sir, I move.

The motion was adopted.

Clause 3 was added to the Bill.

Clauses 2 and 1 were added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. C. B. DRAKE : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

INDIAN FINANCE (SUPPLEMENTARY AND EXTENDING) AMENDMENT BILL.

THE HONOURABLE MR. A. F. L. BRAYNE (Finance Secretary) : Sir, I move that the Bill to amend the Indian Finance (Supplementary and Extending) Act, 1931, for a certain purpose, as passed by the Legislative Assembly, be taken into consideration.

Sir, I need not take up much of the time of the House on this Bill which possesses one virtue which perhaps is a rare feature of Income-tax Bills that it is largely for the benefit of the assessee. Since the taxable limit was lowered

[Mr. A. F. L. Brayne.]

from Rs. 2,000 to Rs. 1,000 in the Finance Bill, some 350,000 new assesseees have been added ; that is to say, the number of assesseees has been almost doubled, and it is obviously desirable that some procedure should be devised partly for the convenience of the assesseees and partly to facilitate the disposal of business and to prevent heavy expenditure on additional establishment which would have been necessary if the ordinary and very detailed procedure were followed. A similar provision existed in the Act of 1918, but there is this difference in the present case that whereas in 1918 it was only necessary to publish the notice of assessment, at present we propose that the notice should be directly served on the assessee because it is felt that mere publication is not quite fair in so far as the assessee may not have notice of it. I would emphasise to the House that this measure is in no way compulsory. It is open to any assessee to ask that his assessment should be fixed according to the ordinary procedure. The matter is entirely in his hands. Another feature of the Bill is that it is purely provisional. It appears as an amendment of the Finance Act of 1931 and will be in force only so long as that Act is in force. If it so appears that it is necessary and desirable to extend the provision, it will be included in the regular Income-tax Act. As therefore the Bill is voluntary and provisional and for the benefit of the assessee and makes for economy in the administration, I hope that this House will be able to accept it. Sir, I move.

The motion was adopted.

Clauses 2 and 3 were added to the Bill,

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. A. F. L. BRAYNE : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

CODE OF CIVIL PROCEDURE (AMENDMENT) BILL.

THE HONOURABLE SIR BROJENDRA MITTER (Law Member) : Sir, I move that the Bill further to amend the Code of Civil Procedure, 1908, for a certain purpose, be taken into consideration.

Sir, this Bill provides for a procedure to be adopted when foreign courts require the evidence of witnesses in India. There is no such provision in our Civil Procedure Code now, and in order to fill this lacuna this Bill has been brought forward. It is fully explained in the Statement of Objects and Reasons and I need not take up the time of the House any longer. Sir, I move.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE SIR BROJENDRA MITTER : Sir, I move that the Bill be passed.

The motion was adopted.

WIRE AND WIRE NAIL INDUSTRY (PROTECTION) BILL.

THE HONOURABLE MR. J. C. B. DRAKE (Commerce Secretary): Sir, I move that the Bill to provide for the fostering and development of the wire and wire nail industry in British India, as passed by the Legislative Assembly, be taken into consideration.

This Bill, Sir, is the outcome of an enquiry held by the Tariff Board last year. There is, however, an earlier history attached to the relations of the wire and wire nail industry with Government and the Legislature which those Honourable Members who have taken an interest in the subject will see is given in paragraph 2 of the Tariff Board's present Report. It will be as well, perhaps if I explain very briefly that the wire and wire nail industry depends upon the use of a raw material known as wire rod. Wire rod is actually soft steel rod of a size known as No. 5 gauge. The wire and wire nail industry has hitherto been relying upon imported wire rod as its raw material. In connection with the first enquiry into the Steel Industry made by the Tariff Board in 1924, the Board recommended that a duty of Rs. 60 a ton should be placed upon wire and wire nails on the assumption that this wire rod, which is the raw material of the industry, would be obtainable shortly from the Tata Iron and Steel Company. The Government and the Legislature accepted that recommendation and that duty was imposed, and at the same time a protective duty was imposed upon this wire rod. In 1925 the matter came before the Tariff Board again, and they found that actually no wire rod had been supplied to the wire and wire nail industry by the Iron and Steel Company and as the statutory enquiry into the Steel Industry was to take place in the following year, that is, in 1926, they recommended that the question should be considered whether this protection which had been given to the wire and wire nail industry should not be withdrawn on the ground that the industry was not using an indigenous raw material, the use of an indigenous raw material being one of the main conditions laid down by the Indian Fiscal Commission as requiring to be satisfied by an industry seeking protection. At the same time the Tariff Board recommended that the protective duty upon this wire rod should be withdrawn and the ordinary revenue duty of 10 per cent. *ad valorem* should be substituted for it. Those recommendations were accepted. Again in 1926, in the course of the statutory enquiry into the Steel Industry, once more, for the third time, the case of this industry was examined and it was found that the industry was still unable to obtain its raw material in the country and was still relying upon imported rod. But shortly before the Tariff Board reported, the existing industry, which was represented by one firm known as the Indian Steel Wire Products, had gone into voluntary liquidation. The result was that when the Board came to report there was no industry to protect, and they recommended that the protective duty of Rs. 60 a ton on wire and wire nails should be withdrawn. The assets of the original Company were then bought in 1927 by the present proprietor, and he began to manufacture wire and wire nails early in the year 1928. In 1930 he submitted an application for protection, for an inquiry by the Tariff Board into his claim for protection, and—this is the important point—the main ground upon which he based his application was that he proposed to make wire rod in India himself. The raw material of this industry is in a somewhat peculiar position. We have plenty of steel in India and we have plenty of steel of the right quality, but we have not got steel of the right size. In other words, it has not been found possible as yet for the Tata Iron and Steel Company to roll their steel billets

[Mr. J. C. B. Drake.]

into rod of the required size to enable wire and wire nails to be made from it. The present proprietor of the Indian Steel Wire Products Company proposes to install the necessary machinery for that purpose, to use Indian steel and to roll it down to the size required and produce his wire and wire nails from it. That, Sir, is the basis of the proposals which are now before the House.

Now, in going into the merits of the case before them the Tariff Board came to certain findings which I think may be summarised as follows. Dependence on imported raw material still disqualifies the wire and wire nail industry from substantive protection. Secondly, there is good reason to believe that if tariff assistance is given now the industry will be able in about two years to qualify for substantive protection. Thirdly, the case for substantive protection should be examined in the course of the next statutory inquiry into the iron and steel industry, which must take place under the law before March, 1934. And lastly, in the meantime a moderate protective duty should be placed upon wire and wire nails in order to save this industry from collapsing before it is possible for it to establish a claim to substantive protection. The proposal therefore is not the ordinary proposal for substantive protection. It really amounts to a proposal to erect a low tariff wall for a short period behind which the industry can shelter while it is enabling itself to satisfy the conditions precedent to protection by producing its own raw material. It is necessary for me to make quite clear the fact that by passing this Bill the Government and the Legislature are not committed to the grant of full substantive protection to the wire and wire nail industry. The intention is that when this statutory inquiry takes place, as it must, actually, in 1933, the Tariff Board, or whatever agency makes the inquiry, will then go into the merits of the whole case and decide whether, in accordance with the principles laid down by the Fiscal Commission, this industry satisfies the conditions required to establish a claim to protection. On the other hand, what the Government feel is this, that a great deal of money has been put into this industry, it satisfies an important need, and if it does collapse, as it appears likely to do if it receives no assistance, then it is extremely unlikely that that industry will ever be started again, or at any rate for a number of years. Equally, the Tariff Board have gone as far as they could very carefully into the manufacturing conditions of this industry and they saw reason to believe that if its raw material can be obtained in India this branch of manufacture can be developed on sound economical lines. That is all I want to say on the Bill generally.

As regards the clauses, the main operative clause is No. 2 and the second item in the Schedule which impose a duty of Rs. 45 a ton on wire and wire nails, omitting certain classes in which the Indian industry is not interested. Clause 3, which was introduced on the recommendation of the Select Committee, exempts the proposed new duty from the operation of the revenue surcharge imposed by the last Finance Act.

The only other points to which I should like to draw the attention of the House are these. As the result of the deliberations in Select Committee it was recommended that Government should satisfy themselves that the manufacturer of wire and wire nails was actually taking steps to render himself independent of foreign raw materials. And the other point is that it was recommended also that Government should undertake an examination of the question whether any other kinds of wire besides those specifically exempted by the Bill should be exempted on the ground that a duty on them would mean a burden on the consumer without it being of any real benefit to the Indian

industry. Both those recommendations have been accepted by the Government and if this measure passes into law the necessary inquiries will be made under both heads. Sir, I move.

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Schedule was added to the Bill.

The Title and Preamble were added to the Bill.

THE HONOURABLE MR. J. C. B. DRAKE : Sir, I move that the Bill, as passed by the Legislative Assembly, be passed.

The motion was adopted.

The Council then adjourned till Eleven of the Clock on Tuesday, the 1st March, 1932.
